

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
December 3, 2013

v

LAVELLE LEWIS STOKES,

Defendant-Appellee.

No. 311438
Wayne Circuit Court
LC No. 12-000519-FH

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

The people appeal as of right a trial court order granting defendant's motion to suppress evidence from a search of his home conducted pursuant to a warrant and dismissing charges against defendant for felon in possession of a firearm, MCL 750.224f, possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during a felony (felony firearm), MCL 750.227b. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

On July 5, 2011, a police officer (the affiant), submitted an affidavit in support of a search warrant for controlled substances and evidence related to the trafficking of controlled substances at defendant's residence at 17586 Freeland Street in Detroit. In the affidavit, the affiant set forth his qualifications and stated that his experience showed that narcotics dealers often kept guns and that "heavy traffic to a particular location involving short stays is one indicator of the sale of street level illegal narcotics." The officer also set forth facts establishing probable cause or grounds for the search in relevant part as follows:

[3] C. On June 20, 2011, ATF Agents interviewed a source of information. The source indicated s/he was aware of a subject by the name of Lavelle Stokes, a black male, approximately 28 years old, who was a felon in possession of multiple firearms and that he sells marijuana. The source stated that Stokes resides in the area of Freeland Street and Outer Drive in the City of Detroit The source of information stated that s/he last saw a Glock .40 and an assault rifle on June 17, 2011 at the residence and that on June 10, 2011, s/he last saw Stokes with a 1 ½ pounds of marijuana that he was bagging up into various quantities. The source of information also advised that Stokes drives a dark blue

4-door Volvo. The source of information advised that someone could telephone Stokes . . . and order a pound of marijuana from him.

D. Affiant conducted a name searching via LIEN/SOS and located an individual by the name of Lavelle Lewis Stokes (DOB) 02/27/1981. A query of the individual indicated the address associated with him was 17586 Freeland St, Detroit, MI. Affiant also queried vehicles owned by the individual and the query indicated the individual owned a 1999 Volvo, 4 door. The vehicle also came back registered to 17586 Freeland St, Detroit, Mi. A LEIN query also indicated that Stokes has a suspended Michigan Concealed Pistol License.

E. On June 30, 2011 at approximately 11:45 am, [an officer] and affiant initiated surveillance in the area of Freeland St and Outer Dr. Officers located the residence of 17596 Freeland St and observed a dark blue, 4 door, Volvo backed into the driveway. While conducting surveillance on the residence [the officer] and Affiant observed vehicle and bicycle traffic arriving at the residence, staying a short time and subsequently leaving. Between 11:45 am and 11:50 am, officers observed approximately 2 subjects arrive by means of bicycle and personal vehicle and depart after short stays.

F. On July 5, 2011, at approximately 4:00 pm, [two officers] and affiant established surveillance at the residence of 17586 Freeland Street. [The officers] and affiant observed a black in color Cadillac Escalade arrive at the residence at approximately 4:20 pm. A black male subject exited the vehicle and walked up to the main entry door of the residence. The black male subject made contact with several black males on the porch for a short period of time. The black male subject was observed entering the main entrance of the residence. A short time later the black male subject exited the residence carrying a white in color baseball cap in his left hand. [An officer] observed the subject depart moments later north on Freeland driving the black Cadillac Escalade.

G. Officers initiated and maintained surveillance on the vehicle for several blocks where Detroit Police Department officers conducted a traffic stop on the vehicle for a traffic violation. During the subsequent traffic stop, officers detected the odor of marijuana [emanating] from the vehicle. Officer then detained the driver of the vehicle who indicated that he obtained the marijuana on the "West Side" of Detroit. [The officer] located and recovered the suspected marijuana, which was underneath a white . . . baseball cap on the passenger seat.

The affiant averred that he conducted a field test on the suspected marijuana that confirmed the presence of THC. The affiant attested that a criminal history check revealed that defendant had prior felony convictions for drug and weapons offenses and a LEIN check revealed that defendant had two Glock handguns registered in his name.

A magistrate issued a search warrant and the affiant and other officers executed the warrant on July 5, 2011. After defendant was charged and bound over to the circuit court he moved to suppress evidence obtained during the search, alleging that the magistrate lacked

probable cause to issue the warrant. The trial court granted defendant's motion, finding that the magistrate lacked probable cause to issue the warrant. The court found that the affidavit was "devoid of . . . credible and reliable information" where the affiant spoke with ATF agents but not the informant and where there was no other information concerning the informant's reliability. The court reasoned that police failed to conduct a controlled buy and, although a visitor to defendant's residence was arrested with marijuana, police only conducted five minutes of surveillance on June 30, 2011 and 20 minutes on July 5, 2011. The trial court emphasized that police failed to perform sufficient vetting of the informant to "test the reliability or the credibility of the information" provided. The court suppressed all evidence seized during execution of the search warrant. This appeal ensued.

The people argue that the trial court erroneously held that the affidavit was insufficient to justify the magistrate's issuance of the search warrant. "A trial court's findings of fact on a motion to suppress are reviewed for clear error, while the ultimate decision on the motion is reviewed de novo." *People v Hrlie*, 277 Mich App 260, 262-263; 744 NW2d 221 (2007). A search warrant may only be issued upon a showing of probable cause. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651(1). "Probable cause exists when the facts and circumstances would allow a reasonable person to believe that the evidence of a crime or contraband sought is in the stated place." *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009). Probable cause "is a practical, nontechnical conception" judged by the totality of the circumstances. *Maryland v Pringle*, 540 US 366, 370; 124 S Ct 795; 157 L Ed 2d 769 (2003). A finding of probable cause must be based on facts presented to the magistrate by oath or affirmation. *Waclawski*, 286 Mich App at 698.

Contrary to the trial court's conclusion, probable cause in this case did not turn on the credibility or reliability of the confidential informant; instead, independent of the confidential informant, the independent observations of the affiant showed that there was probable cause to support the warrant. Here, the informant gave the affiant information concerning possible drug activity taking place at defendant's residence. After obtaining that information, the affiant took independent steps to verify the information. Specifically, on June 30, 2011, the affiant conducted surveillance outside the residence¹ where he and another officer observed two individuals make brief visits, which, in the affiant's experience, was indicative of the sale of street level narcotics. Thereafter, the affiant resumed surveillance at defendant's residence on July 5, 2011. The affiant and two other officers observed a man drive up to the residence in a black Cadillac Escalade. The affiant saw the man enter defendant's residence and then exit a short while later carrying a white baseball cap in his left hand. Police maintained surveillance on the Cadillac until Detroit Police Department officers effectuated a traffic stop on the vehicle. During the traffic stop, officers detected the odor of marijuana and discovered suspected

¹ Although the affiant listed the wrong address with respect to the residence observed in his initial surveillance, reading the affidavit as a whole indicates that the inaccurate address amounted to a typographical error. The affiant described defendant's residence with great detail, referenced the correct address numerous other times, and noted that a dark-colored Volvo, the same type of car registered to defendant, was parked in the driveway at the residence.

marijuana underneath a white baseball cap on the passenger seat of the vehicle. The affiant conducted a field test and the suspected marijuana tested positive. Furthermore, the affiant learned that defendant had prior criminal convictions in 2008 and 2011 for drug and weapons offenses and a LEIN search showed that defendant had two Glock handguns registered in his name. Based on the totality of these circumstances, a reasonable person could have concluded that a controlled substance and evidence related to the trafficking of a controlled substance was present at defendant's residence at the time of the issuance of the search warrant. *Waclawski*, 286 Mich App at 698.

Moreover, to the extent that the credibility or reliability of the confidential informant was central to the question of probable cause, the trial court erred in finding that there was nothing in the affidavit to support that the informant was credible or reliable. Where an informant is unnamed in an affidavit, the affidavit should contain "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." MCL 780.653(b). In this case, there were affirmative allegations that would allow a magistrate to conclude that the informant had personal knowledge and was credible or reliable. Here, the informant identified defendant by name and approximated his age. The informant identified what street defendant lived on and the type of car that he drove and stated that defendant owned a Glock handgun and sold marijuana. The affiant confirmed that defendant lived on Freeland Street, drove a four-door dark blue Volvo, had a Glock handgun registered in his name, previously had a concealed weapons permit, and had prior drug and weapons-related convictions. Further, the affiant's investigation supported the inference that defendant was selling marijuana from his home. As noted, the affiant observed a man enter defendant's residence and exit a short time later with a white baseball cap. Police stopped the man's vehicle and discovered marijuana under a white baseball cap. In short, contrary to the trial court's finding, the magistrate could have concluded that the informant had personal knowledge and was credible or reliable.

In sum, applying *Pringle*, 540 US at 370, we find that based on the totality of the circumstances set forth in the affidavit, a reasonable person could have concluded that a controlled substance and evidence related to the trafficking of a controlled substance was present at defendant's residence at the time of the issuance of the search warrant. *Waclawski*, 286 Mich App at 698-699. Accordingly, the magistrate did not err in finding that there was probable cause to issue the search warrant.² *Id.*

² We also find that, even assuming the magistrate's search warrant was unsupported by probable cause, the trial court erred in failing to apply the good-faith exception to the exclusionary rule where the affiant relied in good-faith on the search warrant. See *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984); *People v Hawkins*, 468 Mich 488, 499-500; 668 NW2d 602 (2003).

We reverse the trial court's order granting defendant's motion to suppress evidence obtained during the search and dismissing the charges against defendant and we remand for further proceedings. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello