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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL FLYNN ACCARDI,

Defendant and Appellant.

E054296

(Super.Ct.No. FVI902166)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erik M. Nakata, Judge. Affirmed.

Amanda Fates, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Garrett Beaumont and Vincent P. LaPietra, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Michael Flynn Accardi pled no contest to a single count of being a felon in possession of a firearm. (Former Pen. Code, § 12021, subd. (a)(1).)

The trial court placed defendant on probation for three years and included in the probation conditions the requirement that he serve 90 days in county jail. In this appeal, defendant argues the trial court erred when it denied his motion to suppress as evidence the numerous firearms found in his home. As discussed below, we conclude that the trial court was correct when it denied defendant's motion.

### **FACTS AND PROCEDURE**

On the morning of September 25, 2009, San Bernardino County Sheriff's Deputy Boros responded to a report from a resident that a neighbor had shot her dog. The resident reported that, earlier that morning, she heard a loud pop or bang from somewhere in the rear of her backyard. The resident found her Chihuahua dog in the backyard and it appeared to have been shot in the eye with a pellet or BB. The dog survived. The resident saw her neighbor, the defendant, in his yard running away from their common chain-link fence, wearing a long-sleeve green or tan shirt and camouflage pants. The defendant was carrying a brown rifle with a black scope and a black strap.

Deputy Boros and other responding officers went to defendant's home. Defendant answered the door. Defendant matched the description given by the neighbor. Defendant denied having shot the Chihuahua, but complained that it barked night and day. Defendant denied possessing any type of firearm or having ever been arrested. Defendant would not allow the officers to search his home for firearms.

City of Hesperia Animal Control Officer Sanders prepared an application for an administrative inspection/seizure warrant under Code of Civil Procedure section 1822.50 et seq. In the supporting affidavit Officer Sanders stated in part:

“Employees of the City have been made aware of possible animal cruelty violations at 18007 Yucca, in Hesperia; CA. City staff was made aware of the following violations on said property:

“a) Resident shooting animals with a BB or similar gun.

“These are violations of the California Penal Code:

“a) 597. (a) Crimes against Animals

“I have reviewed the records of the County Tax Assessor of San Bernardino County and other public records, which show that the owner of record of 18007 Yucca Street, as Michael Accardi of Hesperia, California 92345.

“The City first became aware of violations at the subject property on September 25, 2009.

“As of the date of this Declaration, the violations remain and are being maintained on the property.

“The City requests an Inspection Warrant to enter the property for the following purpose:

“a) To check for weapons used in shooting the dog.

“b) The camouflage pants the witness reported seeing the suspect wearing.”

The magistrate issued the warrant based on this affidavit. The officers who served it found 21 weapons of various types, including crossbows, pistols and rifles, along with the clothing the neighbor reported seeing defendant wear as he ran away holding the firearm.

On July 6, 2010, the People filed an information charging defendant with 15 counts of being a felon in possession of a firearm (former Pen. Code, § 12021, subd. (a)(1)) and one count of cruelty to an animal (Pen. Code, § 597, subd. (a)). On June 17, 2011, after the trial court denied defendant's vigorously contested motion to suppress evidence,<sup>1</sup> defendant pled guilty to one count of being a felon in possession of a firearm. On August 12, 2011, the court granted defendant probation for three years, with one of the conditions being that he serve 90 days in county jail. This appeal followed.

### **DISCUSSION**

Defendant argues the inspection/seizure warrant should be scrutinized as a criminal search warrant and, as such, was not based upon probable cause because the supporting affidavit by Officer Sanders: (1) did not establish a nexus between the place to be searched and the items to be seized; and (2) failed to identify the source of the information and, thus, prevented the magistrate from independently evaluating the affidavit.

The People agree with defendant that the administrative inspection/seizure warrant should be scrutinized as a criminal search warrant requiring a showing of probable cause,

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<sup>1</sup> Animal control officer Sanders testified at the hearing on the motion to suppress that when he arrived at defendant's residence with the inspection warrant, Deputy Boros told him that defendant was a convicted felon, and that this conversation took place before they entered the residence. Officer Sanders' supervisor, Suzanne Edson, also testified that Deputy Boros informed her before the search that defendant was a felon.

citing *People v. Todd Shipyards Corp.* (1987) 192 Cal.App.3d Supp. 20, 30, and *Michigan v. Clifford* (1984) 464 U.S. 287, 294.<sup>2</sup>

When a trial court rules on a motion to suppress evidence, it ““(1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] . . . The court’s resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.” [Citation.]’ [Citations.]” (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.)

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<sup>2</sup> An administrative inspection warrant is an order signed by a judge, directing a state or local official to conduct an inspection authorized by state or local law or regulation “relating to building, fire, safety, plumbing, electrical, health, labor, or zoning.” (Code Civ. Proc. § 1822.50.) The inspection warrant must be supported by an affidavit containing good “cause” for the inspection. (Code Civ. Proc. § 1822.51.)

A search warrant is an order signed by a magistrate, directing a peace officer to search for person(s), thing(s) or personal property, generally when such things, etc. were the object of a crime, were used as a means of committing a crime, or tend to show that a crime has been committed, and to bring any such things, etc. before the magistrate. (Pen. Code, § 1523.) The search warrant must be supported by an affidavit containing “probable cause” for the search and seizure. (Pen. Code, § 1525.)

The probable cause standard to issue a criminal search warrant is significantly higher than the good cause standard required to issue an administrative inspection warrant. (See *In re William G.* (1985) 40 Cal.3d 550, 566.) As explained below, the warrant issued by the magistrate here meets the more stringent probable cause standard, based on the information contained in the affidavit prepared by Officer Sanders.

The affidavit supporting the search warrant specified that a resident of the home to be searched was shooting animals with a BB gun or similar weapon. This appears to us to be sufficient information to support a finding of probable cause to search the specified residence for a BB gun or similar weapon. Defendant argues that this information is insufficient to support a finding of probable cause because it did not include any details as to who witnessed the shooting, whether the suspect was male or female, what type of animal was shot, whether the animal was injured, whether the suspect possessed animals on his or her property who still were in danger, or why it was believed that the weapon was inside the residence. Defendant cites to *People v. Garcia* (2003) 111 Cal.App.4th 715, 722-723, for his argument that there was not a sufficient nexus between the information that a resident of the home to be searched was shooting at animals and the request that the home be searched for the suspected weapon. However, that case is not at all applicable; it holds that an affidavit that the suspect is selling drugs from a business, in this case a bar, does not establish probable cause to search the bar where the suspect is merely a regular customer and not an owner or employee. Here, the place to be searched is the suspect's own residence, in the vicinity of which he was seen with the weapon at issue. "A sufficient nexus is established for the search of a residence when a target sells controlled substances from the residence." (*Id.* at p. 721, citing *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1206 [superseded by statute on another point].) Similarly, the affidavit established a sufficient nexus to search defendant's house for the weapon, not only because defendant was seen with the weapon somewhere, but because he was seen

with the weapon specifically on the property where the residence to be searched was located.

“Probable cause exists when the information on which the warrant is based is such that a reasonable person would believe that what is being sought will be found in the location to be searched.” (*People v. Stanley* (1999) 72 Cal.App.4th 1547, 1554.) We conclude that a reasonable person would believe the weapon being sought would be found at defendant’s residence simply because he was observed shooting at an animal with such a weapon and, further, because he was seen with the weapon near the residence. We make this conclusion regardless of whether anything is known about the defendant’s gender, whether he has animals on his property, who witnessed the shooting, what type of animal was shot, or whether the animal was injured.

Defendant also argues the magistrate did not have probable cause to issue the search warrant because the affidavit did not contain enough information about the source who reported the shooting and, thus, the magistrate had no way to determine the veracity of the source. Specifically, defendant argues the affidavit should have included the following information: the source’s name, the source’s relationship to the suspect (i.e., citizen witness, neighbor, ex-girlfriend), the source’s manner of contact with law enforcement (i.e., 911 call, anonymous tip), and how the source obtained the information (i.e., did the source see or hear the shooting or learn of it from another source). The People respond that the affidavit contains sufficient information to establish probable cause because it includes the fact that a witness identified a suspect who was connected to the residence to be searched. We agree.

An informant's "veracity," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his or her information. However, these factors "should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause' to believe that contraband or evidence is located in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 230.) Here, the magistrate knew from the affidavit that a witness had reported to city staff that a resident of defendant's home had been shooting animals with a BB or similar gun, and that the witness had seen the suspect wearing camouflage pants. The reference to the camouflage pants in particular indicated first-hand knowledge by the witness. While the affidavit could have been more artfully drafted, it was sufficient to provide probable cause to search defendant's home for the BB-type gun and camouflage pants.

Further, even if the warrant were not supported by probable cause, the sheriff's deputies and animal control officers who searched defendant's home relied upon the warrant in good faith, and the warrant was facially valid. Under the "good faith" exception to the exclusionary rule, exclusion is not required "where police officers act in objectively reasonable reliance on a search warrant that is issued by a detached and neutral magistrate but is later found to be invalid for lack of probable cause . . . ." (*People v. Willis* (2002) 28 Cal.4th 22, 30.) However, "the good faith exception does not apply 'where the issuing magistrate wholly abandoned his judicial role,' where the affidavit was "' so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,'" or where the warrant was '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.’ [Citation.] Thus, courts must determine ‘on a case-by-case basis’ whether the circumstances of an invalid search pursuant to a warrant require the exclusionary rule’s application. [Citation.]” (*Id.* at p. 32, quoting *United States v. Leon* (1984) 468 U.S. 897, 918, 923.)

Defendant argues that the affidavit was so lacking in probable cause that a reasonable officer would not have presumed it to be valid. We disagree. A reasonably well-trained officer would have believed the affidavit provided a substantial basis for finding probable cause. A witness had told sheriff’s deputies and city staff that a resident of defendant’s home was shooting animals with a BB-type weapon and the witness had also seen the suspect wearing camouflage pants. Hence, the officers’ conclusion that a BB-type weapon and camouflage pants would be found at defendant’s residence was by no means unreasonable.

Since the officers’ conclusion was reasonable, their execution of a facially valid warrant, issued by a neutral magistrate, was done in good faith. Therefore, even if the warrant was invalid for lack of probable cause, its execution was nonetheless proper. (*Massachusetts v. Sheppard* (1984) 468 U.S. 981, 987-988.)

We conclude that the magistrate did not err in granting the warrant, even when considered under the more rigorous probable cause standard applicable to criminal search warrants rather than the lesser good cause requirement applicable to administrative search warrants. Further, even if probable cause had not been not established, and it was, the “good faith” exception applies.

**DISPOSITION**

The trial court's ruling denying defendant's motion to suppress evidence is affirmed.

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RAMIREZ  
P. J.

We concur:

KING  
J.

MILLER  
J.