2013 IL App (1st) 110794-U

FIFTH DIVISION
January 25, 2013

No. 1-11-0794

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. 10 CR 16106
	)	
KABARIS HAYNES,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 ***Held*:** Trial counsel was not ineffective for failing to file a motion to quash a search warrant where the complaint for the warrant established probable cause and the omission of the time and date of issuance of the warrant was not material.

¶ 2 In a bench trial, defendant Kabaris Haynes was convicted of possession of a controlled substance (1.1 grams of cocaine) and sentenced to three years in prison. On appeal, defendant contends that his trial counsel was ineffective for failing to file a motion to quash a search warrant and suppress the evidence obtained as a result of the ensuing search. He also contends that the warrant was invalid because it omitted the time and date of its issuance. We affirm.

¶ 3 The State's evidence at trial established that at about 6 a.m. on August 13, 2010, Chicago

police officers, acting pursuant to a search warrant, entered the third floor unit of an apartment building located at 4911 West Adams Street in Chicago. They breached a locked bedroom door and found defendant lying in bed with a young woman and an infant. Defendant told them that "all the shit in the apartment" was his. He repeated this admission after he was advised of his *Miranda* rights. In a search of the bedroom the police found a large plastic bag filled with 14 smaller bags containing what they believed was cocaine, along with $747. They also found defendant's Illinois identification card underneath the mattress. The parties stipulated that, if called to testify, Illinois State Police forensic chemist Nancy McKenna would state that she performed tests on the contents of 11 of the 14 small bags recovered from the apartment and determined that they tested positive for cocaine and weighed 1.1 grams. Based upon this evidence, defendant was convicted of possession of a controlled substance and sentenced to three years in prison.

¶ 4 On appeal, defendant contends that his trial counsel was ineffective for failing to challenge the search warrant that led to the recovery of the cocaine at the Adams Street apartment. The complaint for a search warrant contains the affidavit of Chicago police officer Guerin. In the affidavit, Guerin states that he (or she) had been a police officer for five years and was assigned to a tactical team and had participated in hundreds of narcotics arrests. On the date of the affidavit, August 12, 2010, an informant who wished to be known as J. Doe told Guerin that he had known defendant for 16 years and that for the past 6 years defendant had sold cocaine. For the past three weeks, the informant had visited defendant every day to purchase cocaine. On August 12, 2010, the informant went to the third-floor apartment at 4911 West Adams, where he smoked marijuana with defendant. Defendant then asked the informant if he wanted to "work." When the informant told him he did, defendant went to the back bedroom of the apartment and retrieved a plastic bag containing 14 small bags containing cocaine for the informant to sell. The informant stated that he knew these bags contained cocaine because

defendant had previously sold this drug to the informant, who then resold it without receiving any complaints. In fact, the informant stated that he had return customers. In the affidavit, Guerin stated that he conducted a name check and found a photograph of defendant from which the informant positively identified defendant as the person from whom he had purchased crack cocaine. Guerin also drove the informant past the 4911 West Adams building, which the informant identified as the building where he knew defendant to live on the third floor. The informant also told Guerin that this was the building where he had purchased cocaine from defendant. Guerin stated that defendant had been convicted of possession of a controlled substance in 2008. Finally, Guerin stated that the informant had also appeared before the judge issuing the search warrant and was available for questioning by the judge.

¶ 5 To establish ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced because there is a reasonable probability that without counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687,694 (1984); *People v. Villarreal*, 198 Ill. 2d 209, 228 (2001). In this instance, we must determine whether a motion to quash the search warrant would have been successful because defendant's conviction was based upon the evidence obtained when the warrant was executed. In reviewing the sufficiency of an affidavit to support a search warrant, we are tasked with determining whether the issuing judge had a substantial basis for finding that probable cause for the search existed. *People v. McCarty*, 223 Ill. 2d 109, 153 (2006). Probable cause supporting the issuance of a search warrant exists when, based on all of the facts set out in the affidavit, there is a fair probability that contraband will be found at the place specified in the affidavit. *People v. Sutherland*, 223 Ill. 2d 187, 219 (2006). In examining the sufficiency of the supporting facts, we must look to the totality of the circumstances. *People v. Bryant*, 389 Ill. App. 3d 500, 520 (2009). We may not substitute our judgment for that of the issuing judge (*People v. Smith*, 372

Ill. App. 3d 179, 182 (2007)) and we are required to review the supporting affidavit in a common-sense manner (*McCarty*, 223 Ill. 2d at 153-54).

¶ 6 Upon review of the affidavit, we find that it provided the issuing judge with sufficient information to establish a fair probability that contraband would be found in the back bedroom of the apartment on the third floor at the building located at 4911 West Adams. The affidavit related that an informant told Chicago police officer Guerin that defendant was selling cocaine from the third-floor apartment of that building, and had sold the informant cocaine every day for the past three weeks. On the day the affidavit was prepared, August 12, 2010, the informant visited defendant at the apartment, where defendant retrieved 14 bags of cocaine from the back bedroom and gave them to the informant to sell. The informant said that he knew the bags contained cocaine because defendant had previously sold this drug to the informant, who then resold it without receiving any complaints. Guerin conducted a name search and found a photograph from which the informant identified defendant. Guerin also drove the informant by the Adams Street building and the informant identified it as the building he had been describing. Guerin stated in the affidavit that defendant had been convicted of possession of a controlled substance in 2008. Guerin also stated that the informant had appeared before the judge who issued the warrant and was available for questioning by the judge.

¶ 7 Defendant argues that there was no independent corroboration of this informant's statement. But the fact that the informant presented himself before the issuing judge, thus making himself available for questioning by the judge, in itself is a factor supporting the sufficiency of the affidavit to establish probable cause, even though there is no evidence that the judge actually questioned him. *People v. Smith*, 372 Ill. App. 3d 179, 182-84 (2007). Also supporting the sufficiency of the affidavit is the amount of detail provided by the informant concerning defendant's involvement with cocaine and the presence of that drug at the apartment. *People v. Tisler*, 103 Ill. 2d 226, 238-39 (1984); *People v. Meyer*, 402 Ill. App. 3d 1089, 1094

(2010). The informant stated that he had purchased cocaine from defendant every day for the past three weeks. The day the affidavit was prepared, he obtained 14 bags for resale from defendant at the apartment. He also specified that defendant brought these bags from the rear bedroom of the apartment. Defendant's statements about having purchased cocaine from defendant and reselling it also support the reliability of the affidavit because they constitute admissions against interest, specifically admissions of criminal behavior. *Smith*, 372 Ill. App. 3d at 184.

¶ 8 Defendant cites *People v. Damian,* 299 Ill. App. 3d 489 (1998), for the proposition that no probable cause for a search warrant exists where the informant has no established record of reliability and fails to provide specific details concerning alleged drug transactions. But the informant in this case did provide specific details concerning the most recent drug transaction he had with defendant. Furthermore, the *Damian* court was most concerned with the fact that the informant's tip concerned criminal activities that occurred six weeks before the warrant was issued. *Damian*, 299 Ill. App. 3d at 491-92. Here, the informant gave the police information concerning a drug transaction that occurred the day the warrant was prepared. The *Damian* court also noted that there was no indication that the informant appeared before the magistrate issuing the warrant and the informant failed to appear at an arranged meeting with police officers the day after the controlled buy that had occurred six weeks earlier. *Damian*, 299 Ill. App. 3d at 493. Here, the informant appeared before the issuing judge and was available for questioning. Nor was there any affirmative evidence of the informant's unreliability, as there was with the informant in *Damian.*

¶ 9 Defendant also asserts that this informant was "completely anonymous" and therefore not reliable, citing *People v. Brown*, 343 Ill. App. 3d 617, 619 (2003). *Brown* concerned the legality of a police stop where an anonymous caller left a voice mail message for a police officer, stating that the subject was driving home to Zion from Chicago with a shipment of drugs. The

informant was unknown to the officer. *Brown*, 343 Ill. App. 3d at 619. Furthermore, the information that the defendant was driving home at a particular time was contradicted by the time he arrived home and by the direction he was traveling. *Brown*, 343 Ill. App. 3d at 627. But the informant in this case was not completely anonymous. He was known to Officer Guerin and he also appeared before the issuing judge and thus was available for questioning.

¶ 10 To summarize, the informant in this case gave the police detailed information about defendant's drug dealing and his location in a third-floor apartment of an apartment building with a specified address. The informant stated that he had obtained 14 bags of cocaine from defendant on the day the affidavit supporting the complaint for a search warrant was prepared. The informant appeared before the trial judge issuing the search warrant and therefore was available for questioning by the judge. The informant also provided information that incriminated him. All of these factors provide support for our conclusion that, based upon this information, there was a fair probability that cocaine would be found at the Adams Street apartment specified by the informant and therefore the judge did not err in issuing a search warrant for that location. This also establishes that defendant's trial counsel was not ineffective for failing to move to quash the warrant and suppress the evidence obtained pursuant to that warrant.

¶ 11 Defendant also asserts that the search warrant should have been quashed because it did not specify the date and time when it was issued. Although this information is required by statute (725 ILCS 5/108-4(a) (West 2010)), its omission does not automatically require the suppression of a search warrant. *People v. Blake*, 266 Ill. App. 3d 232, 237 (1994). The purpose of this requirement is to insure that the warrant is not stale when it is executed and therefore when the record establishes that the warrant has been executed in a timely manner, there is no basis for suppression of the warrant. *Blake*, 266 Ill. App. 3d at 267; *People v. Vanlandingham*, 223 Ill. App. 3d 362, 376 (1991). Defendant cites to *People v. Taylor*, 198 Ill. App. 3d 667, 669-70 (1990), in support of his claim that the absence of a time and date from the warrant should

always invalidate that warrant. But in *Taylor*, the issuing judge authorized a search warrant by telephone, without seeing the supporting affidavit, without the opportunity to question the officer who supplied the affidavit, and without signing the search warrant. *Taylor*, 198 Ill. App. 3d at 669-70. Subsequent cases have limited *Taylor* to its facts. *Blake*, 266 Ill. App. 3d at 236-37; *Vanlandingham*, 223 Ill. App. 3d at 375-76. Here, the affidavit in support of the search warrant states that the informant gave his information "[o]n today's date, 12 August 2010." The search warrant was executed the following day, on August 13, 2010. Clearly the warrant was executed in a timely manner and it is not subject to suppression on this basis.

¶ 12 For the reasons set forth in this order, we affirm defendant's conviction.

¶ 13 Affirmed.