

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
December 13, 2012

v

JOVON CRAYTON,

Defendant-Appellee.

No. 307013
Wayne Circuit Court
LC No. 11-004179-FH

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant Jovon Crayton appeals by right his jury convictions of possession with intent to deliver 50 grams or more, but less than 450 grams of heroin, MCL 333.7401(2)(a)(iii), and carrying or possessing a firearm during the commission of a felony (felony firearm), MCL 750.227b. The trial court sentenced Crayton to serve two to 20 years in prison for his possession with the intent to deliver heroin conviction, which had to be served consecutive to a two year term for his felony firearm conviction. Because we conclude that there were no errors warranting relief, we affirm.

I. BACKGROUND

Crayton's convictions arose from evidence collected when Detroit police officers searched two residential homes. The officers obtained a warrant to search the homes on the basis of an affidavit by an officer assigned to the Narcotics Enforcement Section. In his affidavit, the officer averred that an unnamed informant, identified as a "cooperating defendant," stated that he or she had personal knowledge that Crayton sold cocaine and heroin in the area of Barlow and 6 Mile, that the informant had mutual friends with Crayton who sold narcotics, and that he or she knew that Crayton actually supplied narcotics to a friend. The informant stated that he or she had been inside the location on Barlow within the past week and saw large quantities of cocaine and heroin. The informant knew that Crayton did not keep his money at the Barlow location, but kept it at a house on the east side of Detroit by St. John's Hospital, and also knew that Crayton drove a white Lexus and a Jeep Cherokee. The informant drove with the officer to the Barlow location and pointed out Crayton's vehicles, which further investigation revealed were registered in Crayton's name at 5953 Hillcrest, a residential home on the east side of Detroit near St. John's Hospital.

The officer averred that he conducted independent surveillance of the Barlow home and, on two occasions, saw Crayton make what the officer believed to be drug sales. On the same day, the officer saw the Jeep Cherokee that the informant had identified as Crayton's, and which the officer had previously seen at the Barlow home, parked in the Hillcrest home's driveway. The officer averred that it was common practice in the narcotics trade for a seller to keep his money and narcotics in separate locations to avoid detection.

The officer secured the search warrant for the Barlow and Hillcrest locations on the basis of the information obtained from the unnamed informant and his surveillance and his investigation. During the search of the Barlow home, officers recovered a knotted sandwich bag containing two grams of heroin, \$7,496 in cash, three guns, and photos in which Crayton appeared. During the search of the Hillcrest home, the officers recovered seven firearms, including assault rifles and handguns, 99.9 grams of heroin, \$179,059 in cash, and numerous documents listing the Hillcrest home as Crayton's residence.¹

The prosecutor charged Crayton with possession with the intent to deliver 50 to 450 grams of heroin and felony firearm on the basis of the drugs and weapons recovered from the Hillcrest home. The jury convicted Crayton of those charges, but acquitted him of charges stemming from the search of the Barlow home.

II. MOTION TO QUASH SEARCH WARRANT

Crayton first argues that the trial court erred in denying his motion to quash the search warrant and suppress the evidence obtained from the search. Specifically, he contends that the officer's affidavit was based on information provided by an unnamed informant whose reliability was never established and the affidavit failed to establish a sufficient nexus between the Hillcrest home and any criminal activity.

"A search warrant may not be issued absent probable cause to justify the search." *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006). "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." *Id.* (internal quotation marks and citation omitted). "Probable cause must be supported by oath or affirmation." *Id.*, citing US Const, Am IV; Const 1963, art 1, § 11. "If the search warrant is supported by an affidavit, the affidavit must contain facts within the knowledge of the affiant and not mere conclusions or beliefs. The affiant may not draw his or her own inferences, but rather must state matters that justify the drawing of them." *Martin*, 271 Mich App at 298 (citations omitted). "However, the affiant's experience is relevant to the establishment of probable cause." *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009).

¹ Crayton admitted at trial that he resided at the Hillcrest home and owned the guns and money recovered there, but he denied ever having heroin in the home or being involved in anything involving drugs.

In reviewing a magistrate's decision to issue a search warrant, this Court neither reviews the decision de novo, nor reviews it for an abuse of discretion. *Martin*, 271 Mich App at 297, quoting *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.” [*Russo*, 439 Mich at 603.] 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 St Ct 2317; 76 L Ed 2d 527 (1983). “Affording deference to the magistrate's conclusion simply requires that reviewing courts ensure that there is a ‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *Russo*, [439 Mich] at 604, quoting *Gates*, [462 US] 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). [*Martin*, 271 Mich App at 297.]

“Furthermore, the search warrant and underlying affidavit must be read in a commonsense and realistic manner to determine whether a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause.” *Id.* at 298.

Here, an officer averred that an unnamed informant provided him with information that Crayton was involved in drug trafficking. A search warrant affidavit may be based on information supplied by an unnamed informant if the affidavit 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.” MCL 780.653; *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485 (1996). “Personal knowledge can be inferred from the stated facts.” *Martin*, 271 Mich App at 302, citing *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992).

In his affidavit, the officer provided sufficient details to permit the magistrate to infer that the unnamed informant spoke from personal knowledge. “The personal knowledge element should be derived from the information provided or material facts, not merely a recitation of the informant's having personal knowledge.” *Stumpf*, 196 Mich App at 223. The specificity of the details provided by the unnamed informant—including information about the area where Crayton sold drugs, the make and color of his vehicles, the informant's observations of large quantities of heroin and cocaine while recently inside the Barlow location, and his knowledge that Crayton did not keep his money at the Barlow location, but at a location near St. John's Hospital in Detroit—was compelling evidence that the informant derived his information from personal knowledge.

Moreover, the officer averred that he conducted an “independent investigation that produced corroborating evidence and substantially verified the information supplied by the informant.” *Stumpf*, 196 Mich App at 223. The officer’s independent surveillance of the Barlow location, where he observed Crayton leave the home and make two suspected drug sales, independently verified the informant’s statement that Crayton sold narcotics in the area of Barlow and 6 Mile. Further, the officer also verified that the vehicles identified by the informant were Crayton’s and determined that they were registered to a home near St. John’s Hospital, and surveillance at that location verified that Crayton parked there. The officer’s independent investigation established that the informant spoke from personal knowledge.

In addition to the requirement that the unnamed informant spoke with personal knowledge, under MCL 780.653, the affidavit must contain allegations from which the magistrate can conclude that the unnamed informant is either credible or that the information is reliable. *Poole*, 218 Mich App at 706. Although the officer did not directly attest to the informant’s credibility or reliability in the affidavit, and admitted that he had never used the informant before, the officer’s independent investigation provided substantial verification of the information provided by the informant, thereby establishing the reliability of the information. See *Stumpf*, 196 Mich App at 223; *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991) (stating that an independent police investigation that verifies the informant’s information can sufficiently support the issuance of a search warrant).

Reviewing the officer’s affidavit in a “commonsense and realistic manner,” *Martin*, 271 Mich App at 298, there was a substantial basis to conclude that the informant spoke with personal knowledge and the information provided was reliable. MCL 780.653; *Stumpf*, 196 Mich App at 223-224. Accordingly, the affidavit satisfied the requirements set forth in MCL 780.653.

Crayton further challenges the legality of the search of his Hillcrest residence on the basis that the affidavit failed to establish a sufficient nexus connecting the Hillcrest location to the drug sales. He relies heavily on the fact that the officer did not observe, and the informant did not state, that Crayton sold drugs from the Hillcrest home. However, a commonsense reading of the affidavit supporting the request for a warrant established that the Hillcrest home might plausibly contain evidence of illegal activities. See *Martin*, 271 Mich App at 298.

The officer related in his affidavit that the informant saw Crayton sell drugs at the Barlow home and saw large amounts of heroin and cocaine there. The informant also stated that Crayton did not keep the money from those sales at the Barlow home, but kept it at a home near St. John’s Hospital. The officer investigated the informant’s statements and personally observed what he thought were drug sales at the Barlow home and further verified that Crayton used a residence on Hillcrest near St. John’s Hospital. Moreover, the officer stated that he knew from experience and training that drug dealers often keep money and narcotics in separate locations. These averments provided a substantial basis from which the magistrate could conclude that there was a fair probability that narcotics and other evidence related to drug trafficking would be found in the Hillcrest address. *People v Whitfield*, 461 Mich 441, 444; 607 NW2d 61 (2000); *Martin*, 271 Mich App at 298.

Crayton further attacks the legality of the search on the basis that the Barlow location was incorrectly described as a single family dwelling and had the wrong address. A search warrant must particularly describe the place to be searched and the persons or things to be seized. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.654(1); *People v Toodle*, 155 Mich App 539, 543; 400 NW2d 670 (1986). Although the address listed for the Barlow home on the warrant was not correct—the location searched was 17132 Barlow and the warrant listed 17152 Barlow, the warrant described the location to be searched with sufficient particularity. Notably, the warrant provided that it listed the “possible address” and set forth the specific location (“1 house directly south of 17160 Barlow an[d] the first house north of 6 mile on the east side of the street”).² The warrant also had a description of the home. The validity of the warrant is also not compromised by the fact that it referred to the Barlow house as a single family dwelling, even though according to Crayton’s testimony the house was actually rented to two individuals, a tenant who lived in the upper half, and his brother, who lived in the lower half. “[W]here a multi-unit is involved, . . . the warrant must specify the particular sub-unit to be searched, unless the multi-unit character of the dwelling is not apparent and the police officers did not know and did not have reason to know of its multi-unit character.” *Toodle*, 155 Mich App at 545. Here, it is evident from the officer’s testimony that it was not readily apparent that the Barlow home was a multi-unit. The officer’s belief was reasonable considering that the home did not contain a visible address and in light of testimony by other officers indicating that they also believed the residence was a single family home.

The trial court did not err when it denied Crayton’s motion to quash the search and suppress the evidence obtained during the search.

III. RIGHT TO CONFRONT

Crayton next argues that he had a constitutional right to confront the unnamed informant. The Confrontation Clause guarantees a criminal defendant the right “to be confronted with witnesses against him.” US Const, Am VI; *Crawford v Washington*, 541 US 36, 42; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Under the Confrontation Clause, out-of-court testimonial statements are barred from admission at trial “unless the declarant was unavailable at trial and the defendant had a prior opportunity for cross-examination.” *People v Chambers*, 277 Mich App 1, 10; 742 NW2d 610 (2007). “A statement by a confidential informant to the authorities generally constitutes a testimonial statement.” *Id.* However, the Confrontation Clause “does not bar the use of out-of-court testimonial statements for purposes other than establishing the truth of the matter asserted.” *Id.* at 10-11, citing *Crawford*, 541 US at 59 n 9; *People v McPherson*, 263 Mich App 124, 133-135; 687 NW2d 370 (2004). “Specifically, a statement offered to show why police officers acted as they did is not hearsay.” *Chambers*, 277 Mich App at 11.

Here, it is evident that the limited and brief references to a “cooperating defendant” were not offered for the truth of the matters asserted but were made in the context of providing background information to explain certain aspects of the officer’s investigation, i.e., how he located the Hillcrest location and why Crayton’s brother was not the target of his investigation.

² The Barlow location apparently did not have an address on the exterior.

These references do not implicate Crayton's constitutional right to confront the witnesses against him. See *Chambers*, 277 Mich at 11, citing *People v Lee*, 391 Mich 618, 642-643; 218 NW2d 655 (1974). A defendant's constitutional right to confront the witnesses against him is not implicated when the "testimony was provided merely by way of background." *United States v Cromer*, 389 F3d 662, 676 (CA 6, 2004). Regardless, the trial court's corrective instruction to disregard any testimony concerning the informant's statements to the officer following defense counsel's objection eliminated any potential prejudice that may have resulted from the reference. See *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad

/s/ Kirsten Frank Kelly

/s/ Michael J. Kelly