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Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000256-MR

COMMONWEALTH OF KENTUCKY — APPELLANT

v.

APPEAL FROM MASON CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 09-CR-00120

GARRY MCCLAIN SR. — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: The Commonwealth of Kentucky is seeking interlocutory relief pursuant to Kentucky Revised Statutes (KRS) 22A.020(4) from an order of the Mason Circuit Court entered January 26, 2010, quashing a search warrant and suppressing evidence seized during the search of Garry McClain Sr.'s residence. The Commonwealth contends that the circuit court improperly found that the search warrant affidavit contained a false statement, and with the false statement

purged, did not support a finding of probable cause. The Commonwealth further argues that the circuit court improperly determined that the good faith exception did not apply in this case. After careful review of the record, including the suppression hearing, as well as the parties' arguments in their respective briefs, we affirm.

In September 2009, the Mason County grand jury issued a twenty-four-count indictment against Garry McClain Sr. (hereinafter the Defendant), charging him with nine counts of possession of a handgun by a convicted felon, a Class C felony, and with fifteen counts of possession of a firearm by a convicted felon, a Class D felony, both pursuant to KRS 527.040. The weapons were seized from the Defendant's residence at 7032 Water Tower Road in Maysville, Kentucky, during the execution of a search warrant on July 30, 2009. The Defendant moved to quash the search warrant and to suppress the evidence forming the basis for the indictment. In support of these motions, he argued that the search warrant affidavit did not sufficiently state facts to establish probable cause, that there was insufficient evidence of a nexus between criminal activity and the Defendant's residence, and that the officer's reliance on the search warrant was not objectively reasonable so as to permit the good faith exception to apply.

The circumstances surrounding the issuance of the search warrant are as follows: On July 30, 2009, Mason County Sheriff Patrick Boggs was on patrol in the eastern end of the county due to several daytime robberies. While on patrol, he saw James Beckett, a known drug user from another part of the county, driving

in the area. Sheriff Boggs turned around to follow Beckett's car, but failed to find his vehicle again. Still looking for Beckett's car, Sheriff Boggs pulled onto Olivet Church Road, a location for which he had received reports of drug trafficking. On Olivet Church Road, Sheriff Boggs saw the Defendant's son, Garry McClain Jr., driving an ATV (all-terrain vehicle) on the roadway without a helmet. He performed a traffic stop and searched the vehicle, discovering a baggie containing a rock of suspected crack cocaine in the wheel well. Sheriff Boggs arrested McClain Jr. on charges of operating an ATV on a roadway without a helmet and for first-degree possession of a controlled substance (cocaine). The uniform citation, completed by Sheriff Boggs, shows that McClain Jr. supplied an address of 318 E. 5th Street in Maysville, Kentucky, and describes the circumstance of the stop and arrest:

> Above subject was observed operating an ATV on Olivet Church Rd without a helmet. Upon impound and inventory of said vehicle a small white substance in a plastic wrapper believed to be cocaine was found in the middle portion on the left rear wheel well. Mr. McClain advised that he did not know you couldn't ride ATVs in the country on the roadway and that he had come from "over there" and he could go get a truck and pick it up.

Sheriff Boggs assumed that by the phrase "over there," McClain Jr. meant the Defendant's residence on Watch Tower Road, which was approximately a mile away by road, but closer in a direct line over the fields. The uniform citation shows that McClain Jr. was stopped at 12:37 p.m. and arrested at 1:00 p.m.

Following the arrest, Sheriff Boggs completed an affidavit for a search warrant, which was sworn before an assistant county attorney, Jacqueline S.

Wright, at 1:51 p.m. the same day. In the affidavit, Sheriff Boggs stated that he had probable grounds to believe that there were drugs, controlled substances, marijuana, pills, drug paraphernalia, drug records, money (proceeds of drug activity), and other contraband at the Defendant's residence at 7032 Water Tower Road and/or on the Defendant's person or other occupants of the residence. Sheriff Boggs then stated that he observed:

> Gary McClain, Jr. traveling on the highway on a 4-wheeler. Affiant conducted a traffic stop on McClain and impounded the 4-wheeler and a subsequent search of the vehicle revealed a quantity of crack cocaine. **The driver of the 4-wheeler stated that he had just come from his father's house located at 7032 Water Tower Road, Maysville, KY.** [Emphasis added.]

After observing this, Sheriff Boggs stated that he conducted his own independent investigation:

> Affiant reviewed recent reports, claims and information reported to Sheriff Boggs that Gary McClain Jr. is allegedly involved in the trafficking of drugs in and out of the above described residence and on the particular highway on which he was traveling on the 4-wheeler.

Fleming District Judge Todd Walton signed the search warrant at 2:04 p.m. and returned the signed warrant to Sheriff Boggs via fax.

Upon obtaining the search warrant, Sheriff Boggs went to the Defendant's residence at 7032 Water Tower Road along with three other law enforcement officers to execute the warrant. Present at the residence were Melanie Johnson, Todd Gordon, and Maizie McClain. The Defendant was not present. The search began at 2:39 p.m. and ended several hours later at 7:20 p.m. During the search,

the officer seized multiple firearms, ammunition, suspected drugs, including cocaine and marijuana, drug paraphernalia, and money. The suspected drugs were sent to the lab for testing. The seized firearms became the basis for the present indictment.

After permitting the parties to brief the issue following the suppression hearing, the circuit court granted the Defendant's motions in an order entered January 26, 2010, which we shall set forth in pertinent part below:

> The Court finds that the search warrant issued in this case was invalid and further that the officer's reliance upon the deficient warrant was [sic] should not be deemed to be [in] good faith and therefore the evidence seized at the time should be suppressed.
>
> Under the Constitution of the United States and the Kentucky Constitution, the people of this Nation and of this Commonwealth are to be free from searches through warrants unsupported by probable cause.[1] Under Guth v. Commonwealth 29 S.W.3d 809, 811 (Ky. App. 2000) *quoting* Coker v. Commonwealth 811 S.W.2d 8, 9 (Ky. App., 1991), the judicial interpretation of Section 10 of the Kentucky Constitution requires that "the affidavit for a search warrant reasonably describe the property or premises to be searched and state sufficient facts to establish probable cause for the search of the property or premises." Under Commonwealth v. Smith, 898 S.W.2d 496 (Ky. App., 1995)
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> > To attack a facially sufficient affidavit, it must be shown that (1) the affidavit contains intentionally or recklessly false statements, and (2) the affidavit, purged of its falsities,

[1] The Fourth Amendment to the Constitution of the United States supports "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." The Kentucky Constitution Section 10 states in part that: "no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation."

> would not be sufficient to support a finding of probable cause.

In the case at bar, Mr. McClain, Jr., the Defendant's son, was pulled over by Sheriff Boggs for driving his ATV on a public road (Olivet Church Road) without a helmet and was found to be in possession of a single rock of crack cocaine. According to Sheriff Boggs' testimony at the suppression hearing, McClain, Jr. told Boggs that he had just come from "over there" and could go get a truck to pick up the ATV. There was no explanation or further inquiry as to where "over there" was, and no way to tie "over there" to McClain, Sr.'s house which was over a mile away on a different county road (Water Tower Road). (McClain, Jr.'s residence according to his operator's license was at 318 E. 5th St. in downtown Maysville, a different address from McClain, Sr.).

McClain, Jr. was subsequently arrested and Sheriff Boggs went to an assistant County Attorney with the above information, including that McClain, Jr. "is allegedly involved in the trafficking of drugs in and out of the above described residence [McClain, Sr.'s] and on the particular highway on which he was traveling on the 4-wheeler."

McClain, Sr.'s residence is on Water Tower Road. McClain, Jr. was stopped on his ATV on Olivet Church Road. A major inaccuracy in the affidavit is that McClain, Jr. never "stated he had just come from his father's house" [McClain, Sr.]. The testimony of Sheriff Boggs and the Uniform Citation both indicate that McClain, Jr. simply said he came from "over there," and the testimony was that McClain, Sr.'s residence was on a different road about a mile away.

The court finds that the affidavit, purged of inaccurate recitation that McClain, Jr. had just come from McClain, Sr.'s house, coupled with a lack of any other information in the affidavit to tie McClain, Sr. to the sale of cocaine, would not be sufficient to support a finding of probable cause to search the residence of McClain, Sr.

The court rules that had the issuing judge been presented with an accurate affidavit, he could not have found probable cause to issue a search warrant for McClain, Sr.'s residence. The information contained within the four corners of the affidavit is insufficient to authorize a search warrant.

Furthermore, under United States v. Carpenter, 360 F.3d 591 (2004), there must be a "nexus between the place to be searched and the evidence sought," (*quoting* United States v. Van Shutters, 163 F.3d 331, 336-37 (6th Cir. 1998), there must be an indication of "why evidence of illegal activity will be found 'in a particular place.'" *Id*.

The quantity of drugs recovered from McClain, Jr.'s vehicle was minimal and indicative of personal use. No further evidence of drug dealing was found in the vehicle search and there was no evidence to suggest that any additional evidence of that nature would be found located at McClain, Sr.'s residence over a mile away. Therefore the warrant is held to be invalid.

Lastly, the Commonwealth cites the "good faith" exception to the exclusionary rule set forth in United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), and adopted by the Kentucky Supreme Court in Crayton v. Commonwealth, 846 S.W.2d 684 (Ky. 1992), in which an officer's objectively reasonable reliance on an invalidated warrant may not result in the exclusion of the evidence obtained.

The issue to be decided in *Leon* was whether or not to bar the prosecution's use of evidence "obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause." 468 U.S. at 900. The Court in *Leon* held that the officer must have an objectively reasonable belief in the sufficiency of the warrant and the determination of probable cause in order for the "good faith" exception to the exclusionary rule to apply, and that if the affidavit contains false or misleading information, reliance is not reasonable. *Leon*, 468 U.S. at 923. In *Crayton*, following the holding in *Leon*, [footnote containing lengthy quotation from *Leon*

omitted] the court states that with regard to what constitutes an officer acting in an "objectively reasonable" manner

> if it should appear that the affidavit failed to describe with particularity the place to be searched and the thing to be seized, or was untrue, misleading, or that the judicial officer merely acted as a rubber stamp for the police, then public policy would require suppression as the essential purpose of the warrant would have been defeated.

846 S.W.2d at 688.

In the case at bar, critical evidence adduced by the Commonwealth at the suppression hearing and contained in the Uniform Citation is at odds with the information contained in the affidavit. The court assumes that the preparer of the affidavit misunderstood the officer and that the officer failed to pick up the inaccuracy when reading and signing the affidavit. All information was supplied by the same officer who was forthright about the inaccuracy at the hearing. Nevertheless, the affidavit was misleading and included inaccurate statements, and the "good faith" exception should not be applied when such a critical piece of information is relied upon in the issuance of a search warrant.

In conclusion, considering the part of the language in the affidavit which must be excluded by contradictory testimony under oath, and the magistrate being permitted only to look to the four corners of the affidavit, there was not enough evidence to support a finding of probable cause under *Smith*. There was no nexus between the finding of a singular rock of crack cocaine in McClain, Jr.'s vehicle, the only other evidence listed in the affidavit, and the unconnected activity at McClain, Sr.'s home, therefore the warrant must be invalidated. Lastly, the good faith exception in *Leon* and *Crayton* does not apply because the affidavit was misleading and the officer's reliance on this warrant is not objectively reasonable. Therefore, the Defendant's motion to quash

> the search warrant and suppress evidence is hereby granted.

This appeal follows.[2]

In *Beemer v. Commonwealth*, 665 S.W.2d 912 (Ky. 1984), the Supreme Court of Kentucky adopted the "totality of the circumstances" test for the issuance of a search warrant as set forth by the United States Supreme Court in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Our review of a search warrant is described by the Supreme Court of Kentucky in *Commonwealth v. Pride*, 302 S.W.3d 43, 49 (Ky. 2010):

> The proper test for appellate review of a suppression hearing ruling regarding a search pursuant to a warrant is to determine first if the facts found by the trial judge are supported by substantial evidence, RCr 9.78, and then to determine whether the trial judge correctly determined that the issuing judge did or did not have a "substantial basis for ... conclud[ing]" that probable cause existed. *Gates*, 462 U.S. at 236, 103 S.Ct. 2317; *see also Beemer*, 665 S.W.2d at 915 (applying the "substantial basis" test to the decision of the warrant-issuing judge to determine if there was probable cause). In doing so, all reviewing courts must give great deference to the warrant-issuing judge's decision. *Gates*, 462 U.S. at 236, 103 S.Ct. 2317. We also review the four corners of the affidavit and not extrinsic evidence in analyzing the warrant-issuing judge's conclusion. *Commonwealth v. Hubble*, 730 S.W.2d 532 (Ky. App. 1987).

[2] On January 22, 2010, the Defendant was charged in a separate indictment (10-CR-00001) with trafficking in a controlled substance (cocaine), trafficking in marijuana, use or possession of drug paraphernalia, and receiving stolen property (firearm). These charges all apparently arose from evidence seized during the search on July 30, 2009. The Defendant moved to suppress the evidence forming the basis for the charges, and the circuit court held that motion in abeyance pending a ruling in the present appeal.

Pride, 302 S.W.3d at 49 (footnotes omitted). Because there is no allegation that any factual findings are at issue and the court's findings as to the applicable facts are supported by substantial evidence, our review is confined to whether the circuit court properly suppressed the evidence obtained with the search warrant in this case.

The constitutional provision underpinning our decision in this case is Section 10 of the Kentucky Constitution, which states that "no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." In *Beckam v. Commonwealth*, 284 S.W.3d 547, 549 (Ky. App. 2009), this Court recently set forth the law applicable to the issue before us:

> An affidavit supporting a search warrant must "'reasonably describe the property or premises to be searched *and state sufficient facts to establish probable cause for the search of the property or premises*.'" *Guth v. Commonwealth*, 29 S.W.3d 809, 811 (Ky. App. 2000) (emphasis added) (quoting *Coker v. Commonwealth*, 811 S.W.2d 8, 9 (Ky. App. 1991)). The test for probable cause is whether, under the totality of the circumstances, a fair probability exists that contraband or evidence of a crime will be found in a particular place. *Moore v. Commonwealth*, 159 S.W.3d 325, 329 (Ky. 2005). When reviewing the issuance of a search warrant, we must give great deference to the warrant-issuing judge's findings of probable cause and must not reverse unless the court arbitrarily exercised its discretion. *Id*.

For its first argument, the Commonwealth addresses the validity of the affidavit and warrant, suggesting that the circuit court implicitly held that the documents at issue were facially valid. The Defendant does not appear to contest

that the warrant was valid on its face. Therefore, having reviewed Sheriff Boggs' statements in the affidavit, we agree with the Commonwealth that the affidavit for the search warrant was facially valid because it sufficiently described the property to be searched and stated facts sufficient to establish probable cause.

Turning to the second argument, the Commonwealth contends that in light of the finding that the affidavit was facially valid, the circuit court applied an incorrect standard when it held that a mere false statement invalidated the search. It argues that it is not enough to show that an affidavit contains inaccurate information before it may be held invalid.

We begin our analysis of this issue with the acknowledgement that "[t]here is, of course, a presumption of validity with respect to the affidavit supporting the search warrant." *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 2684, 57 L. Ed. 2d 667 (1978). In *Commonwealth v. Smith*, 898 S.W.2d 496 (Ky. App. 1995), this Court set out the proper standard to follow when analyzing a facially valid warrant obtained by means of an allegedly inaccurate affidavit:

> The correct standard is that set out in *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). To attack a facially sufficient affidavit, it must be shown that (1) the affidavit contains intentionally or recklessly false statements, and (2) the affidavit, purged of its falsities, would not be sufficient to support a finding of probable cause. The same basic standard also applies when affidavits omit material facts. An affidavit will be vitiated only if the defendant can show that the police omitted facts with the intent to make, or in reckless disregard of whether the omission made, the affidavit misleading *and* that the affidavit, as supplemented by the omitted information, would not have been sufficient to support a finding of probable

> cause. *United States v. Sherrell*, 979 F.2d 1315, 1318 (8th Cir. 1992); *State v. Garrison*, 118 Wash.2d 870, 872-873, 827 P.2d 1388, 1390 (1992).

Smith, 898 S.W.2d at 503.

At issue in this case is the following line from Sheriff Boggs' statement in the affidavit: "The driver [McClain Jr.] of the 4-wheeler stated that he had just come from his father's house located at 7032 Water Tower Road, Maysville, KY." However, in the uniform citation introduced at the suppression hearing, Sheriff Boggs reported that McClain Jr. stated to him "that he had come from 'over there[.]'" During the suppression hearing, Sheriff Boggs testified that McClain Jr.'s statements to him matched those as reported in the uniform citation. He further stated that he "took ['over there'] to mean that he was at his father's residence over on Water Tower Road." He then testified that Water Tower Road is approximately one mile from the location of the stop on Olivet Church Road.

The Commonwealth contends that the circuit court did not find that the affidavit contained an intentionally or recklessly false statement. Rather, the court merely found that it was a major inaccuracy when Sheriff Boggs stated his understanding of the term "over there" rather than using the exact words McClain Jr. had used. The Defendant, on the other hand, points out that Sheriff Boggs did not state in the affidavit that such was only his understanding of what McClain Jr. said to him. Instead, Sheriff Boggs swore that those were McClain Jr.'s words to him.

In *Franks v. Delaware*, the United States Supreme Court described what is necessary for purposes of the first prong of the test:

> There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

438 U.S. 154, 171, 98 S. Ct. 2674, 2684.

While not specifically stated by the circuit court, Sheriff Boggs' sworn statement that McClain Jr. told him that he had just come from his father's Water Tower Road residence was at best recklessly false. Sheriff Boggs deliberately chose not to include McClain Jr.'s actual words or to explain that the statement in the affidavit was his understanding of what McClain Jr. meant when he stated he had come from "over there." In any event, Sheriff Boggs' statement in the search warrant was false and misleading, and because it was at least recklessly false, it was sufficient to come within the ambit of *Franks v. Delaware*. Therefore, we disagree with the Commonwealth's argument that the circuit court erred in finding that the affidavit contained a major inaccuracy or utilized the wrong standard.

The Commonwealth's next argument addresses the second prong of the *Franks v. Delaware* analysis: namely, whether the affidavit supports a finding of probable cause once the false statement is purged. The Commonwealth contends

that even without that statement, the affidavit contains a sufficient basis for a probable cause finding. We disagree.

The review of a search warrant by the courts is well settled in the Commonwealth. The Supreme Court of Kentucky provided a summary of the applicable law in *Moore v. Commonwealth*, 159 S.W.3d 325 (Ky. 2005):

> Our review of a search warrant must give great deference to the warrant-issuing judge's findings of probable cause and should not be reversed unless arbitrarily exercised. Courts should review the sufficiency of an affidavit underlying a search warrant in a commonsense, rather than hypertechnical, manner. The traditional standard for reviewing an issuing judge's finding of probable cause has been that so long as the magistrate had a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing, the Fourth Amendment requires no more. U.S.C.A. CONST. AMEND. 4. *United States v. Miller*, 314 F.3d 265, (6th Cir. 2002), *reh'g and suggestion for reh'g denied*, *cert. denied*, 539 U.S. 908, 123 S.Ct. 2261, 156 L.Ed.2d 121; *see also United States v. Ware*, 338 F.3d 476 (6th Cir. 2003).
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> Whether probable cause exists is determined by examining the totality of the circumstances. *United States v. Hammond*, 351 F.3d 765 (6th Cir. 2003). Furthermore, the test for probable cause is whether there is a fair probability that contraband or evidence of a crime will be found in a particular place. *See Miller*, *supra*. Probable cause does not require certainty that a crime has been committed or that evidence will be present in the place to be searched. *United States v. Hall*, 8 F.App. 529, (5th Cir. 2001), *cert. denied*, 536 U.S. 961, 122 S.Ct. 2668, 153 L.Ed.2d 841 (2002).

Moore, 159 S.W.3d at 329. "[A] judge is bound by the four corners of the affidavit when determining whether to issue or deny a search warrant." *Smith v. Commonwealth*, 323 S.W.3d 748, 753 (Ky. App. 2009).

The Commonwealth contends that even without McClain Jr.'s statement that he had just come from the Defendant's residence, the affidavit contained enough other information to justify issuance of the warrant. It argues that the finding of drugs in the ATV corroborated reports that McClain Jr. was involved in drug trafficking through transporting drugs from the Defendant's residence on Water Tower Road to Olivet Church Road. On the other hand, the Defendant disputes that sufficient facts were presented in the affidavit to tie the drugs found with McClain Jr. to any suspected drug trafficking at the Water Tower Place residence. He points out that only a small amount of drugs indicative of personal use was found on McClain Jr.; that no other indications of drug trafficking were found on the ATV, such as scales, baggies, or large amounts of cash; and that nothing suggested that additional contraband tied to the small amount of drugs recovered from the ATV would be found at the Defendant's residence.

We agree with the circuit court and the Defendant that the affidavit, purged of McClain Jr.'s statement, failed to establish a nexus between the Defendant's residence and the evidence of drugs and drug trafficking Sheriff Boggs was seeking. "To justify a search, the circumstances must indicate why evidence of illegal activity will be found 'in a particular place.' There must, in other words, be a 'nexus between the place to be searched and the evidence sought.'" *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (citing *United States v. Van Shutters*, 163 F.3d 331, 336-37 (6th Cir. 1998)). Sheriff Boggs found only a small amount of drugs on McClain Jr.'s ATV and did not find any indication of drug

trafficking, despite the reports he had received. Furthermore, the Defendant's residence on Water Tower Road was some distance away from where McClain Jr. was stopped. Finally, the address McClain Jr. provided to Sheriff Boggs was not the Water Tower Road address, but an address on East Main Street in Maysville. Accordingly, we agree with the circuit court's holding that the search warrant, when purged of the false statement, failed to establish the requisite probable cause to search the Defendant's residence based upon the totality of the circumstances.

For its final argument, the Commonwealth contends that the circuit court should have applied the *Leon* good faith exception to the exclusionary rule and not have suppressed the evidence seized pursuant to the invalid warrant. The Defendant argues that the exception is not available in this case.

In *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), the United States Supreme Court enunciated an exception to the exclusionary rule when evidence was obtained in violation of the Fourth Amendment:

> We conclude that the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion. We do not suggest, however, that exclusion is always inappropriate in cases where an officer has obtained a warrant and abided by its terms. . . . [T]he officer's reliance on the magistrate's probable-cause determination and on the technical sufficiency of the warrant he issues must be objectively reasonable, *cf. Harlow v. Fitzgerald*, 457 U.S. 800, 815-819, 102 S.Ct. 2727, 2737-2739, 73 L.Ed.2d 396 (1982), and it is clear that in some circumstances the officer will have no

> reasonable grounds for believing that the warrant was properly issued.

Leon, 468 U.S. at 922-23, 104 S.Ct. at 3420 (footnotes omitted). The Sixth Circuit Court of Appeals described this exception in *United States v. Van Shutters*, 163 F.3d 331 (6th Cir. 1998):

> We have articulated that *Leon* stands for the proposition that "the exclusionary rule 'should be modified so as not to bar the admission of evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective.'" *United States v. Weaver*, 99 F.3d 1372, 1380 (6th Cir. 1996) (quoting *Leon*, 468 U.S. at 905, 104 S.Ct. 3405). We have also noted that the "good faith" exception of *Leon* is not boundless and is inappropriate in at least four circumstances:
>
> > [F]irst, if the issuing magistrate "was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth," [*Leon*, 468 U.S.] at 914, 104 S.Ct. at 3416; second, if "the issuing magistrate wholly abandoned his judicial role," *id*; third, if the affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," *id*. at 915, 104 S.Ct. at 3416-17 (citations omitted), or in other words, where "the warrant application was supported by [nothing] more than a 'bare bones' affidavit," *id*.; and fourth, if the "warrant may be so facially deficient-i.e., failing to particularize the place to be searched or the things to be seized ...," *id*. at 923, 104 S.Ct. at 3421 (citations omitted).
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> *Weaver*, 99 F.3d at 1380 (brackets added; parentheticals in original). We have defined a "bare bones" affidavit as one that "states suspicions, or conclusions, without providing some underlying factual circumstances

> regarding veracity, reliability, and basis of knowledge[.]" *Id*. at 1378.

Van Shutters, 163 F.3d at 337.

The Supreme Court of Kentucky adopted the *Leon* good faith exception in *Crayton v. Commonwealth*, 846 S.W.2d 684 (Ky. 1992), holding that the exception did not violate Section 10 of the Kentucky Constitution and stating:

> [O]n motion for suppression, if it should appear that the affidavit failed to describe with particularity the place to be searched and the thing to be seized, or was untrue, misleading, or that the judicial officer merely acted as a rubber stamp for the police, then public policy would require suppression as the essential purpose of the warrant would have been defeated. Whether by virtue of deceit or indifference, when it appears that the judicial function contemplated by Section 10 has not been discharged, suppression is available. In other circumstances, however, and when it appears that the affidavit was made in good faith but the warrant erroneously issued by virtue of judicial error, neither the Constitution nor sound public policy requires suppression of the evidence.

Crayton, 846 S.W.2d at 688.

Turning to the present case, the circuit court declined to apply the *Leon* good faith exception, pointing to discrepancy between the information in the affidavit and the evidence adduced at the suppression hearing as well as in the uniform citation, and the fact that Sheriff Boggs both supplied the information for the affidavit and testified about the inaccuracy at the suppression hearing. The Commonwealth argues that the circuit court incorrectly found that Sheriff Boggs' reliance on the information was not objectively reasonable because it included false or misleading information. Rather, it contends that his reliance was

objectively reasonable because it was based on his interpretation of his conversation with McClain Jr. The Defendant, on the other hand, disagrees that Sheriff Boggs' reliance on the information in the affidavit was objectively reasonable.

We agree with the Defendant and the circuit court that Sheriff Boggs did not act in good faith when he included misleading information in the search warrant affidavit. His reliance on that information cannot be deemed objectively reasonable, despite the Commonwealth's argument that it was reasonable because it was based on his interpretation of the conversation he had with McClain. The fact remains that Sheriff Boggs chose to include misleading information in his affidavit, and he cannot now rely upon his interpretation of McClain Jr.'s words to form a good faith basis for his reliance on the statement in the affidavit he knew was misleading. Accordingly, the circuit court correctly declined to apply the *Leon* good faith exception in this case and did not abuse its discretion in granting the Defendant's motions to quash the search warrant and to suppress evidence.

For the foregoing reasons, the order of the Mason Circuit Court is affirmed.

ALL CONCUR.

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