

**STATE OF MICHIGAN
IN THE SUPREME COURT**

APPEAL FROM THE MICHIGAN COURT OF APPEALS

Douglas B. Shapiro, P.J., and William C. Whitbeck, Cynthia Diane Stephens JJ,

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

SC: 150906

COA: 314337

St. Joseph CC: 12-017690-FH

v

MICHAEL RADANDT,

Defendant-Appellant.

DEFENDANT-APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

Respectfully submitted,

December 8, 2015

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Table of Contents

TABLE OF CONTENTSII

TABLE OF AUTHORITIES..... III

INTRODUCTION 1

ARGUMENT AND AUTHORITIES2

I. THE FOURTH AMENDMENT’S FOUNDATIONAL PREMISE IS TO PROTECT THE CITIZENS’ RIGHT TO BE FREE IN THEIR HOMES; OFFICERS VIOLATED MR. RADANDT’S CONSTITUTIONAL RIGHTS BY EXPANDING THE KNOCK AND TALK PROCEDURE BY PHYSICALLY INTRUDING AN AREA OF THE HOME TO WHICH COMMON VISITORS ARE NOT LICENSED TO ENTER.....2

II. THE GOOD FAITH EXCEPTION DOES NOT APPLY4

A. THE *DAVIS* EXCEPTION DOES NOT APPLY BECAUSE *JARDINES* DID NOT OVERRULE MICHIGAN CASE LAW REQUIRING OFFICERS TO ENGAGE IN ORDINARY CITIZEN CONDUCT4

B. LEON’S GOOD FAITH EXCEPTION DOES NOT APPLY TO ILLEGAL PREDICATE SEARCHES.....8

CONCLUSION10

Table of Authorities

Cases

<i>Arizona v Gant</i> , 129 S Ct 1710 (2009)	5
<i>Boyd v United States</i> , 6 S Ct 524 (1886)	7
<i>Brower v County of Invo</i> , 109 S Ct 1378 (1989)	7
<i>Carmen v Carroll</i> , 135 S Ct 348 (2014)	4
<i>Entick v Carrington</i> , 95 Eng. Rep. 807 (C.P. 1765)	7
<i>Florida v Jardines</i> , 569 US 1 (2013)	passim
<i>Hardesty v Hamburg Township</i> , 461 F3d 646 (CA 6 2006)	5
<i>Kentucky v King</i> , 131 S Ct 1849 (2011)	3
<i>New York v Belton</i> , 101 S Ct 2860 (1981)	4
<i>Payton v New York</i> , 445 US 585 (1980)	10
<i>People v Adams (Shaw)</i> , 485 Mich 1039 (2010)	10
<i>People v Adams (Shaw)</i> , Unpublished per curiam opinion of the Michigan Court of Appeals, Issued Oct 1, 2009 (Docket No. 286915)	10
<i>People v Frohriep</i> 247 Mich App 692, 702 (2001)	6, 7, 8
<i>People v Galloway</i> , 259 Mich App 634 (2003)	5, 6, 7
<i>People v Houze</i> , 425 Mich 82 (1986)	5, 7, 8
<i>People v Pemberton</i> , unpublished per curiam opinion of the Court of Appeals, issued Apr 3, 2003 (Docket No. 238522)	5, 8
<i>People v Powell</i> , 477 Mich 860 (2006)	5, 7, 8
<i>United States v Davis</i> , 131 S Ct 2419 (2011)	4, 5, 8
<i>United States v Jones</i> , 132 S Ct 945 (2012)	7
<i>United States v McClain</i> , 444 F3d 556 (6 CA, 2005)	9
<i>United States v Reilly</i> , 76 F3d 345 (CA 2, 1996)	9
<i>United States v United States District Court</i> , 407 US 297 (1972)	10
<i>United States v Villard</i> , 678 F Supp 483 (D NJ 1988)	9

Statutes

42 USC § 1983	5
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Introduction

This case presents unique and contradictory theories. On the one hand, the Fourth Amendment recognizes the highest level of protection in the home. But on the other, a random stranger is permitted to approach a home and knock on the door. Because this is permitted, law enforcement is allowed to do the same without a warrant. Yet, it is expected and understood that when the police come to your house to “make contact,” they are also keeping their eyes open for signs of criminal activity. The knock and talk thus presents officers with the opportunity to perform a warrantless search, provided they adhere to the knock and talk’s boundaries. Those boundaries must be defined and a realistic view of societal norms casts these limits. We do not expect strangers to knock, receive no answer, and meander into our backyards because they think someone “could be home,” whether that conclusion is reasonable or not. Permitting this action will create a knock and talk exception that swallows the warrant requirement.

Because our traditions do not allow this, and have never allowed this, the officers’ conduct should not be viewed as a reasonable act. The officers visited Mr. Radandt’s property twice, viewed the home in two wildly different settings, and acted in an identical fashion: entering the curtilage of his home without a warrant. This objectively shows a pattern of behavior by the same officers that submitted the affidavit and executed the search that is unacceptable and not a good faith attempt to do their jobs. They took a short cut to avoid a complete investigation and violated Mr. Radandt’s constitutional right to privacy in his home.

Argument and Authorities

I. THE FOURTH AMENDMENT’S FOUNDATIONAL PREMISE IS TO PROTECT THE CITIZENS’ RIGHT TO BE FREE IN THEIR HOMES; OFFICERS VIOLATED MR. RADANDT’S CONSTITUTIONAL RIGHTS BY EXPANDING THE KNOCK AND TALK PROCEDURE BY PHYSICALLY INTRUDING AN AREA OF THE HOME TO WHICH COMMON VISITORS ARE NOT LICENSED TO ENTER.

The People advance an argument minimizing *Jardines* and the officers’ conduct to conclude the officers’ entry into Mr. Radandt’s backyard was reasonable. This is based on the People’s significant and overreaching use of footnote 2 to conclude that *Jardines* adopted a wide ranging, fact-dependent rule.¹ While the “appearance of things”, what might cause “alarm,” and what would be expected from a “reasonably respectful citizen” may be relevant, the *Jardines* majority did not adopt this as its holding. *Id.* Instead, the proper question under *Jardines* is whether 1) the officers had an implied license to enter the backyard and 2) if so, did the officers have a proper purpose for that entry. *Florida v Jardines*, 133 S Ct 1409, 1417 (2013).

The officers did not have an implied license to enter the backyard and approach the back door because, absent extenuating circumstances, traveling past two doors and around the corner of a home to the backyard is not a route a stranger would customarily use to approach a home.

The People argue it was perfectly reasonable for the officers to enter the backyard because of a “foot path” and the assertion that Mr. Radandt has admitted the back door was used as an entrance. Appellee’s Brief on Appeal, p. 16. This “foot path” was described as “beat down grass.” See Appendix 65a. And given the rural nature of the property, the unpaved driveway, and the officers’ admission they circled the home without the guidance of “foot path”, Mr. Radandt denies this “foot path” serves to invite visitors into the backyard. See Appendix 34a, 53-55a, 101a; pictures contained in Appellant’s Brief on Appeal.

¹ Footnote 2 is placed at the conclusion of the Court’s discussion of the implicit license granted to visitors and how determining the scope of this license is easily handled by Girl Scouts and trick-or-treaters. See *Jardines*, *supra* at

Second, the People's allegation that Mr. Radandt admitted to using the rear door as an entrance is of no relevance. See Appellee's Brief on Appeal at p. 21. Doors are used for entrances. That is the purpose of a door. Just because a *resident* uses a door for its normal purpose does not mean a *stranger* is invited to use the same door. For example, garages often contain a door into the home that is used an entrance. These internal doors, while used by residents, are not traditionally considered doors strangers would approach. The decision of what conduct is permitted will turn on the concept of traditional norms. And "back doors" commonly fall into the category of doors that a *resident* may use, but a *stranger* would not.

The People also argue that a ruling in favor of Mr. Radandt will create a number of bright-line rules. See Appellee's Brief on Appeal, p. 24. Contrary to the People's position, Fourth Amendment issues are inherently fact dependent and will be addressed as such.

Here, the officers entered the driveway and approached the side or middle door, which the officers concluded "appeared most commonly used" without seeing the rear door. Appendix 65a and 89a. They knocked and nobody answered. Appendix 100a. When the officers did not get the response they wanted, they invited themselves into the backyard.² This is not ordinary citizen conduct. And this is not what *Jardines* expects from officers: "This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave....Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do." *Jardines, supra* at 1415-16 citing *Kentucky v King*, 563 US ___, ___, 131 S Ct 1849, 1862, 179 L Ed 2d 865 (2011).

² While the People rely on reasons why the Offices were licensed to enter the backyard, being signs of life and the presence of a "foot path", it cannot be ignored that the Officers acted in the same fashion when 1) approaching a home that appeared to be vacant and 2) traversing the entire home despite the absence of any "foot paths." See Appendix 53-55a, 101a.

Holding the police to this standard does not conflict with *Jardines* or *Carmen v Carroll*, 135 S Ct 348 (2014).³ And adopting the ordinary citizen standard as a limit on knock and talks will allow the police the room needed to initiate warrantless contact with residents while protecting the Fourth Amendment's protection of the home.

II. THE GOOD FAITH EXCEPTION DOES NOT APPLY

The good faith exception to the search warrant requirement does not apply for three reasons. First, Michigan courts have long required the police to engage in ordinary citizen conduct only during a knock and talk. Second, the traditional *Leon* test does not apply in cases dealing with illegal predicate searches. Third, the officers repeated conduct that ignored the sanctity of the home must be deterred.

A. The *Davis* Exception Does Not Apply Because *Jardines* did Not Overrule Michigan Case Law Requiring Officers to Engage in Ordinary Citizen Conduct

In *United States v Davis*, 131 S Ct 2419 (2011), the Court addressed whether the exclusionary rule should be applied when police conduct a search in compliance with binding precedent that is later overruled. Specifically, the Court addressed the change in the rule regarding vehicle searches incident to arrest. In *New York v Belton*, 101 S Ct 2860 (1981), the Court, addressing the need for a straightforward and "workable rule" held "that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as contemporaneous incident of that arrest, search the passenger compartment of that automobile. *Id.* This set a "simple, bright-line rule." *Davis*, *supra* at 2425. However, in 2009, the Court

³ Carroll addressed whether an officer was entitled to qualified immunity, and specifically, whether the officer violated a statutory or constitutional right that was clearly established at the time of the challenged conduct. See *Carroll*, *supra*, at 350. The United States Supreme Court expressly refused to rule on the issue of whether the officer's conduct constituted an unlawful expansion of the knock and talk procedure. *Id.* at 352. "We do not decide today whether those cases were correctly decided or whether a police officer may conduct a 'knock and talk' at any entrance that is open to visitors rather than only the front door." *Id.*

limited *Belton* to situations in which “the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” *Arizona v Gant*, 129 S Ct 1710, 1719 (2009). This presented a fundamental change in law enforcement by limiting the situations in which it was appropriate to search a vehicle.

In *Davis*, two years before *Gant*, the passenger was arrested after a routine traffic stop, placed in a patrol car, and the police searched the automobile. *Davis, supra* at 2425. The *Davis* Court stated that binding precedent authorized the officer’s search of Davis’ automobile and as a result, the officers’ conduct was not culpable and invoking the exclusionary rule would not provide meaningful deterrence:

Responsible law-enforcement officers will take care to learn ‘what is required of them’ under Fourth Amendment precedent and will conform their conduct to these rules....But by the same token, when binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities. An officer who conducts a search in reliance on binding appellate precedent does not more than ‘act as a reasonable officer would and should act’ under the circumstances. *Davis, supra* at 2439 (citations omitted) (italics in original).

The People assert five cases establish binding precedent that specifically authorized the officers’ conduct at Mr. Radant’s home: *Hardesty v Hamburg Township*, 461 F3d 646 (CA 6 2006), *People v Pemberton*, unpublished per curiam opinion of the Court of Appeals, issued Apr 3, 2003 (Docket No. 238522), *People v Powell*, 477 Mich 860 (2006), *People v Houze*, 425 Mich 82 (1986), and *People v Galloway*, 259 Mich App 634 (2003).

The People’s reasoning fails because Michigan law at the time of the officers’ entry into Mr. Randadt’s home did not create a simple, bright-line test that was overturned by *Jardines*. While *Hardesty*, involving a 42 USC § 1983 claim and a potential emergency situation, may contain language permitting an officer’s entry into the curtilage, Michigan law has long provided

for an “ordinary citizen standard” substantially similar to *Jardines* and the rule Mr. Radandt now requests. As a result, there was no single, clear, binding precedent that unequivocally guided officers’ actions in a knock and talk procedure. The good faith reliance on precedent does not save the officers’ conduct here. The more relevant binding precedent the officers should have relied upon prohibited their entry into Mr. Radandt’s backyard, as the established standard was that of “ordinary citizen contact.”

The constitutionality of the knock and talk procedure was first examined in *People v Frohriep*, 247 Mich App 692, 702 (2001). In *Frohriep*, officers obtained information that a defendant may possess controlled substances. *Id.* at 693. Not having sufficient evidence to establish probable cause, the officers went to the defendant’s home. *Id.* While the exact discussion between the defendant and the officers was disputed, it is clear the officers entered a pole barn, looked around, and found marijuana. *Id.* at 694-95. When defendant challenged the constitutionality of the knock and talk procedure, the Court of Appeals determined the knock and talk procedure was constitutional largely because it is nothing more than “ordinary citizen contact.”⁴ *Id.* at 701. Mr. Radandt requests the same standard be applied. This same “ordinary citizen contact” standard was applied in *People v Galloway*, 259 Mich App 634 (2003), which presented an intersection of a knock and talk procedure against the plain view exception to the warrant requirement. As a result, the question asked was whether the “police intrusion was unlawful in the first place.” *Id.* at 638. Again, Mr. Radandt asks the same question.

⁴ However, the Court of Appeals also expressed concern that the knock and talk stay within constitutional boundaries: “That is not to say, however, that the knock and talk procedure is without constitutional implications. Anytime the police initiate a procedure, whether by search warrant or otherwise, the particular circumstances are subject to judicial review to ensure compliance with general constitutional protections. Accordingly, what happens within the context of a knock and talk contact and any resulting search is certainly subject to judicial review. For example, a person's Fourth Amendment right to be free of unreasonable searches and seizures may be implicated where a person, under particular circumstances, does not feel free to leave or where consent to search is coerced. Thus, whenever the procedure is utilized, ordinary rules that govern police conduct must be applied to the circumstances of the particular case.” *Frohriep, supra* at 638.

And while *Jardines* may cause upheaval of binding precedent as it relates to dog sniff cases,⁵ it does not have the same impact on *Frohriep* or *Galloway's* ordinary citizen contact standard. *Jardines* will coexist with *Frohriep* or *Galloway*. Further, the idea that *Jardines* created a new rule of law or overturned clear, binding precedent as it relates to the Fourth Amendment is incorrect. *Jardines* cited *United States v Jones*, 132 S Ct 945, 950 (2012) for the proposition that when “the Government obtains information by physically intruding’ on persons, houses, papers, or effects, a ‘search within the original meaning of the Fourth Amendment’ has ‘undoubtedly occurred.’”). See *Jardines, supra* at 1414. And the *Jones* Court stated this physical intrusion test has been in place since to the 1700’s:

The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted. *Entick v Carrington*, 95 Eng. Rep. 807 (C.P. 1765), is a "case we have described as a 'monument of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law'" with regard to search and seizure. *Brower v County of Invo*, 109 S Ct 1378 (1989) quoting *Boyd v United States*, 6 S Ct. 524 (1886).

Jones, supra at 949. As a result, and under then existing binding appellate precedent, the officers’ entry into the backyard was an unconstitutional search at the time they entered and the good faith exception does not save their conduct.

This Court’s decisions in *Houze* and *Powell* do not change this conclusion. First, the *Houze* officers approached through a “public alley from a common access route” that would likely be considered within the scope of an implied license, meaning there was no unlicensed

⁵ Before *Jardines*, binding precedent in Michigan regarding warrantless canine sniffs was articulated in *People v Jones*, 279 Mich App 86; 755 NW2d 224 (2008). In that case, the court held that a canine sniff outside of an individual’s residence did not constitute a search for purposes of the Fourth Amendment. *Id.* at 94. *Jardines* changed the impact of this ruling.

physical intrusion rendering *Jardines* inapplicable. *Houze, supra* at 92; See PAM’s Amicus Brief at p. 23 (“entering the yard to go to the walk-in garage door from the alley in order to make inquiry at the garage was reasonable, and made, this court said, “from a common access route,” and thus, in the terminology of *Jardines*, within an implied license.”) And *Powell* simply addressed a curtilage determination, an inherently case-by-case analysis. *Powell, supra* at 860. Further, the People’s contention that Mr. Radandt’s backyard “was in view of the neighbors” is unsupported by the record. See Appellee’s Brief on Appeal at p. 34. The People rely on the officer’s testimony regarding obtaining permission from neighbors to traverse “trails” behind the neighbor’s property in order to view Mr. Radandt’s property. Mr. Radandt’s property was at least hidden to some extent by the presence of these trails as the home was located in a rural and wooded area. See Appendix at 34a. This is not the same as a property in “plain view” of the neighbors as in *Powell*. *Powell, supra* at 860 (“The record demonstrates that the area was not enclosed and was in plain view of defendant’s neighbors.”) Finally, the unpublished *Pemberton* decision cannot be binding precedent to have the impact of invoking the *Davis* good faith exception. The officers did not act in “strict compliance” with binding precedent that specifically authorized their actions because no such precedent existed. Instead, the officer’s conduct violated the “ordinary citizen” standard that Michigan courts adopted in *Frohriep* in 2001 and have been applying ever since. As a result, the *Davis* exception does not apply.

B. Leon’s Good Faith Exception Does Not Apply to Illegal Predicate Searches

The People advance a broad reading of *Leon* to conclude the good faith exception applies because the officers relied on a warrant issued by a magistrate.

Leon held the exclusionary rule does not bar admission of evidence seized in “reasonable reliance on a search warrant issued by a detached and neutral magistrate.” *United States v Leon*,

468 US 897, 900 (1984). But this is not a prototypical *Leon* case in which there was a mistake made about probable cause. Rather, the facts contained within the affidavit to establish probable cause were themselves discovered as a result of an illegal search. This is a fundamentally different scenario than the *Leon's* foundational underpinnings, i.e. permitting the police to reasonably rely on a magistrate's decision. See *United States v Villard*, 678 F Supp 483, 490 (D NJ 1988) ("*Leon* did not address the admissibility of evidence seized under a warrant that was based on information obtained in a prior illegal search. Further, it would be inappropriate and inconsistent with the reasoning of *Leon* to extend the good faith exception to such a situation."); See also *United States v Reilly*, 76 F3d 345 (CA 2, 1996) (collecting cases).

The People further assert that the officers' error, if any, was not so objectively unreasonable or in bad faith, and thus suppression is unnecessary. See Appellee's Brief on Appeal, p. 37. Mr. Radandt disagrees. Walking into someone's curtilage without an invitation violates a social norm. And when the police do it, they violate the Fourth Amendment. This expectation is not something that was built overnight, but rather is a time-honored tradition that forms part of the social contract. To call it "reasonable" to throw these traditions out the window in the name of "hoping to find someone to talk to" while performing an investigation turns the concept of good faith, societal norms, and Fourth Amendment protections on its head.

Three important factors weigh in favor of finding the officers' conduct was unreasonable. First, there was no exigent circumstances or emergencies. The officers did not have any reason to believe a crime was being committed or evidence was being destroyed. They simply walked into the curtilage, or the home, to look for someone that might be home. (Cf *United States v McClain*, 444 F3d 556, 566 (6 CA, 2005) (officers' action to enter a home in connection with suspicion of a burglary in progress was "close enough to the line of validity" to be determined reasonable).

Second, the same officer in this case made the winter visit, summer visit, completed the search warrant affidavit, and executed the search. Courts are more likely to preclude application of the good faith exception when the illegal predicate search is not insulated by the involvement of other officers. See *McLain, supra* at 566. Further, the People’s reliance on *People v Adams (Shaw)*, 485 Mich 1039 (2010) is irrelevant because it does not address an illegal predicate search, but instead, address a traditional *Leon* scenario in which the affidavit failed to establish probable cause. See also on *People v Adams (Shaw)*, Unpublished per curiam opinion of the Michigan Court of Appeals, Issued Oct 1, 2009 (Docket No. 286915), attached as **Exhibit 1**.⁶

Third, an entry into the home that does not comport with traditional Fourth Amendment principles is precisely the type of culpable law enforcement action susceptible to deterrence by the exclusionary rule. *Herring v United States*, 555 US 135, 143 (2009). After all, “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Payton v New York*, 445 US 573, 585 (1980) (quoting *United States v United States District Court*, 407 US 297, 313 (1972)). The officers entered Mr. Radandt’s home without a warrant, *twice*. This is conducted that should be deterred and as a result, *Leon’s* good faith exception to the exclusionary rule should not apply.

CONCLUSION

WHEREFORE, Defendant-Appellant Radandt respectfully requests this Court REVERSE the Court of Appeals.

Respectfully submitted,

Dated: December 8, 2015

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⁶ This unpublished Court of Appeals opinion is attached as an exhibit for the sole purpose of providing the facts relevant to the case that were not included in the Supreme Court’s opinion.

**STATE OF MICHIGAN
IN THE SUPREME COURT**

APPEAL FROM THE MICHIGAN COURT OF APPEALS

Douglas B. Shapiro, P.J., and William C. Whitbeck, Cynthia Diane Stephens JJ,

PEOPLE OF THE STATE OF MICHIGAN,

SC: 150906
COA: 314337
St. Joseph CC: 12-017690-FH

Plaintiff-Appellee,

v

MICHAEL RADANDT,

Defendant-Appellant.

PROOF OF SERVICE

Eric Misterovich, being duly sworn, deposes and says that the foregoing Reply Brief was served on all counsel of record via the electronic filing system on December 8, 2015:

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EXHIBIT 1

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
October 1, 2009

v

SHAWN ADAMS,

Defendant-Appellee.

No. 286915
Wayne Circuit Court
LC No. 08-007633-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order dismissing charges of possession with intent to deliver 45 or more kilograms of marijuana, MCL 333.7401(2)(d)(i), conspiracy to possess with intent to deliver 45 or more kilograms of marijuana, MCL 750.157a, and possession of a firearm during the commission of a felony, MCL 750.227b. The court dismissed the charges after granting defendant's motion to suppress the evidence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The evidence in question was seized during the execution of a search warrant at a house on Winthrop in Detroit, Michigan. The trial court agreed with defendant that the affidavit submitted in support of the request for a search warrant was insufficient to establish probable cause to believe that evidence of drug trafficking could be found at the Winthrop house. We agree.

The affiant to the search warrant affidavit was Dearborn Police Officer Jon DeKiere, who, after reciting his qualifications and experience in participating in narcotics investigations and knowledge of methods employed by drug traffickers, stated the following:

4. In June of 2007, Ofc. DeKiere received information from Sgt. Carriveau regarding suspicious activity at 7833 Mead in the City of Dearborn. This activity consisted of vehicles from outside Dearborn coming at all hours of the day and night and only staying for a few minutes before leaving.

5. On July 23, 2007 Ofc. DeKiere observed a black Yukon with Michigan license plate BKU4752 parked in the driveway of 7833 Mead. A records check in the Michigan Secretary of State shows the vehicle to be registered to Shelia Faye Brown, 18727 In Brook Apt. #1, Northville, Michigan.

6. At approximately 1640 hours on July 24, 2007 Ofc. DeKiere observed the same black Yukon with Michigan license BKU4752 turn off Tireman into the parking lot of Vegas Liquor (Tireman/Greenfield). The Yukon backed into a parking space away from the entrance to Vegas Liquor leaving several other empty parking spaces all around it. Both the driver and passenger stayed in the vehicle for approximately ten minutes until a Chevy HHR with Michigan license AGY6674 backed into the parking spot next to the driver's side of the Yukon. The passenger of the Yukon, later identified as Marquis Workman, got in the passenger side of the HHR. Secretary of State records show the HHR to be a rental car from Enterprise Rental. In addition, that license plate was shown to be invalid and replaced.

7. After several minutes, both the female driver of the HHR, later identified as Toni Talley, and Marquis Workman exited the HHR. Marquis Workman then got in the driver's side of the HHR leaving the Vegas Liquor parking lot. While Talley got in the passenger side of the Yukon and also left the parking lot. Members of the Dearborn Police Narcotics Unit maintained constant surveillance of the HHR until it pulled into the driveway of the 7282 Winthrop, City of Detroit. Marquis Workman was seen exiting the HHR and approaching the North side door of the residence. Surveillance was maintained on 7282 Winthrop.

8. After several minutes, the Yukon with Talley pulled into the alley on the Northwest corner of Warren and Greenfield. The Yukon parked and waited in the alley. After several minutes, the HHR driven by Marquis Workman backed out of the driveway of 7282 Winthrop and went South on Winthrop to the CVS parking lot. Under surveillance, Marquis Workman parked and made a cell phone call. At this same time, the driver of the Yukon, later identified as Donte Workman[,] was seen answering a cell phone. Several seconds later, the HHR left the CVS and drove directly down the alley toward Greenfield where Talley and Donte Workman were still waiting in the Yukon. As seen before, Talley got back into the HHR and Marquis got back into the passenger side of the Yukon. Both vehicles left the alley at Greenfield.

9. Based on the training and experiences of the officers involved, it was believed a drug transaction took place as a result of all the suspicious activities of Marquis Workman, Donte Workman, and Toni Talley. Uniformed officers from the Dearborn Police Department conducted a traffic stop on Toni Talley in the HHR. Upon approach, officers smelled a heavy odor of Marijuana. In addition, they observed two large white bags next to Talley. Sticking out of one of the white bags was a clear bag of suspected Marijuana. Talley was placed under arrest.

10. A traffic stop was then conducted on the two Workmans in the Yukon and both were placed under arrest. A search of Marquis Workman, subject who went to 7282 Winthrop, was in possession of approximately \$4,363 cash.

11. Your Affiant strongly believes based on his training, experience, observations, and the observations of other experienced officers that 7282 Winthrop, in the City of Detroit, is involved in the sales, storage, and facilitation of narcotic-trafficking activities.

12. Affiant believes that a search of 7282 Winthrop, city of Detroit, will help enhance the prosecution of this case and further the investigation of Marijuana trafficking.

A search warrant may not be issued unless probable cause to justify the search is shown. US Const, Am IV; Const 1963, art 1, § 11; *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008). "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." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000), quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). "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*, supra at 298 (citations omitted).

In reviewing a finding of probable cause, a court must read the warrant and underlying affidavit "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.* The magistrate's determination of probable cause is entitled to great deference. *People v Keller*, 479 Mich 467, 477; 739 NW2d 505 (2007).

The prosecution argues that the search warrant was not defective because the factual statements in the affidavit were sufficient to establish probable cause that contraband or evidence of a crime would be found in the Winthrop house. The prosecution contends that based on the activity observed by Officer DeKiere, it may be logically inferred that Marquis Workman went to the house on Winthrop to pick up marijuana, which he delivered to Toni Talley. The prosecution further contends that although the affidavit does not state that Officer DeKiere saw Marquis carrying bags from the house on Winthrop, the officer's assumption that Marquis brought the marijuana from the house was "more reasonable than the only other possibility—that the bags were on the seat when [Marquis] initially got into the car." According to the prosecution, the entire "charade" that Marquis and Talley "played-out was for the purpose of getting the marijuana from the Winthrop house to the Chevy. So, a search of the Winthrop house was warranted."

The trial court did not err in finding that no probable cause existed to justify the search of the Winthrop house. The affidavit describes a series of transactions involving two vehicles and their occupants: the Yukon, which had been observed at the house on Mead Street in Dearborn, Michigan, which was the focus of a narcotics investigation, and the Chevy HHR, which was suspicious only because of its involvement in the observed transactions with the Yukon. While Officer DeKiere believed that the actions of Marquis, Donte Workman, and Talley, as the drivers and passengers of these vehicles, suggested that they were involved in a drug transaction, the only mention in the affidavit of any connection between any of these people to the Winthrop residence was an observed brief stop there by Marquis while driving the Chevy HHR. The

affidavit does not mention seeing Marquis take anything into the Winthrop house or carry anything from the house. It also does not indicate that he was wearing clothing that would enable him to easily hide a large amount of marijuana, or that any bulges were observed in his clothing. The affidavit also lacked any information indicating that Marquis, or any of the other two individuals observed during the transactions, resided in the Winthrop house or had any relationship to the residents of the house. At the motion hearing, the prosecution characterized the officer's belief that drugs were in the house on Winthrop as "a guessing game." Even recognizing that great deference must be given to a magistrate's determination of probable cause, *Keller, supra* at 477, we agree with the trial court that the affidavit was insufficient to support a belief that the Winthrop house was connected to drug activity. The affidavit does not provide a "substantial basis" to infer a "fair probability" that evidence of a crime would be found at that residence. *Kazmierczak, supra* at 417-418.

The prosecution alternatively argues that even if the search warrant is invalid, suppression is not required because the police executed the warrant with a good-faith belief that it was properly issued. In order for the good-faith exception to apply, the "officer's reliance on a magistrate's probable cause determination . . . must be objectively reasonable." *People v Goldston*, 470 Mich 523, 531; 682 NW2d 479 (2004), citing *United States v Leon*, 468 US 897, 919-921; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The good-faith exception does not apply where "the issuing magistrate or judge is misled by information in the affidavit that the affiant either knew was false or would have known was false except for his reckless disregard of the truth[,] . . . where the magistrate wholly abandons his judicial role or where an officer relies on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.*, quoting *Leon, supra* at 923 (quotations omitted). In this case, Officer DeKiere was both the affiant whose sworn statement served as the basis for the search warrant and one of the officers who executed the warrant. It cannot be said that Officer DeKiere and the other executing officers objectively and reasonably relied on the magistrate's finding of probable cause given the lack of information in the affidavit linking the Workmans or Talley to the Winthrop house, with the exception of one brief stop there by Marquis, or indicating that contraband or other evidence of a crime would be found in the house, as described above. Therefore, the good-faith exception does not apply in this case.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering