

No. 1-09-1830

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 09 CR 3204 |
| |) | |
| JORDAN VAUGHN, |) | Honorable |
| |) | Marcus R. Salone, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial counsel was not ineffective for failing to challenge a search warrant where the sworn complaint from the officer established probable cause and the omission of the time and date of issuance did not affect any substantial rights of defendant; the record belies defendant's claim regarding the trial court's hostility and failure to consider his rehabilitative potential in imposing his sentence; and the mittimus should be corrected to reflect that defendant is entitled to 75 days of presentence custody.
- ¶ 2 Following a bench trial, defendant Jordan Vaughn was found guilty of unlawful possession of a weapon by a felon and possession of a controlled substance, then sentenced to concurrent, respective terms of five and three years' imprisonment. On appeal, defendant

contends that trial counsel was ineffective for failing to quash a defective search warrant, that his sentence should be reduced given the court's hostility and intemperate remarks which were reflected in the sentence imposed, and that his mittimus should be amended to reflect the correct number of days he served in presentence custody.

¶ 3 The record shows that in January 2009, Chicago police officer Dennis Leet and a confidential informant, "J. Doe," appeared before a circuit court judge and requested a search warrant for defendant's person and the second floor apartment at 1227 East Hyde Park Boulevard in Chicago. The warrant requested authority to seize a blue steel shotgun, ammunition, documents showing ownership of the weapon, proof of residency, and other illegal items, which have been used in the commission of, or which constitute evidence of the offense of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). In the sworn complaint for a search warrant, Officer Leet stated that on January 11, 2009, J. Doe reported that defendant, whom J. Doe had known for about 10 years, invited J. Doe inside the apartment on January 9, as he had before on multiple occasions. J. Doe saw defendant in possession of a blue steel shotgun with red shotgun shells in his bedroom, and had seen defendant with the same shotgun six times in the last month. Officer Leet and J. Doe went to 1227 East Hyde Park Boulevard, where J. Doe identified "the first apartment at the top of the stairs" as the place where he saw defendant with a blue steel shotgun and red shotgun shells. Additionally, Officer Leet stated that a computer inquiry using defendant's name, returned the address given by J. Doe, a photograph that J. Doe identified as defendant, and a prior weapons conviction from August 2006.

¶ 4 The circuit court judge signed the complaint and the search warrant, but the date and time of issuance were not recorded on it. A three-page facsimile of the signed complaint and search warrant appears in the common law record with a handwritten notation on each page that reads,

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"ASA Ashley Moore Approved 09 SW 4140 11 JAN 09 1755." A printed notation at the top of each page reads, "JAN-11-2009 17:53 FROM: COURT BRANCH 48."

¶ 5 At trial, Officer Leet testified that he executed the search warrant shortly before 10:30 a.m. on January 13, 2009, and found defendant sleeping in the back bedroom. Defendant was the only person in the apartment. Leet recovered a loaded shotgun, one bag of nine millimeter ammunition, and three bags of crack cocaine from plain view in the bedroom closet, which did not have a door. He also recovered a bag of marijuana and \$170 near the television stand. From the dining room, Leet recovered a bond slip and Comcast bill in defendant's name at that address. After being advised of his *Miranda* rights, defendant stated that the back bedroom belonged to him, but denied any knowledge of the shotgun. The parties stipulated to the chain of custody, inventory and chemical composition of the crack cocaine, and to defendant's 2006 aggravated unlawful use of a weapon conviction.

¶ 6 Defendant testified that he lived with his grandmother in a senior citizen building on East 51st Street, but three nights a week, he stayed at his mother's apartment at 1227 East Hyde Park Boulevard, where he was arrested. He always slept in the back bedroom when he visited his mother, as did his uncle when he visited. His mother placed the Comcast bill in his name, and he claimed that he used his mother's address on the bond slip when he was arrested the previous month for marijuana possession because it happened "right there in front of that house." Defendant denied any knowledge of the shotgun and cocaine in the bedroom closet, and claimed that only the marijuana and the money belonged to him.

¶ 7 The trial court found defendant guilty of unlawful possession of a weapon by a felon and possession of a controlled substance, and after hearing arguments in mitigation and aggravation, sentenced defendant to concurrent, respective terms of five and three years' imprisonment. Following the denial of his motion to reconsider sentence, defendant filed this appeal.

¶ 8 In this court, defendant first contends that trial counsel was ineffective for failing to challenge the validity of the search warrant. Defendant claims the warrant was based on the uncorroborated allegations of an unidentified informant with no showing of prior reliability, and notes that it did not reflect the date and time of its issuance. Defendant argues that the complaint for the search warrant failed to establish probable cause because J. Doe was "completely anonymous" and Officer Leet had no basis to personally determine the reliability of J. Doe from his "first and only contact" with J. Doe. He asserts that "J. Doe's identification of [his] photograph and verification of his address did not corroborate any information suggesting criminal or even suspicious activity," and that the omission of the date and time of issuance rendered the search warrant invalid.

¶ 9 Under the totality of the circumstances approach set forth in *Illinois v. Gates*, 462 U.S. 213 (1983), and adopted by our supreme court in *People v. Tisler*, 103 Ill. 2d 226, 245 (1984), it is the task of the issuing magistrate to make a practical, commonsense determination of whether, given all the circumstances set forth in the affidavit, "including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238, *quoted in People v. Smith*, 372 Ill. App. 3d 179, 184 (2007). The initial probable cause determination by the issuing magistrate is given great deference (*People v. Bryant*, 389 Ill. App. 3d 500, 513-14 (2009)), and "the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants" (*United States v. Ventresca*, 380 U.S. 102, 109 (1965), *quoted in People v. Stewart*, 104 Ill. 2d 463, 477 (1984)).

¶ 10 As a reviewing court, we may not substitute our judgment for that of the issuing magistrate, but rather, decide whether the magistrate had a substantial basis for concluding that probable cause existed. *People v. Sutherland*, 223 Ill. 2d 187, 219 (2006), and cases cited

therein. In turn, we review *de novo* whether trial counsel's failure to contest the validity of the warrant supports a claim of ineffective assistance. *People v. Sharifpour*, 402 Ill. App. 3d 100, 116 (2010).

¶ 11 Here, Officer Leet and J. Doe appeared before a circuit court judge and presented a sworn complaint for a search warrant. According to the complaint, on January 11, 2009, J. Doe told Officer Leet that two days earlier, he was in defendant's bedroom and saw defendant with a blue steel shotgun and red shotgun shells. J. Doe stated that he had known defendant for about 10 years, that he had been inside the apartment on multiple occasions and had seen defendant with the same shotgun six times in the past month. Based on this information, Officer Leet verified defendant's identity, his address at 1227 East Hyde Park Boulevard and learned that he had a prior weapons conviction from 2006. Considering the totality of these circumstances, we find that the magistrate had a sufficient basis for concluding that probable cause existed to believe that defendant unlawfully possessed a shotgun and shotgun shells at the East Hyde Park Boulevard address. *People v. Bui*, 381 Ill. App. 3d 397, 415 (2008).

¶ 12 We are unpersuaded by defendant's attempt to analogize his case to *Florida v. J.L.*, 529 U.S. 266 (2000), involving an anonymous telephone call to police about a man standing at a bus stop carrying a gun, and *People v. Brown*, 343 Ill. App. 3d 617 (2003), involving an anonymous telephone call to police about a drug dealer driving home from Chicago with a large amount of marijuana and who kept a gun in his house. As in *J.L.* and *Brown*, defendant argues, J. Doe was "completely anonymous" and "it was incumbent upon the officer to establish the reliability of the tipster," but Officer Leet failed to do so.

¶ 13 We disagree with defendant's characterization of J. Doe as "completely anonymous," because an anonymous informant is "one unknown to both the investigating officer and the magistrate." *Bryant*, 389 Ill. App. 3d at 518-19, quoting *State v. Roth*, 674 N.W.2d 495, 500

(2004). *J.L. and Brown* are distinguishable in that they concerned "innocent details" of a suspect from an anonymous caller whose basis of knowledge was unknown and thus incapable of corroboration by police. Whether or not the informant is anonymous, our focus is on the totality of the circumstances surrounding the information provided with particular attention to the basis of knowledge and the veracity of the informant. *People v. Jackson*, 348 Ill. App. 3d 719, 730-31 (2004). Unlike *J.L. and Brown*, the informant in this case was known to Officer Leet and the magistrate, and notwithstanding Officer Leet's "first and only contact" with the informant, J. Doe provided detailed, first hand knowledge of defendant's recent and continuing possession of a blue steel shotgun and red shotgun shells. *People v. Loera*, 250 Ill. App. 3d 31, 51-52 (1993). This specific and detailed information regarding the alleged unlawful possession of weapons and ammunition suggests that J. Doe obtained it in a reliable fashion. *People v. Meyer*, 402 Ill. App. 3d 1089, 1094 (2010). Additional evidence relating to J. Doe's reliability was unnecessary under these circumstances, and because he appeared before the issuing magistrate, who had the opportunity to personally observe his demeanor and assess his credibility. *People v. Smith*, 372 Ill. App. 3d 179, 182 (2007). That J. Doe was not questioned does not undermine the magistrate's finding that probable cause existed to issue the search warrant because J. Doe's presence supported his credibility. *Smith*, 372 Ill. App. 3d at 184.

¶ 14 Moreover, we find inaccurate, defendant's claim that Officer Leet's investigation failed to provide substantial corroboration of J. Doe's tip and merely confirmed his identity and location at the East Hyde Park Boulevard address. Rather, according to the sworn complaint for the search warrant, the computer inquiry that generated defendant's photograph and address, also revealed that he had a prior weapons conviction from August 2006, thereby corroborating more than "innocent details." *People v. Payne*, 393 Ill. App. 3d 175, 181 (2009). However mindful of the importance of independent police corroboration of an informant's tip, we emphasize that

corroboration was not required in this case where J. Doe appeared before the issuing magistrate. *People v. Phillips*, 265 Ill. App. 3d 438, 448 (1994).

¶ 15 As for the omission of the time and date of issuance from the search warrant, defendant acknowledges that Officer Leet stated in his sworn complaint that he spoke to J. Doe on January 11, 2009, the record indicates that the complaint and search warrant were approved by an assistant State's Attorney on January 11, 2009, and testimony established that the warrant was executed on January 13, 2009. However, defendant complains that the State cannot point to any place in the record to suggest "at what point in this timeline of events that Leet and J. Doe appeared before the magistrate, and when the magistrate – rather than the State's Attorney – approved the warrant to search [defendant's] apartment." He argues that this omission violates Illinois law and, thus, trial counsel should have filed a pretrial motion attacking the warrant.

¶ 16 A search warrant should be quashed only if the alleged defect affects the substantial rights of the accused. 725 ILCS 5/108-14 (West 2008). The substantial rights of the accused may be deemed affected if an omission on the face of the search warrant confused or could have confused the officers attempting to execute it. *People v. Favela*, 288 Ill. App. 3d 85, 89 (1997). The requirement that the search warrant show the time and date of its issuance serves to allow officers executing the warrant to determine whether it has expired due to the passage of time, *i.e.*, within 96 hours from the time of issuance (725 ILCS 5/108-6 (West 2008)), and for purposes of judicial review. *People v. Blake*, 266 Ill. App. 3d 232, 237 (1994). Here, the search warrant was executed by the same officer who secured its issuance and thus knew that it was not stale when it was executed. *Blake*, 266 Ill. App. 3d at 238. The inadvertent omission of the time and date of its issuance were technical irregularities, which did not affect defendant's substantial rights or provide a basis for quashing the warrant. *Blake*, 266 Ill. App. 3d at 238. As a result, defendant

suffered no prejudice from counsel's failure to challenge the issuance of the warrant, and defendant's claim of ineffectiveness based thereon fails. *Meyer*, 402 Ill. App. 3d at 1095.

¶ 17 Defendant next contends that the trial court made several comments throughout the proceedings indicating that it overlooked the constitutionally mandated objective of rehabilitation in imposing his sentence. He refers us to the trial court's "hostility" in its comments that attempts to rehabilitate defendant were "fruitless," that "we are not dealing with rocket scientists," and "[w]hat is he going to do, come up with the cure for the common cold?" He thus claims that his sentence should be reduced.

¶ 18 We disagree. The requirement that all penalties be determined with the objective of restoring the offender to useful citizenship does not require greater consideration than the requirement that all penalties shall be determined according to the seriousness of the offense. *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981). Here, the trial court specifically acknowledged the goal of rehabilitation, but noted that defendant had been placed in rehabilitation programs on four previous occasions and failed to participate in them. A defendant's rehabilitative potential may be so minimal that it need not be reflected in the sentence actually imposed. *Shumate*, 94 Ill. App. 3d at 485. Because the record shows that the trial court considered defendant's mitigating factors, his criminal history and his failure to avail himself of the rehabilitation opportunities previously afforded him, we cannot say that the trial court abused its discretion in imposing defendant's sentence. *People v. Jones*, 376 Ill. App. 3d 372, 394 (2007).

¶ 19 Moreover, we observe that defendant could have been sentenced to a maximum term of 14 years' imprisonment as this was his second weapons offense, but the trial court imposed a sentence near the statutory minimum of three years' imprisonment. 720 ILCS 5/24-1.1(e) (West 2008). Although defendant points to a number of allegedly injudicious comments, which, he

claims, reflect the trial court's hostility toward himself and trial counsel, we cannot conclude that any alleged hostility toward the defense was prejudicial considering the actual sentence imposed by the trial court. *People v. Brown*, 172 Ill. 2d 1, 59 (1996).

¶ 20 Lastly, defendant contends that the mittimus should be amended to reflect the correct number of days he served in presentence custody. In his opening brief, defendant asserts that he is entitled to 76 days of presentence custody credit, but concedes in his reply brief that he is only entitled to 75 days of credit in light of *People v. Williams*, 239 Ill. 2d 503, 510 (2011). We agree. Pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the mittimus to reflect a credit of 75 days of presentence custody. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of Cook County and modify the mittimus.

¶ 22 Affirmed as modified.