2017 IL App (1st) 150510-U

No. 1-15-0510

Order filed June 29, 2017

Fourth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10CR6092
	)	
KEVIN LONG,	)	Honorable
	)	Clayton Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court denying defendant's motion to quash the search warrant and suppress evidence where the affidavits for the warrants established a sufficient nexus between a criminal offense, the items to be seized, and the place to be searched to establish probable cause.

¶ 2 Following a bench trial, defendant Kevin Long was found guilty of 47 counts of unlawful use or possession of a weapon by a felon after Chicago police officers recovered nearly 1600 weapons from a storage unit at his condominium building. The trial court subsequently merged

all of the counts into Count 1 and sentenced defendant to 13 years' imprisonment to be served concurrently with his nine-year sentence for unlawful use or possession of a weapon in case number 13 CR 19523. On appeal, defendant contends that the complaints for the successive search warrants failed to support probable cause that evidence would be found in his storage unit. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with 47 counts of unlawful use or possession of a weapon by felon in violation of section 24-1.1(a) of the Illinois Criminal Code of 2012. 720 ILCS 5/24-1.1(a) (West 2012). Prior to trial, defendant filed a motion to quash search warrant and suppress evidence. At a hearing on defendant's motion, Lieutenant James Dillon of the Cook County Sheriff's Office Criminal Intelligence Unit testified that on March 16, 2010, defendant was arrested for unlawful use or possession of a weapon at the Daley Center. Lieutenant Dillon testified that he monitored defendant's phone calls while he was being held in custody at the Cook County Department of Corrections. On March 19, 2010, Lieutenant Dillon monitored a call in which defendant told his mother that he did not want his parole officer to come to his "house" because he had "bags of knives" there. Lieutenant Dillon acknowledged that defendant did not reference a storage unit or a garage parking space during the phone call with his mother.

¶ 5 After listening to the conversation, Lieutenant Dillon filed a complaint for a search warrant. In the complaint, Lieutenant Dillon indicated that he was seeking to search the premises of 4572 North Milwaukee Avenue, Unit 5B in Chicago, Illinois, a "condominium residence." Lieutenant Dillon testified that 4572 North Milwaukee Avenue is a multi-unit, five-story condominium building. Lieutenant Dillon searched defendant's condominium unit with two other officers around 10 a.m. on March 20, 2010, but they did not recover any weapons.

¶ 6 After searching the unit, Lieutenant Dillon spoke to the condominium president, Ida Hesotian. Hesotian told him that defendant had a garage and a storage space as part of his condominium. Hesotian provided Lieutenant Dillon with a copy of defendant's condominium deed, which indicated that Unit 5B had a deeded garage space and storage unit in the building. Hesotian also showed Lieutenant Dillon where defendant's garage space and storage unit were located on the ground floor of the building.

¶ 7 After his discussion with Hesotian, Lieutenant Dillon filed a complaint for a second search warrant. The second complaint was substantially similar to the first complaint, but added to the premises to be searched "any storage area and garage space" associated with the residence. Lieutenant Dillon informed the judge who signed the warrant about the information he obtained from Hesotian and also informed the judge that he did not recover any weapons from the first search of defendant's condominium unit.

¶ 8 Lieutenant Dillon returned to defendant's condominium building several hours later and searched the garage space and storage unit using keys that Lieutenant Dillon had taken from defendant after he was taken into custody at the Daley Center. The officers did not find anything in the garage space, but found approximately 1600 weapons in the storage unit, including knives, handguns, replica guns, and brass knuckles.

¶ 9 Earl Key of the Cook County Public Defender's Office testified that he went to 4572 North Milwaukee Avenue and, although he could not enter the building, measured a distance of 204 feet from defendant's condominium unit on the fifth floor, to the garage space and storage unit on the first floor. On cross-examination, Earl acknowledged that he was not aware of the doors inside the building, which would have shortened the measured distance between defendant's condominium unit and the garage space and storage unit.

¶ 10 Following argument from both sides, the circuit court recounted the evidence and found that the parking space and the storage area were part of defendant's property at the condominium. The court stated that its interpretation was that when "talking about house, we're talking about his entire ownership within that property that's extended by the condominium act." That court believed that this interpretation was consistent with defendant's interpretation of the term "house" because defendant stated on the phone that he had the knives in his house and the knives were found in the storage unit, which the court reasoned was part of his "house." The court therefore denied the motion to quash.

¶ 11 The court subsequently denied defendant's motions to reconsider that ruling and the case proceeded to a bench trial. Following the bench trial, defendant was found guilty of all 47 counts of unlawful use or possession of a weapon by a felon.[1] The court merged all of the counts into Count 1 and sentenced defendant to a term of 13 years' imprisonment to be served concurrently with his nine-year sentence for unlawful use or possession of a weapon in case number 13 CR 19523. This appeal follows.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant contends that the court erred in denying his motion to quash and suppress where the original search warrant failed to support probable cause to believe that evidence would be found in the storage unit and the complaint for the second warrant similarly failed to support such probable cause. Defendant asserts that the storage unit was five floors and more than 200 feet away from the property identified in the original warrant and the second

[1] We note that the report of proceedings from defendant's bench trial has not been included in the record filed on appeal.

"bare bones" affidavit was insufficient to establish probable cause to support the second warrant to search the garage space and storage unit.

¶ 14 In reviewing the trial court's denial of the motion to quash and suppress evidence, we will reverse the trial court's factual findings only if they are against the manifest weight of the evidence. *People v. Caro*, 381 Ill. App. 3d 1056, 1066 (2008). We review *de novo* the trial court's ultimate ruling in denying the motion. *Id.*

¶ 15 The fourth amendment of the United States Constitution provides, in pertinent part, that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV; see Ill. Const. 1970, art. I, § 6 ("[n]o warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized"). Illinois courts interpret the search warrant requirement of the Illinois constitution in "limited lockstep" with the fourth amendment (*People v. Caballes*, 221 Ill. 2d 282, 313 (2006)) and thus courts have interpreted both constitutions "as having the same meaning and effect" (*People v. Urbina*, 393 Ill. App. 3d 1074, 1078 (2009)).

¶ 16 In determining whether probable cause for a search warrant exists, there must be a sufficient nexus between a criminal offense, the items to be seized, and the place to be searched. *People v. Beck*, 306 Ill. App. 3d 172, 178-79 (1999) (citing *People v. McCoy*, 135 Ill. App. 3d 1059, 1066 (1985)). If there is no direct information to establish such a nexus, the court may draw reasonable inferences to create the nexus. *McCoy*, 135 Ill. App. 3d at 1066. "A judge asked to issue a search warrant may draw reasonable inferences from the material supplied, and although it may not be easy to determine when an affidavit demonstrates probable cause, doubtful or marginal cases are largely resolved by resorting to the preference accorded to

warrants." *Beck*, 306 Ill. App. 3d at 179 (citing *People v. Hancock*, 301 Ill. App. 3d 786, 792 (1998)). The standard for probable cause rests upon the probability of evidence of criminal activity, not a showing of proof beyond a reasonable doubt. *People v. Brown*, 2014 IL App (2d) 121167, ¶ 22 (citing *People v. Stewart*, 104 Ill. 2d 463, 475-76 (1984)). "At a probable cause hearing, the trial court must make a practical, commonsense assessment of whether, given all of the circumstances set forth in the affidavit, there is a fair probability that evidence of a particular crime will be found in a particular place." *Brown*, 2014 IL App (2d) 121167, ¶ 22 (citing *People v. Hickey*, 178 Ill. 2d 256, 285 (1997)).

¶ 17 Here, defendant contends that the complaint for the second warrant failed to establish a fair probability that evidence of a crime would be found in the storage unit. Defendant contends that the second complaint failed to make any connection between his alleged unlawful acts and the storage unit where Lieutenant Dillon acknowledged that defendant did not mention the storage unit on the monitored telephone call with his mother and where neither Dillon nor Hesotian witnessed defendant commit any criminal activity in connection with the storage unit. Defendant further asserts that the storage unit was not part of his "residence" where it was uninhabited and located five floors below his condominium unit.

¶ 18 In response, the State relies on the fact that defendant was on Mandatory Supervised Release (MSR) at the time of the search in contending that defendant had a diminished expectation of privacy in his property such that the traditional requirements for probable cause need not be satisfied. As defendant points out in his reply brief, the State failed to raise this argument before the trial court. Defendant contends that we should therefore find this argument waived for purposes of this appeal.

¶ 19 We observe, however, that the State, as appellee "may urge any point in support of the judgment on appeal, even though not directly ruled on by the trial court, so long as the factual basis for such point was before the trial court." *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003) (quoting *Shaw v. Lorenz*, 42 Ill. 2d 246, 248 (1969)). Moreover, it is well-settled that we may affirm the judgment of the circuit court on any basis supported by the record. *People v. Rajagopal*, 381 Ill. App. 3d 326, 329 (2008).

¶ 20 Here, the fact that defendant was on MSR at the time of the search was before the trial court. Section 3-3-7(a) of the Unified Code of Corrections provides that "[t]he conditions of every parole and [MSR] are that the subject: *** (10) consent to a search of his or her person, property, or residence under his or her control." 730 ILCS 5/3–3–7(a)(10) (West 2012). Defendant's status as a parolee, "reduced his expectation of privacy in his residence to a level that society would not recognize as legitimate. Accordingly, the special protection normally afforded to an individual's home does not apply to him." *People v. Wilson*, 228 Ill. 2d 35, 52 (2008). Defendant contends, however, that the "sort of facts relied upon in [*Wilson*] are lacking here where the State did not seek to justify the search in the trial court based on defendant's status as a parolee." As discussed, however, we find that the State is not precluded from raising this argument for the first time on appeal where it is the appellee and defendant's status as a parolee is evidenced in the record.

¶ 21 Nonetheless, we find that Lieutenant Dillon's complaints were sufficient such that the issuing judge could find that there was probable cause to believe that evidence of criminal activity would be found in defendant's storage unit. Here, Lieutenant Dillon monitored a telephone call in which defendant told his mother that he had bags of knives at his house. Lieutenant Dillon knew that defendant had recently been arrested for unlawful use or possession

of a weapon at the Daley Center. Based on this information, Lieutenant Dillon filed a complaint for a search warrant to search defendant's condominium unit. After the search yielded no weapons, Lieutenant Dillon learned from Hesotian that defendant had a garage space and storage unit in the building as part of his condominium deed. Accordingly, Lieutenant Dillon filed a second complaint for a search warrant, adding the garage space and the storage unit to the premises to be searched and informing the judge that he had not recovered any weapons from the search of defendant's condominium unit. The search of defendant's storage unit yielded approximately 1600 weapons. We find that there was therefore a sufficient nexus between the alleged criminal offense, the items to be seized, and the place to be searched to establish probable cause.

¶ 22 Defendant contends, however, relying on *People v. Lenyoun*, that the complaint for the successive search warrant was based on a "bare bones" affidavit that failed to establish probable cause to believe that evidence would be found in the storage unit. In *Lenyoun*, a police detective filed a complaint to search defendant and his vehicle based on extensive surveillance of defendant leaving an address in Hillside, driving to a nearby location, meeting an individual on the street, and appearing to exchange an item for money. *People v. Lenyoun*, 402 Ill. App. 3d 787, 788 (2010). After obtaining the warrant, the detective observed defendant leave the Hillside address, and subsequently stopped him in his vehicle. *Id.* Officers searched defendant and his vehicle pursuant to the warrant, but did not recover any contraband. *Id.* Two hours later, the detective returned to the same circuit court judge with an application for a second search warrant. *Id.* at 789. The complaint for the second warrant was identical to the first except that it added information the officers obtained during the execution of the first warrant, including that defendant's driver's license listed the address in Hillside the officers had observed him exiting

during their surveillance. *Id.* The complaint requested a search warrant to search defendant's person and apartment unit at the Hillside address. *Id.* The warrant was issued and immediately executed. *Id.*

¶ 23 Defendant filed a motion to quash the warrant and suppress evidence. *Id.* After argument, the court found that the complaint for the second warrant lacked sufficient specificity to justify a search of the apartment unit at the Hillside address. *Id.* The state filed a motion for a good-faith finding on the part of the officers executing the warrant. *Id.* At the hearing on the State's motion, the detective testified that at the time he requested the second warrant, he did not inform the issuing judge that the execution of the first warrant yielded no recovered contraband from defendant or his vehicle. *Id.* at 789-90. The detective further acknowledged that he had never seen, nor been informed about, any drug-related activity taking place at defendant's unit in the Hillside apartment building. *Id.* at 790. The detective also acknowledged that he had never seen defendant go into the identified apartment unit. *Id.* The circuit court denied the State's motion, finding that there was insufficient evidence to support the search. *Id.*

¶ 24 On appeal, this court found that there was no question concerning the validity of the first warrant. *Id.* at 794. In regard to the second warrant, the court observed that "the requisite deference due to the judicial determination of probable cause in the issuance of the second warrant turns on the information provided in the second complaint that connects the defendant's criminal activity to his residence." *Id.* at 795. The court found that the information regarding defendant's drug sales included in the second complaint was the same information included in the first complaint and did not properly trigger a request for a search of defendant's residence. *Id.* The court noted that "[t]o accept a single drug sale conducted from a car by a defendant as probable cause for the search of the defendant's residence would nullify the rule of

law that disavows 'bare-bones' affidavits to support the issuance of a search warrant." *Id.* The court observed that "[i]t would be unprecedented to accept the proposition that a judicial determination of probable cause established by an outdoor drug sale may be shifted to support a successive warrant to search the defendant's residence." *Id.* at 796. The court found that a court may not improperly use the "mere commission of a crime" and the affidavit of law enforcement officer to "undermine the sanctity of a citizen's home." *Id.* at 797 (citing *Beck*, 306 Ill. App. 3d at 180-81). The court concluded that there was no evidence presented connecting the defendant's drug activity on the street to his apartment, it was improper for the issuing judge to independently determine that there was probable cause that evidence of defendant's criminal activity was present in his apartment. *Lenyoun*, 402 Ill. App. 3d at 798. The court further cautioned that:

> "To sanction a successive search warrant within hours of a failed search pursuant to the first warrant, with no additional information provided connecting the defendant's residence to his criminal activity, will simply provide an incentive to officers to seek an immediate second warrant for the defendant's home as a fall-back search for contraband without the need to develop facts that give rise to a reasonable inference of criminal activity in the home." *Id.* at 799-800.

¶ 25 We find *Lenyoun* distinguishable from the case at bar. Here, Lieutenant Dillon heard defendant tell his mother that he had bags of knives at his "house." At the time Lieutenant Dillon filed the complaint for the first search warrant, he did not know that defendant's condominium deed also included a garage space and a storage unit. After executing the first warrant and learning of the garage space and storage unit, Lieutenant Dillon returned to the court, filed a new complaint adding the storage unit and the garage space to the premises to be searched, and

informed the issuing judge that the search of defendant's condominium unit had yielded no weapons. In ruling on defendant's motion, the circuit court found that the storage unit and the garage space were encompassed in defendant's "house." The court believed that this was also defendant's interpretation of the word "house" because he told his mother the knives were at his "house" and the weapons were found in the storage unit. The complaint and affidavit in this case were thus sufficient to show a nexus between a criminal offense, the items to be seized, and the place to be searched.

¶ 26 The circumstances in this case are distinguishable from *Lenyoun* where, in that case, the detective presented no evidence in his affidavit to show that a criminal offense had taken place in defendant's apartment. The only information contained in the complaint for the second search warrant was related to defendant's alleged drug dealing activities outside of his apartment and in his vehicle. The court found that there was no nexus between the criminal offense and the place to be searched. The court criticized the "bare bones" affidavit for the second search warrant that provided information only about defendant's activity outside of the apartment and in his vehicle, but sought a warrant to search defendant's home. The affidavit at issue in this case, however, was not a "bare bones" affidavit where it presented information about defendant's criminal activity in his "house" and sought a warrant to search, what the circuit court determined, was his "house."

¶ 27 At base, the *Lenyoun*, court found that the complaint for the second affidavit was insufficient to support a warrant to search defendant's apartment where it was based on the same information as the complaint for the first warrant and failed to provide any nexus between the alleged criminal activity and the place to be searched, defendant's apartment. At contrast, here, the factual allegations in the initial complaint were sufficient to support a search of both

defendant's condominium unit and his garage space and storage unit. The comments of the circuit court in ruling on defendant's motion suggest that it would have found the first search warrant sufficient to establish probable cause to search defendant's storage unit and garage space.[2] We agree. Lieutenant Dillon, however, exercised caution and obtained a second search warrant specifically identifying the storage unit and garage space. It was unnecessary, however, for Lieutenant Dillon to add any further factual information to the second complaint to connect the storage unit to the alleged criminal activity where, as the circuit court recognized, when "talking about house, we're talking about his entire ownership within that property that's extended by the condominium act," which included the storage unit and the garage space. This case is unlike *Lenyoun* where, in order to establish probable cause to search defendant's apartment, the detective in that case would have had to add information to the second complaint connecting defendant's apartment to the alleged criminal activity, rather than filing substantially the same complaint used to secure a warrant to search defendant's person and vehicle.

¶ 28 We further find unpersuasive defendant's arguments regarding the distance between the storage unit and the condominium unit. As the State points out, Key was unable to perform an accurate measurement of the distance between the two areas because he was not permitted to enter the building. Notwithstanding, we would find this argument unpersuasive where the storage unit was in the same building as defendant's condominium unit and was included in the deed for defendant's condominium. As the circuit court found in this case, the condominium unit, the garage space, and the storage unit were all part of defendant's property at the condominium building and were all included in his "house." Accordingly, we find that the circumstances of

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[2] The circuit court observed that after executing the first search warrant and learning about the storage unit, the court would have "had no quarrel with [Lieutenant Dillon] if he had searched the storage area."

this case are thus unlike the cases cited by defendant involving the definition of a "residence" under the criminal trespass to a residence and burglary statutes. See *In re A.C.*, 215 Ill. App. 3d 611 (1991); *People v. Thomas*, 137 Ill. 2d 500 (1990).

¶ 29 Nonetheless, defendant points out that neither Lieutenant Dillon, nor Hesotian witnessed defendant commit any crimes in the storage unit. This argument, however, misunderstands the standard for probable cause, which rests upon the probability of evidence of criminal activity, not a showing of proof beyond a reasonable doubt. *Brown*, 2014 IL App (2d) 121167, ¶ 22. "At a probable cause hearing, the trial court must make a practical, commonsense assessment of whether, given all of the circumstances set forth in the affidavit, there is a fair probability that evidence of a particular crime will be found in a particular place." *Brown*, 2014 IL App (2d) 121167, ¶ 22. Here, where defendant told his mother that he had a bag of knives at his "house," and a search of his condominium yielded no weapons, the issuing judgment could make a "commonsense assessment" that, given all of the circumstances set forth in the affidavit, there is a fair probability that evidence would be found in the storage unit. We therefore find that the circuit court did not err in denying defendant's motion to quash the warrant and suppress evidence. Because we find the court did not err in denying defendant's motion, we need not address defendant's argument that the good-faith exception to the exclusionary rule should not apply in this case.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.