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2013 IL App (3d) 120769-U

Order filed October 21, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois
	)	
v.	)	Appeal No. 3-12-0769
	)	Circuit No. 10-CF-607
JEFFERY MICHAEL HUNZIKER,	)	
	)	Honorable Timothy Lucas
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE WRIGHT delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Based on the complaint for search warrant and attached affidavit, the trial judge had a substantial basis for determining the existence of probable cause and properly issued a search warrant to search defendant's residence.

¶ 2 Following the execution of a search warrant, the State seized approximately 89 grams of a substance containing cocaine from defendant, Jeffery Hunziker's, residence on June 16, 2010.

On June 17, 2010, the State charged defendant with one count of unlawful possession with intent to deliver a controlled substance (cocaine) and unlawful possession of a controlled

substance (cocaine). 720 ILCS 570/401(a)(2)(A), 402(a)(2)(A) (West 2010). The court denied defendant's motion to quash the warrant and to suppress evidence. After a stipulated bench trial, the trial court found defendant guilty of both offenses and sentenced him to 15 years of imprisonment plus three years of mandatory supervised release (MSR). Defendant appeals the court's denial of his motion to quash the warrant and suppress evidence. We affirm.

¶ 3

### FACTS

¶ 4 On June 17, 2010, the State charged defendant by information with one count of unlawful possession of more than 15 grams, but less than 100 grams, of a controlled substance (cocaine) with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)) and one count of unlawful possession of more than 15 grams, but less than 100 grams, of cocaine (720 ILCS 570/401(a)(2)(A) (West 2010)). These charges stemmed from the June 16, 2010 execution of a search warrant of the premises located at 201B East Orchard Place, Peoria, Illinois.

¶ 5 The complaint for search warrant, signed before the court on June 15, 2010, stated, in relevant part:

“S/A Tarby (Complainant), a peace officer employed by the Tazewell County Sheriffs Office, assigned to the Peoria MEG Unit, appears before the undersigned judge and respectfully requests the issuance of a search warrant to search the premises in the County of Peoria, State of Illinois, located at 201B East Orchard Pl., Peoria, Illinois.

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On June 14<sup>th</sup>, 2010, I interviewed John Doe and was informed by John Doe of substantially the facts contained in the affidavit of John Doe, which is attached hereto and incorporated herein. I explained to John Doe that an affidavit is a sworn statement and if

John Doe lied in the affidavit, John Doe would be prosecuted for the offense of perjury.

I interviewed John Doe further and John Doe stated that a white male, known to John Doe as Jeffery Hunziker had a large amount of powder cocaine inside his residence at 201B East Orchard Pl., Peoria. I showed John Doe a photo and he identified the photo as Jeffery Hunziker. Within the past 72 hours, John Doe stated that he observed two (2) plastic bags containing a white chunky substance purported to be powder cocaine, two scales, and packaging material. John Doe knows what cocaine looks like from past experience and observed Jeffery Hunziker distribute cocaine to an unknown subject while he was at the residence.

I verified Jeffery M Hunziker lived at 201B East Orchard by running a check of his drivers license which showed Jeffery M Hunziker to live at 201B East Orchard Pl., Peoria IL. I drove John Doe to the area and John Doe directed me to Jeffery M Hunziker's residence.

Complainant has been a Police Officer with the Tazewell County Sheriffs Office for 11 years and assigned to Narcotics Investigations since May 1, 2006. Complainant has attended the Basic DEA narcotic training course. Complainant has been involved in the arrest of over 400 individual [*sic*] for narcotic violations and assisted in over 100 search warrants that pertained to narcotics trafficking offenses on the state and federal level.”

¶ 6 The sworn affidavit of informant John Doe was signed before the court on June 15, 2010, and attached to the complaint for a search warrant. John Doe's affidavit stated:

“I, John Doe, state under oath: I am making this affidavit under an assumed name

because I believe that if Jeffery M Hunziker M/W DOB: 7/26/54 was to learn that I had given this information to the Police, he would cause death or great bodily harm to be done to me. I have been at 201B East Orchard Pl., Peoria, IL, approximately 2 times within the last thirty days with the most recent being within the last 72 hours. On this occasion, I saw two bags of a powder substance known to be cocaine on or about the persons of Jeffery M Hunziker. I have also seen the powder cocaine in and about the premises.

S/A Tarby has informed me that this affidavit is a sworn statement and that if I intentionally lie in this affidavit I can and will be prosecuted for perjury.”

The trial court issued the search warrant at 3:10 p.m. on Tuesday, June 15, 2010, and police executed the warrant at 11:05 a.m. the following morning, on Wednesday, June 16.

¶ 7 On May 7, 2012, defendant filed a motion to suppress. Defendant argued the trial court lacked probable cause to issue the search warrant because the complaint for search warrant did not include any information regarding the past reliability of the informant, and alleged there was no independent corroboration of information John Doe provided to the court.

¶ 8 On May 17, 2012, the trial court conducted a hearing on defendant’s motion to suppress. After hearing arguments, the court denied defendant’s motion to quash the search warrant concluding the ‘first time’ informant would never exist if the informant was required to establish he previously provided reliable information and the affidavit and the complaint provided sufficient information to establish probable cause existed.

¶ 9 On July 11, 2012, defendant indicated he wished to preserve his right to appeal the court’s order denying the motion to suppress. As a result, the parties agreed to a stipulated bench trial. Based on the stipulated facts, the court found defendant guilty of unlawful possession with

intent to deliver a controlled substance and unlawful possession of a controlled substance.

¶ 10 On August 31, 2012, the trial court sentenced defendant on the greater offense, unlawful possession with intent to deliver a controlled substance, a Class X felony, to 15 years of imprisonment followed by three years of MSR. Defendant filed a motion for new trial on September 4, 2012, arguing the court erred when it denied defendant's motion to quash the search warrant and suppress evidence and that the evidence at trial was insufficient to justify a conviction, which the trial court denied on September 6, 2012. Defendant timely appealed.

¶ 11 ANALYSIS

¶ 12 Defendant alleges the trial court erred by denying his motion to quash the search warrant and suppress evidence because the search warrant was not supported by probable cause.

¶ 13 We first consider the State's contention that defendant has not provided this court with an adequate record on appeal and should not prevail. When reviewing whether the trial court properly determined probable cause existed in this case, we must examine the complaint for search warrant signed by Officer Tarby and the affidavit signed by the informant. Both of these documents are in the record on appeal and we reject the notion that defendant has not provided this court with an adequate record for review.

¶ 14 Next, we consider whether the complaint and the affidavit presented to the trial court established probable cause in this case. It is well-established that a complaint for search warrant and supporting affidavit must demonstrate probable cause (*People v. Smith*, 372 Ill. App. 3d 179, 181 (2007)) based on the totality of the facts and circumstances, to cause a person of reasonable caution to believe the law was violated and evidence of the violation is on the premises to be searched. *People v. McCarty*, 223 Ill. 2d 109, 153 (2006). The probability of criminal activity,

rather than proof beyond a reasonable doubt, is the standard for determining whether probable cause is present. *People v. Tisler*, 103 Ill. 2d 226, 236 (1984).

¶ 15 The issuing judge must make a practical, common-sense decision whether, given all of 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. *McCarty*, 223 Ill. 2d at 153. On review, this court should not substitute its judgment for that of the trial judge, but must merely decide whether the judge had a substantial basis for concluding probable cause existed. *Id.*

¶ 16 Initially, we observe, Officer Tarby's complaint for search warrant, indicates the informant gave the officer many details concerning the informant's observations while in defendant's apartment on two occasions. After carefully reviewing the affidavit, together with the complaint, it becomes apparent to this court that the informant's affidavit, signed, under oath on June 15, 2010, deleted important details the informant reported to the officer on June 14, 2010, according to the officer's complaint for search warrant.

¶ 17 The record does not indicate whether the officer, or someone else, prepared the complaint for search warrant and the supporting affidavit. Further, the record does not show whether a representative from the State's Attorney's office was present when the judge issued the search warrant, during normal business hours, on June 15, 2010. However, the fact that the complaint was issued during the afternoon of July 15, but not served until late morning on the next business day, suggests the discrepancies between the two documents did not result from a hastily drafted request for a search warrant caused by the exigencies of time.

¶ 18 Defendant justifiably notes and emphasizes the considerable lack of detail in the informant's affidavit, when compared to the information set out in the officer's complaint for

search warrant. As requested, we have carefully considered and recognize the variation of detail between the two documents. The differences may support a reasonable inference that the informant did not wish to verify, under oath, significant details provided to the investigating officer the day before. In spite of defendant's concerns based on this fair inference, the trial court had an opportunity to make the same comparison of the information provided by the officer in his complaint with the information informant swore was truthful in the affidavit, before assessing the informant's credibility in person. See *Smith*, 372 Ill. App. 3d at 184. Obviously, the informant's sworn personal account that the informant saw defendant with "two bags of a powder [*sic*] substance known to be cocaine" in the apartment "within the last 72 hours" convinced the trial court concerning the reliability of the informant's tip. Consequently, we conclude the trial court properly denied defendant's request to suppress the evidence. Therefore, we elect not address the State's alternative contention that, in the absence of probable cause, the officer relied on the warrant in good faith.

¶ 19

#### CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.