

NOTICE

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2017 IL App (4th) 160148-U

NO. 4-16-0148

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 15, 2017

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
JAMES H. ELLIS,)	No. 15CF179
Defendant-Appellee.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court reversed, finding the good-faith exception applied to preclude the suppression of evidence seized in a search of defendant's residence.
- ¶ 2 In July 2015, the State charged defendant, James H. Ellis, by information with residential burglary (count I) (720 ILCS 5/19-3(a) (West 2014)), theft (count II) (730 ILCS 5/16-1(a)(1) (West 2014)), unlawful possession of a weapon by a felon (count III) (720 ILCS 5/24-1.1(a) (West 2014)), unlawful possession of ammunition by a felon (count IV) (720 ILCS 5/24-1.1(a) (West 2014)), unlawful possession of a firearm without a requisite firearm owner's identification (FOID) card (count V) (430 ILCS 65/2(a)(1) (West 2014)), unlawful possession of firearm ammunition without a requisite FOID card (count VI) (430 ILCS 65/2(a)(2) (West 2014)), unlawful possession of a hypodermic syringe (count VII) (720 ILCS 635/1 (West 2014)), and unlawful possession of drug paraphernalia (count VIII) (720 ILCS 600/3.5(a) (West 2014)).

In October 2015, defendant filed a motion to suppress evidence seized from his residence, arguing the search warrant affidavit did not establish probable cause for the search. In December 2015, the trial court granted defendant's motion, finding (1) the search warrant was issued without probable cause and (2) the good-faith exception did not apply.

¶ 3 On appeal, the State argues the trial court erred in granting defendant's motion to suppress evidence. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 On July 3, 2015, Fairbury police lieutenant Robert McCormick, as the affiant, sought a warrant to search a residence located at 305 South Williams Street, in Forrest, Livingston County, Illinois, "being occupied by [defendant]." The complaint for search warrant listed the following property to be seized:

"Black Nintendo Play[S]tation 3 (PS3) console with 'Turtle Beach' oval sticker attached[;] Black Nintendo Play[S]tation 4 (PS4) console with serial number #MB096666173[;] 32" Westinghouse colored flat[-]screen television[;] Black Play[S]tation handheld controllers[;] camouflaged Play[S]tation controller with silver buttons[;] Play[S]tation console wires, cables, [and] connectors[;] Play[S]tation games to include [] Far Cry 4, Call of Duty Ghost, Call of Duty Black OPS 1 & 2, Assassins Creed Unity, Assassins Creed Black Flag, Shadow of Murder, Battlefield 4, Dying Light, [and] Madden 08[; and] [a]ny other evidence relating to the offense(s) of [possession of stolen property and residential burglary]."

¶ 6 McCormick stated he had probable cause to believe, based upon the facts provided in his affidavit, the above listed items were "now located upon the premises set forth above." In his affidavit, McCormick stated as follows:

"1. I, Lt. Robert McCormick, am a Police Officer for the Fairbury Police Department;

2. I, Lt. Robert McCormick have been informed by [Officer] Graves that a burglary had occurred from a residence located at 308 S. Williams St., Forrest, Livingston County[;]

3. I, Lt. Robert McCormick had been advised that items taken during the burglary included several Nintendo Play[S]tation console units along with games, cords, controllers, and a flat- screen T.V.[;]

4. I, Lt. Robert McCormick was contacted by Nisa Schaffer[,] the victim and resident from 308 S. Williams St.[.], Forrest, Livingston County, who advised she had received text messages from Jamie N. Ellis inquiring about specific items taken from the burglary. Jamie N. Ellis became aware that items had been taken from 308 S. Williams St.[,] Forrest, Livingston County[,] due to seeing it posted on Facebook on 7-3-2015[;]

5. I, Lt. Robert McCormick, spoke with Jamie Ellis who advised the previous evening that [defendant] came to her apartment and had in his possession a Nintendo Play[S]tation 4 game, Battlefield 4. Jamie N. Ellis advised [defendant] that her children's Play[S]tation was a Play[S]tation 3. [Defendant] stated to Jamie N. Ellis that he had a Play[S]tation 4 he would give her. Jamie N. Ellis

asked [defendant] how he had a Play[S]tation 4. [Defendant] stated he had helped a subject move who had given him the Play[S]tation 4.

6. I, Lt. Robert McCormick was informed by Jamie N. Ellis that prior to speaking to me on 7-3-2015[,] she had been at the residence at 305 S. Williams St., Forrest, Livingston County[,] and had seen several Nintendo Play[S]tation consoles, [g]ames[,] and a flat[-]screen T.V. Jamie N. Ellis stated that she had seen the items in the residence at [approximately 1 p.m.] on 7-3-2015."

¶ 7 McCormick presented the complaint for search warrant to a judge in Livingston County. The record does not reflect the name of the issuing judge and the signature on the warrant is not legible. The judge issued the search warrant at approximately 9:28 p.m. on July 3, 2015, and officers executed the warrant at approximately 10:17 p.m. On July 6, 2015, the State charged defendant with residential burglary (count I) (720 ILCS 5/19-3(a) (West 2014)), theft (count II) (730 ILCS 5/16-1(a)(1) (West 2014)), unlawful possession of a weapon by a felon (count III) (720 ILCS 5/24-1.1(a) (West 2014)), unlawful possession of ammunition by a felon (count IV) (720 ILCS 5/24-1.1(a) (West 2014)), unlawful possession of a firearm without a requisite FOID card (count V) (430 ILCS 65/2(a)(1) (West 2014)), unlawful possession of firearm ammunition without a requisite FOID card (count VI) (430 ILCS 65/2(a)(2) (West 2014)), unlawful possession of a hypodermic syringe (count VII) (720 ILCS 635/1 (West 2014)), and unlawful possession of drug paraphernalia (count VIII) (720 ILCS 600/3.5(a) (West 2014)). Defendant pleaded not guilty.

¶ 8 In October 2015, defendant filed a motion to suppress "all information, statements[,] and material obtained upon detention, search[,] and arrest" of defendant on July 3, 2015. Defendant argued "[t]he warrant was based upon an affidavit which did not provide

proper probable cause." Specifically, defendant argued his sister's statement to McCormick that she went to defendant's house on July 3, 2015, and "had seen several Nintendo Play[S]tation consoles, [g]ames[,] and a flat[-]screen T.V." lacked specificity.

¶ 9 In December 2015, the trial court conducted a hearing on defendant's motion to suppress evidence. The parties agreed the issue presented in defendant's motion required the court to examine only the information within the four corners of the complaint for search warrant and the search warrant itself. Defendant argued, although Jamie N. Ellis (defendant's sister) reported seeing "several Nintendo Play[S]tation consoles, [g]ames[,] and a flat-screen T.V." at defendant's residence, there would be no limit on the number of residences that could be searched based on the assertion the residence had on its premises a PlayStation console and flat-screen television. After considering the arguments of the parties, Judge Jennifer H. Bauknecht found the complaint for search warrant "very, very vague," and therefore, it failed to "connect the alleged items missing or stolen to the items in [defendant's residence]." Thus, the court found "no substantial basis for concluding probable cause nor would the good-faith exception apply because the warrant is so lacking in regards to the facts." In January 2016, the State filed a motion to reconsider, which the court denied.

¶ 10 This appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 On appeal, the State argues the trial court erred in finding the search warrant was unsupported by probable cause. The State also argues, even if the search warrant was deficient in establishing probable cause, the officer who provided the affidavit in support of the search warrant acted in good faith, and therefore, the evidence should not have been suppressed. In the present case, we need not determine whether the facts in the affidavit established probable cause

for the warrant because the officer's conduct clearly falls within the good-faith exception to the exclusionary rule.

¶ 13 The good-faith exception to the exclusionary rule was first announced in *United States v. Leon*, 468 U.S. 897 (1984), adopted by our supreme court in *People v. Stewart*, 104 Ill. 2d 463, 477, 473 N.E.2d 1227, 1233 (1984), and codified in the Code of Criminal Procedure of 1963 (Code). Section 114-12(b) of the Code provides, in relevant part:

"(1) If a defendant seeks to suppress evidence because of the conduct of a peace officer in obtaining the evidence, the State may urge that the peace officer's conduct was taken in a reasonable and objective good faith belief that the conduct was proper and that the evidence discovered should not be suppressed if otherwise admissible. The court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer who acted in good faith.

(2) 'Good faith' means whenever a peace officer obtains evidence:

(i) pursuant to a search or an arrest warrant obtained from a neutral and detached judge, which warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer reasonably believed the warrant to be valid[.]"
725 ILCS 5/114-12(b) (West 2014).

¶ 14 The good-faith exception stands for the proposition that evidence obtained by officers in objectively reasonable good-faith reliance upon a search warrant is admissible, even though the warrant was unsupported by probable cause. *Leon*, 468 U.S. at 922. We acknowledge "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. Suppression remains an appropriate remedy if (1) the issuing judge was "misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth"; (2) the issuing judge "wholly abandoned his judicial role"; (3) the affidavit in support of the warrant was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or (4) the warrant is "so facially deficient *** that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U.S. at 923.

¶ 15 We review *de novo* whether the good-faith exception applies. *People v. Turnage*, 162 Ill. 2d 299, 305, 642 N.E.2d 1235, 1238 (1994).

¶ 16 The State argues the good-faith exception applies here because the officer relied on a "facially valid warrant" later deemed to be invalid based on a lack of probable cause. The State asserts, "McCormick's conduct was appropriate in all respects and exclusion of the evidence obtained pursuant to the search warrant would not further the purpose of the exclusionary rule." See *Leon*, 468 U.S. at 918 (the exclusion of evidence is without deterrent effect where an officer acts in objectively reasonable reliance on a facially valid warrant that is later found to have been issued without probable cause). Defendant argues the court properly excluded evidence "where the search warrant was so lacking in probable cause as 'to render official belief in its existence entirely unreasonable.'" (quoting *Leon*, 468 U.S. at 923)

¶ 17 This case presents no evidence, or even an assertion, McCormick gave a knowingly false affidavit or otherwise acted in bad faith. In fact, the trial court indicated the law enforcement officers were not engaged in "some improper conduct." The warrant was issued by a proper authority, and no evidence suggests the issuing magistrate had abandoned his neutral judicial role. Defendant seemingly refers to the third scenario in *Leon* under which objective

good-faith belief does not exist, characterizing the affidavit as " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " (quoting *Leon*, 468 U.S. at 923) We disagree.

¶ 18 Here, the complaint for a search warrant requested the issuance of a warrant for 305 South Williams Street, in Forrest, Livingston County. Contrary to defendant's assertion, the complaint provided a very specific description of the property to be seized. McCormick's affidavit in support of the complaint lacked particularity regarding the items defendant's sister reported seeing in defendant's home. However, McCormick did state he had been informed by another police officer of a burglary from a residence located at 308 South Williams Street, in Forrest, Livingston County; he was advised of the items taken during the burglary; defendant's sister became aware of the burglary and texted with the victim of the burglary regarding the items that were stolen; defendant's sister went to defendant's home; and she reported to McCormick she had seen "several" items whose descriptions matched the reportedly stolen items from 308 South Williams Street, in Forrest, Livingston County. Finally, McCormick averred his belief that the listed items to be seized (Black Nintendo Playstation 3 console with "Turtle Beach" oval sticker attached; Black Nintendo Playstation 4 console with serial number #MB096666173; 32" Westinghouse colored flat-screen television; etc.) were located on defendant's premises. Assuming, *arguendo*, this fell short of probable cause, the affidavit was not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we reverse the trial court's judgment suppressing the evidence and remand for further proceedings consistent with the views expressed herein.

¶ 21

Reversed and remanded.