

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Stephenson County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09—CF—91
	)	
KENNETH E. WILLIAMSON,	)	Honorable
	)	David L. Jeffrey,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE ZENOFF delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

*Held:* Where the complaint and supporting affidavits for search warrant provided a reasonable inference that defendant was involved in a continuing course of criminal conduct and that evidence of the conduct would be found at the location to be searched, and the good-faith exception to the exclusionary rule applied, the trial court did not err in denying defendant's motion to quash the warrant and suppress evidence.

Following a stipulated bench trial, defendant, Kenneth E. Williamson, was convicted of possession in excess of 900 grams of a controlled substance (cocaine) with the intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2008)), possession of 30 to 500 grams of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2008)), and possession of a weapon by a felon (three counts) (720

ILCS 5/24—1.1(a) (West 2008)). He was sentenced to a total of 30 years' imprisonment and a three-year term of mandatory supervised release and ordered to pay a "street value" fine in excess of \$50,000, plus other fines and fees. On appeal, defendant argues that the trial court erred in denying his motion to quash the search warrant and suppress evidence because the warrant was not supported by probable cause. For the following reasons, we affirm.

#### BACKGROUND

On March 27, 2009, police obtained and executed a search warrant for defendant's person and for 624 E. Crocker Street in Freeport, Illinois. The execution of the warrant resulted in the seizure of over \$90,000 in United States' currency, suspected cocaine, and other items, including three safes. Thereafter, police obtained warrants to search the contents of the safes. On April 1, 2009, defendant was charged by information with possession in excess of 900 grams of a controlled substance (cocaine) with the intent to deliver (count 1) (720 ILCS 570/401(a)(2)(D) (West 2008)), possession of 30 to 500 grams of cannabis with intent to deliver (count 2) (720 ILCS 550/5(d) (West 2008)), and possession of a weapon by a felon (counts 3 through 12) (720 ILCS 5/24—1.1(a) (West 2008)).

On June 11, 2009, defendant filed an amended motion to quash search warrant and suppress physical evidence (relating to the warrant for 624 E. Crocker) and a consolidated motion to quash search warrants and suppress physical evidence (relating to the warrants for the safes).<sup>1</sup> On July 10,

---

<sup>1</sup>The parties agreed that the validity of the warrants pertaining to the safes was dependent upon the validity of the warrant for 624 E. Crocker. Defendant raises no issue on appeal regarding the warrants for the safes.

2009, the trial court heard argument on both motions; no evidence was presented. The court entered its memorandum opinion and order denying the motions on September 9, 2009.

The case proceeded to a stipulated bench trial on January 20, 2010. The State summarized its evidence and the parties stipulated that it was sufficient to support a finding of guilty beyond a reasonable doubt on counts 1 through 5. The parties further stipulated to sentencing recommendations for those five counts and the State dismissed counts 6 through 12 (additional charges of possession of a weapon by a felon). The parties also stipulated that defendant had preserved for appeal his intended challenge to the validity of the search warrant for 624 E. Crocker. The court admonished defendant of the charges, possible penalties, and his rights, and then accepted the parties' stipulations, and entered judgment accordingly. Defendant timely appealed.

#### ANALYSIS

Defendant argues that the search warrant for 624 E. Crocker was not supported by probable cause because the information in the supporting affidavit was stale since the allegations pertaining to 624 E. Crocker occurred six months prior to the presentation of the complaint. Section 108—3(a) of the Code of Criminal Procedure of 1963 provides that any judge may issue a search warrant if it is supported by a written complaint on oath or affirmation containing grounds sufficient to show probable cause and a particular description of the person or place to be searched and the items to be seized. 725 ILCS 5/108—3(a) (West 2008). “A showing of probable cause means that the facts and circumstances within the knowledge of the affiant are sufficient to warrant a person of reasonable caution to believe that an offense has occurred and that evidence of it is at the place to be searched.” *People v. Moser*, 356 Ill. App. 3d 900, 908 (2005); *People v. Beck*, 306 Ill. App. 3d 172, 178-79 (1999) (a determination of probable cause requires a sufficient nexus between the criminal offense,

the items to be seized, and the location to be searched). “The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, \*\*\* there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

Defendant asserts that our review of the trial court’s ruling on his motion to suppress is *de novo* because it involves only a question of law. In support, defendant cites *People v. Cooke*, 299 Ill. App. 3d 273 (1998). In *Cooke*, the court reviewed *de novo* the trial court’s ruling on the motion to suppress because no question of fact was presented. *Cooke*, 299 Ill. App. 3d at 277-78. However, the court applied the *Gates*’ totality-of-the-circumstances analysis to review the issuing judge’s probable-cause determination. *Cooke*, 299 Ill. App. 3d at 278-80. When, as here, the only issue is whether the complaint and supporting affidavits were sufficient to establish probable cause, our analysis is of the issuing judge’s initial determination of probable cause, not on the trial court’s assessment of that decision. *People v. Bryant*, 389 Ill. App. 3d 500, 511 (2009); *People v. Smith*, 372 Ill. App. 3d 179, 181-82 (2007) (citing *People v. McCarty*, 223 Ill. 2d 109, 153 (2006)). The United States Supreme Court explained,

“[W]e have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate’s ‘determination of probable cause should be paid great deference by reviewing courts.’ [Citation.] ‘A grudging or negative attitude by reviewing courts toward warrants,’ [citation] is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant; ‘courts should not invalidate warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner.’ ” [Citation.] *Gates*, 462 U.S. at 236.

The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Gates*, 462 U.S. at 236. “[A]lthough it may not be easy to determine when an affidavit demonstrates probable cause, doubtful or marginal cases are largely resolved by resorting to the preference accorded to warrants.” *Beck*, 306 Ill. App. 3d at 179.

The same deferential standard applies to a trial court’s decision on a defendant’s motion to suppress for lack of probable cause because it is, essentially, reviewing the probable-cause determination of the issuing judge. *Bryant*, 389 Ill. App. 3d at 516. Thus, if the complaint provided a substantial basis for the issuing judge’s probable-cause determination, we will affirm the trial court’s denial of a defendant’s motion to quash warrant and suppress evidence. See *People v. Stewart*, 104 Ill. 2d 463, 477-78 (1984) (first concluding that the complaint provided the issuing judge a substantial basis for the probable-cause determination and then holding that the trial court’s denial of the defendant’s motion to suppress was not manifestly erroneous); cf. *Bryant*, 389 Ill. App. 3d at 511 (holding that if the judge issuing the search warrant was correct, then it necessarily followed that the trial court’s grant of the defendant’s motion to suppress was erroneous).

Here, the complaint requested the issuance of a warrant for 624 E. Crocker followed by a very specific description of that property. The complaint contains the sworn statements of citizen Jane Doe (an assumed name) and Robyn Stovall, an investigator with the State Line Area Narcotics Team (SLANT), who both personally appeared before the issuing judge. In the complaint, Doe described her contact with defendant over the previous six months as follows. On about four occasions, Doe “negotiated the purchase of crack cocaine at this residence [624 E. Crocker] with [defendant].” Each time, defendant gave Doe an amount of crack cocaine in exchange for money.

Two other times within the previous six months, Doe was “to be present at”<sup>2</sup> 624 E. Crocker and observed defendant “in possession of an amount of crack cocaine packaged for sale to another” but Doe did not purchase any cocaine during these two contacts. Doe further asserted that within the last 72 hours, she met with SLANT to arrange and execute a controlled buy of cocaine from defendant at 636 E. Iroquois Street in Freeport, Illinois. Doe was permitted inside 636 E. Iroquois where she and defendant exchanged money for cocaine.

In the complaint, investigator Stovall corroborated Doe’s description of the controlled buy at 636 E. Iroquois. Stovall averred that, during her involvement with SLANT’s investigation of defendant, she had occasion to work with Doe, who had acted as a confidential informant in four prior cases that resulted in five felony convictions for narcotics. Stovall stated that Doe had “recently participated in four confidential purchases of crack cocaine.” One of those purchases was from defendant inside the residence of 636 E. Iroquois. Another of those purchases was from defendant “directly after he left the residence of 624 E. Crocker.” Stovall checked defendant’s driver’s license and found his address was 624 E. Crocker. Stovall noted that, during her surveillance of defendant, she had seen defendant at 624 E. Crocker on several occasions as well as a silver Ford Expedition that defendant often drove parked in the driveway there. Stovall concluded that she believed 624 E. Crocker was defendant’s primary address. The complaint closed with the following paragraph:

---

<sup>2</sup>We note that this language suggests a future, uncompleted action. Defendant makes no argument regarding this language. Based on the use of past tense following this odd construction (Jane Doe “observed”), it appears that the language was a typographical error.

“Based on the above, we believe probable cause exists that evidence of the offenses of Unlawful Possession of a Controlled Substance and Unlawful Possession with the Intent to Deliver Controlled Substances is located at 624 E. Iroquois Street, Freeport, Stephenson County, Illinois and is involving [defendant].”

A commonsense reading of the complaint as a whole reveals a substantial basis to support a finding of probable cause. The issuing judge could have reasonably inferred that defendant was engaged in the sale of drugs because within the past six months, defendant sold cocaine to Jane Doe four times at 624 E. Crocker and also had packaged cocaine there that Jane Doe saw twice. The complaint also supports a reasonable inference that defendant’s conduct was current, because he sold cocaine to Doe from the 636 E. Iroquois residence in the controlled buy 72 hours prior to the presentation of the complaint and had recently sold cocaine to Jane Doe directly after he left 624 E. Crocker. The issuing judge could further have reasonably concluded that 624 E. Crocker was defendant’s base of operations because he had packaged cocaine at that location and because it was his primary residence. Accordingly, on its face, the complaint provided a substantial basis to conclude that the search warrant was supported by probable cause because defendant was engaged in a course of illegal drug sales from 624 E. Crocker. See *Moser*, 356 Ill. App. 3d at 908 (the issuing judge should not be restricted in the use of common sense, and his or her determination of probable cause is given great deference); *Beck*, 306 Ill. App. 3d at 179 (stating that “doubtful or marginal cases are largely resolved by resorting to the preference accorded to warrants”).

Defendant contends that the factual allegations pertaining to 624 E. Crocker were stale because they failed to indicate specifically when in the last six months each incident occurred. A search warrant is considered stale when too much time has elapsed between the factual allegations

in the affidavit and the issuance of the warrant. *People v. Donath*, 357 Ill. App. 3d 57, 64 (2005); *see generally* 2 W. LaFave, *Search & Seizure*, § 3.7(a) at 371-91 (4th ed. 2004) (discussing the issue of staleness of probable cause for search warrants). No bright-line rule exists and the issuing judge is expected to exercise his or her informed judgment. *Donath*, 357 Ill. App. 3d at 64. The single most important factor to consider is whether the defendant was engaged in a continuing course of criminal conduct. *Donath*, 357 Ill. App. 3d at 64. When more than one event is alleged in a complaint, it is presumed that one of the events occurred at the most remote time. *People v. Gant*, 150 Ill. App. 3d 180, 184 (1986). However, it is not likely that all of the alleged events occurred at the most remote point. *Gant*, 150 Ill. App. 3d at 185. Moreover, where more than one event is alleged, there is a greater likelihood that the defendant was engaged in a continuing course of conduct. *Gant*, 150 Ill. App. 3d at 185 (rejecting the defendant’s staleness argument and affirming the trial court’s denial of his motion to suppress where the complaint alleged two controlled buys within the month preceding the complaint).

Here, we will presume that one of Doe’s cocaine purchases from defendant at 624 E. Crocker occurred six months prior to the presentation of the complaint. *See Gant*, 150 Ill. App. 3d at 184. However, Doe’s allegations of three more buys and two observations of packaged cocaine at 624 E. Crocker within the preceding six months did not likely occur at that remote point in time. *See Gant*, 150 Ill. App. 3d at 185. At least one of the cocaine buys occurred “recently” and “directly after [defendant] left the residence of 624 E. Crocker.” These allegations support the reasonable inference that defendant was engaged in a continuing course of selling drugs. *See Gant*, 150 Ill. App. 3d at 185. Even if, as defendant asserts, the recent buy at 624 E. Crocker was one of the four purchases over the last six months, it was still recent and indicative of a continuing course of conduct. The

allegation of the controlled buy at 636 E. Iroquois within 72 hours of the complaint further supports the inference that defendant was engaged in continuing drug sales. Although it is not possible to discern from the complaint which occurred later in time—the drug buy within 72 hours at Iroquois or the “recent” drug buy at Crocker—a common-sense reading of the complaint suggests ongoing drug sales by defendant beginning six months prior to presentation of the complaint and continuing to just before the presentation of the complaint. See *Moser*, 356 Ill. App. 3d at 908 (the issuing judge may draw reasonable inferences from the supporting material); *Beck*, 306 Ill. App. 3d at 179 (stating that “doubtful or marginal cases are largely resolved by resorting to the preference accorded to warrants”).

*People v. McCoy*, 135 Ill. App. 3d 1059 (1985), is instructive. In *McCoy*, the defendant was charged with theft. The trial court granted his motion to quash the search warrant and the State appealed. *McCoy*, 135 Ill. App. 3d at 1061. The warrant was based on a complaint by a county sheriff’s detective and one by a private citizen informant, alleging that the informant had seen the defendant with various weapons on his person and in his van several times over the course of about 9 months, with the last time being within 30 days of the presentation of the complaints. *McCoy*, 135 Ill. App. 3d at 1062. The trial court granted the defendant’s motion to quash, concluding, *inter alia*, that the information was stale because the last “definite” time the weapons were observed was two months prior to the presentation of the complaints. *McCoy*, 135 Ill. App. 3d at 1063. The appellate court reversed. On the issue of staleness, the court reasoned that the time lapses of five months and two months between the various viewings and the last sighting within 30 days of the issuance of the warrant were sufficient to conclude that the defendant was engaged in a continuing offense such that the information was not stale. *McCoy*, 135 Ill. App. 3d at 1067.

The instant case is similar to *McCoy*, and indeed, the facts alleged here were better suited for concluding that there was a substantial basis for finding a continuing course of conduct. Whereas in *McCoy* the criminal conduct was witnessed six times over a period of nine months, here, Jane Doe witnessed defendant engaged in criminal conduct seven or eight times over a period of six months. Moreover, defendant here was observed in criminal conduct “recently” and within 72 hours of the presentation of the complaint, while the final observation of the defendant in *McCoy* was within 30 days of the presentation of the complaint.

Defendant relies on *People v. Damian*, 299 Ill. App. 3d 489 (1998), in support of his argument that the search warrant was based on stale factual allegations. In *Damian*, the defendant was charged with possession of a controlled substance with intent to deliver and the trial court granted his motion to quash the search warrant and suppress evidence. *Damian*, 299 Ill. App. 3d at 490. The State appealed and the appellate court affirmed, holding that the information relied upon by the issuing judge was stale. *Damian*, 299 Ill. App. 3d at 491-92. The complaint alleged that one controlled buy took place between the defendant and an anonymous informant six weeks prior to the presentation of the complaint. *Damian*, 299 Ill. App. 3d at 492. The complaint contained no additional information other than a vague assertion by the officer-affiant that the unreliable anonymous informant told him that the defendant possessed cocaine six weeks later, some of which the informant “snorted,” without indicating where. *Damian*, 299 Ill. App. 3d at 490, 492. The appellate court concluded that the information regarding the controlled buy six weeks prior to the complaint was stale and that there was nothing indicating that the defendant was engaged in a continuing course of criminal conduct. *Damian*, 299 Ill. App. 3d at 492.

Here, unlike *Damian*, there were factual allegations supporting the reasonable inference that defendant was engaged in a continuing course of conduct. As previously discussed, Jane Doe alleged at least four cocaine buys from defendant within the last six months at 624 E. Crocker, with one (directly after defendant left 624 E. Crocker) being recent; two observations of cocaine packaged for sale at 624 E. Crocker; and one controlled cocaine buy at 636 E. Iroquois. Moreover, in *Damian* the most recent, and only, alleged criminal conduct was six weeks prior to the presentation of the complaint. Here, however, there were two allegations of recent criminal conduct (one at each location).

Defendant urges that there was nothing to indicate any continuing conduct at 624 E. Crocker and that, if anything, the complaint established that defendant had moved on from the 624 E. Crocker operations to selling drugs at 636 E. Iroquois because that was the only recent and continuing conduct alleged. Defendant's argument misses the mark. The issuing judge is to apply a totality-of-the-circumstances analysis by looking at all of the allegations set forth in the affidavit. *Gates*, 462 U.S. at 238. Probable cause does not require that the alleged criminal activity must have actually occurred at the location to be searched. Rather, it is sufficient if a person of reasonable caution would believe that an offense occurred and that evidence of it is at the place to be searched. *Moser*, 356 Ill. App. 3d at 908. That defendant also sold cocaine at 636 E. Iroquois is further indication of his continuing course of conduct; in other words, it was reasonable to infer that defendant's activity at 636 E. Iroquois was part of the broad course of criminal conduct primarily involving 624 E. Crocker. See *People v. Lyons*, 373 Ill. App. 3d 1124, 1128 (2007) (in the absence of direct information, reasonable inferences may be entertained to create the necessary nexus between the location to be searched and the offense). Jane Doe's allegation of seeing cocaine packaged for sale

at 624 E. Crocker and investigator Stovall's alleged belief that 624 E. Crocker was defendant's primary residence<sup>3</sup> support the reasonable inference that evidence of defendant's continuing course of criminal conduct would be found at 624 E. Crocker. See *People v. Wolski*, 83 Ill. App. 3d 17, 22 (1980) (where probable cause was established that a homicide occurred, the allegation that a recently dated sales receipt on the defendant's credit card account was found near the body "established the probability that defendant was linked to the offense so as to reasonably permit the search [of the defendant's home]"); *People v. Weinger*, 63 Ill. App. 3d 171, 175 (1978) (where police sought items of clothing and jewelry worn by the defendant during the commission of the murders, it was a "logical supposition that defendant would have these articles in his apartment" as well as the possible weapon); *People v. Ruopp*, 61 Ill. App. 3d 140, 142 (1978) ("Under the circumstances it was reasonable for the issuing judge to conclude defendant kept the clothing and the weapon he used to perpetrate the armed robberies at his place of residence \*\*\*."); *People v. Hammers*, 35 Ill. App. 3d 498, 504 (1976) ("The complaint was sufficient to show probable cause that defendant shot and killed the victim, and, if so, it was reasonable for the issuing judge to infer that the weapon used might be at defendant's home nine days later.").

---

<sup>3</sup>Stovall's belief was based on her allegations that she had run defendant's driver's license and found his address was 624 E. Crocker and that, while conducting surveillance, she had seen defendant at that residence as well as the vehicle he drove parked there on several occasions. Defendant contends that nothing in the complaint indicates when Stovall ran defendant's driver's license, but conceded at oral argument that, at some point, 624 E. Crocker must have been his residence, even if he maintained dual residences.

Defendant next raises several arguments for which he neglects to provide any authority in support. Accordingly, defendant has forfeited them. See *People v. Lindmark*, 381 Ill. App. 3d 638, 664 (2008) (“Points not argued with citation to authority are forfeited.”) (citing Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006)). Nonetheless, we briefly address them.

Defendant asserts that, although Doe averred that she was inside 636 E. Iroquois, she never said that she was inside 624 E. Crocker. Presumably defendant reads being “at” 624 E. Crocker as something other than “inside.” At oral argument, defendant stressed that his reading is the more reasonable inference since the controlled buy at 636 E. Iroquois was described as having occurred “inside” that residence. We disagree. That the affiants chose to describe the controlled buy at Iroquois in more detail and with a different choice of preposition or that other inferences are also reasonable does not negate the existence of probable cause. Moreover, whether Doe was inside or outside of 624 E. Crocker residence is irrelevant. See *Cooke*, 299 Ill. App. 3d at 279 (“It does not matter whether the source was inside the residence or outside the residence when the observations were made.”).

Defendant also contends that Jane Doe’s statements regarding 624 E. Crocker were uncorroborated. Because a sworn complaint supporting a search warrant is presumed valid, where, as here, the defendant does not challenge the veracity of the statements in the complaint, we view the statements as true for purposes of appeal. *McCarty*, 223 Ill. 2d at 154. We note that this is not a case of an unidentified anonymous informant. Although affiant Jane Doe used an assumed name, she was a sworn complainant who personally appeared before the issuing judge. See *Smith*, 372 Ill. App. 3d at 182 (no additional evidence of reliability was needed when an informant appeared before the issuing judge and was under oath and the judge had an opportunity to observe the informant);

*McCoy*, 135 Ill. App. 3d at 1065 (noting that the case did not involve an anonymous informant supplying hearsay information, but rather an identified informer who presented his own affidavit to the issuing judge). Moreover, investigator Stovall vouched for Doe's history of reliability as a confidential informant. Accordingly, defendant's argument lacks merit.

Defendant finally argues that the complaint was internally inconsistent, because it contained factual allegations regarding 624 E. Crocker and 636 E. Iroquois, but concluded that probable cause existed to search 624 E. Iroquois—an address not previously mentioned in the complaint. Defendant asserts that the error here was significant, and not a mere technicality because one could infer that the place to be searched was 636 E. Iroquois—the location of the most recent activity.

As defendant acknowledges, in considering the issue of probable cause, complaints for warrants should not be subjected to unduly technical scrutiny. *Gates*, 462 U.S. at 236. The test for the sufficiency of a search warrant's description is whether it leaves the executing officer no doubt and no discretion as to the premises to be searched. *People v. Mabry*, 304 Ill. App. 3d 61, 64 (1999). A defendant alleging ambiguity bears the burden of proving that any potential ambiguity did or could cause confusion. *People v. Powless*, 199 Ill. App. 3d 952, 956 (1990). Considering the complaint in its entirety, defendant fails to establish that confusion could have resulted. The request for issuance of the warrant on the first page of the complaint listed and described with particularity 624 E. Crocker. The allegations regarding 624 E. Crocker and 636 E. Iroquois were clearly delineated throughout the body of the complaint. Stovall's portion of the complaint concludes with her belief that 624 E. Crocker was defendant's residence. We cannot say that the alleged ambiguity in the concluding paragraph could have resulted in confusion as to the location sought to be searched. We also note that the command portion of the warrant itself clearly identified 624 E. Crocker as the

location to be searched. Nor did the error actually result in confusion as the warrant was issued for and executed at 624 E. Crocker, as requested on the first page of the complaint.

Even assuming *arguendo* that probable cause was lacking, we further determine that the trial court did not err in finding that the good-faith exception to the exclusionary rule applied to prevent suppression.<sup>4</sup> The good-faith exception to the exclusionary rule was first announced in *United States v. Leon*, 468 U.S.897 (1984), adopted by our supreme court in *Stewart* (104 Ill. 2d at 477), and codified in the Code of Criminal Procedure of 1963 (Code). Section 114—12(b) of the Code provides in relevant part:

“(1) If a defendant seeks to suppress evidence because of the conduct of a peace officer in obtaining the evidence, the State may urge that the peace officer’s conduct was taken in a reasonable and objective good faith belief that the conduct was proper and that the evidence discovered should not be suppressed if otherwise admissible. The court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer who acted in good faith.

(2) ‘Good faith’ means whenever a peace officer obtains evidence:

(i) pursuant to a search or an arrest warrant obtained from a neutral and detached judge, which warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer

---

<sup>3</sup>In its September 9, 2009, Memorandum Opinion and Order, the trial court noted that, because it concluded that there was a substantial basis for the issuing judge’s probable cause determination, there was no need for it to address the good-faith exception. Nonetheless the trial court considered the issue because the parties had briefed and argued it.

reasonably believed the warrant to be valid.” 725 ILCS 5/114—12(b)(1) and (b)(2)(i) (West 2008).

However, objective good-faith belief does not exist, and suppression will remain an appropriate remedy, if (1) the issuing judge was “misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;” (2) the issuing judge “wholly abandoned his judicial role;” (3) the affidavit in support of the warrant was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable;” or (4) the warrant is “so facially deficient \*\*\* that the executing officers cannot reasonably presume it to be valid.” *Leon*, 468 U.S. at 923. The applicability of the good-faith exception presents a question of law that we review *de novo*. *People v. Turnage*, 162 Ill. 2d 299, 305 (1994).

Defendant contends that the “absence of probable cause for the issuance of the warrant for the E. Crocker Street precludes the application of the ‘good-faith exception’ to the exclusionary rule.” Defendant refers to the third scenario in *Leon* under which objective good-faith belief does not exist, characterizing it as “when the affidavit does not provide the magistrate with a substantial basis for determining the existence of probable cause.” In support, defendant cites this court’s decision in *People v. Hieber*, 258 Ill. App. 3d 144, 148 (1994), where we did characterize the third scenario as defendant asserts. We reasoned that the court’s language in *Leon* regarding the third scenario—lacking indicia of probable cause—“simply means that, if a reasonable examination by a reviewing court would find a clear lack of probable cause, this is sufficient to suppress evidence.” *Hieber*, 258 Ill. App. 3d at 152. We acknowledge that our reasoning in *Hieber* was criticized in *Cooke*, where the court stated,

“Police officers executing a warrant do not have recourse to a reviewing court to determine in advance whether reliance on the warrant is reasonable. Moreover, if simply an absence of probable cause defeats the exception, what good is the exception? How ‘clear’ must the lack of probable cause be for the police officers to be not acting in good faith?” *Cooke*, 299 Ill. App. 3d at 281.

However, we note that our decision in *Hieber* was based on our conclusion that “there was very little indication of probable cause” (*Hieber*, 258 Ill. App. 3d at 151) and that the affidavit in support was merely “a conclusory statement based on [the affiant-officer’s] own bare conclusions” (*Hieber*, 258 Ill. App. 3d at 152). Therefore, our analysis was essentially consistent with *Leon*. To the extent that our decision in *Hieber* held that an officer executing a search should be held to the same standard as the judge issuing the warrant, we now disavow it.

In response to questioning at oral argument about the applicability of the other scenarios in *Leon*, defendant said that the second scenario could reasonably be argued because, had the issuing judge not wholly abandoned her judicial role, she “would have caught the obvious defect” in the concluding paragraph asserting probable cause to search the previously unmentioned 624 E. Iroquois. As we noted above, this alleged ambiguity in the concluding paragraph could not reasonably have resulted in confusion as to the location to be searched. Moreover, the type of judicial abandonment contemplated by *Leon* was that exemplified in *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 327 (1979). *Leon*, at 468 U.S. at 923. There, the issuing judge “allowed himself to become a member, if not the leader, of the search party.” *Lo-Ji Sales*, 442 U.S. at 327. Simply overlooking a possible ambiguity does not rise to that level.

In the case at bar, even assuming *arguendo* that probable cause was lacking, we cannot say that the officers' reliance on the warrant was not in objective good faith. Even if our review were to indicate that probable cause was stale, the complaint contained allegations of four or five drug buys over six months at 624 E. Crocker, including one recently. Thus, it was not a "bare-bones" affidavit lacking sufficient indicia of probable cause but provided a sufficient basis for the executing officers to reasonably rely on the validity of the warrant. See *Beck*, 306 Ill. App. 3d at 180-81 (holding that, even if the issue of probable cause were close, the officers' good-faith reliance on the search warrant prevented suppression because the affidavit was not a "bare-bones" one but rather contained sufficient indicia of probable cause that the officer's belief in its validity was not unreasonable); *People v. Rehkopf*, 153 Ill. App. 3d 819, 823, 825 (1987) (holding that, although probable cause was stale because most recent allegation of defendants' having silencers was 13 months prior to presentation of complaint, the good-faith exception applied because executing officers reasonably relied on special agent-affiant's allegation that silencers were typically kept for a long time). Accordingly, the trial court did not err in concluding that the good-faith exception applied.

Because we conclude that the issuing judge had a substantial basis for determining that probable cause existed to issue the search warrant for 624 E. Crocker, and that, even if probable cause was lacking, the good-faith exception to the exclusionary rule applied, the trial court's denial of defendant's motion to quash the warrant and suppress evidence was not erroneous. *Stewart*, 104 Ill. 2d at 477-78 (where the complaint provided the issuing judge a substantial basis for the probable-cause determination, the trial court's denial of the defendant's motion to suppress was not manifestly erroneous); *People v. Bohan*, 158 Ill. App. 3d 811, 817-19 (1987) (where the question of probable

No. 2—10—0081

cause was close, the court held that the good-faith exception applied, because the search warrant was not so facially deficient to render the officers' reliance on it unreasonable).

Based on the foregoing reasons, we affirm the judgment of the circuit court of Stephenson County.

Affirmed.