

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER BOND SAPPINGTON,

Defendant-Appellant.

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UNPUBLISHED

April 21, 1998

No. 198824

Ogemaw Circuit Court

LC No. 95-000912 FH

Before: Neff, P.J., and White and D. A. Teeple\*, JJ.

MEMORANDUM.

Following his jury trial conviction for manufacture of marijuana, MCL 333.7401(4); MSA 14.15(7401)(4), defendant appeals by right. Defendant contends that the principal evidence against him, which was procured in a search pursuant to a warrant, is a product of a variety of Fourth Amendment violations.

Defendant first contends that information in the warrant was shown to be false at an evidentiary hearing, and that this requires suppression of the evidence pursuant to *Franks v Delaware*, 438 US 154, 155-156; 98 S Ct 2674; 57 L Ed 2d 667 (1978). At the evidentiary hearing testimony was presented which, if accepted by the trier of fact, would have supported such a determination; however, there was contrary testimony, and the trier of fact expressed its conclusion that no falsity had been demonstrated. This finding of historical fact is not clearly erroneous and therefore must be accepted by this reviewing Court. *Ornelas v United States*, 517 US 690; 116 S Ct 1657, 1663; 134 L Ed 2d 911 (1996).

In his affidavit in support of the search warrant, Ogemaw Sheriff's Deputy Clayton related information supplied by Officer Byerlein, whose information came from two unnamed informants. The reliability of these informants was supported by a recitation of verified information they had each previously supplied to one or both officers, and the credibility of such informants is not here challenged. Rather, defendant contends that the credibility of Officer Byerlein was not properly established. This argument is without merit, inasmuch as Michigan courts have consistently recognized identified citizens

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\* Circuit judge, sitting on the Court of Appeals by assignment.

and police officers as presumptively reliable for such purposes. *People v Powell*, 201 Mich App 516, 523; 506 NW2d 894 (1993). Officer Byerlein was indeed identified as a law enforcement officer in the affidavit prepared by Deputy Clayton, bringing this case within the rule of *Powell*, *supra*.

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple