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2019 IL App (3d) 180442-U

Order filed August 12, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-18-0442
CLINT D. COLE,	)	Circuit No. 17-CF-380
Defendant-Appellant.	)	Honorable Jeffrey W. O'Connor, Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err when it denied defendant's motion to quash the search warrant and suppress evidence.

¶ 2 Defendant appeals his convictions and sentences contending that the circuit court erred when it denied his motion to quash the search warrant and suppress evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 27, 2017, the State filed a complaint for search warrant. The complaint for search warrant described the property to be searched as:

“2564 N 150 Avenue, Alpha, Henry County, Illinois, being a White two-story residence with gray shingled roof and an attached two car garage located on the North side of the residence and a gravel driveway that runs on the east side from the road to the garage with four outbuildings located on the property and an old cattle lot on the east side of the driveway with the entire property located on the north side of North 150 Avenue.”

¶ 5 Attached to the complaint for search warrant is the affidavit of Sergeant Sue Cervantez. Cervantez averred that she received information from a concerned citizen indicating that defendant had guns and ammunition on his property. Defendant had prior felony convictions and did not possess a valid firearm owners identification card.

¶ 6 Following a search of defendant’s home, the State charged defendant with four counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)) and two counts of unlawful possession of firearm ammunition by a felon (*id.* § 24-1.1(a)).

¶ 7 Defendant filed a motion to quash the search warrant and suppress evidence. The motion alleged that the search warrant failed to adequately describe the place to be searched. Specifically, the motion argued that the complaint for search warrant listed the incorrect address of the home police searched.

¶ 8 At the hearing on the motion, defendant testified that unlike the address listed in the complaint for search warrant, his property was located at 2428 North 150th Street. The address listed on the warrant belonged to the property of his father, Dave Cole. Defendant’s father’s property was located on the same street about 1000 feet away from defendant’s home. Defendant acknowledged that his property did not have a number posted on his mailbox. Defendant also acknowledged that his property “somewhat” matched the physical characteristics described in

the warrant. As described in the search warrant, defendant's property had several outbuildings on the property and an old cattle lot. The only inaccurate description described the composition of defendant's driveway. The warrant incorrectly described the surface as gravel, but defendant's driveway had an asphalt surface.

¶ 9 Cervantez testified that she prepared the complaint for search warrant of defendant's property. Cervantez obtained a copy of defendant's driver's license, which incorrectly listed defendant's address. Detective Joe Bedford drove to the location of defendant's property, which matched the description the concerned citizen provided police. Bedford photographed defendant's property.

¶ 10 Cervantez assisted other officers in the execution of the search warrant. Defendant's property matched the description provided in the warrant. Cervantez did not know that the warrant incorrectly listed defendant's address. Cervantez stated that the warrant authorized the search of the property the police actually searched. Cervantez also noted the physical distinction between defendant's home and his father's residence, in that the driveway locations were on opposite sides of each home.

¶ 11 Bedford testified that he assisted Cervantez in preparing the complaint for search warrant. Bedford photographed defendant's property. Bedford did not see any numbers posted on defendant's home during his surveillance of defendant's property. Bedford did not observe anything that would make him believe that defendant's address did not match the address listed on the warrant. Defendant's property matched the physical description provided by the concerned citizen. On his way to execute the search warrant, Bedford did not drive past defendant's father's property.

¶ 12 Detective Jim Kessinger, testified similarly to Bedford. Kessinger did not observe any number posted on defendant’s property that would have indicated that the warrant incorrectly listed defendant’s address. Kessinger “knew” which house they planned to search, and that he and other officers went to the home with “no doubts” as to its accuracy. Kessinger did not learn of the discrepancy in the search warrant until after completing the search.

¶ 13 Following the evidence and the arguments of the parties, the circuit court denied defendant’s motion to quash the search warrant and suppress evidence. The court acknowledged the error in listing the address on the warrant. However, the court found that the description of the house to be searched included in the warrant provided sufficient specificity to establish that the police intended to search defendant’s home.

¶ 14 Subsequently, the cause proceeded to a stipulated bench trial in which the court found defendant guilty of counts I and III (unlawful possession of a weapon by a felon). The court sentenced defendant to concurrent terms of two years’ imprisonment for each conviction.

¶ 15 **II. ANALYSIS**

¶ 16 On appeal, defendant contends the circuit court erred by denying his motion to quash the search warrant and suppress evidence. Specifically, defendant contends that the search warrant left the executing officers with doubt and impermissible discretion in determining the premises to be searched because the warrant listed the incorrect address for defendant’s home. Upon review, we find that despite listing the incorrect address of the residence to be search, the warrant sufficiently identified defendant’s residence as the property to be searched.

¶ 17 A valid search warrant must particularly describe the place or person to be searched and the items to be seized. 725 ILCS 5/108-3(a) (West 2016). “Generally, an otherwise valid warrant will not be quashed due to technical errors not affecting the substantial rights of a defendant.”

*People v. Burmeister*, 313 Ill. App. 3d 152, 158 (2000); see 725 ILCS 5/108-14 (West 2016). “[E]rrors or omissions in addresses are not *per se* fatal to the validity of a search warrant” and “[a] warrant must simply identify the place to be searched to the exclusion of all others.” *Burmeister*, 313 Ill. App. 3d at 158.

¶ 18 “A warrant is sufficiently descriptive if it enables the officer, with reasonable effort, to identify the place [to be searched].” *People v. Watson*, 26 Ill. 2d 203, 206 (1962). However, “where a search warrant raises a question in an officer’s mind as to which premises to search, the warrant should not be executed, because officers are prohibited from using their own discretion to determine which premises to search.” *People v. Urbina*, 393 Ill. App. 3d 1074, 1078 (2009). “Whether a warrant satisfies the requirements of particularity is determined on a case-by-case basis.” *People v. Economy*, 259 Ill. App. 3d 504, 512 (1994).

¶ 19 Here, we find that despite listing the incorrect street address, the search warrant sufficiently described defendant’s residence as the place to be searched. The search warrant identified the property to be searched as a white two-story residence with gray shingled roof and an attached two car garage located on the north side of the residence and a gravel driveway that runs on the east side from the road to the garage with four outbuildings located on the property, and an old cattle lot on the north side of North 150 Avenue. The record reflects that the property at issue in this case consisted of a two-story home with a gray roof, an attached two car garage on the north side of the residence, a driveway on the east side, several outbuildings, and an old cattle lot.

¶ 20 Moreover, nothing in the record indicates that the law enforcement officers executing the search warrant were confused or doubtful about which building to search or that they exercised their discretion in determining where to search. In fact, none of the officers were aware of the

fact that the warrant incorrectly listed defendant's address until after completing the search. As defendant testified, his property lacked a physical address number which would have alerted officers of the discrepancy in the search warrant. Similarly, no evidence showed that another physically similar property was located in the area. Although defendant's father lived down the road from defendant, each property had distinct physical characteristics. For example, the location of the driveway and the other structures on the properties. Additionally, the same officers who were involved in the investigation of the target residence were involved in the execution of the search warrant. See *Burmeister*, 313 Ill. App. 3d at 158 ("Inaccuracies will not necessarily invalidate a warrant if the officer applying for the warrant also executed the warrant."). None of the officers believed that the warrant authorized the search of any home other than that of defendant. True, the officers could have entered the address into a GPS system and realized the mistake, but the officers' testimony left no doubt that they intended to search defendant's home. Accordingly, we conclude that the circuit court did not err when it denied defendant's motion to quash the search warrant and suppress evidence.

¶ 21

### III. CONCLUSION

¶ 22

For the foregoing reasons, we affirm the judgment of the circuit court of Henry County.

¶ 23

Affirmed.