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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN GALLAWAY,

Defendant and Appellant.

H039722

(Monterey County

Super. Ct. No. SS082903)

Defendant Justin Gallaway appeals from a judgment of conviction entered after he pleaded no contest to possession of methamphetamine for sale (Health & Saf. Code, § 11378) and admitted that he had one prior narcotics conviction within the meaning of Health and Safety Code section 11370.2, subdivision (c). Pursuant to the negotiated plea agreement, the trial court sentenced defendant to six years in county jail. On appeal, defendant contends that the trial court erred when it denied his motion to quash the search warrant and suppress the evidence seized pursuant to the warrant. We find no error and affirm.

I. Statement of Facts¹

At approximately 1:11 p.m. on December 3, 2008, Detective Nicholas Borges was driving in an unmarked police vehicle when he observed defendant driving a white Mercedes Benz in excess of the speeding limit. Detective Borges radioed for a marked patrol unit to assist with the traffic stop. According to Detective Borges, defendant displayed the symptoms of an individual under the influence of an illegal drug. After defendant exited the vehicle, Detective Borges conducted a pat search and found a baggie containing marijuana. Based on defendant's driving, his objective symptoms of intoxication, and his performance on several field sobriety tests, the officer placed defendant under arrest for operating a motor vehicle while under the influence of a controlled substance. During the search incident to defendant's arrest, Detective Borges found a baggie containing 1.3 grams of crystal methamphetamine and \$791.

After obtaining a search warrant, officers conducted a search of defendant's residence. They found 13.8 grams of crystal methamphetamine, some marijuana, and 14 to 17 marijuana plants in pots. They also found several digital scales and methamphetamine pipes as well as hundreds of baggies.

II. Discussion

Defendant contends that the trial court erred when it failed to quash the search warrant. He contends that the affidavit in support of the warrant lacked sufficient probable cause to support its issuance.

A. Background

Here, the search warrant was issued on the basis of an affidavit submitted by Detective Borges. In the affidavit, dated December 3, 2008, Detective Borges set forth

¹ The statement of facts is taken from the probation officer's report.

his experience. In 2002, he graduated from the police academy where he received an education regarding drug investigations, including the surveillance and monitoring of residences. Detective Borges had been employed by the Seaside Police Department for six years, and was currently assigned as a narcotics detective. He had participated in numerous investigations that led to the successful conviction of drug offenders. He was certified to conduct under-the-influence evaluations of individuals who use illegal drugs and was a member of the California Narcotics Officer Association. He had also taken several courses on drug expert testimony and search warrant preparation. Detective Borges had testified as an expert in Monterey County Superior Court over a dozen times in cases involving the sale and distribution of powder cocaine, cocaine base, crystal methamphetamine, marijuana, and prescription pills. He had “managed” over 10 confidential informants that had resulted in the development of evidence required to search, arrest, and convict drug suspects. In his contacts with narcotics users, experts, and informants, Detective Borges had discussed all aspects of the sale, use, packaging, and transfer of drugs in the Monterey Peninsula area. He had also participated in numerous parole and probation searches as well as searches pursuant to warrants in which drugs were being sought as evidence.

Detective Borges had met “[w]ithin the month” a “previously tested” confidential informant (CI) who stated that he/she had personal knowledge that defendant was currently an active methamphetamine dealer in Seaside. The CI had known defendant for several years and stated that his address was 1500 Darwin Street in Seaside. The CI was not currently on California probation or parole.

At approximately 1:11 p.m. on December 3, 2008, Detective Borges contacted defendant during a traffic stop. Defendant appeared to be under the influence of illegal drugs and was placed under arrest. As Detective Borges started to search defendant, a baggie containing 1.3 grams of methamphetamine fell out of defendant’s pants. Defendant also had a cell phone and approximately \$790 in his possession.

A couple hours later, defendant received a cell phone message from “ODOG,” which stated “Culd I grab a little something from ya?” Detective Borges suspected that this message was from a potential customer for a drug transaction.

Detective Borges ran a driver’s license check on defendant. His address was listed as 1500 Darwin Street in Seaside and 1224 Waring Street in Seaside. Detective Sergeant Dias ran defendant’s name through a law enforcement Web site and it showed defendant’s address as of November 2008 as 1500 Darwin Street in Seaside. When defendant was booked, Detective Borges located a bank check, which was dated November 26, 2008, and paid to the order of defendant at 1500 Darwin Street. Detective Borges had also personally seen defendant at this address within the last week.

Detective Borges ran defendant’s criminal history and learned that his history included: possession of methamphetamine, possession of a controlled substance, sale of a controlled substance, and maintaining a place to sell narcotics.

Detective Sergeant Dias and Detective Cohon informed Detective Borges that they had previously received information from drug users that defendant sold methamphetamine. Monterey County Probation Officer Kevin Christian informed Detective Borges that a probationer told him approximately a month ago that defendant sold methamphetamine in Seaside and was the probationer’s supplier.

Based on his training and experience, Detective Borges knew that “people who sell narcotics often sell from their place of residence to avoid being detected by law enforcement out in public settings. Many dealers will store a supply of narcotics at their residence and in their surrounding yard to avoid detection and confiscation by the police, and so they are not robbed of their entire supply by users or rival dealers.”

The trial court found that there was probable cause for the issuance of the warrant and denied defendant’s motion to suppress evidence.

B. Analysis

The Fourth Amendment to the Constitution of the United States provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.”

“In reviewing a search conducted pursuant to a warrant, an appellate court inquires “whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing.” [Citations.] “The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him [or her], including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” [Citation.] The magistrate’s determination of probable cause is entitled to deferential review. [Citations.]’ Probable cause sufficient for issuance of a warrant requires a showing in the supporting affidavit that makes it substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought. [Citations.]” (*People v. Scott* (2011) 52 Cal.4th 452, 483.)

In the present case, Detective Borges’s affidavit provided sufficient facts to support the magistrate’s conclusion that probable cause existed to issue a search warrant for defendant’s residence. The affidavit stated that when Detective Borges contacted defendant during the traffic stop he appeared to be under the influence of illegal drugs and was in possession of 1.3 grams of methamphetamine and a significant amount of cash. About two hours later, defendant’s cell phone received the message, “Culd I grab a little something from ya,” which strongly suggested negotiations for a drug transaction. Defendant also had a criminal history, including “sale of a controlled substance” and “maintaining a place to sell narcotics.” Given Detective Borges’s training and experience

that sellers of narcotics store and sell narcotics at their residence, these facts established “a fair probability” that narcotics would be found at defendant’s residence.

Defendant argues that the present case is similar to *People v. Pressey* (2002) 102 Cal.App.4th 1178. In *Pressey*, two police officers conducted a traffic stop, arrested the defendant for driving under the influence of marijuana and a central nervous system stimulant, and found 1.5 grams of methamphetamine in his possession. (*Id.* at p. 1181.) One of the officers then sought a warrant to search the defendant’s residence. (*Ibid.*) The magistrate found probable cause to search the defendant’s residence for drugs and paraphernalia based on the defendant’s arrest for possession of a controlled substance and the officer’s opinion that drug users with controlled substances on their person or in their cars are more likely to have these substances at their residence. (*Id.* at p. 1182.) *Pressey* concluded that “probable cause to search the residence of someone suspected of using illegal drugs requires more than an opinion or inference, available in every case, that drugs are likely to be present. This does not mean that probable cause to search a home could never arise from the particularized suspicions of an experienced narcotics officer, or the circumstances of an arrest for drug possession, only that illegal drug use does not necessarily provide probable cause to search the user’s residence, and that such cases must be decided on their own facts. [Citation.]” (*Id.* at p. 1190.) In contrast to *Pressey*, here, there were factors in addition to defendant’s possession of methamphetamine while under the influence. Defendant had a history of drug sales, a large amount of cash in his possession, and received a cell phone message suggesting a drug transaction. Thus, *Pressey* is factually distinguishable from the present case.

Defendant argues that “[c]ell phones are ubiquitous and not indicative of drug selling” and defendant’s possession of approximately \$790 was not a basis “for concluding that the money was ill-gotten gains or indicative of drug selling.” However, when considered with defendant’s possession of methamphetamine and his criminal

history, the magistrate could reasonably infer that the cell phone and cash were related to drug sales.

Regarding the cell phone message, defendant next argues that the affidavit lacks sufficient facts from which the magistrate could reasonably conclude that the cell phone belonged to defendant or that the message was sent by someone who was trying to buy drugs. We disagree. The cell phone was in defendant's possession when he was arrested and the message can reasonably be interpreted as a request to purchase drugs.

Defendant also points out that the affidavit fails to state the dates of defendant's prior convictions, the underlying drug involved, or whether the convictions were in California. Defendant's reliance on *People v. French* (2011) 201 Cal.App.4th 1307 is misplaced. In *French*, the affidavit included information from three informants, who were not reliable, stating that the defendant and another individual were selling drugs from a residence and a vehicle. (*Id.* at p. 1321.) *French* held that the officer's corroboration of the informants' statements with one of the alleged drug dealer's criminal history was insufficient to establish probable cause to issue the search warrant. (*Id.* at pp. 1321-1322.) *French* observed that the police corroboration did not include when the police contacts occurred, the nature of the offenses, and what narcotics were involved. (*Id.* at p. 1320.) Here, though defendant's criminal history could not corroborate the CI's report of defendant's drug sales, his criminal history, including convictions for "sale of a controlled substance" and "maintaining a place to sell narcotics," as previously stated, was one more factor to be considered in determining whether there was probable cause for a search warrant for defendant's residence.²

² Since we have found that there was probable cause to support the search warrant, we need not consider whether the good faith exception applies.

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Grover, J.