

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JIM FRANK JONES,

Defendant-Appellee.

UNPUBLISHED
February 20, 2007

No. 266569
Wayne Circuit Court
LC No. 05-007720-01

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

The prosecution appeals as of right from a circuit court order dismissing charges of possession with intent to deliver 50 or more but less than 450 grams of a controlled substance, MCL 333.7401(2)(a)(iii), possession with intent to deliver less than 50 grams of a controlled substance, MCL 333.7401(2)(a)(iv), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court dismissed the charges after granting defendant's motion to suppress evidence that was seized during the execution of a search warrant. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor argues that the trial court erred in finding that the search warrant affidavit was deficient because it failed to establish probable cause for believing that a controlled substance was located on the premises. We agree.

The search warrant affidavit stated:

1.) The Affiant is a sworn member of the Detroit Police Department, currently assigned to the Narcotics Division working in conjunction with a credible and reliable SOI #2117 [the informant] regarding the sale of illegal narcotics from the above-described location. Information from [the informant] has led to the seizure of narcotics, narcotics proceeds, narcotics paraphernalia and firearms. Information from [the informant] has been used by the Detroit Narcotics Section on numerous occasions. [The informant] is also familiar with narcotics in there [sic] various forms, packaging and distribution tactics.

2.) On 7/18/2005, Affiant met with [the informant] to formulate a plan to attempt to make a controlled purchase of Narcotics from the above-described

location. [The informant] was searched for money and drugs with none being found and issued a sum of Secret Service Funds with which to attempt to make the purchase. The Affiant then observed [the informant] walk into the above-mentioned dwelling (front door). [The informant] stayed for a short time and then return [sic] directly to the Affiant. Upon returning to this writer, [the informant] advised affiant on actions of above-mentioned seller. Seller handed [the informant] suspected cocaine in exchange for SS funds, seller then questioned [the informant] on who [the informant] was sent by and who [the informant] was familiar with. Being unsatisfied with [the informant's] response, seller then grab [sic] suspected cocaine from [the informant's] hand and threw SS funds to the ground in front of [the informant] as he told [the informant] to leave the above location. [The informant] then returned SS funds to affiant. [The informant] was then again searched for money, narcotics and contraband with negative results. [The informant] then advised members on actions, description and location of above mentioned seller.

3.) Affiant has been in numerous narcotics raids in the City of Detroit. In the overwhelming majority of these raids, firearms and or weapons were found used to protect illegal narcotic activity and seek to remove the same.

5 [sic].) Therefore, Affiant has probable cause to believe that the above listed items will be found on the premises of the above-described location.

The trial court concluded that the affidavit was deficient because it lacked information concerning the reason that the police targeted the particular house for the attempted controlled buy. The court also rejected the applicability of the good-faith exception to the exclusionary rule. See *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004).

In *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006), this Court summarized the applicable standard of review as follows:

“[A]ppellate scrutiny of a magistrate’s decision involves neither de novo review nor application of an abuse of discretion standard.” *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Instead, this Court need only ask “whether a reasonably cautious person could have concluded that there was a ‘substantial basis’ for the finding of probable cause.” *Id.* Because of the strong preference for searches conducted pursuant to a search warrant, a magistrate’s decision regarding probable cause should be paid great deference. *Id.* at 604, citing *Illinois v Gates*, 462 US 213, 236-237; 103 S Ct 2317; 76 L Ed 2d 527 (1983). “Affording deference to the magistrate’s decision simply requires that reviewing courts ensure that there is a substantial basis for the magistrate’s conclusion that there is a ‘fair probability that contraband or evidence of a crime will be found in a particular place.’” *Russo, supra* at 604, quoting *Gates, supra* at 238. Finally, this Court reviews a trial court’s factual findings in a ruling on a motion to suppress for clear error, *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005), but reviews de novo a trial court’s interpretation of the law or the application of a constitutional standard to uncontested facts, *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

This case is factually similar to *People v Whitfield*, 461 Mich 441; 607 NW2d 61 (2000), which also involved an attempted controlled buy. In *Whitfield, supra*, p 443, the affidavit in support of the search warrant stated that the affiant, a member of the narcotics division of a police department, went to a particular address, where an individual asked him what he wanted. The affiant responded, “one,” meaning one packet of heroin. *Id.* The individual pulled out a bundle of small coin envelopes from his pocket, which the affiant recognized were similar to those commonly used for heroin. *Id.*, pp 443, 448. The individual then asked the affiant whom he knew. *Id.*, p 443. The affiant was unable to convince the individual to complete the sale, but he told the affiant to come back with someone the individual knew and then he would take care of the affiant. *Id.* There were no facts indicating that the house had been under surveillance. *Id.*, pp 443, 453 (Kelly, J., dissenting). There was no indication that the affidavit had given a specific reason for why the police had targeted the location at issue. *Id.*, pp 442-448. The Supreme Court held that “the magistrate had a substantial basis for finding probable cause to issue the search warrant because there was a ‘fair probability that contraband or evidence of a crime [would] be found [at the home where this conversation took place].’” *Id.*, p 448 (citation omitted; bracketed material in *Whitfield*.)

Although the person attempting the purchase in the present case was an unnamed confidential informant, rather than a police officer as in *Whitfield*, the affidavit contained sufficient allegations of the informant’s personal knowledge and credibility. Pursuant to MCL 780.653(b), an affidavit may be based on information supplied by an unnamed person if it contains “affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible *or* that the information is reliable.” (Emphasis added.) The description of the encounter between the informant and the individual in the home provided a basis for the magistrate to conclude that the informant spoke with personal knowledge. The averments concerning the police department’s use of information supplied by the informant “on numerous occasions,” and the fact that the information had led to “seizure of narcotics, narcotics proceeds, narcotics paraphernalia and firearms,” provided a basis from which the magistrate could conclude that the informant was credible. See *People v Howey*, 118 Mich App 431, 438; 325 NW2d 451 (1982). Because the allegations were adequate to enable the magistrate to conclude that the informant spoke with personal knowledge and was credible, further averments concerning the reliability of the information were not necessary to comply with the statute. Although violation of the statute does not necessarily require exclusion of evidence, *People v Hawkins*, 468 Mich 488, 510-511; 668 NW2d 602 (2003), compliance with the statute suggests that the warrant was not constitutionally deficient, see, generally, *Martin, supra*, pp 301-303.

Defendant argues that “the affidavit is not specific and fails to mention the type of controlled substance to be seized.” Defendant’s reliance on *Groh v Ramirez*, 540 US 551; 124 S Ct 1284; 157 L Ed 2d 1068 (2004), however, is misplaced, because that case involved a *warrant* that failed to set forth a description of the evidence to be seized. A similar deficiency does not exist in this case. The warrant here refers to “[a]ll suspected controlled substances” and other related items. Defendant has not provided any authority suggesting that greater specificity is required.

In sum, the affidavit was adequate to provide a substantial basis for the magistrate's conclusion that there is a fair probability that contraband or evidence would be found at the specified location. Therefore, the trial court erred in suppressing the evidence.

Reversed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis