

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GLEN ALAN GEURIAN,

Defendant-Appellee.

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UNPUBLISHED

June 25, 2013

No. 314429

Cass Circuit Court

LC No. 12-010172-FH

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

The people appeal by leave granted<sup>1</sup> the trial court's November 26, 2012, order granting defendant's motion to quash the search warrant issued by the magistrate. We reverse and remand the case for further proceedings.

In this case, David Nevins, a member of the Cass County Drug Enforcement Team, received several anonymous tips that defendant was manufacturing methamphetamine at his property. Nevins initiated an investigation, which revealed that defendant made 20 purchases of pseudoephedrine between January 18, 2011, and March 9, 2012, and was blocked from purchasing pseudoephedrine four additional times. Nevins also confirmed that defendant lived at the property referenced in the anonymous tips and had an outstanding warrant in Indiana for a methamphetamine crime. On March 15, 2012, Nevins swore out an affidavit for a search warrant of defendant's property. Within the affidavit, Nevins outlined his significant experience in investigating drug cases, the tips he received, and the facts obtained from his investigation. Also, based on his training and experience, Nevins represented within the affidavit that the amount of pseudoephedrine defendant purchased was "indicative of someone purchasing pseudoephedrine for the manufacturing of methamphetamine," and that "persons who manufacture methamphetamine often keep the components [used in making methamphetamine, including pseudoephedrine] in and around their residences, vehicles, and outbuildings, and

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<sup>1</sup> On January 23, 2013, the people filed their application for leave to appeal. We granted that application and stayed further proceedings before the trial court until the resolution of this appeal. *People v Geurian*, unpublished order of the Court of Appeals, entered January 28, 2013 (Docket No. 314429).

persons present at the residence.” Nevins also represented that, based on his training and experience, persons involved in manufacturing methamphetamine often keep components used in making methamphetamine, including pseudoephedrine, for “days up to weeks in order to store up for a cook or to reuse components.” After reviewing Nevins’ affidavit, the magistrate found that probable cause existed to search defendant’s property and issued a search warrant. The search of defendant’s property revealed significant evidence of the manufacture of methamphetamine. Defendant subsequently moved the trial court to quash the search warrant. That motion was granted by the trial court based on its findings that there was no information within the affidavit that provided probable cause to believe that evidence of methamphetamine manufacture or possession would be found at defendant’s property and that the tips were stale.

The people argue on appeal 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 Hrlic*, 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 must be based on facts presented to the issuing magistrate by oath or affirmation, such as by affidavit. *Id.*

As an initial matter, the proceedings in the trial court largely centered on the contents of the anonymous tips that Nevins received in this case and the statutory requirements of MCL 780.653(b). Because the informant(s) in this case was unnamed within the affidavit, under MCL 780.653(b), the affidavit should have contained “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.” However, a defect within an affidavit in regard to MCL 780.653(b) does not render a search warrant unconstitutional or entitle a defendant to the suppression of evidence. *People v Hawkins*, 468 Mich 488, 502, 507; 668 NW2d 602 (2003). And, a “warrant may issue on probable cause if the police have conducted an independent investigation to confirm the accuracy and reliability of the information regardless of the knowledge and reliability of the source.” *Waclawski*, 286 Mich App at 699. “[A]n affiant’s representations in a search warrant affidavit that are based upon the affiant’s experience can be considered along with all the other facts and circumstances presented to the examining magistrate in determining probable cause.” *People v Darwich*, 226 Mich App 635, 639; 575 NW2d 44 (1997). An independent investigation that sufficiently corroborates a confidential informant’s tip may also demonstrate an informant’s reliability. *People v Levine*, 461 Mich 172, 183-184; 600 NW2d 622 (1999).

Here, Nevins indicated that defendant made 20 purchases of pseudoephedrine between January 18, 2011, and March 9, 2012, and was also blocked from purchasing pseudoephedrine four times. Based on that purchase history, Nevins represented within the affidavit that the amount of pseudoephedrine defendant purchased was “indicative of someone purchasing pseudoephedrine for the manufacturing of methamphetamine,” and that “persons who manufacture methamphetamine often keep the components [used in making methamphetamine, including pseudoephedrine] in and around their residences, vehicles, and outbuildings, and

persons present at the residence.” The trial court improperly failed to consider Nevins’ representations when it found that there was no information within the affidavit that would provide probable cause to believe that evidence of methamphetamine manufacture would be found at defendant’s property. *Darwich*, 226 Mich App at 639. Moreover, it is proper to infer that evidence of drug activity will be found at a person’s residence where an affidavit establishes evidence of the person’s drug trafficking. See *id.* at 638-640; *People v Nunez*, 242 Mich App 610, 613-615; 619 NW2d 550 (2000). Defendant’s pseudoephedrine history, including a purchase six days before the execution of the search warrant, and his outstanding warrant for methamphetamine possession was evidence of defendant’s drug trafficking.

In regard to the trial court’s finding that the information within the affidavit was stale, “[t]he passage of time is a valid consideration in deciding whether probable cause exists.” *People v Brown*, 279 Mich App 116, 128; 755 NW2d 664 (2008). However, Nevins’ independent investigation and representations indicated that it was likely that defendant was manufacturing methamphetamine, that defendant purchased a component of methamphetamine manufacture six days before the issuance of the search warrant, and that it was likely that the components of defendant’s manufacture of methamphetamine would be kept for “days up to weeks in order to store up for a cook or to reuse components.” Again, the trial court erred in failing to consider Nevins’ representations in finding that the information within the affidavit was stale. *Darwich*, 226 Mich App at 639.

Accordingly, Nevins’ independent investigation, combined with his representations based on his experience, corroborated the tips that defendant was manufacturing methamphetamine on his property and demonstrated the confidential informant(s)’ reliability. *Levine*, 461 Mich at 183-184; *Darwich*, 226 Mich App at 639. The tips, Nevins’ investigation, and Nevins’ representations would allow a reasonable person to believe that evidence of methamphetamine manufacture existed on defendant’s property at the time of the issuance of the search warrant. *Waclawski*, 286 Mich App at 698-699. The trial court erred in finding that the magistrate’s search warrant was unsupported by probable cause. *Hrlic*, 277 Mich App at 262-263.<sup>2</sup>

We reverse the trial court’s order quashing the search warrant and remand the case for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ Deborah A. Servitto

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<sup>2</sup> We also find that, even if 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. *People v Goldston*, 470 Mich 523, 525-526, 541; 682 NW2d 479 (2004).