Third District Court of Appeal

State of Florida

Opinion filed August 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0008
Lower Tribunal No. 15-0904-A-K

The State of Florida,
Appellant,

vs.

Willie Louis Aaron, Jr.,
Appellee.

An Appeal from a non-final order from the Circuit Court for Monroe County, Mark H. Jones, Judge.

Ashley Moody, Attorney General, and David Llanes, Assistant Attorney General, for appellant.

Carlos J. Martinez, Public Defender, and Deborah Prager, Assistant Public Defender, for appellee.

Before SALTER, LINDSEY, and GORDO, JJ.

LINDSEY, J.

The State appeals the suppression of evidence collected from Willie Louis Aaron, Jr., the defendant below. Because we find no constitutional violation, we reverse.

I. BACKGROUND

Defendant was charged via information with one count of DUI manslaughter with failure to render aid and one count of leaving the scene of an accident involving death. As a result of the accident, a motorcyclist died from head injuries. Officer Kuniko Keohane, a traffic homicide investigator with the Key West Police Department, was called to the scene to investigate. Based on Officer Keohane's observations of Defendant's demeanor, he concluded that a sample of Defendant's blood was needed to test for blood alcohol. Because Defendant refused to give consent for a blood draw, Officer Keohane and Officer Alex Gaufillet left the scene to secure a search warrant from the on-duty judge.

The officers' search warrant affidavit stated that they knew "from training and experience two blood draws, taken approximately an hour apart, are required in order for a qualified expert to determine an approximate blood alcohol level or chemical substance or controlled substance level at the time of the crash." Accordingly, the signed warrant gave them permission to "seize by the least intrusive means as circumstances require two blood samples approximately an hour apart . . . ." After securing the search warrant, the officers returned to the crime scene and called for

paramedics to conduct the blood draw. Only one blood sample kit was used. The kit contained two vials of blood that were filled one after the other. No second sample was collected.

Defendant moved to suppress both vials contending, inter alia, that the officers did not follow the warrant's directive because they seized only one blood sample instead of two. As such, Defendant argued, suppression was mandated because "[n]othing should be left to the discretion of the officers executing the search warrant as to what should be seized and taken."

Following a hearing, the trial court granted Defendant's motion to suppress, explaining its ruling as follows:

> The Court finds that the most serious issue with the search which has been raised by the Defendant is the fact that although the officers swore in the affidavit that they "...know from training and experience two blood draws, taken approximately an hour apart, are required in order for a qualified expert to determine an appropriate blood alcohol level... at the time of the crash," and as part of the warrant, the magistrate ordered that "two blood samples approximately an hour apart" be seized. Nevertheless, only one sample consisting of 2 vials was actually taken from the Defendant! Apparently, there was only one blood draw kit available. However, there was no evidence presented as to what, if any, efforts were made to obtain a second kit or otherwise comply with the dictates of warrant and proper procedure as sworn to by the officers
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> . . . .
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> A search warrant must adequately specify what is to be seized and nothing should be left to the discretion of the officer executing the warrant. State v. Nelson, 542 So. 2d

> 1043 (5 DCA, 1989). Here, the warrant clearly specified that 2 samples must be seized. Because the officers obtained only one sample, they failed to adhere to the clear dictates of the warrant, abused their discretion, and caused prejudice to the Defendant. Therefore, the Court has no alternative but to invalidate the search warrant and suppress the evidence.

This appeal followed.

II. JURISDICTION

We have jurisdiction pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(B).

III. STANDARD OF REVIEW

Review of a motion to suppress is a mixed question of law and fact. Cole v. State, 190 So. 3d 185, 188 (Fla. 3d DCA 2016). In reviewing the denial of a defendant's suppression motion, the Court defers to the trial court on questions of fact and conducts a de novo review of the constitutional issue. Chavez v. State, 832 So. 2d 730, 748 (Fla. 2002).

IV. ANALYSIS

In its order granting the motion to suppress, the trial court relied on State v. Nelson, 542 So. 2d 1043 (Fla. 5th DCA 1989), a case having to do with the Fourth Amendment's particularity requirement. As the court in Nelson explained, "[t]he purpose of requiring particularity in the description of things to be seized under a warrant is to prevent 'general searches.'" Id. at 1045 (quoting Pezzella v. State, 390

So. 2d 97, 99 (Fla. 3d DCA 1980), review denied, 399 So. 2d 1146 (Fla. 1981)); see also Carlton v. State, 449 So. 2d 250, 251-52 (Fla. 1984) ("The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." (quoting Marron v. United States, 275 U.S. 192, 196 (1927)). In short, the particularity requirement limits a searching officer's discretion by preventing exploratory searches pursuant to a general warrant. See id. at 252.

The warrant at issue in this case was clearly not a general warrant; it specified exactly what was to be seized: "two blood samples approximately an hour apart . . . ." Consequently, the warrant was not overbroad, and it did not violate the particularity requirement. The trial court's order appears to take the particularity requirement out of context by focusing on the language in Nelson having to do with an officer's discretion: "nothing should be left to the discretion of the officer executing the warrant." See Nelson, 542 So. 2d at 1045. In other words, the trial court invalidated the warrant not because it was overbroad, giving the officers discretion to make an unconstitutional general search, but because the blood sample seized pursuant to the warrant was more limited than what the warrant permitted. We find no support for this position.

The impermissible discretion referred to in cases dealing with the particularity requirement clearly has to do with discretion to perform a general, overbroad search. See Carlton, 449 So. 2d at 252 ("[T]he requirement limits the searching officer's discretion in the execution of a search warrant, thus safeguarding the privacy and security of individuals against arbitrary invasions by governmental officials."). Nothing about this requirement suggests that conducting a search that is *more limited* in scope than what a valid warrant permits somehow invalidates the warrant because the searching officer exercised some level of discretion.

As explained by the United States Court of Appeals for the Ninth Circuit when confronted with this same argument:

> The purpose of having a particularized, as opposed to general, warrant is to "'assure [ ] the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.'" Groh v. Ramirez, 540 U.S. 551, 561, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (quoting United States v. Chadwick, 433 U.S. 1, 9, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977)). In other words, a search warrant gives an officer the "power" to seize the items specified in the warrant. While an officer generally does not have the power to seize anything not specified in the warrant, he retains discretion over the execution of the search and, as is implicit in the word "power," can exercise discretion to leave items that may arguably come within the literal terms of the search warrant.

San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose, 402 F.3d 962, 973-74 (9th Cir. 2005); see also Strauss v. Stynchcombe, 165 S.E.2d 302, 307

(1968) ("We do not believe that it was the intention of the Supreme Court of the United States . . . to lay down any such rule as contended for by appellant that the searching and seizing officer be left no room to make a judgment as to what particular documents or things are subject to seizure under the warrant which he is executing. It is difficult to imagine that a case could arise where an officer executing a valid search warrant would not at some stage in the matter be required in the very nature of things to exercise his judgment as to what thing or things or person or persons were to be seized under the warrant.").

Defendant also contends that even if the trial court erred in its application of the particularity requirement, we should nevertheless affirm because the lower court reached the right conclusion for the following two reasons: (1) the warrant was not served by an authorized officer and (2) the affidavit failed to articulate probable cause.[1]

With respect to the first argument, Defendant directs us to what he himself refers to as "undoubtably an oversight," a blank space in the warrant where the City

[1] The trial court's ruling was not based on either of these arguments. Defendant relies on the "tipsy coachman" rule, which provides that a trial court's ruling "will be upheld if there is any basis which would support the judgment in the record." State v. Hankerson, 65 So. 3d 502, 505 (Fla. 2011), as revised on denial of reh'g (June 30, 2011) (quoting Dade County Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999)).

of Key West should have appeared.[2] Defendant argues that this violates section 933.08, Florida Statutes (2019), which provides that a "search warrant shall in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer requiring it, said officer being present and acting in its execution." We reject this argument because the searching officers, Officers Keohane and Gaufillet, are both specifically mentioned in the warrant and the attached affidavit. Cf. State v. Vargas, 667 So. 2d 175, 176 (Fla. 1995) (holding that a motion to suppress should have been granted when the searching officer was "not named in the warrant").

We also reject Defendant's argument that the affidavit failed to articulate probable cause.[3] During consideration of the motion to suppress, the following exchange took place:

> THE COURT: But let me just ask you: Okay. We found it a legally sufficient motion, then the State had the burden to go forward. So, at this point, where does the burden rest here?
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> [COUNSEL FOR DEFENDANT]: Judge, the burden because we're not challenging the probable cause determination -- had he challenged the probable cause

[2] The warrant appeared as follows: "TO THE SHERIFF AND/OR DEPUTY SHERIFF OF MONROE COUNTY FLORIDA, AND ANY POLICE OFFICER OF THE CITY OF _____ FLORIDA[.]"

[3] We note that the trial court's order found as follows: "A review of the affidavit clearly shows the existence of probable cause and a review of the search warrant reveals that it is facially sufficient containing all of the necessary information."

> determination, I think the case law is clear, we would have the burden. I think I do believe, still, the State has the burden.
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> . . . .
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> Because we're simply arguing the constitutionality of the issuance of the warrant, not the probable cause. We're not attacking the warrant itself. It's in the execution of the warrant and how it got to where it was.

It is clear, based on the above-quoted exchange, that Defendant waived his probable cause argument. We therefore decline to consider it in the first instance here.

V. CONCLUSION

For the reasons set forth above, we reverse the lower court's suppression order and remand for further proceedings.

REVERSED and REMANDED