

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JACKIE LANE SHACKELFORD, JR.,

Defendant-Appellee.

UNPUBLISHED

February 10, 2005

No. 250605

Wayne Circuit Court

LC No. 03-006473

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing the case following the grant of defendant's motion to suppress evidence. We reverse and remand.

Defendant was charged with possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii). The marijuana was discovered during a search of his house executed pursuant to a warrant. Defendant asserted that the affidavit in support of the warrant was insufficient to establish probable cause to believe drugs would be found in the house. The trial court agreed and suppressed the evidence.

The trial court's ruling on a motion to suppress is reviewed de novo on appeal. *People v Echavarría*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When reviewing a magistrate's conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate's determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled in part on other grounds by *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

Issuance of a search warrant must be based upon probable cause. MCL 780.651(1). "Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). "A magistrate can consider only the information in the affidavit made before him in determining whether probable cause exists to issue a search warrant." *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d

308 (1986). The search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

The affidavit stated that a confidential informant went to defendant's house at the direction of the police. The informant was told he could buy cocaine if he came back with someone known to the seller. A police officer then observed visitor traffic which, in his experience, was consistent with the illegal sale of narcotics. Such evidence is virtually identical to that in *People v Mario Perry*, 463 Mich 927; 620 NW2d 308 (2000), which the Court found sufficient to "provide[] a substantial basis for the magistrate's decision to issue a search warrant." Although the affidavit did not conclusively establish that anyone obtained drugs at the house, "the affidavit need not *prove* anything." It only has to provide a substantial basis for concluding that there is a fair probability that contraband or evidence of a crime will be found in the place stated. *People v Whitfield*, 461 Mich 441, 445-446; 607 NW2d 61 (2000) (emphasis in original).

Reversed and remanded for reinstatement of the charge. Jurisdiction is not retained.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello