2013 IL App (1st) 120015-U

No. 1-12-0015

SIXTH DIVISION
March 1, 2013

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. 10 CR 4090
	)	
VINCENT RIZZO,	)	The Honorable
	)	James B. Linn,
Defendant-Appellee.	)	Judge Presiding.

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

O R D E R

¶ 1 HELD: The trial court erred in failing to allow the State to reopen its case to respond to the court's sua sponte challenge to the search warrant.

¶ 2 The State appeals the trial court's ruling quashing the arrest of defendant, Vincent Rizzo, and suppressing defendant's statements subsequent to his arrest. The State contends the trial court erred by granting the motion on a sua sponte basis without allowing the State to present evidence in response. Based on the following, we reverse and remand for further proceedings.

¶ 3 FACTS

¶ 4 Defendant was arrested on February 3, 2010, and charged with possession of cannabis with the intent to deliver following the execution of a search warrant at 3550 N. Ravenswood, Apartment 4E, in Chicago, Illinois. Defendant filed a motion to quash his arrest and suppress his statements. The trial court conducted a hearing on defendant's motion on November 16, 2011.

¶ 5 During opening statements at the hearing on defendant's motion, defense counsel said:

> "Your Honor, on February 3, 2010, the Chicago Police Department executed a search warrant at 3550 North Ravenswood in Apartment 4E. ***.
>
> As soon as the Chicago Police made forced entry they put Vincent Rizzo in custody, they handcuffed him, they put him on the ground and then put him on a couch and began questioning him after they Mirandized him.
>
> The issue in this motion is essentially this. We are not contesting the validity of the warrant. However, once the police came in and essentially arrested Mr. Rizzo right away, they did so without probable cause, and any statements made subsequent to that initial arrest we are asking this Court suppress."

The State replied by making its opening statements.

¶ 6 Prior to hearing evidence on the motion, the trial court said, "I don't see the warrant in the file ***. May I have a copy of the warrant and the complaint?" The record later reflects that both parties provided the court with a copy of the warrant without objection.

¶ 7 Steven Teufel testified for the defense that he was at 3550 North Ravenswood, Apartment 4E with defendant on February 3, 2010. According to Teufel, defendant, who goes by the name

of Michael, and Nenard Denovich lived in the apartment. After eating dinner with defendant and Denovich, Teufel and Denovich exited the rear of the apartment around 9 p.m. The pair walked down to the garage to retrieve Denovich's car in order to transport Teufel home. As Denovich pulled his car out of the garage, a police officer stopped the car. Denovich and Teufel were asked to provide identification and were instructed to exit the car. Denovich provided the police with consent to search his car and both he and Teufel were searched and handcuffed.

¶ 8 According to Teuful, approximately 10 minutes later, the police brought Teufel and Denovich back into the apartment. Teufel was seated at the kitchen table near the rear door of the two-floor apartment and Denovich was escorted to a room adjacent to the kitchen. After sitting at the kitchen table for approximately 10 minutes, the police officers moved Teufel to a couch in the living room. According to Teufel, he observed defendant walking down the stairs with handcuffs about 10 minutes later. Defendant was led by a police officer into the room in which Denovich was originally taken. Eventually, both Denovich and defendant were brought to the couch where Teufel was sitting. All three men were handcuffed. At some point, a fourth individual, Jeff Goldford, entered the apartment. The police searched Goldford, handcuffed him, and seated him on the couch with the other three men. Approximately 30 minutes later, the police took defendant and Denovich from the apartment and removed Teufel's handcuffs. Teufel was not arrested.

¶ 9 Defendant testified that, on the date in question, he lived at 3550 Ravenswood with two roommates, Denovich and David Crowler. At approximately 9:15 p.m, defendant was alone in the apartment when he heard a loud banging on the front door. Before he could open the door,

the door "c[a]me down and *** eight to ten policemen ran through the door" and two "tackled" him. Defendant was then placed in handcuffs. Defendant testified that he is known as both Vincent and Michael, his middle name. Defendant said he was never shown a warrant.

¶ 10 The defense rested and the State requested a directed finding, which was denied.

¶ 11 Officer Ryan Delaney testified for the State that, on the date in question, he executed a search warrant at 3550 N. Ravenswood. At approximately 9:15 p.m., Officer Delaney and his team walked up to the fourth floor apartment 4E and made a forced entry after receiving no response to their knock on the door. Upon entry, Officer Delaney observed defendant, "who fit the description of the warrant." As a result, defendant "was detained" and the residence was secured. According to Officer Delaney, the "target of the search warrant" was a "male white, approximately 24, 26 years old, between five-five, five-nine, *** 150 to 170 pounds with medium length black hair" who "went by Michael." Officer Delaney testified that, after securing the premises, the officers "advised [defendant] of his rights. We presented him with a copy of the search warrant, and told him we were here for the cannabis, at which time he said the cannabis is upstairs and I'll show you where it is." The officers recovered cannabis from the apartment. Prior to showing defendant the search warrant, defendant said his name was Vincent Michael Rizzo.

¶ 12 On cross-examination, defense counsel asked Officer Delaney questions regarding the identification provided on the search warrant. When Officer Delaney testified that he could not recall the exact height of the target as recorded on the warrant, defense counsel refreshed his recollection by providing Delaney with the warrant.

¶ 13 After the State rested, the trial court engaged in a colloquy with the State. We quote extensively from the record as the question before us is directly related to the conversation.

"THE COURT: Both sides rest. Where was this warrant executed, Mr. Murphy?

[Assistant State's Attorney (ASA)] MR. MURPHY-AGUILU: Your Honor, the warrant was executed at 3550 is one address.

THE COURT: What is the address on the record today? What is all the information I have on this record as to where this warrant was executed?

ASA MURPHY: 3550 North Ravenswood.

THE COURT: What is the address on the search warrant where the police had permission to search? What is stated there?

ASA MURPHY: I don't have it in front of me.

THE COURT: It says 1801 West Addison.

ASA MURPHY: Correct.

THE COURT: I am not sure if it is the same building or not. But if it is different addresses, I don't know. I have a warrant giving the police permission to go into an address on Addison Street. Everything I heard today on this record says the police went into an address on Ravenswood. What about that?

ASA MURPHY: Respectfully, the warrant is not made part of the record.

THE COURT: Look, this is the real deal here. The warrant is part of a court file. I asked for a copy because I was searching through the court file and I

didn't see it. Both parties, you gave me a copy of the warrant yourself as did the Defense *** and in both copies of the warrant I have *** talks about an address on Addison, and it has the same complainant Officer Delaney and it talks about the same Michael with a description listed in the warrant. I am assuming this is the warrant we are talking about in this case.

ASA MURPHY: Yes.

THE COURT: What do I do about the address discrepancy?

ASA MURPHY: Your Honor, there isn't really an address discrepancy.

THE COURT: How do I know that from this record? How do I know we are talking about the same place when I have an address on Addison Street, a different street, and testimony about an address on Ravenswood?

ASA MURPHY: With respect to the record, again, I would assert that nobody moved [sic]. It may be in the court file, but nobody moved that or even made an offer of proof of it with respect to this particular trial, nor is it pled in their pleadings.

THE COURT: Are you denying that this is the warrant that was executed in this case and *** this is the warrant that the police and your office are relying on for the police having permission to go inside the apartment and make a search?

ASA MURPHY: Yes, your Honor.

THE COURT: It says a different address.

ASA MURPHY: I understand that. If I might respond to that. Had pleadings been on that particular issue of the warrant then we would have been aware of it prior to actually putting the officer on. Then I will ask to reopen. I am not resting and ask to reopen the case so I can put the officer on so he can explain to you the address situation. But I wasn't aware that was going to be an issue for this particular motion until now and you are bringing it up to me when it wasn't offered by either side.

THE COURT: I was told and it has been pled that there was a problem with the execution of the warrant, with the search of the defendant. Didn't bring it up. I don't know if they didn't catch it. I don't know if you didn't catch it. And I don't like to be in the position of being an advocate for anybody. I am not anybody's advocate. I am sitting in the middle here. I am looking at a court file and I am listening carefully to the testimony. We are talking about what happened during the course of the execution of a warrant, and the first thing that I look at is I see an address on Ravenswood being talked about, an address on the arrest report about Ravenswood. Everybody is talking about Ravenswood. I look at the warrant which you agree is the warrant in this case and it has a different address. I don't know what I'm to do about that.

ASA MURPHY: Well, your Honor, I went off this. The defendant himself on examination testified that he lived at 3550 and that a warrant was executed at 3550.

THE COURT: I don't see any warrant for 3550. This is the warrant in this case.

ASA MURPHY: That's fine. But his request is that he supplied statements made in conjunction with the warrant he is testifying about.

THE COURT: I have a fatal flaw on this record.

ASA MURPHY: Your Honor, this is sua sponte a motion you are making on your own.

THE COURT: You can call it that.

ASA MURPHY: Then I ask to reopen my case.

THE COURT: No, no, no. We are not doing that. I am stuck with the record you made. I didn't rush anybody. I only asked for a courtesy so I can have all the information in front of me, I asked for a copy of the warrant. I was given a copy of the warrant. It is glaring to me that I am not sure if we are talking about the same unit. Even if the building is the same or with two different addresses it still could be a different unit. There is a problem on the record. I am talking about execution of a warrant and I'm hearing about execution of a warrant at one address and a Judge signed off on a separate address and nobody said anything about the same building.

I believe that the flaw is fatal. I understand your objection. I am sustaining their motion. If you want an appeal check date I will give it to you.

* * *

ASA MURPHY: For the record, I am objecting because, first of all, they haven't made that motion. This is a motion being made by your Honor.

THE COURT: They made enough of a motion.

ASA MURPHY: You are sustaining their motion. I am making my record, and I appreciate if you all me to make my record.

THE COURT: Go ahead.

ASA MURPHY: My first objection is that you are sustaining a motion not even based on the merits of their request.

Secondly, I ask in order for you to even sustain your own motion that you allow me an evidentiary hearing with respect to that issue, the fatal issue, you are claiming that's on the face of the warrant, which you denied me the opportunity to bring my officer out and offer evidence to that point. So you are sustaining this based on not the evidence they presented nor are you really granting their motion because that isn't their motion. This is you Honor's motion and you haven't allowed evidence on that particular point.

***.

THE COURT: Let me just state. The last thing I am is an advocate. I know the lawyers professionally. I don't know Mr. Rizzo. I don't know any of the witnesses here. It don't matter to me one little bit. I don't think I can shirk my responsibility as a Judge and let something like this just get washed over. I have a concern.

> We are so careful about warrants. And you go to a Judge to get permission to make a tumultuous entry in someone's residence, there has to be particularity and it has to be in a proper fashion. I am not sure what happened here because I have an address that's different than everybody [sic] else. Everybody had a chance to call witnesses and say something about that. Nobody said anything about it. This is not like my motion. It is just part of the motion I have in front of me. It is something that I can find questions with anything that comes in front of me. It doesn't necessarily have to be particularly pled like that. They are saying there is a problem with the execution of the warrant. I am looking at the warrant, and I see a flaw there as well."

This timely appeal followed.

¶ 14 DECISION

¶ 15 The State contends the trial court erred in granting the motion to quash defendant's arrest and suppress his statements on a sua sponte basis not raised by the parties where the court relied on a document that was not entered into evidence and without allowing the State to reopen its case to provide a response.

¶ 16 A ruling on a motion to quash arrest and suppress evidence presents both questions of law and fact. People v. McCarty, 223 Ill. 2d 109, 148 (2006). On review, the trial court's findings of fact will be upheld unless they are against the manifest weight of the evidence. Id. However, the ultimate determination whether an arrest should be quashed and evidence suppressed based on the factual findings is a question of law which we review de novo. Id.

¶ 17 We first address the trial court's refusal to allow the State to reopen its case after determining, sua sponte, that the discrepancy between the address where the warrant was executed and the address provided on the warrant was a "fatal flaw." It is within the sound discretion of the trial court to decide whether to reopen a case for additional evidence and that decision will not be overturned absent an abuse of discretion. People v. Figueroa, 308 Ill. App. 3d 93, 101 (1999). In determining whether to reopen a case, this court in People v. Watkins, 238 Ill. App. 3d 253 (1992), advised that:

> " '[A] trial court should take into account various factors, including the existence of an excuse for failure to introduce the evidence at trial, e.g., whether it was inadvertence or calculated risk; whether the adverse party will be surprised or unfairly prejudiced by the new evidence; whether the evidence is of utmost importance to the movant's case; and whether there are the most cogent reasons to deny the request.' " Id. at 258 (quoting Hollembaek v. Dominick's Finer Foods, Inc., 137 Ill. App. 3d 773, 778 (1985)).

¶ 18 After applying the Watkins factors, we conclude that the trial court erred in refusing to allow the State to reopen its case to respond to the issue of the address discrepancy raised sua sponte by the trial court after the close of evidence.

¶ 19 The State has a viable excuse for failing to present evidence regarding the address discrepancy, namely, that the issue was not raised by either party. The State's failure to introduce evidence addressing the difference between the address listed on the warrant and the address to which each witness testified as the location of the warrant's execution was neither inadvertent nor

a calculated risk. Rather, in responding to the trial court's sua sponte introduction of the issue, the State attested that Officer Delaney did not provide testimony related to the addresses because the issue had not been raised by defendant. The State requested an opportunity to reopen its case to "put the officer on so he can explain to you the address situation."

¶ 20 Because of the sua sponte nature of the issue, both the State and defendant were surprised by the court's interest in the address discrepancy; however, we do not find defendant would be unfairly prejudiced by the State calling Officer Delaney to testify as to whether the two addresses reflected different entrances to the same building. If the State were provided the opportunity to recall Officer Delaney for the limited question, defense counsel similarly would have the opportunity to cross-examine the witness.

¶ 21 It is clear from the record that the trial court found the lack of evidence explaining the address discrepancy to be of the utmost importance where the court deemed the discrepancy to be "fatal" and quashed defendant's arrest and suppressed his statement as a result.

¶ 22 The trial court denied the State's request to reopen its case to provide evidence in response to the sua sponte issue on the basis that the parties were not "rushed" and had the chance to call witnesses to "say something" about the address discrepancy, but failed to do so. While we recognize our collective goal to maintain efficiency within the courts and the trial court's discretion to manage its own docket, we find the State's request to reopen its case to recall Officer Delaney was de minimus where the witness had finished testifying some minutes earlier, just prior to the colloquy regarding the issue at bar. Moreover, we do not find the trial court's reasons for denying the State's request were cogent where the issue was raised sua sponte by the

court, essentially blind-siding the State. The Fifth District advised:

> "In rare instances, a trial judge may take judicial notice, sua sponte, of fact, as long as the judge makes clear during the course of the trial and not after the evidence is closed what facts and sources are included in the sua sponte notice. [Citations.] It is well-established that concepts of fair play require that all parties to an action be given a fair opportunity to confront and to rebut any evidence which might be damaging to their position. [Citation.] A party has the same right to rebut evidence admitted by sua sponte judicial notice as it does to rebut evidence introduced by the opposing party." People v. Barham, 337 Ill. App. 3d 1121, 1129 (2003).

Because the trial court sua sponte raised the address discrepancy after the close of evidence, the parties were not prepared to respond and the trial court denied the State the opportunity to do so without a valid basis.

¶ 23 In sum, we find the trial court abused its discretion in failing to allow the State to reopen its case in response to the dispositive matter raised sua sponte where the State averred that its witness, who likely was readily available after just having testified, could explain the "address situation." Cf. People v. Beverly, 364 Ill. App. 3d 361, 367-68 (2006) (holding that the trial court did not abuse its discretion in denying the State an opportunity to reopen its case where the evidence to which the State wished to respond was not "pivotal" to the trial court's decision to quash arrest and suppress evidence, and the evidence was presented by the defendant after a full hearing addressing the basis upon which the motion was granted).

¶ 24 CONCLUSION

¶ 25 Based on the foregoing, we reverse the trial court's order granting defendant's motion to quash arrest and suppress his statements, and remand this cause for further proceedings to allow the State to reopen its case in order to respond to the address discrepancy and for the trial court to rule on the substance of defendant's motion.

¶ 26 Reversed; remanded with instructions.