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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM WALL et al.,

Defendants and Appellants.

B232286

(Los Angeles County
Super. Ct. No. LA066056)

APPEAL from judgments of the Superior Court of Los Angeles County,
Michael K. Kellogg, Judge. Affirmed.

Law Offices of Carl K. Osborne and Carl K. Osborne for Defendant and Appellant
William Wall.

Law Offices of Michael L. Galey and Michael L. Galey for Defendant and
Appellant Jesse Kenyon Boddie.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson, and Jonathan
J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

After the trial court denied their joint motion to quash a search warrant, William Wall pleaded no contest to possession of ammunition by a felon and possession of a deadly weapon (Pen. Code, §§ 12316, subd. (b)(1), 12020, subd. (a)(1)), and Jesse Kenyon Boddie pleaded no contest to possession of cocaine for sale, with a four-kilogram weight enhancement (Health & Saf. Code, §§ 11351, 11370.4, subd. (a)). Boddie and Wall appeal the judgments entered following sentencing; they challenge the trial court's denial of their motion to quash. We affirm.

FACTS

On May 18, 2010, Wall purchased 50 rounds of 9-millimeter ammunition, 50 rounds of .38-caliber ammunition, 50 rounds of .357-caliber ammunition, and 20 rounds of .460-caliber ammunition at the Firing-Line Indoor Shooting Range on Eddy Street in Northridge. Firing-Line recorded Wall's ammunition purchase on a Los Angeles Police Commission "ammunition registration form" dated May 18, 2010. At some point, the form was forwarded to the Los Angeles Police Department (LAPD). LAPD received the ammunition registration form on May 25, 2010.

On August 5, 2010, LAPD Officer Jennifer Rogers and her partner, Detective J. Edwards, were conducting a "routine review" of ammunition registration forms when they noted the May 18, 2010 entry by Firing-Line recording Wall's purchase of ammunition. Officer Rogers conducted a check on Wall utilizing LAPD resources and found that he was a convicted felon, including a conviction for being a felon in possession of a firearm. Further, Wall was a documented member of the "Black P-Stone" gang, with street monikers of "Top Dollar" and "Dollar Bill." An LAPD criminalist compared a thumbprint on the ammunition registration form from Firing-Line against Wall's fingerprints in booking information from a prior arrest in August 2007. The comparison showed that Wall purchased the ammunition noted on the May 18, 2010 ammunition registration form received from Firing-Line. Officer Rogers also confirmed Wall's conviction for possession of a firearm by a felon through court records. The court records showed that Wall was placed on formal probation through November 2012, and had been ordered not to possess any deadly weapons, including firearms.

On September 10, 2010, Officer Rogers executed an affidavit in support of an application for a search warrant. Officer Rogers's affidavit detailed the investigation described in the preceding paragraphs above, and requested a warrant to search Wall's residence — an apartment on Oxnard Street in North Hollywood — his vehicle, and his person.¹ The application sought a search warrant authorizing police to search for firearms and any items related to Wall's use or possession of firearms. The magistrate issued the warrant.

The probation reports provide the following information regarding the execution of the search warrant. On September 14, 2010, officers executed the warrant at Wall's residence. Boddie answered the officers' knocks on Wall's front door, and he was taken into custody. Wall exited a bedroom and was also placed in custody. During the officers' ensuing search of the residence, they recovered a single .460-caliber bullet from Wall's bedroom dresser. Further, they recovered dirks, daggers, and swords from Wall's bedroom and the living room. In a second bedroom, police recovered five brick-shaped packages weighing a total of 13.18 pounds from inside a duffel bag "belonging" to Boddie. The brick-shaped objects contained a white, powdery substance resembling cocaine.

In November 2010, the People filed an information jointly charging Wall and Boddie with possession of a controlled substance, cocaine, for sale (count 1; Health & Saf. Code, § 11351), with an allegation that the cocaine weighed more than four kilograms (Health & Saf. Code, § 11370.4, subd. (a)). Further, the information charged Wall with possession of ammunition by a felon (count 2; Pen. Code, § 12316, subd. (b)(1)); possession of a deadly weapon, to wit, a "throwing star" (count 3; Pen. Code, § 12020, subd. (a)(1)); and possession of a deadly weapon, to wit, a "Butterfly Knife" (count 4; Pen. Code, § 12020, subd. (a)(1)).

¹ Officer Rogers's affidavit stated that Wall's residence and vehicle registration information had been obtained from Department of Motor Vehicle records. Officers had also checked the address and observed the name "Wall" on the mailbox.

Wall filed a written motion to quash the search warrant. Boddie filed a notice of joinder in the motion. Wall's motion argued in various specifics that the search warrant was not supported by probable cause.

On February 8, 2011, the parties argued the motion to quash to the trial court. The prosecutor addressed cases cited in Wall's motion on the issue of whether an affidavit is too "stale" to support probable cause. The prosecutor argued that Officer Rogers's affidavit was not stale because the cited cases involved narcotics, which are unique in their transportability and usability, while Wall's case involved a warrant involving more durable items, firearms. The prosecutor argued that Wall's case should be likened more to the published cases in which searches for stolen property were involved. Wall's counsel argued that the important factor was "criminal conduct," and that passage of time in his case from his purchase of ammunition (May 2010) until Officer Rogers submitted her affidavit for the search warrant (September 2010), defeated probable cause. Boddie's counsel stated that he "join[ed]" in the argument by Wall's counsel.

At the conclusion of the argument, the trial court denied the motion to quash. The court agreed that if police had observed a drug sale at Wall's residence, "without anything else," and had then waited the length of time involved in his case to get a warrant to search for drugs at the residence, then "the nexus between the two [] would be no more than an educated guess" that drugs probably would still be found at the residence. But the court found firearms and ammunition to be items of a different nature. Even in the likelihood that the ammunition purchased in May had been "consumed," say at a firing range, it was still reasonable to conclude that Wall possessed a firearm at his residence. As the court explained: "When I end up firing a box of rounds at targets then I clean the weapon, put [it] back in my case and take it back home from where it came. . . . [¶] . . . [¶] . . . So looking at the time frame, weapons have a history of remaining longer than do drugs. Drugs are transitory [whereas] weapons even though they can be transitory they're generally not."

On February 16, 2011, Wall waived his constitutional trial rights and pleaded no contest to possession of ammunition by a felon as charged in count 2, and possession of a deadly weapon as charged in count 3. Boddie waived his constitutional trial rights and pleaded no contest to possession of cocaine for sale as charged in count 1 (Health & Saf. Code, § 11351) and admitted the weight enhancement allegation (§ 11370.4, subd. (a)). On April 5, 2011, the trial court sentenced Wall to an aggregate term of one year four months.² Counts 1 and 4 were dismissed pursuant to the plea negotiations. On April 12, 2011, the trial court sentenced Boddie to an aggregate term of five years.³ Wall and Boddie filed timely notices of appeal.

DISCUSSION

I. Staleness

Wall contends the trial court erred in denying his motion to quash because the affidavit contained “stale” information that did not support probable cause. We disagree.

In determining the sufficiency of an affidavit for the issuance of a search warrant, the test of probable cause is whether the facts in the affidavit would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion of the guilt of the accused. (*People v. Kraft* (2000) 23 Cal.4th 978, 1041.) The task of the issuing magistrate is to make a common-sense decision whether, given the information in the affidavit, there is a reasonable probability that contraband or evidence of a crime will be found in a particular place. (*Ibid.*) There is no bright-line, count-the-number-of-days rule defining the point at which information in an affidavit must be considered too stale to support probable cause; the question of staleness depends on the facts of each case. (*People v. Carrington* (2009) 47 Cal.4th 145, 163-165.)

² The aggregate term consisted of a low term of one year four months for the possession of ammunition, and a concurrent low term of one year four months for the possession of a deadly weapon.

³ The aggregate term consisted of a low term of two years for possession of cocaine for sale, plus a three-year term for the weight enhancement pursuant to Health and Safety Code section 11370.4, subdivision (a).

Wall cites four cases in support of his staleness argument: *Hemler v. Superior Court* (1975) 44 Cal.App.3d 430 (*Hemler*); *Durham v. United States* (1968) 403 F.2d 190 (*Durham*); *Sgro v. United States* (1932) 287 U.S. 206 (*Sgro*); and *People v. Hulland* (2003) 110 Cal.App.4th 1646 (*Hulland*). In *Hemler*, the Court of Appeal ruled that facts set forth in an affidavit regarding an informant's purchase of cocaine at a residence some 34 days before the affidavit was submitted were stale and did not support the magistrate's probable cause determination for a warrant to search the residence. (*Hemler*, at pp. 432-435.) In *Durham*, a search pursuant to a warrant resulted in the recovery of a \$20 counterfeit bill and a plate for printing counterfeit money. (*Durham*, at p. 192.) The court ruled that a delay of more than 17 weeks between the activity described in an affidavit for the search warrant and the search warrant itself was too long of a delay. (*Id.* at p. 194.) *Sgro* involved a case during the Prohibition era. There, the United States Supreme Court ruled that a delay of 21 days between the sale of beer at a hotel and the ensuing affidavit and search warrant negated probable cause for believing that beer would still present as of the date of the search warrant. (*Srgo, supra*, at pp. 210-211.) *Sgro* involved a statutory interpretation issue under a federal search warrant statute, but its discussion of delay is related to the probable cause issue. *Hulland* is another drug-related case. There, the trial court denied a motion to suppress, finding information in an affidavit was stale, but that the good faith exception applied. (*Hulland*, at p. 1653, discussing *United States v. Leon* (1984) 468 U.S. 897.) The Court of Appeal reversed, agreeing that information in an affidavit regarding activities in September was too stale to support a warrant issued in November (*Hulland, supra*, at pp. 1649, 1652-1653), and then rejecting application of the good faith exception because the officer who executed the affidavit knew the information was stale.

We disagree with Wall that Officer Rogers's affidavit in the current case falls within the same framework as *Hemler*, *Sgro*, and *Hulland*. Although *Durham* is closer, we nonetheless agree with the People that the nature of the evidence involved in a search warrant — here, in particular, firearms — is the factor that carries the day. In our view, the warrant involved in Wall's case is more like the search warrants for weapons

approved in cases such as *U.S. v. Neal* (8th Cir. 2008) 528 F.3d 1069, *U.S. v. Kennedy* (8th Cir. 2005) 427 F.3d 1136, 1142, and *United States v. Bowers* (9th Cir. 1976) 534 F.2d 186. *Neal*, *Kennedy* and *Bowers* teach that information concerning someone who is suspected of possessing firearms illegally is not stale, “even several months later,” because it is reasonable, and adheres to common sense, to believe that “individuals who possess firearms tend to keep them for long periods of time.” (*Neal, supra*, at p. 1074; see also *Kennedy, supra*, at p. 1142, fn. 5 & *Bowers, supra*, at pp. 192-193 [it is probable that even a weapon used in a murder would be retained for “weeks”].) We are satisfied that Officer Rogers’s affidavit did not contain information that was so stale that it could not support a reasonable probable cause determination.

For the reasons explained above, Boddie’s arguments on the same ground are rejected.

II. Omission of Fact

Wall contends the trial court erred in denying his motion to quash because Officer Rogers’s affidavit failed to disclose to the magistrate that police received information as early as May 25, 2010, the date on which the LAPD received the ammunition registration form from Firing-Line, which indicated that Wall was involved in criminal activity.⁴ We disagree that the omission, if any, commands that the search warrant be quashed.

A defendant who challenges a search warrant based on an alleged omission in the affidavit bears the burden of showing an intentional or reckless omission of material fact that, when added to the affidavit, renders it insufficient to support a finding of probable cause. (*People v. Scott* (2011) 52 Cal.4th 452, 484.) An omitted fact may be deemed material when there is a substantial probability that the fact, if disclosed, would have changed a reasonable magistrate’s probable cause determination, or when the omitted fact makes the affidavit substantially misleading. (*People v. Kurland* (1980) 28 Cal.3d 376, 385.)

⁴ At the hearing on the motion to quash, the parties agreed that the LAPD received the ammunition registration forms on May 25, 2010.

We do not see a material omission, or an omission of any measurably significance. Officer Rogers's affidavit disclosed that the ammunition registration form was dated May 18, 2010, and that she first saw the form on August 5, 2010. Even if the affidavit stated the further fact that the police received the form on May 25, 2010, we see no possibility that this further fact would have affected the magistrate's probable cause determination. We see no relevance to the date upon which LAPD received the ammunition registration form. The important dates for probable cause are the date the ammunition was bought, the date Officer Rogers submitted her affidavit for the search warrant, and the date the magistrate found probable cause and issued the warrant. This information was available to the magistrate. We see no grounds for reversal of the trial court's decision denying the motion to quash based on an alleged omission in Officer Rogers's affidavit.

For the reasons explained above, Boddie's arguments on the same ground are rejected.

III. The Good Faith Exception

Because we have found that the search warrant was properly issued, we need not address Wall's contention that the police could not rely upon the "good faith exception" (see *United States v. Leon, supra*, 468 U.S. 897) to justify the search on a warrant issued pursuant to an allegedly insufficient affidavit.

For the reasons explained above, Boddie's arguments concerning the same issue are rejected.

IV. Suppression of the Cocaine

Boddie contends the cocaine should have been suppressed because the location where it was found was outside the scope of the warrant and no exception to the requirement of a warrant existed. We disagree.

First, Boddie forfeited any claim that the police wrongly looked in the duffel bag in the bedroom where he was staying. He did not raise this duffel bag search issue in the trial court; he joined Wall's motion challenging the validity of the warrant on the ground of lack of probable cause. It would be unfair to both the prosecution and the trial court to

address an issue not presented at the hearing on the motion to quash. The prosecution did not have an opportunity to respond to the issue and the court did not have an opportunity to rule on the issue. (*People v. Williams* (1999) 20 Cal.4th 119, 136; see also *People v. Garcia* (2003) 111 Cal.App.4th 715, 720.)

Assuming Boddie did not forfeit his claim that the police exceeded the scope of the warrant, we find no error in not suppressing the cocaine. The scope of a permissible search pursuant to a warrant is determined by its language. (*People v. Balint* (2006) 138 Cal.App.4th 200, 207.) Officers executing a search warrant may be called upon in certain situations to interpret the scope of the warrant, but they are not required to interpret it narrowly. On the contrary, a search pursuant to an interpreted search warrant is proper if the officers' interpretation was reasonable. (*Ibid.*)

Here, the search warrant at issue authorized the police to search “[t]he premises located at 10617 Oxnard Street, #2, North Hollywood, CA,” and further provided: “The search is to include all rooms . . . within Unit #2.” We see nothing on the face of the warrant, and see no evidence in the record, indicating that the police were on notice that Wall did not have control over the whole the apartment. (See *People v. Govea* (1965) 235 Cal.App.2d 285, 300 [a search by police of an entire residence pursuant to a warrant identifying the residence was within the scope of the warrant as to an occupant because nothing on the face of the warrant indicated that the residence was more than a single living unit, or that it included a separate dwelling area for the occupant].) We see no evidence in the record, for example, indicating that Boddie was a co-lessee of the Oxnard Street apartment, or a sub-lessee of Wall, or that he told police he had control over the second bedroom. There is no evidence in the record that Boddie was had anything other than an unlucky, transient visitor in the apartment when the police executed the search warrant.⁵ The on-site officers' decision to search the second bedroom was reasonable and did not exceed the scope of the search warrant.

⁵ There are comments by the lawyers at the hearing on the motion to quash that the bedroom was the bedroom of Wall's daughter, and that Boddie had been staying in the bedroom for a couple of days when the search warrant was executed.

For the reasons explained above, the trial court properly denied Boddie's implicit motion to suppress the cocaine as the fruit of a search that exceeded the scope of the search warrant.

DISPOSITION

The judgments are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.