

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LEE FARMER,

Defendant-Appellant.

UNPUBLISHED
September 6, 2007

No. 271217
Muskegon Circuit Court
LC No. 05-051642-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant as an habitual offender, fourth offense, to a prison term of 30 months to 30 years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in denying his pretrial motion to suppress the cocaine that fell from his pants during a search and his statement to the police, as a fruit of the poisonous tree. He challenges the court's determination that there was probable cause to arrest him based on the information supplied by an informant. This Court reviews a trial court's factual findings in a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). Because the application of constitutional standards by the trial court is not entitled to the same deference as factual findings, this Court reviews de novo the trial court's ultimate ruling on a motion to suppress. *Id.*; *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

At the hearing on the motion, Sergeant Lewkowski testified that on April 8, 2005, he received a phone call from a confidential informant at approximately 5:30 p.m. advising him that defendant, identified by name, would be arriving within a half hour in a gray Chevrolet at 1080 Terrace and would be in possession of crack cocaine. The informant did not indicate that she had actually seen defendant with cocaine and did not state the basis for her belief that defendant would have cocaine. The area was "consistent with drug sales." Lewkowski provided the information to Sergeant Fine.

The West Michigan Enforcement Team, a task force that investigated drug complaints in Muskegon County, had worked with the informant on three previous occasions to purchase drugs in controlled buys where the informant identified the target. The third buy led to a search

warrant and a felony arrest. She had also provided information leading to the arrest of a fugitive. The informant was paid for providing some of the information.

Lewkowski was familiar with defendant and was aware that he had prior convictions for drugs and weapons, that he had recently been released from prison, and according to his parole agent, had recently tested positive for cocaine and marijuana.

For the purposes of the motion, the parties stipulated that, on April 8, 2005, at about 6:00 p.m., police officers observed a gray Chevrolet with defendant as a passenger arrive at 1080 Terrace. Shortly after 6:00 p.m., Fine advised Lewkowski that the police had located defendant and found crack cocaine. Lewkowski was not in the vicinity at the time of the arrest.

A police officer may arrest an individual without a warrant if the officer has probable cause to believe that a felony has been committed and that the suspect committed it. MCL 764.15; *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). “Probable cause to arrest exists where the facts and circumstances within an officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Id.* (citation omitted).

With respect to information supplied by informants, before *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed 2d 527 (1983), the analysis consisted of a two-pronged test requiring a determination of the basis of the informant’s knowledge and a determination that the informant was credible or the report was reliable. This test was abandoned by the United States Supreme Court in favor of a “totality of the circumstances” analysis in *Gates*. *People v Levine*, 461 Mich 172, 179; 600 NW2d 622 (1999). The consideration of an informant’s veracity, reliability, and basis of knowledge are not separate and independent requirements but are intertwined issues to be considered in assessing probable cause. *Id.* at 180. Corroboration of an informant’s tip remains an important consideration. See *Id.* at 180-185.

The facts of the present case may be compared to those in *People v Walker*, 401 Mich 572; 259 NW2d 1 (1977). Although *Walker* was decided under the former two-pronged test, “[t]here is no question that, having survived rigid application of the *Aguilar-Spinelli* test, the circumstances in *Walker* would satisfy the flexible *Gates* test.” *Levine, supra* at 184 n 10. In *Walker*, the police received an anonymous tip in which the caller reported that the defendant was traveling from Benton Harbor to Detroit to purchase drugs and would be returning to a particular residence with drugs in about five hours accompanied by two women. The caller stated that he would be driving either a four-door bronze-colored Cadillac with Indiana plates or a four-door black-over-yellow Oldsmobile with Michigan plates. The records indicated that an owner of a 1969 Oldsmobile lived at the specified address. The police observed a bronze-colored Cadillac in the garage. The police stopped a 1969 black-over-yellow Oldsmobile with a Michigan license as it approached Benton Harbor and ordered the occupants out of the car. The defendant discarded heroin, which the police confiscated. The Court concluded that the tip contained “sufficient detail so that the police could reasonably infer that they were relying on ‘something more than a casual rumor’ or information based on ‘an offhand remark heard at a neighborhood bar’.” *Walker, supra* at 581 (citation omitted). There was “sufficient self-verifying detail to warrant an inference that the informant obtained his information in a reliable manner.” *Id.* at

582. The corroboration of the details allowed the police to reasonably conclude that the informant was reliable. *Id.* at 584.

In both the present case and in *Walker* the informant predicted the arrival of the defendant in a particular location within a particular time frame. In both cases, the informant provided the correct description of the vehicle. The description in the instant case, a gray Chevrolet, was not quite as detailed as in *Walker*, but the informant additionally provided information identifying defendant by name as a passenger. The tip in the present case did not include information concerning other occupants of the car, and the police did not link the type of vehicle reported in the tip to the address as they did in *Walker*. But in the present case, unlike in *Walker*, the informant was known by the police and had previously supplied accurate information leading to controlled buys, a search warrant, a felony arrest, and the apprehension of a fugitive. The totality of the circumstances provided a sufficient basis for the officers to reasonably conclude that defendant was in possession of cocaine. Because the arrest was supported by probable cause, the search was valid as a search incident to the arrest. The motion to suppress was correctly denied.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto