

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

APPELLEE,

vs.

HOFFMAN,

APPELLANT.

13-0688

On Appeal from the
Lucas County Court
of Appeals, Sixth
Appellate District

Court of Appeals
Case No. L-12-1262

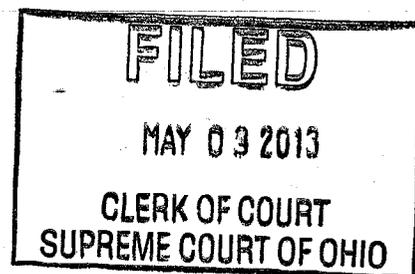
NOTICE OF APPEAL OF APPELLANT BRANDON HOFFMAN

David Klucas (0041188)
1900 Monroe Street
Toledo, Ohio 43604
PH: (419) 255-1102
FX: (419) 255-1415
DaveK@buckeye-access.com

COUNSEL FOR APPELLANT BRANDON HOFFMAN

Evy M. Jarrett (COUNSEL OF RECORD)
Frank H. Spryszak
Assistant Lucas County Prosecuting Attorneys
700 Adams Street
Toledo, OH 43604
PH: (419) 213-4700
FX: (419) 213-4595
Ejarrett@co.lucas.oh.us

COUNSEL FOR APPELLEE STATE OF
OHIO



Notice of Appeal of Appellant Brandon Hoffman

Appellant Brandon Hoffman gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. L-12-1262 on 22 March 2013. A copy of the decision and judgment is attached to this Notice of Appeal.

This case involves a felony, raises a substantial constitutional question, and is one of public or great general interest.

Copies of prior judgment entries appointing counsel for Mr. Hoffman are attached.

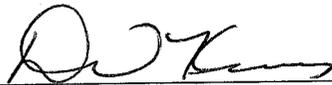
Respectfully Submitted,



David Klucas
Attorney for Appellant Brandon Hoffman

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by email transmission to counsel for the appellee, Ms. Evy M. Jarrett, Assistant Lucas County Prosecuting Attorney, Ejarrett@co.lucas.oh.us, 700 Adams Street, Toledo, OH 43604 on May 23, 2013.



David Klucas
Counsel for Appellant Brandon Hoffman

FILED
COURT OF APPEALS

2013 MAR 22 A 8:04

COMMON PLEAS COURT
BERNIE OULTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1262

Appellee

Trial Court No. CR0201102970

v.

Brandon Lee Hoffman

DECISION AND JUDGMENT

Appellant

Decided:

MAR 22 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, Frank H. Spryszak and Evy M. Jarrett, Assistant Prosecuting Attorneys, for appellee.

David Klucas, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant, Brandon Hoffman's, motion to suppress. For the reasons set forth below, this court affirms the judgment of the trial court.

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MAR 22 2013

{¶ 2} Appellant presents one assignment of error:

The trial court committed reversible error when it denied Mr. Hoffman's motion to suppress. (R. 63)

{¶ 3} On December 6, 2011, appellant was indicted for aggravated murder and aggravated robbery. Appellant filed a motion to suppress arguing that his arrest was illegal. A suppression hearing commenced on June 8, 2012.

{¶ 4} Toledo police officer, Alexander Schaller, testified that he was on duty on November 26, 2011, when he was dispatched to a residence on Lorain Street in Toledo, Ohio. Specifically, a concerned neighbor had reported that a man was lying on the floor in his locked house. The fire department unlocked the house for Schaller and his fellow officers. Inside, they found the body of Scott Holzauer, who appeared to have been beaten to death. A crow bar was impaled in his skull. Schaller testified that he interviewed two of Holzauer's neighbors who indicated that a man named "Brandon" had recently visited Holzauer at his home, and that "Brandon" had recently borrowed a crow bar from Holzauer. One of the neighbors gave Schaller a description of "Brandon."

{¶ 5} Toledo police detective Jeffery Clark testified that upon entering Holzauer's home, he noticed an empty gun safe. A friend of Holzauer's told Clark that Holzauer had recently considered selling a gun to someone named "Brandon." Clark learned that "Brandon" used to live across the street from Holzauer. When investigators entered that address into their computer, they found that Brandon Hoffman used to live

across the street. The computer also indicated that Hoffman had three active warrants for misdemeanor offenses.

{¶ 6} Clark testified that Hoffman was now considered to be “a strong person of interest” in the death of Holzauer. Police were sent to Hoffman’s current address to arrest appellant for the active warrants. Though police obviously wanted to talk to Hoffman regarding Holzauer’s death, Clark testified that they were not yet ready to arrest him for aggravated murder.

{¶ 7} When police arrived at Hoffman’s residence, they could see Hoffman inside, through a window. A man opened the door for the officers and they immediately arrested Hoffman for the outstanding warrants. During his arrest, Hoffman was found to be concealing a .45 caliber handgun, later determined to be Holzauer’s property, and Holzauer’s cell phone was found in close proximity to Hoffman. He was ultimately arrested for the aggravated murder of Holzauer.

{¶ 8} Hoffman’s sole assignment of error centers around the validity of the misdemeanor warrants which he claims led police to his location. Specifically, Hoffman contends that the warrants lacked probable cause, and thus, were invalid, thereby undermining the legitimacy of the evidence collected when he was arrested and all other evidence subsequently collected against him.

{¶ 9} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998).

During a suppression hearing, the trial court assumes the role of the trier of fact and is, therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992); *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996). As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). The reviewing court must then review the trial court's application of the law de novo. *State v. Russell*, 127 Ohio App.3d 414, 416, 713 N.E.2d 56 (9th Dist.1998).

{¶ 10} Crim.R. 4(A)(1) provides for the issuance of an arrest warrant following the filing of a complaint. The rule states in pertinent part:

If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

{¶ 11} The authority issuing the warrant must judge for herself the persuasiveness of the facts relied upon by the officer-complainant to establish probable cause and should not accept without question the officer's mere conclusion that the person sought to be arrested committed the crime. *State v. Jones*, 7th Dist. No. 11 MA 60, 2012-Ohio-1301, ¶ 3. A neutral and detached judicial officer, such as a deputy clerk, but not a police officer, is the party with the final obligation to independently determine that there is probable cause to issue an arrest warrant. *Id.* "In other words, the issuing authority is not a rubber-stamp for the police. Thus, the document serving as the affidavit must disclose the complainant's grounds for believing the defendant committed the offense." *Id.*

{¶ 12} "An officer seeking an arrest warrant must establish his grounds for his belief that the defendant committed the crime, and where the belief is based upon someone witnessing the offense, the affidavit or complaint should establish who witnessed the offense." *Jones* at ¶ 32, citing *Jaben v. U.S.*, 381 U.S. 214, 223-224, 85 S.Ct. 1365, 14 L.Ed.2d 345 (1965).

Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. *U.S. v. Ventresca*, 380 U.S. 102, 109, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). The complaint or affidavit in support thereof must provide the officer's answer to the question: "What makes you think that the defendant committed the offense charged?" (Emphasis added.) *Id.* at ¶ 33-34, citing *Jaben*, 381 U.S. at 224.

{¶ 13} The three warrants at issue in this case, for theft, criminal damaging and house stripping respectively, read as follows:

The defendant did take, without the consent of the owner Lamar Pittman, take siding, downspouts and gutters from the victim's rental property at 337 Chapin Toledo, Ohio 43609 City of Toledo, Lucas County.

The defendant did remove, dismantle siding, gutters, downspouts to a house at 337 Chapin Toledo Ohio 43609, this act caused substantial damage to the property. This was without the authorization of the owner/victim Lamarr (sic) Pittmon, City of Toledo Lucas County.

The defendant did, without permission or authorization from victim/owner Lamar Pittman, take/remove siding, downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25 City of Toledo Lucas County.

{¶ 14} All three complaints fail to list the source of the information or otherwise state why the complainant thought Hoffman committed the violations. They were not accompanied by any affidavits. The complaints contain only the conclusion that Hoffman committed the violations. Also admitted into evidence was a procedural document Toledo Municipal Court deputy clerks use when issuing warrants. Nowhere in the document are the clerks instructed about making a finding of probable cause.

{¶ 15} At the suppression hearing, the deputy clerk of the Toledo Municipal Court who signed and issued the three arrest warrants testified that she never asks officers

seeking warrants why they believe that the subject of the warrant was the person who in fact committed the offense. She specifically testified, regarding the warrants in this case, that she made no probable cause determination. When asked by defense counsel whether or not she even knew what probable cause was, she replied, “no, I don’t.”

{¶ 16} By the deputy clerk’s own admission, the misdemeanor warrants at issue in this case were issued without a probable cause determination and therefore, they are invalid.

{¶ 17} But beyond that, it has long been held, and we agree, that a mere recitation of the statutory elements of the crime is not sufficient to support a finding that probable cause exists. *Giordenello v. United States*, 357 U.S. 480, 485, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); *see also State v. Sharp*, 109 Ohio App.3d 757, 760, 673 N.E.2d 163 (12th Dist.1996); *State v. Zinkiewicz*, 67 Ohio App.3d 99, 108, 585 N.E.2d 1007 (2d Dist.1990). Such “bare-bones” complaints are invalid. *City of Centerville v. Reno*, 2d Dist. No. 19687, 2003-Ohio-3779, ¶ 25, *State v. Rodriguez*, 64 Ohio App.3d 183, 187, 580 N.E.2d 1127 (6th Dist.1989).

{¶ 18} In reaching this conclusion, we are mindful of this court’s decision in *State v. Overton*, 6th Dist. No. L-99-1317, 2000 WL 1232422 (Sept. 1, 2000). In *Overton*, an arrest warrant was found valid despite the fact that the complaint merely recited the statutory elements of a crime and contained no information indicating the officer saw the crime committed or that the officer was informed by someone else that the subject of the warrant committed the crime. The United States Supreme Court denied writ of certiorari.

Overton v. Ohio, 534 U.S. 982, 122 S.Ct. 389, 151 L.Ed.2d 317 (2001). Justice Breyer, joined with three other justices, issued a compelling statement respecting the denial of the petition for writ of certiorari.

This “complaint” sets forth the relevant crime in general terms, it refers to *Overton*, and it says she committed the crime. But nowhere does it indicate how Detective Woodson knows, or why he believes, that *Overton* committed the crime. This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. * * * I consequently conclude that the city of Toledo clearly violated the Fourth Amendment warrant requirement. * * * I realize that we cannot act as a court of simple error correction and that the unpublished intermediate court decision below lacks significant value as precedent. Nonetheless, the matter has a general aspect. The highlighted print on the complaint * * * offers some support for *Overton*’s claims that the “complaint” is a form that the police filled in with her name and address. And that fact, if true, helps to support her claim that her case is not unique. That possibility, along with the clarity of the constitutional error, convinces me that the appropriate disposition of this case is a summary reversal.

{¶ 19} To the extent that *Overton* is inconsistent with our decision announced today, we hereby overrule *Overton*.

{¶ 20} Our analysis, however, does not end there. “The exclusionary rule operates to exclude evidence obtained by the government in violation of the United States Constitution.” *State v. Helton*, 160 Ohio App.3d 291, 2005-Ohio-1789, 826 N.E.2d 925, ¶ 14 (11th Dist.). “The purpose of this rule is to deter police misconduct.” *Id.* “The exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence that is subsequently discovered and derivative of that prior illegality.” *State v. McLemore*, 197 Ohio App.3d 726, 2012-Ohio-521, 968 N.E.2d 612, ¶ 20 (2d Dist.). Thus: “[t]he derivative-evidence rule, or fruit-of-the-poisonous-tree doctrine as it is widely known, requires suppression of evidence that was seized in a seemingly lawful manner but about which police learned because of a prior constitutional violation such as an illegal search or seizure.” *Id.*

{¶ 21} Appellant contends that police obtained Hoffman’s current address from the active misdemeanor warrants. Once they arrived at the residence to execute the arrest warrants, warrants we have determined above were invalid; they found evidence incriminating Hoffman in the murder of Holzhauser. Therefore, because the evidence was obtained by an illegal arrest, the evidence against Hoffman in this case must be suppressed unless an exception to the exclusionary rule applies.

{¶ 22} The exclusionary rule does not apply to evidence police obtain in good faith in reliance on the validity of a warrant. *See State v. Palinkas*, 8th Dist. No. 86247, 2006-Ohio-2083, ¶ 9. Under the good faith exception, we are to uphold searches when police reasonably and in good faith relied upon a warrant subsequently declared to be

invalid, because excluding evidence under such circumstances would not deter police misconduct. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *State v. Wilmoth*, 22 Ohio St.3d 251, 490 N.E.2d 1236 (1986).

{¶ 23} The exclusionary rule is not a personal right or a means to redress constitutional injury; rather, it is used to deter future violations. *Davis v. United States*, ___ U.S. ___, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). Deterrence alone is insufficient to justify the exclusionary rule, because the benefits of deterrence must outweigh the costs of excluded evidence, such as “letting guilty and possibly dangerous defendants go free.” *Leon*, 468 U.S. at 907. *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). In keeping with this principle, the exclusionary rule generally applies where police exhibit “‘deliberate,’ ‘reckless,’ or ‘grossly negligent’ disregard for Fourth Amendment rights, * * *” but not “when the police act with an objectively ‘reasonable good-faith belief’ that their conduct is lawful.” *Davis*, 131 S.Ct. at 2427. Finally, if the police conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot “pay its way.” *Id.* at 2427-2428, citing *United States v. Leon*, *supra*.

{¶ 24} Officer Schaller testified that a neighbor of Holzhauer’s mentioned that someone named “Brandon” had recently been to Holzhauer’s residence to purchase a gun. The neighbor gave Schaller a detailed description of “Brandon,” including the fact that “Brandon” had facial tattoos. Soon after, Schaller testified he was called to meet a police sergeant at another location. It was there that he received Brandon Hoffman’s

information, though he did not specify what kind of information he was given. He then pulled up Brandon Hoffman's picture from his vehicle computer. He testified that when he looked at the picture and saw that the person's first name was Brandon, he thought Brandon Hoffman was someone the police needed to talk to regarding the murder. He did acknowledge, however, he headed to Hoffman's address to serve the outstanding misdemeanor warrants.

{¶ 25} Detective Clark also was given the name "Brandon" by a second source at the crime scene. Clark learned from the neighbors that "Brandon" used to live across the street. Clark testified that he contacted the Police Investigative Services, back at the police station, and gave them "Brandon's" old address. He testified that someone at Investigative Services "did some computer work" and found a Brandon Hoffman linked to the address across the street. Investigative Services also told Clark that Brandon Hoffman had three active warrants. Investigative services gave Clark the address that also happened to appear on the warrants, the address where Hoffman was ultimately arrested. When asked, on redirect, whether or not the only way the police could have determined Hoffman's last known address was through the active warrant's, Clark responded "[N]o. * * * it could have been from other information."

{¶ 26} In addition to the officers who testified, there were approximately ten officers involved in this case. Much information was exchanged. The officers in this case were investigating a brutal murder and they were aware that some of the guns belonging to the victim appeared to be missing. Armed with some information they

received from the victim's neighbors, information exchange among the officers at the scene as well information from officers back at the police station, the police were led to Hoffman's residence. None of the officers testified that they read the warrants. They merely testified they knew of the active warrants and they knew Hoffman's current address. Minimal time elapsed between the discovery of the victim and Hoffman's arrest. Both Schaller and Clark testified they were concerned from a public safety standpoint as there was a recent murder and missing guns.

{¶ 27} In determining whether the exclusionary rule applies to exclude evidence obtained through an invalid warrant, the court first must determine the deterrent value of excluding evidence toward the achievement of Fourth Amendment aims and secondly, the court must weigh the social costs of exclusion. *Id.*

{¶ 28} As discussed above, it was not shown with any degree of certainty that the officers obtained Hoffman's current address from the warrants. What was shown was that the officers knew Hoffman's current address and they knew he had outstanding warrants. This information was relayed to them through sources in their own department, the type of information relied upon daily by police officers. They had no reason to doubt the validity of the warrants and thus, they acted in good faith based on the information available to them at the time. Suppressing evidence under the facts in this case would not serve to deter deliberate, reckless or illegal conduct on the part of police officers.

{¶ 29} Accordingly, the arrest of Hoffman in this case was lawful. Because the arrest of Hoffman was lawful, the items recovered from Hoffman's person and his residence are admissible. Appellant's sole assignment of error is found not well-taken.

{¶ 30} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

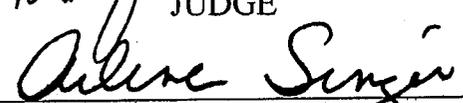
Mark L. Pietrykowski, J.

Arlene Singer, P.J.

Thomas J. Osowik, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

SCANNED

FILED
LUCAS COUNTY

2011 DEC 14 P 3: 05

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO

Plaintiff.

v.

BRANDON LEE HOFFMAN

Defendant.

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CASE NO:

G-4801-CR-0201102970-000

ORDER

JUDGE JAMES D. JENSEN

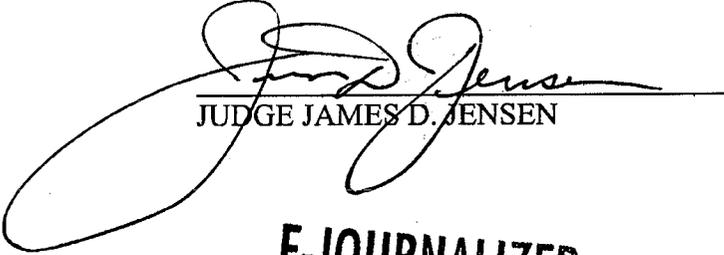
December 14, 2011. Court Reporter Mays, Assistant Prosecutor Bruce Sorg, and Defendant, BRANDON LEE HOFFMAN present in court.

Indigency hearing held. Defendant notified of application fee for appointment of counsel. DAVID L. KLUCAS appointed as counsel. Counsel present and arraignment held.

Defendant acknowledged receipt of a copy of the indictment, waived any defects as to time, place or manner of service, and waived its reading in open Court. Defendant entered a plea of Not Guilty

Matter set for pre-trial on January 18, 2012 at 8:30a.m. Motion for Investigative Assistance (motion 1) is granted. See Order.

Bond hearing held. Bond ordered set at 1 million. Defendant waived time constraints in writing and in open court.


JUDGE JAMES D. JENSEN

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DEC 15 2011

Corrections as to count 2 to be served concurrently with count 1.

Defendant notified that under federal law 18 USC 922(g) and state law, as a result of a felony conviction or a misdemeanor offense of violence conviction against a family or household member, defendant shall never be able to ship, use, receive, purchase, own, transport, or otherwise possess a firearm or ammunition and violation is punishable as a felony offense.

It is further ORDERED the defendant is subject to 5 years mandatory post-release control as to count 2 after the defendant's release from imprisonment pursuant to R.C. 2967.28 and 2929.14.

Defendant given notice of appellate rights under R.C. 2953.08. Defendant notified of 5 years mandatory post-release control as to count 2.

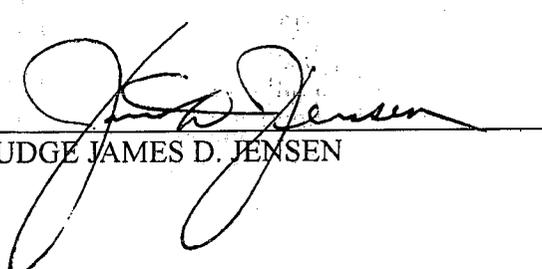
Defendant notified that if post release control conditions are violated the adult parole authority or parole board may impose a more restrictive or longer control sanction or return a defendant to prison for up to nine months for each violation, up to a maximum of 50% of the stated term originally imposed. Defendant further notified that if the violation of post release control conditions is a new felony, a defendant may be both returned to prison for the greater of one year or the time remaining on post release control, plus receive a prison term for the new felony.

Defendant granted credit for 274 days up to and including this sentencing date and granted credit for all additional in-custody days while awaiting transportation to the appropriate institution.

Defendant found to have, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law. Defendant ordered to reimburse the State of Ohio and Lucas County for such costs. This order of reimbursement is a judgment enforceable pursuant to law by the parties in whose favor it is entered. Defendant further ordered to pay the cost assessed pursuant to R.C. 9.92(C), 2929.18 and 2951.021. Notification pursuant to R.C. 2947.23 given.

David Klucas appointed as counsel for appeal purposes.

Defendant ordered remanded into custody of Lucas County Sheriff for immediate transportation to appropriate state institution.


JUDGE JAMES D. JENSEN