

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 12, 2013

v

MARK ANTHONY TRUMAN,

Defendant-Appellant.

No. 309014
Jackson Circuit Court
LC No. 10-005600-FH

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Defendant Marc Anthony Truman was convicted after a jury trial of possession of 50 or more but less than 450 grams of cocaine, MCL 333.7403(2)(a)(iii). On January 19, 2012, the trial court sentenced defendant as a habitual offender, MCL 769.12, to 6 to 20 years' imprisonment. He appeals as of right and for the reasons set forth in this opinion, we affirm.

This case arises as a result of an investigation conducted by officers in the Jackson police department. In August 2010, officers began investigating an individual named Marlin Davis in connection with suspected marijuana trafficking. From information gathered during this investigation, officers obtained and executed a series of search warrants for several locations associated with Davis, where they found and confiscated several pounds of marijuana and over \$100,000 in cash. During the execution of these search warrants, officers found paperwork indicating that Davis was married to an individual named Kimberly Truman and that Kimberly resided at 3033 Tulsa Drive, in Jackson County, Michigan. Based on this information, officers obtained and executed a search warrant at 3033 Tulsa Drive. Officers found defendant in the basement of the residence along with 13.09 grams of crack cocaine, 66.80 grams of powder cocaine, and over \$10,000 in cash.

Defendant's sole argument on appeal is that the search warrant issued for 3033 Tulsa Drive lacked probable cause. Defendant argues that the only reference to 3033 Tulsa Drive in the affidavit for the search warrant was that mail with that address on it was located during a separate search warrant at a different location with ties to Davis. Defendant contends that there was no indication that any illegal activity was ongoing at 3033 Tulsa Drive. Therefore, no basis existed for the search warrant and the evidence found and seized pursuant to the defective warrant must be excluded.

“[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). Rather, this Court asks “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.” *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006).

“A search warrant may be issued only on a showing of probable cause that is supported by oath or affirmation.” *People v Nunez*, 242 Mich App 610, 612; 619 NW2d 550 (2000). “Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in a stated place to be searched.” *Id.* (quotations and citations omitted). When reviewing the decision to issue a search warrant, “this Court must evaluate the search warrant and underlying affidavit in a common-sense and realistic manner,” and “then determine whether a reasonably cautious person could have concluded, under the totality of the circumstances, that there was a substantial basis for the magistrate’s finding of probable cause.” *People v Darwich*, 226 Mich App 635, 636-37; 575 NW2d 44 (1997).

We have previously considered whether a person’s illegal activity at one address gives rise to sufficient probable cause to search other addresses associated with that person. For example, in *Darwich*, 226 Mich App at 637, officers executed a search warrant for the residence of a defendant who was suspected of selling marijuana at his place of business and we found that there was probable cause for the warrant, stating that “individuals who cultivate marijuana routinely conceal contraband, proceeds of drug sales and records of drug transactions in their homes in order to prevent law enforcement officials from discovering them.” *Id.* at 639 (citation omitted)¹. Additionally, in *Nunez*, 242 Mich App at 614, information that the defendant “resided at or habitually used” an apartment rented to a third party, including bills mailed to the defendant at the apartment address, coupled with the fact that the defendant was a suspected drug dealer and the “reasonable inference that drug traffickers often keep evidence of illicit activity in their homes, provided a sufficient basis for the magistrate’s finding of probable cause to search the apartment.”

Here, an officer with the Jackson City Police Department, executed the affidavit in support of the search warrant. In the affidavit, the officer stated that (1) valid search warrants were issued and executed for 405 Richard Street and 1470 Gallery Place in connection with Davis; (2) officers found Davis along with over \$100,000 in cash and about 100 pounds of marijuana and marijuana packaging materials at those addresses; (3) Kimberly is married to Davis and mail indicated that Kimberly resided at 3033 Tulsa Drive; (4) other mail addressed to both Davis and Kimberly displayed the 3033 Tulsa Drive address; (5) five warrants executed within the previous 24 hours with relationships to Davis and Kimberly have uncovered narcotics

¹ The quantity of illegal drugs seized from other residences involved in this case provides an even stronger basis for a finding of probable cause than was presented to this Court in *Darwich*.

and proceeds; (6) Davis currently has a federal drug trafficking case pending; and (7) in his experience, drug traffickers usually keep narcotics in their possession.

In deciding the issue of whether probable cause existed, we must consider the totality of these circumstances. By taking into consideration the totality of the circumstances presented to issuing magistrate in this case, we find that a reasonably cautious person could conclude that there was a substantial basis for finding probable cause. *Russo*, 439 Mich at 603. The affidavit demonstrated that Davis was a drug trafficker, that five warrants issued for other residences with connections to Davis and Kimberly revealed several thousand dollars and about 100 pounds of marijuana, and that Davis and Kimberly were married and received mail at the 3033 Tulsa Drive address. This, combined with the “reasonable inference that drug traffickers often keep evidence of illicit activity in their homes, provided a sufficient basis for the magistrate’s finding of probable cause to search the apartment.” *Nunez*, 242 Mich App at 614.

Affirmed.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello