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SIXTH DIVISION
September 5, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 CR 16963
)	
LEMAR BANKS,)	The Honorable
)	Evelyn Clay,
Defendant-Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶1 *HELD:* Where the search warrant lacked the requisite particularity of the items to be seized, the trial court properly quashed the warrant and suppressed the evidence obtained in execution thereof.

¶2 Defendant, Lemar Banks, was arrested and charged with various drug charges subsequent to the execution of a search warrant. Prior to trial, defendant filed a motion to quash the warrant and to suppress the narcotics evidence obtained during execution of that warrant. The State appeals the trial court's order granting defendant's motion to quash the search warrant and to

suppress the evidence obtained, contending the warrant was sufficiently specific and the officers could rely on the warrant in good faith. Based on the following, we affirm.

¶3

FACTS

¶4 On August 15, 2012, a search warrant was executed at "the residence located at 516 N. Long in the City of Chicago, Cook County, Single-family." Defendant was named on the warrant. In addition, the warrant directed officers to seize "a handgun, ammunition, stolen; television, computers, and other valuables which have been used in the commission of, or which constitute evidence of the offense of: [u]nlawful [p]ossession of a [f]irearm by [a] [f]elon 720 ILCS 5/24-1.1A [t]heft: [p]osses [sic] [s]tolen [p]roperty 720 ILCS 5/16-1-A-4." While executing the warrant, officers recovered narcotics. Defendant was subsequently arrested and charged with possession of 100 to 400 grams of cocaine with the intent to deliver and possession of 1 to 15 grams of heroin with the intent to deliver.

¶5 On January 30, 2013, defendant filed a motion to quash the search warrant and to suppress the recovered evidence, arguing the warrant was invalid on its face because it lacked particularity of the items to be seized. No testimony was presented by the defense or the State. The trial court heard arguments on the motion and ultimately granted the motion in favor of defendant, finding the warrant was "woefully" "lacking in specificity as to the items to be seized." The trial court denied the State's motion to reconsider. This appeal followed.

¶6

ANALYSIS

¶7 The State contends the trial court erred in quashing the warrant and suppressing the evidence where the warrant was sufficiently specific and the police officers relied on the warrant in good faith.

¶8 The fourth amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. Similarly, the Illinois Constitution provides that "[t]he people shall have the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches[] [and] seizures." Ill. Const. 1970, art. I, § 6. A valid search warrant must state with particularity the place to be searched and the persons or things to be seized. *People v. Capuzi*, 308 Ill. App. 3d 425, 432 (1999); 725 ILCS 5/108-7 (West 2012). It is not necessary to give a "minute and detailed" description of the property to be seized, but "the property must be so definitely described that the officer making the search will not seize the wrong property." [Internal quotation marks omitted.] *Capuzi*, 308 Ill. App. 3d at 432. In other words, the search warrant description must leave the executing officer no doubt and no discretion as to the person or premises to be searched. *People v. Urbina*, 393 Ill. App. 3d 1074, 1078 (2009).

¶9 Courts must determine whether warrants meet the requisite specificity on a case-by-case basis by considering what degree of descriptive detail is reasonable given the nature of the property to be seized and the progress of the police investigation at the time the warrant was issued. *Capuzi*, 308 Ill. App. 3d at 432. On review, we perform a two-part analysis of the trial court's decision whether to grant the motion to quash and suppress. *Id.* at 430. In the first part, a reviewing court must determine whether the trial court relied on any factual findings in making its decision and, if so, whether the findings were clearly erroneous or against the manifest weight of the evidence. *Id.* In the second part, a reviewing court must determine *de novo* whether the evidence should have been suppressed. *Id.* There were no factual findings made in the case before us; therefore, we exclusively apply the *de novo* standard of review.

¶10 The Supreme Court has instructed:

"The Fourth Amendment by its terms requires particularity in the warrant, *not in the supporting documents*. (Emphasis added.) [Citations.] And for good reason: 'The presence of a search warrant serves a high function,' [citation] and that high function is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection. We do not say that the Fourth Amendment prohibits a warrant from cross-referencing other documents. Indeed, most Courts of Appeals have held that a court may construe a warrant with reference to a supporting application or affidavit *if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant*. [Emphases added.]" *Groh v. Ramirez*, 540 U.S. 551, 557-58 (2004).

¶11 In this case, the warrant did not incorporate other documents by reference nor was there any evidence to show that the complaint accompanied the warrant. Accordingly, we focus on whether the face of the warrant provided the requisite particularity of the items to be seized. As stated, the warrant instructed officers to seize "a handgun, ammunition, stolen; television, computers, and other valuables which have been used in the commission of, or which constitute evidence of the offense of: [u]nlawful [p]ossession of a [f]irearm by [a] [f]elon 720 ILCS 5/24-1.1A [t]heft: [p]osses [sic] [s]tolen [p]roperty 720 ILCS 5/16-1-A-4." We conclude that the warrant was not sufficiently detailed.

¶12 A plain reading of the warrant provides two groups of items to be seized, namely, those before the semi-colon and those after. The items before the semi-colon, *i.e.*, a handgun and

ammunition, were described as stolen, while the items after the semi-colon, *i.e.*, television, computers, and "other valuables," were described as used in the commission of or as constituting unlawful possession of a firearm by a felon or theft. At best, the warrant is confusing and fails to provide a clear description of the items to be seized. At worst, the lack of description left the executing officer in doubt and with full discretion to determine what items to seize within the authority of the warrant. *Urbina*, 393 Ill. App. 3d at 1078. Similar to the holding in *Capuzi*, the instant warrant failed to limit in any meaningful way the items to be seized. See *Capuzi*, 308 Ill. App. 3d at 432. Most, if not all, homes have televisions and computers. Even assuming the warrant was not confusing in providing whether the computer, television, and "other valuables" were stolen, there was no identifying information to distinguish stolen televisions and computers from those owned by defendant. See *id.* Further, the warrant authorized the seizure of "other valuables" used in the commission of the listed crimes or that constituted criminal property without providing any information upon which the executing officer could distinguish stolen property from property owned by defendant. See *id.* "Other valuables" is both broad and vague. The only items to be seized that arguably had a sufficient description were the handgun and ammunition because the listed crime was unlawful possession of a firearm by a felon. See 720 ILCS 5/24-1.1a (West 2012). However, the warrant itself did not substantiate defendant's felony status.

¶13 In addition, the rudimentary descriptions in the warrant at bar were not sufficient where more specific descriptions were available pursuant to the complaint. "[G]eneric descriptions are sufficient in some instances, such as when more specific descriptions are not available." *Capuzi*, 308 Ill. App. 3d at 431. The complaint expressly described the handgun as a "black Glock 9mm" that was "place[d] inside of a[n] entertainment center in the basement." The complaint also

described "numerous televisions and laptops in the basement." None of these details were included in the warrant despite their availability. Relying on *People v. Fragoso*, 68 Ill. App. 3d 428 (1979), the State argues that the information in the complaint could have been used to clarify the warrant because the officer that signed and swore to the information in the complaint, namely, Chicago Police Officer Michael Walsh, also executed the warrant. *Id.* at 433. However, as stated, no evidence was presented to the trial court regarding the execution of the warrant. The State further argues that the stolen goods were obvious to the officer executing the warrant rather than merely being defendant's possessions because "most homes do not stockpile these items in their basements." In making that argument, the State again relies on facts that are not found on the warrant and are not even found on the complaint. In sum, the warrant failed to provide the requisite detail to comply with the United States and Illinois Constitutions.

¶14 In the alternative, the State contends that, even if the warrant was invalid, the evidence collected in execution thereof should not be suppressed because of the "good faith exception" to the exclusionary rule.

¶15 The Supreme Court has held that evidence should not be suppressed when a warrant issued by a detached and neutral magistrate is later determined to be invalid as long as the executing officer acted in objectively reasonable reliance thereon. *Massachusetts v. Sheppard*, 468 U.S. 981, 987-88 (1984). However, the application of the "good faith exception" has limits, such that suppression is still appropriate where a warrant is "so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *United States v. Leon*, 468 U.S. 897, 923 (1984).

¶16 In this case, the warrant was so facially deficient that it was unreasonable for an executing officer to presume its validity. We, therefore, find the "good faith exception" does not apply in this case.

¶17 In conclusion, we find the trial court properly granted the motion to quash the search warrant and to suppress all of the items seized in execution of that warrant.

¶18 CONCLUSION

¶19 We affirm the judgment of the trial court granting defendant's motion to quash the search warrant and to suppress the evidence found in executing the insufficiently, vague warrant.

¶20 Affirmed.