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2012 IL App (3d) 100961-U

Order filed August 13, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0961
v.	)	Circuit No. 09-CF-730
	)	
ROBERT L. KING,	)	Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant a *Franks* hearing because defendant failed to make a substantial showing that the police officer who swore to the complaint for the warrant knowingly, intentionally, or with reckless disregard for the truth made a false statement that was necessary to the finding of probable cause to issue a search warrant.

¶ 2 Defendant, Robert L. King, was found guilty of unlawful possession with intent to deliver a controlled substance (cocaine) (720 ILCS 570/401(a)(2)(A) (West 2008)) and unlawful possession with intent to deliver cannabis (720 ILCS 550/5(d) (West 2008)). The trial court

sentenced defendant to six years of imprisonment for the conviction involving cocaine and a concurrent two-year term of imprisonment for the conviction involving cannabis. On appeal, defendant argues that the trial court erred in denying his request for an evidentiary hearing on his motion to quash the search warrant and suppress evidence. We affirm.

¶ 3 FACTS

¶ 4 On June 27, 2009, a complaint for a search warrant was filed by Officer Joshua Allenbaugh to search the residence of 2207 West Starr Street in Peoria, Illinois. The complaint alleged that in May 2009, Allenbaugh received information from a confidential source that individuals at that address were selling cocaine from the residence.

¶ 5 The complaint further indicated that, on June 19 and 26, 2009, police searched the trash receptacle from 2207 West Starr Street that was located in the rear of the residence. According to the complaint, as a result of the first search of the trash on June 19, police found a torn corner from a clear plastic bag, three knots from clear plastic bags, and 18 clear plastic sandwich bags with the corners torn off. Allenbaugh indicated that his training and experience had taught him that "individuals will package illegal drugs in the corner sections of clear plastic sandwich size bags then cut the corner out" and dispose of the remainder of the bag.

¶ 6 Allenbaugh also alleged in the complaint that on June 25, 2009, he conducted surveillance on the residence and, at three separate times, observed individuals enter the backyard, remain out of sight for a moment, return to the alley, and depart on foot. Allenbaugh's training and experience taught him that "it is common at residences where illegal drugs are sold for individuals to frequently arrive at the residence and depart a moment later."

¶ 7 As a result of the second trash search on June 26, 2009, police found 33 clear plastic sandwich bags with the corners cut off. Allenbaugh also indicated that he "located 2 pieces of mail addressed to 2207 W. Starr St[reet]."

¶ 8 On June 27, 2009, the trial court found that the complaint stated facts sufficient to show probable cause and issued the search warrant. Police executed the warrant the same day.

¶ 9 Defendant was indicted with unlawful possession with intent to deliver cocaine and unlawful possession with intent to deliver cannabis. Defendant filed an amended motion to quash the search warrant and suppress evidence, arguing that there was no probable cause to support the search warrant and the complaint for the warrant contained false information. In support of the motion, defendant attached an affidavit from Dana Williams, who swore: (1) she was a resident of 2207 West Starr Street; (2) garbage from 2207 West Starr Street was not stored on the property on the days described in the warrant complaint; (3) the garbage receptacle from 2207 West Starr Street was located behind 2209 West Starr Street alongside the garbage receptacle for that residence; and (4) on the dates described in the warrant complaint there were no garbage receptacles located behind 2207 West Starr Street.

¶ 10 At the hearing on defendant's amended motion to quash, the trial court indicated that prior to proceeding to a full hearing on the motion, the court would have to make an initial determination pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) on whether defendant had made "a substantial preliminary showing that an allegedly false statement [1:] is necessary to the finding of probable cause and [2: w]as included in the warrant affidavit either knowingly and intentionally or with reckless disregard for the truth." The trial court found that defendant failed to show that any inaccuracies in describing the location of the garbage was intentional or made

with reckless disregard for the truth and, even if the information was inaccurate, the remainder of the complaint was sufficient to establish probable cause.

¶ 11 On December 7, 2010, defendant waived his right to a jury and proceeded with a stipulated bench trial. The parties stipulated that the State could present evidence that on June 27, 2009, while executing the search warrant, police found letters and bills identifying defendant as a resident of 2207 West Starr Street, as well as 16.2 grams of cocaine and 92.5 grams of cannabis. The parties also stipulated that police testimony would indicate that plastic bags and other items in the house were consistent with packaging used to sell drugs. The trial court found defendant guilty.

¶ 12 Pursuant to the agreement of the parties, defendant was sentenced to concurrent sentences of six years of imprisonment for the conviction involving cocaine and two years of imprisonment for the conviction involving cannabis. Defendant appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the trial court erred in denying his request for a full hearing on his motion to quash the search warrant where the motion was supported by a sworn affidavit that the complaint contained a false statement because the trash examined by police came from a different residence. We disagree.

¶ 15 To overcome the presumption of validity of an affidavit or complaint and obtain an evidentiary hearing, the defendant must make a "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit[.]" *People v. Lucent*e, 116 Ill. 2d 133, 147 (1987) (quoting *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)). "[I]f the allegedly false statement is

necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Lucente*, 116 Ill. 2d at 147 (quoting *Franks*, 438 U.S. at 155-56).

¶ 16 The determination of whether a defendant made the necessary showing to warrant a *Franks* evidentiary hearing is within the discretion of the circuit court and will not be disturbed absent an abuse of discretion. *People v. Gorosteata*, 374 Ill. App. 3d 203, 212 (2007); *People v. Caro*, 381 Ill. App. 3d 1056 (2008), citing *Lucente*, 116 Ill. 2d at 153 (providing that as long as the trial court exercised its discretion "within permissible limits," the judgment on whether to grant a hearing should not be disturbed on appeal). It is not the function of the reviewing court to substitute its judgment for that of the issuing magistrate, but rather to ensure that there was a substantial basis for the magistrate to conclude that probable cause existed. *People v. Sutherland*, 223 Ill. 2d 187 (2006). Probable cause for a search warrant exists where all the circumstances set forth in the affidavit establish that there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Sutherland*, 223 Ill. 2d 187; *Illinois v. Gates*, 462 U.S. 213 (1983).

¶ 17 Here, the issue is whether the trial court erred in determining that defendant's allegations regarding the false statement in the affidavit did not justify an evidentiary hearing. The defendant challenged the affidavit in support of the search warrant by alleging that there were no garbage containers behind 2207 West Starr Street at the time police claimed in the complaint, because the containers from 2207 West Starr Street were in fact located next door at 2209 West Starr Street. Defendant argued that due to this false statement in the complaint, the claims of police finding the plastic bags with cut corners in the garbage were not credible.

¶ 18 Defendant's assertions were insufficient to warrant a *Franks* hearing. The complaint for the warrant indicated that a confidential informant had informed police that drugs were being sold by the residents of 2207 West Starr Street. Allenbaugh corroborated the informant's tip by conducting surveillance at the defendant's residence and by searching a trash can near the residence. Allenbaugh saw three individuals separately enter the backyard of the residence momentarily and then leave the area. Allenbaugh stated that his training and experience has taught him that such behavior is common at residences where illegal drugs are sold. Moreover, the trash that was searched, whether it was located directly behind 2207 West Starr Street or next door, contained mail addressed to 2207 West Starr Street. The presence of the mail suggested that the trash had come from that residence and supported the trial judge's finding that probable cause for the warrant existed. See, *e.g.*, *People v. Stage*, 337 Ill. App. 3d 242, 243-45 (2003) (holding that cocaine residue and pipe found in trash can near defendant's residence supplied probable cause for warrant to search the residence where mail addressed to the defendant and a co-resident was also found in the trash, providing "indicia which tied the garbage to the residence"); *People v. Balsley*, 329 Ill. App. 3d 184, 184-86 (2002) (finding probable cause to search defendant's residence where trash bag located near the residence contained a small amount of cannabis and two pieces of mail addressed to the residence). Therefore, the trial court did not err in finding that defendant failed to establish that Allenbaugh intentionally lied or recklessly disregarded the truth in regard to a statement that was necessary to the finding of probable cause.

¶ 19 The defendant also argues that he is entitled to a *Franks* hearing because the trial court "did not understand the purpose of the search warrant obtained by the police." (Specifically, the defendant maintains that the trial court erroneously believed that the police sought a warrant to

search the garbage cans, rather than the defendant's residence.) We disagree. We may affirm the trial court's ruling on a motion to suppress for any reason supported by the record. See, *e.g.*, *People v. Smith*, 406 Ill. App. 3d 747, 752 (2010); see also *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995) (noting that a reviewing court "can sustain the decision of a lower court on any grounds which are called for by the record, regardless of whether the lower court relied on those grounds and regardless of whether the lower court's reasoning was correct"). Thus, regardless of the reasoning employed by the trial court, the ultimate issue is whether, based on the evidence contained in the record, it was an abuse of discretion for the trial court to deny the defendant's request for a *Franks* hearing on his motion to quash the search warrant. See *Smith*, 406 Ill. App. 3d at 752. For the reasons stated above, we hold that the trial court did not abuse its discretion.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 22 Affirmed.