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2015 IL App (3d) 130468-U

Order filed April 23, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

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| THE PEOPLE OF THE STATE OF |) | Appeal from the Circuit Court |
| ILLINOIS, |) | of the 10th Judicial Circuit, |
| |) | Peoria County, Illinois, |
| Plaintiff-Appellee, |) | |
| |) | Appeal No. 3-13-0468 |
| v. |) | Circuit No. 11-CF-837 |
| |) | |
| LARRY S. GUICE, |) | The Honorable |
| |) | Stephen Kouri, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held:* The defendant's motion to suppress evidence obtained in the execution of a search warrant should have been granted because the complaint for the warrant was deficient in that it failed to allege specific dates or times for any drug transactions involving the defendant. Since the complaint lacked probable cause on its face, the good faith exception did not apply. Thus, the defendant's conviction for unlawful possession with intent to deliver a controlled substance was reversed and the cause remanded for further proceedings.

¶ 2 After a stipulated bench trial, the trial court found the defendant, Larry S. Guice, guilty of unlawful possession with intent to deliver a controlled substance, unlawful possession of a controlled substance, and criminal drug conspiracy. The trial court entered judgment against him for unlawful possession with intent to deliver a controlled substance and sentenced him to 14 years' imprisonment. The defendant appealed, challenging the denial of his motion to suppress evidence.

¶ 3 FACTS

¶ 4 The defendant was charged by indictment with criminal drug conspiracy, 720 ILCS 570/405.1 (West 2010), unlawful possession with intent to deliver a controlled substance, 720 ILCS 570/401(a)(1)(B) (West 2010), unlawful possession of a controlled substance, 720 ILCS 570/402(a)(1)(B) (West 2010). The defendant filed a motion to suppress and requested a *Franks* hearing. The defendant argued that there was not probable cause to issue a search warrant for his apartment because the complaint contained no allegations specific in time or event as to the defendant. The defendant argued that he was entitled to a *Franks* hearing based upon government misconduct in the procurement of the search warrant.

¶ 5 There were two search warrants that were relevant in this case, one for 3315 Woodhill, Apt. C, and a second one for 3309 Woodhill, Apt. F. The first complaint for a search warrant, signed by police officer Matthew D. Lane on August 29, 2011, requested a search warrant to search the premises of 3315 Woodhill, and the person of Reginald Guice for cannabis and related paraphernalia. Lane stated that he received information from a confidential informant who had given reliable information in the past. The judge issued the search warrant for 3315 Woodhill. On September 1, 2011, Lane began surveillance of the 3315 Woodhill, in preparation for executing the search warrant. Lane observed Reginald and Natalie Brady leave the Woodhill

apartment complex; he followed them while they entered two different residences in Peoria, Illinois. After returning to the Woodhill complex, Lane observed Reginald and Natalie Brady enter 3309 Woodhill, Apt. F. Shortly thereafter, Reginald, Brady, the defendant, and a fourth individual exited 3309 Woodhill and drove away in a van. A traffic stop was conducted on the van, and the occupants were detained. Heroin was found on Brady.

¶ 6 Thereafter, Lane filed a complaint for a warrant to search the premises of 3309 Woodhill for heroin and related paraphernalia. This complaint referenced the search warrant for 3315 Woodhill, based on the information from the confidential informant, and alleged that the subject of that search warrant, Reginald, was the defendant's brother. The complaint alleged that the informant related that the defendant was selling heroin from 3309 Woodhill, and another confidential source stated that Reginald and the defendant were related and were selling drugs from both apartments. The complaint also noted the traffic stop and the events leading up to it that had occurred earlier that day. The trial court issued the second search warrant.

¶ 7 A search of 3309 Woodhill (the defendant's home) produced over 100 grams of heroin. A search of 3315 Woodhill (Reginald's home) produced only heroin residue and drug paraphernalia. When questioned, the defendant made incriminating statements to the police.

¶ 8 The trial court held a hearing on the defendant's motion, focusing primarily on the *Franks* hearing issue, but then ordered the State to produce, under seal, to the court for an *in camera* inspection, the identity of the confidential informant and all related documentation with respect to the confidential informant. The State disclosed the documents as ordered. After reviewing the documents, the trial court denied the defendant's motion to suppress, although it reserved ruling on the issue of whether statements made by the defendant to the arresting officers should be suppressed.

¶ 9 Both parties submitted stipulations to the trial court for a stipulated bench trial, subject to the defendant's continuing objection to the admission of the evidence that was the subject of the motion to suppress. The trial court found the defendant guilty of all charges. It denied the defendant's motion for a new trial and sentenced the defendant to 14 years' imprisonment for unlawful possession with intent to deliver.

¶ 10 ANALYSIS

¶ 11 The defendant argues that the complaint for 3309 Woodhill was bare-boned and did not provide a substantial basis for concluding that probable cause existed to issue the search warrant. The defendant argues that the allegations linking heroin sales to the defendant and to 3309 Woodhill were vague, lacked factual basis, and were devoid of temporal information. The defendant also argues that the good faith exception did not apply, and the evidence illegally obtained as the result of the search should have been suppressed. The State, on the other hand, argues that the complaint alleged specific facts, with an indicia of reliability, and there were efforts to corroborate the informant's information.

¶ 12 In determining whether a complaint for a search warrant demonstrates probable cause, the reviewing court's role is to ensure that the issuing judge had a substantial basis for concluding that probable cause existed. *People v. Brown*, 2014 IL App (2d) 1211678, ¶ 23. Probable cause measures the probability of criminal activity; it does not require proof beyond a reasonable doubt. *People v. Rojas*, 2013 IL App (1st) 113780, ¶ 15 (2013). There must be an established nexus between the criminal offense, the items to be seized, and the place to be searched. *Id.* When a tip from an informant is involved, the informant's reliability and basis of knowledge should be scrutinized. *People v. Sims*, 192 Ill. 2d 592, 617 (2000). Our review of a trial court's decision to issue a warrant is deferential. *Rojas*, 2013 IL App (1st) 113780, ¶ 16.

¶ 13 The defendant argues that that the complaint was unclear with respect to the statements made by the confidential informant and the confidential source that the defendant was selling heroin or drugs from 3309 Woodhill. The complaint does not make clear how they obtained their information. Also, the defendant argues that there was no allegation in the complaint that the informant was familiar with heroin, nor information provided regarding the confidential source's reliability. The defendant argues that there was no temporal basis for the heroin sales. Finally, the defendant argues that the traffic stop did not support a reasonable inference that heroin was presently being sold at 3309 Woodhill because heroin was not found on the defendant's person and there were no details regarding any relationship between the defendant and the female passenger who possessed heroin. Thus, the defendant argues that probable cause to believe that heroin was presently at 3309 Woodhill could not have been found.

¶ 14 In *Rojas*, the appellate court affirmed a trial court's finding that there was not probable cause to issue a search warrant. 2013 IL App (1st) 113780, ¶ 18. Although the complaint alleged several details regarding a drug trade, it did not provide specific evidence of drug trading at the defendant's residence. *Id.* In contrast, the complaint in *People v. Johnson* was sufficient. 237 Ill. App. 3d 860 (1992). In *Johnson*, the complaint stated that the confidential informant had made numerous controlled buys in the past, and had observed cocaine in the subject address within the last 48 hours. 237 Ill. App. 3d at 866. Similarly, in *People v. Beck*, the appellate court reversed the circuit court's finding that there was no nexus between the defendant's criminal activity and his home in a case involving a street gang that sold drugs and laundered money. 306 Ill. App. 3d 172, 178 (1999). The complaint in that case specified an on-going criminal enterprise, with specific dates, and details regarding the rental of the subject property under an alias. *Id.*

¶ 15 The complaint in this case was deficient because there are no allegations of specific drug transactions with the defendant; the allegation that the defendant was selling drugs from 3309 Woodhill was not supported by any factual basis. The complaint failed to provide any specific dates or times for drug transactions at 3309 Woodhill. The traffic stop, while related in time, was not sufficient to establish probable cause where the defendant was not found in possession of heroin. The exclusionary rule provides for suppression of evidence obtained in contravention of the fourth amendment's protection against unreasonable searches and seizures. *Rojas*, 2013 IL App (1st) 113780, ¶ 15 (citing *Mapp v. Ohio*, 367 U.S. 643 (1961)). Thus, the evidence seized from 3309 Woodhill should have been suppressed.

¶ 16 In some cases, even if a complaint for a search warrant is held not to demonstrate probable cause, the evidence need not be suppressed if the good faith exception applies. The good faith exception applies when the police officer relies, in objective good faith, on a search warrant issued by a neutral and detached judge that is later found to be unsupported by probable cause, and the warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State. *United States v. Leon*, 468 U.S. 897, 922 (1984); 725 ILCS 5/114-12(b)(2)(ii) (West 2010). This exception does not apply in four situations: (1) where the issuing judge was misled by information in the affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) where the issuing judge wholly abandoned his judicial role; (3) where the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where a warrant was so facially deficient that the executing officers cannot reasonably presume it to be valid. *Beck*, 306 Ill. App. 3d at 180. The defendant argues that the exception does not apply in this case because the complaint was so

lacking in indicia of probable cause that official belief in its existence was entirely unreasonable. Again, the defendant argues that the complaint was bare-boned and lacked temporal details.

¶ 17 In *Beck*, the appellate court found that the 16-page complaint for a search warrant may have been a close call with regard to probable cause, but was far from bare-boned, and the officers' good faith reliance on the warrant prevented suppression. 306 Ill. App. 3d at 180. However, in *People v. Reed*, the court found that the good faith exception did not apply because the affidavit for the search warrant, which named none of the defendants, was bare-boned and was facially overbroad in that it allowed the search of all persons in a public bar. 202 Ill. App. 3d 760, 764 (1990). Good faith was also found in *People v. Cooke*, where the appellate court found that the affidavit was partially valid in that the facts supported the warrant for weapons but not for drugs. 299 Ill. App. 3d 273, 282 (1998). In this case, the allegations in the complaint that linked the defendant to heroin sales at 3309 Woodhill were vague and lacked any temporal basis. Thus, official belief in the existence of probable cause was unreasonable and the good faith exception did not apply.

¶ 18 Since we have concluded that the defendant's motion to suppress should have been granted, a *Franks* hearing is not necessary.

¶ 19 The State argues that if we find that the motion to suppress should have been granted, the defendant's argument that the State could not prove the charges without the drugs was presumptuous, and we should remand. The defendant argues that he requested suppression of all fruits of the illegal search, including his incriminating statements. The State does not specify how it could prove the charges without the drugs, but, presumably, the State would rely on those incriminating statements that the defendant made to the police after the search warrant was executed. The trial court reserved ruling on that part of the defendant's motion that sought to

suppress the defendant's incriminating statements. Thus, we remand to the trial court for further proceedings to be conducted without the use of the suppressed evidence. The order denying the defendant's motion to suppress is reversed, the judgment of the trial court is reversed, and the cause is remanded for further proceedings consistent with this order.

¶ 20

CONCLUSION

¶ 21

The judgment of the circuit court of Peoria County is reversed and remanded.

¶ 22

Reversed and remanded.

¶ 23

JUSTICE HOLDRIDGE, dissenting.

¶ 24

I respectfully dissent. At issue here is whether the issuance of the search warrant allowing a search of the defendant's apartment at 3309 Woodhill was improper since it was supported only by a mere "bare-bones" affidavit and whether the good-faith exception to the exclusion of evidence obtained pursuant to an invalid search warrant should have been applied. The majority held that the affidavit at issue was insufficient to support the issuance of the search warrant and that the good-faith exception did not apply under the facts of this case. The majority thereby reversed the judgment of the circuit court. I believe, however, that based upon *People v. Beck*, 306 Ill. App. 3d 172 (1999), we are compelled to apply the good-faith exception.¹ I would therefore affirm the judgment.

¶ 25

Under the good-faith exception, evidence obtained in violation of the fourth amendment will not be excluded if an officer, acting in good faith, relied on a search warrant later found to

¹ When faced with both the issue of probable cause and the issue of the "good-faith" exception to searches conducted pursuant to a warrant, a reviewing court may opt to examine the "good-faith" exception and decide the case on that basis alone if the exception applies. *People v. Bohan*, 158 Ill. App. 3d 811,817 (1987).

be unsupported by probable cause. *People v. Carlson*, 185 Ill. 2d 546, 556 (1999). Reliance on a search warrant is usually sufficient to establish that an officer acted in good faith. *People v. Stewart*, 104 Ill. 2d 463, 472 (1984); 725 ILCS 5/114-12(b)(2)(ii) (West 2010). As the majority observed, the good-faith exception will be applied to allow evidence obtained pursuant to an invalid search warrant to be admitted unless: (1) the issuing judge was misled by information in the affidavit that the affiant knew was false or would have known to be false except for his reckless disregard for the truth; (2) the issuing judge wholly abandoned his judicial role; (3) the affidavit was so lacking in any indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant was so facially deficient that the executing officer could not reasonably presume it to be valid. *Beck*, 306 Ill. App. 3d at 180. In the instant matter, the majority found that the third criteria applied to suppress the evidence obtained pursuant the search warrant issued for the defendant's residence.

¶ 26 The majority declined to apply the good-faith exception on the basis that the affidavit was “bare-bones” as it related to illegal drug activity at the defendant's apartment located at 3309 Woodhill. I respectfully disagree. I believe there was a sufficient nexus shown between the defendant's drug activities and his residence for the good-faith exception to apply. *People v. Beck* is particularly instructive as to the nexus between a defendant's residence and his drug related activities. In *Beck* a warrant was issued to search the defendant's residence based only on evidence that the defendant lived at that address, that the defendant was involved in the sale of illegal drugs, and the affiant officer's knowledge and experience that a drug dealer's residence often contained evidence related to the dealer's drug activities. *Beck*, 306 Ill. App. 3d at 174-75. Here, as in *Beck*, there were no facts directly linking the defendant's residence to his drug activities. *Id.* However, when there is no *direct* evidence to establish such a nexus, “reasonable

inferences may be entertained to create the nexus.” *Beck*, 306 Ill. App. 3d at 179; *People v. McCoy*, 135 Ill. App. 3d 1059, 1066 (1985). Specifically, it is commonly held that this gap can be filled by merely on the basis of the affiant-officer’s experience that drug dealers ordinarily keep their supply, records, and monetary profit at their residence. *Beck*, 306 Ill. App. 3d at 178.

¶ 27 In this case, Officer Lane’s complaint for a warrant to search the defendant’s address alleged that a confidential informant related that the defendant was selling drugs 3309 Woodhill, and another confidential informant related that the defendant and his brother were selling drugs at both 3309 Woodhill and 3315 Woodhill. Lane’s complaint also contained a description of the traffic stop occurring earlier in the same day that the warrant was requested. While these facts may not have been sufficient to establish probable cause to issue a warrant for 3309 Woodhill, they are sufficient to establish an indicia of probable cause for purposes of applying the good-faith exception to the prohibition against the admission of evidence obtained pursuant to an invalid warrant. *Beck*, 306 Ill. App. 3d at 180.

¶ 28 The majority points to the “lack of any temporal basis” as a key reason for not applying the good-faith exception. *Supra* ¶ 17. I disagree. There are references in Lane’s complaint to establish that drug sales at 3309 Woodhill conducted by the defendant were ongoing and occurring contemporaneously with the time the warrant was being sought. The complaint stated that “Reggie *sells* cannabis and heroin from 3315” and “the occupants of the two apartments *are constantly* going between the two apartments and drugs *are being* sold from both apartments.” I would find that these factual allegations are sufficient from which to infer that drug sales activities were taking place within a reasonably cognizable contemporaneous time frame. While these facts may not have been sufficient to establish probable cause, they are sufficient to

establish that indicia of probable cause necessary to invoke the good-faith exception and admit the evidence at issue in this matter. *Beck*, 306 Ill. App. 3d at 180.

¶ 29 On the issue of whether the conviction should be reversed and remanded for a hearing pursuant to *Franks v. Delaware*, 434 U.S. 154 (1978), I would find that defendant failed to overcome the presumption of validity of regarding complaints seeking the issuance of a search warrant. *People v. Medina*, 193 Ill. App. 3d 774, 777 (1990). Allegations that affidavits in support of a complaint for a search warrant contained false or perjured statements must be supported by counter-affidavits. *Id.* A review of the record here would support the State's contention that the defendant has failed to overcome the presumption of validity.

¶ 30 For these reasons, I would affirm the trial court's admission of the evidence gathered from the defendant's apartment at 3309 Woodhill. I would also, therefore, affirm the judgment of conviction entered by the trial court.