

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
September 23, 2014

v

KEITH L. ADAMS,

No. 316114
Wayne Circuit Court
LC No. 12-010394-FH

Defendant-Appellee.

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Plaintiff, the Wayne County prosecutor, appeals as of right the trial court's order granting the motion of defendant, Keith L. Adams, to suppress the search warrant for his residence and dismiss all charges against him. The prosecutor charged Adams as a second-time habitual offender¹ with two counts of manufacturing or delivery of less than 50 grams of narcotics,² one count of delivery of or manufacturing less than 5 kilograms of marijuana,³ one count of felon in possession of a firearm,⁴ and one count of possessing a firearm during the commission of a felony⁵ We reverse and remand for reinstatement of the charges.

I. FACTS

A. BACKGROUND FACTS

Detroit Police Department Officer Lynn Moore swore to the warrant's supporting affidavit. According to Moore's affidavit, on October 17, 2012, an unregistered confidential informant told Moore that he saw "Keith" trafficking cocaine out of a residence during the

¹ MCL 769.10.

² MCL 333.7401(2)(a)(iv).

³ MCL 333.7401(2)(d)(iii).

⁴ MCL 750.224f.

⁵ MCL 750.227b.

previous week. Moore went to the residence on October 19, 2012, and saw a vehicle that matched the informant's description of Adams's vehicle. While watching the residence, Moore saw Adams meet with two people within 35 minutes of each other. Moore saw Adams give each of the individuals a palm-sized object in exchange for money. He approached the second person and asked him about cocaine sale at the residence, and the person responded, "I just copped, go see big boy he will hook you up."

Moore averred that, based on his experience and observations, he believed that Adams was trafficking drugs out of the residence. When executing the search warrant, officers found evidence of drug trafficking in Adams's residence.

B. THE SUPPRESSION HEARING

On March 27, 2013, Adams moved to suppress the warrant as defective. Adams asserted that the affidavit would not lead a reasonable person to believe that narcotics were present in the home. Adams also asserted that the confidential informant was not credible or reliable and that his or her personal observations did not provide probable cause. Adams contended that these deficiencies rendered the warrant plainly invalid.

On April 12, 2013, during the initial suppression hearing, the trial court expressed concern that the confidential informant was not registered as an informant. The trial court initially indicated that it would order the prosecutor to produce the confidential informant for a closed hearing. The prosecutor conceded that the informant was not registered because he or she did not have a proven record of reliability, but contended that a *Franks*⁶ hearing to establish the reliability of the informant was improper because Adams did not allege that the affidavit contained deliberate or grossly negligent falsehoods. The trial court ordered the prosecutor to produce Moore to establish the credibility and reliability of the confidential informant.

On April 25, 2013, at the continued suppression hearing, the prosecutor failed to produce Moore. The trial court granted Adams's motion to suppress, determining that the affidavit was defective because Moore concluded that Adams was trafficking drugs on the basis of an unnamed, unknown witness. The trial court opined that Moore "should have done more in terms of asking the unknown individual what happened" inside the residence. The trial court entered an order suppressing all evidence obtained from the search warrant and dismissing the charges.

On April 26, 2013, Adams moved the trial court to dismiss the charges on an alternative ground that the prosecutor refused to comply with its order to produce Moore to testify about the warrant affidavit. The trial court granted Adams's motion to dismiss on this alternative ground.

⁶ *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978).

II. WARRANT SUPPRESSION

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's findings of fact supporting a motion to suppress.⁷ A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.⁸ This Court reviews de novo whether police conduct violated the Fourth Amendment and reviews de novo a trial court's decision on a motion to suppress.⁹

B. LEGAL STANDARDS

Both the United States and Michigan constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures."¹⁰ To comply with this requirement, police officers generally must have a warrant to conduct a search.¹¹ If police officers obtain evidence while violating the Fourth Amendment, the evidence is generally inadmissible in criminal proceedings.¹²

A magistrate may only issue a search warrant if there is probable cause to do so.¹³ Probable cause exists when "there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place."¹⁴ Probable cause may exist on the basis of facts contained in an affidavit.¹⁵ A magistrate's finding of probable cause

⁷ *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987); *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

⁸ *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁹ *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

¹⁰ *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). See US Const, Am IV; Const 1963, art 1, § 11.

¹¹ See *Kazmierczak*, 461 Mich at 417.

¹² *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Kazmierczak*, 461 Mich at 418.

¹³ *Kazmierczak*, 461 Mich at 417-418, quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992).

¹⁴ *Kazmierczak*, 461 Mich at 418, quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992).

¹⁵ *Mitchell*, 428 Mich at 369; *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009).

deserves great deference and should only be reversed on review if the magistrate lacked a substantial basis for his or her probable cause finding.¹⁶

C. THE SUPPRESSION HEARING

The prosecutor contends that the trial court erred because it was not authorized to order a *Franks* hearing. We conclude that the prosecutor's position is meritless because the trial court did not order a *Franks* hearing.

When statements from unnamed or confidential persons support the warrant affidavit, the magistrate must be able to reasonably conclude that the person had personal knowledge and was credible or that the information was reliable.¹⁷ In *Franks v Delaware*, the United States Supreme Court held that disclosure of a confidential informant is only required when it is *essential* to a fair determination of probable cause.¹⁸ Michigan has also adopted this standard.¹⁹ The trial court may order production of a confidential informant only under specific circumstances and if it follows a specific procedure.²⁰

Here, the trial court initially indicated that the prosecutor must produce or disclose the informant. However, the trial court reconsidered its position during arguments and instead ordered the prosecutor to produce Moore to testify about the informant's reliability and other perceived gaps in the warrant affidavit. Accordingly, the trial court did not order the prosecutor to disclose the confidential informant. We conclude that the prosecutor's position lacks merit.

D. PROBABLE CAUSE

The prosecutor also contends that the trial court clearly erred when it suppressed the warrant because the affidavit sufficiently supported the magistrate's probable cause determination. The trial court granted Adams's motion to suppress because Moore concluded that Adams was trafficking drugs on the basis of an unnamed, unknown witness, and because Moore "should have done more in terms of asking the unknown individual what happened" in the residence. Reviewing the affidavit as a whole, we conclude that the trial court erred because it provided a sufficient basis for the magistrate's probable cause finding.

"The magistrate's finding of reasonable or probable cause shall be based upon *all* facts related within the affidavit made before him or her."²¹ Here, the affidavit contained Moore's repetition of vague, conclusory statements from an unregistered confidential informant. The

¹⁶ *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006).

¹⁷ *Id.*; MCL 780.653.

¹⁸ *Franks*, 438 US at 171-172.

¹⁹ *People v Thomas*, 174 Mich App 411, 416; 436 NW2d 687 (1989).

²⁰ *Id.*; *People v Poindexter*, 90 Mich App 599, 609-610; 282 NW2d 411 (1979).

²¹ MCL 780.653 (emphasis added).

affidavit provides no basis from which to make a conclusion regarding the informant's credibility. And the prosecutor conceded that the informant was not registered and did not have a record of reliability. Accordingly, there was no basis from which the magistrate could have concluded that the informant was credible and reliable.

But the magistrate's probable cause finding did not rest solely on Moore's recitation of the confidential informant's statements. Importantly, the affidavit also contained Moore's personal observations. Moore averred that he personally saw Adams exchange small objects for money in front of the residence, and that one of the individuals told him he had just received drugs. Further, Moore's experience in investigating drug trafficking and his related belief that Adams was trafficking drugs were also relevant.²² These facts created a substantial basis for inferring a fair probability that contraband or evidence of a crime would be found at Adams's house. We conclude that the trial court clearly erred when it found that the affidavit was insufficient because Moore's additional statements rendered the affidavit sufficient.

III. CONCLUSION

We conclude that the trial court clearly erred when it found that the affidavit did not provide probable cause for the warrant.

We reverse and remand for reinstatement of the charges and further proceedings. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot

²² See *Waclawski*, 286 Mich App at 698.