

2018 IL App (2d) 151130-U
No. 2-15-1130
Order filed January 2, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Carroll County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-66
)	
BRENNAN J. REUSCH,)	Honorable
)	John F. Joyce,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to suppress, as defendant's arrest was supported by probable cause: although the officer's investigation revealed minor inaccuracies in an informant's tip, it provided sufficient corroboration to justify a reasonable belief that drugs at a certain residence belonged to defendant.

¶ 2 Defendant, Brennan J. Reusch, appeals from an order of the circuit court of Carroll County ruling that there was probable cause to believe that cannabis found during the search of a home belonged to defendant and denying his motion to suppress. Because there was such probable cause, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged by criminal complaint with one count of possessing with the intent to deliver more than 30 grams but not more than 500 grams of cannabis (720 ILCS 550/5(d) (West 2014)). Defendant filed a motion to suppress statements that he made following his arrest.

¶ 5 The following facts were established at the hearing on defendant's motion to suppress. On September 17, 2014, Deputy Mike Herrig of the Carroll County sheriff's department arrested Jacob Neuberger. Neuberger told Deputy Herrig that on the previous day he had purchased several grams of cannabis from defendant at a residence located at 212 Murray Street in Savanna. Neuberger told Deputy Herrig that while he was at the residence he saw about a pound of cannabis in a blue tote. Deputy Herrig admitted that he did not know if Neuberger previously had provided useful information to the police.

¶ 6 Later that day, Deputy Herrig applied for a warrant to search the residence at 212 Murray Street. In his supporting affidavit, Deputy Herrig averred that Neuberger had told him that on the previous day he had purchased cannabis from defendant at 212 Murray Street. He further averred that Neuberger had told him that he had purchased cannabis from defendant weekly during the past year. Neuberger also had told Deputy Herrig that defendant currently resided at 212 Murray Street. Deputy Herrig added that he knew that another person had told a police officer that he had purchased cannabis from defendant.

¶ 7 Also included with the search-warrant application was Neuberger's affidavit. He averred that the references to him in Deputy Herrig's affidavit were true.

¶ 8 The trial court issued a search warrant for 212 Murray Street. Before executing the warrant, Deputy Herrig did not verify that defendant resided at 212 Murray Street.

¶ 9 At around 6 p.m. on September 17, 2014, Deputy Herrig and other police officers executed the search warrant. Earl Rogers answered the door. Rogers told the officers that he and his wife were residing there and were renting a bedroom to Steven Burkholder. Rogers explained that defendant and another person had stayed at the residence but had moved out within the past week.

¶ 10 During the search, the officers found in a kitchen cupboard a glass jar containing almost 43 grams of cannabis. Next to the jar were several boxes of plastic bags and a digital scale. Near those items was a blue tote containing a glass extractor tube filled with approximately nine grams of cannabis.

¶ 11 According to Deputy Herrig, Rogers denied that the cannabis was his and stated that it belonged to defendant. Rogers admitted that he knew that defendant sold cannabis from the residence. Rogers's wife stated that she had seen defendant sell cannabis from the home several times.

¶ 12 The officers also found throughout the residence 20 to 30 items of drug paraphernalia. Rogers admitted that some of the paraphernalia was his. The officers found approximately seven grams of cannabis in Burkholder's bedroom. In that room was mail addressed to Burkholder. They found no evidence indicating that defendant lived at the residence.

¶ 13 Deputy Herrig admitted that the blue tote did not contain the amount of cannabis indicated by Neuberger. He further admitted that, contrary to what Neuberger had said, defendant was not living at the house the day before the search. However, Rogers had never indicated whether defendant was at the residence the day before the search.

¶ 14 After the search, Deputy Herrig arrested defendant.

¶ 15 In moving to suppress his statements, defendant contended that Deputy Herrig lacked probable cause for the arrest. The trial court found that there was probable cause to arrest defendant and denied the motion to suppress.

¶ 16 At the bench trial, Deputy Herrig testified that defendant admitted during the postarrest interview that the cannabis found during the search was his. Defendant stated that it was left over from cannabis that he had purchased in De Kalb, and he confirmed that he had sold cannabis to several people. Defendant stated that Rogers knew that he was selling cannabis from the residence but that Rogers was not involved. Defendant admitted that he had sold cannabis to Neuberger the day before defendant was arrested.

¶ 17 The trial court found defendant guilty and sentenced him to, among other things, 24 months' probation. Defendant filed a posttrial motion in which he reiterated his contention that he was arrested without probable cause. Following the denial of his posttrial motion, defendant filed a timely notice of appeal.

¶ 18

II. ANALYSIS

¶ 19 On appeal, defendant contends that there was no probable cause to arrest him, as there was no reason to believe that the cannabis found at 212 Murray Street belonged to him. The State responds that, because there was probable cause to believe that the cannabis belonged to defendant, the arrest was valid.

¶ 20 In reviewing a ruling on a motion to suppress evidence, we apply a two-part standard. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). Although we accord great deference to the factual findings, and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the ultimate ruling on a motion to suppress. *Hopkins*, 235 Ill. 2d at 471.

¶ 21 A warrantless arrest is valid only if supported by probable cause. *Hopkins*, 235 Ill. 2d at 472. Probable cause to arrest exists when the facts known to the officer when he makes the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *Hopkins*, 235 Ill. 2d at 472. The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Hopkins*, 235 Ill. 2d at 472. Information from an informant can support probable cause when the officer's investigation corroborates a substantial portion of the informant's story, even if the investigation does not independently verify the defendant's involvement in a crime. *People v. Arnold*, 349 Ill. App. 3d 668, 672 (2004).

¶ 22 In addressing probable cause, we deal with probabilities. *Hopkins*, 235 Ill. 2d at 472. They are the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act. *Hopkins*, 235 Ill. 2d at 472. Accordingly, whether probable cause exists depends upon commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. *Hopkins*, 235 Ill. 2d at 472. Indeed, probable cause does not require even a showing that the belief that the suspect had committed a crime was more likely true than false. *Hopkins*, 235 Ill. 2d at 472.

¶ 23 Here, we are called upon to decide whether Deputy Herrig had probable cause to believe that the cannabis found at 212 Murray Street belonged to defendant. He did.

¶ 24 When viewed in their totality, the facts known to Deputy Herrig would have led a person of reasonable caution to believe that defendant possessed the cannabis found at the residence. Neuberger told Deputy Herrig that he had purchased cannabis weekly from defendant during the past year and that he had done so at 212 Murray Street. That information was corroborated by

Earl Rogers and his wife, both of whom confirmed that defendant, who recently had lived there, had been selling cannabis regularly from the residence.

¶ 25 Neuberger also described a blue tote used by defendant that contained an estimated pound of cannabis. Deputy Herrig found a blue tote in the residence. Although it did not contain anywhere near a pound of cannabis, it did contain some cannabis. Additionally, it was located near a digital scale, several boxes of plastic bags, and a jar containing nearly 43 grams of cannabis. The blue tote found with the cannabis and other indicia of drug dealing further corroborated the information provided by Neuberger.

¶ 26 Defendant contends that, once Deputy Herrig knew that Neuberger had falsely stated that defendant was living at 212 Murray Street the day before the search, it was not reasonable for Deputy Herrig to rely on the rest of the information provided by Neuberger. We disagree. Even if Neuberger was wrong about defendant living there the previous day, any such inaccuracy would not have affected Neuberger's overall credibility. As discussed, for the most part, Neuberger's information was confirmed during the search. Additionally, in light of the evidence that defendant had been selling cannabis from the residence, whether defendant actually lived there the day before the search was not material to whether the cannabis belonged to him. Thus, the inaccuracy in Neuberger's information was minor and did not destroy the overall reliability of Neuberger's information.

¶ 27 As noted, the standard for probable cause is less than that required for a conviction. Here, there was sufficient evidence for a reasonably cautious person to believe that the cannabis found in the residence belonged to defendant and that he possessed it with the intent to deliver. Thus, the trial court did not err in denying defendant's motion to suppress.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Carroll County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 30 Affirmed.