

ORIGINAL

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

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MEMORANDUM IN SUPPORT OF  
JURISDICTION OF APPELLANT  
BRANDON HOFFMAN

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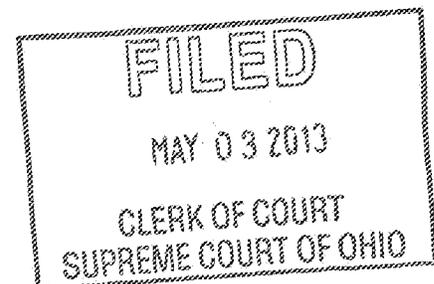


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### **Substantial Constitutional Question and Great Public Interest**

This case presents a substantial constitutional question. Relying on the good faith exception to the Exclusionary Rule found in *United States v. Leon*, 468 U.S. 895, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), and its progeny, the Sixth District Court of Appeals held that the officers arresting Mr. Hoffman reasonably relied on invalid arrest warrants issued and served without a magisterial finding of probable cause. Mr. Hoffman's arrest on these warrants led to his being charged with aggravated murder and aggravated robbery. At issue is the vitality of the fundamental requirement of probable cause which protects citizens of indiscriminate arrest. This issue is as substantial as the Constitution provides.

It is difficult to overstate the great general interest in thousands of arrest warrants obtained and served by the Toledo Police Department without a finding of probable cause. The decision of the Court of Appeals validates a 17 year practice of issuing arrest warrants without the fundamental protection of magisterial review for probable cause. The public in Toledo is arrested on the word of the police alone. This is bad for the public and generates great interest.

### **Statement of the Case and Facts**

On 11 November 2011, criminal complaints and requests for arrest warrants were filed in the Toledo Municipal Court charging Brandon Hoffman with the misdemeanor offenses of theft, criminal damaging, and house stripping prohibited. The theft complaint alleged “the defendant did take, without the consent of the owner Lamarr Pitmon, take siding, downspouts and gutters from the victims rental property at 337 Chapin Toledo, Ohio 43609 City of Toledo, Lucas County.” The criminal damaging complaint alleged “the defendant did remove, dismantled 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 Pitmon. City of Toledo Lucas County.” The complaint for house stripping prohibited alleged that “the defendant did, without permission or authorization from victim/Owner Lamar Pittmon, take/remove siding downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25/11 City of Toledo, Lucas County.”

The complainant law enforcement officer was Detective Kim Violanti of the Toledo Police Department. The complaints were prepared by Detective Violanti. She had no personal knowledge of any of the allegations in each complaint. Although Detective Violanti spoke to the victim and two potential witnesses, she made no reference to the witnesses in her complaint; the alleged victim had no firsthand knowledge of the offenses. Detective Violanti presented the three complaints to Nellie Mata, a Deputy Clerk of the Toledo Municipal Court. When presented with the complaints by Detective Violanti, Ms. Mata verified the RB number, the classification code, the signature of the officer, and administered the following oath: “Do you swear that the

statements made in this affidavit are true and is that your true and legal signature.”

The procedure for processing criminal complaints and requests for arrest warrants is reflected in a general procedure document of the Toledo Municipal Court. Ms. Mata asked Detective Violanti no questions about how she came to make the allegations in any of the three complaints. Detective Violanti indicated that since 1983, no deputy clerk ever asked her any questions about how she came to make accusations in any complaint. Ms. Mata made no probable cause determination for any of the complaints. Ms. Mata admitted that at the time she processed Detective Violanti’s complaints, she had no idea if any of the allegations were true. Ms. Mata testified that making a probable cause determination was not her job. She explained that she receives no training to make a probable cause determination, nor does she have any qualifications to make a probable cause determination. Cindy Downs, a supervisor in the Toledo Municipal Court Clerk’s Office, testified that in her 17 years, no Deputy Clerk ever made a probable cause determination before issuing an arrest warrant.

Based solely on this interaction between Detective Violanti and Ms. Mata, arrest warrants were issued for Mr. Hoffman for each of the three charged misdemeanor offenses. All three cases were administered under Toledo Municipal Court Case No. CRB11-17858.

On 26 November 2011, the dead body of Scott Holzhauser was discovered at his residence at 842 Lorain, Toledo, Ohio. Responding officers noticed there was an open gun safe that did not appear to contain any guns. Information gathered at the scene revealed that Mr. Hoffman may be source of further information. Specifically, investigating officers learned that a white male named Brandon who used to live across the street from Mr. Holzhauser had been seen at Mr. Holzhauser’s home on November 25 or “real recently”. When seen at the residence of Mr. Holzhauser the day

before the murder, Brandon was purportedly discussing purchasing one of Mr. Holzhauer's firearms and supposedly borrowed a crowbar from him. A description of Brandon was given to the police: white male, 5'8" to 5'9", 175lbs, brownish hair cut short, and tattoos on his arms and face. With this information, Toledo Police believed Brandon to be Brandon Hoffman. A warrant check on Mr. Hoffman revealed the active arrest warrants for Toledo Municipal Court Case No. CRB 11-17858.

Within a very short period of time, Mr. Hoffman was located at 333 Chapin in Toledo, Ohio, the address listed on the warrants. The warrants were served, and Mr. Hoffman was arrested. Incident to his arrest on these warrants was a search which revealed numerous items of physical evidence. Based on these items of physical evidence found during the search incident to Mr. Hoffman's arrest, a search warrant was obtained through the Toledo Municipal Court. While the search warrant was being processed, Mr. Hoffman was taken to the Safety Building and questioned by detectives about the death of Scott Holzhauer.

On 6 December 2012, Mr. Hoffman was indicted for the aggravated murder and aggravated robbery of Scott Holzhauer. On 25 April 2012, Mr. Hoffman filed a motion to suppress. In his motion, Mr. Hoffman argued generally that the officers who arrested him at the Chapin Street address lacked valid arrest warrants. On 7 June 2012, Mr. Hoffman supplemented his motion to suppress with more specific assertions of the unconstitutionality of his arrest. Mr. Hoffman maintained that no probable cause determination was made by anyone before any of the warrants were issued; that the faces of the criminal complaints on which the warrants were based failed to reveal a basis for a finding of probable cause; no independent probable cause to arrest Mr. Hoffman for any other offense existed at the time the arrest warrants were served; and a

letter sent to Mr. Hoffman by the Toledo Police Department precluded execution of the warrants until after 29 November 2011. The State filed memoranda opposing the motion.

On 8 June 2012, the motion was heard. The State elicited testimony from Kathryn Wiciak, a clerk in the Toledo Police Department Records Division; Toledo Police Officer Alexander Schaller; Toledo Police Detective Jeffery Clark; and Toledo Police Sergeant Ashley Nichols. Mr. Hoffman elicited testimony from Nellie Mata, the Deputy Clerk of the Toledo Municipal Court who issued the arrest warrants. At the conclusion of the testimony, each side was afforded the opportunity to submit final arguments in writing, and both parties filed briefs.

After all briefs were submitted, the Court ordered that Nellie Mata be recalled for additional testimony and set a date of 24 August 2012. On 22 August 2012, the Court informed the parties that the Court no longer needed additional testimony from Ms. Mata, but either side could still supplement the record with additional testimony on August 24<sup>th</sup>.

On August 24<sup>th</sup>, the State presented additional evidence and testimony from Detective Clark. Mr. Hoffman offered testimony from Cindy Downs, a supervisor in the Clerk's office of the Toledo Municipal Court. After the testimony on August 24<sup>th</sup>, all parties agreed the motion was decisional.

On 27 August 2012, the Trial Court denied Mr. Hoffman's motion to suppress. In a written opinion, the Trial Court reluctantly held that *State v. Overton*, 6<sup>th</sup> Dist. No. L-99-1317 (Sept. 1, 2000), 2000 WL 1232422, required the Court to deny the motion.

On 5 September 2012, Mr. Hoffman pleaded no contest to aggravated murder and aggravated robbery. The Court sentenced him to life in prison without parole.

Mr. Hoffman appealed the denial of his motion to suppress to the Court of Appeals for

Lucas County, Ohio. The Court of Appeals held the warrants were invalid, overruled *State v. Overton*, 6<sup>th</sup> Dist. No. L-99-1317 (Sept. 1, 2000), 2000 WL 1232422, but also ruled that the arresting officers reasonably relied on the arrest warrants in good faith. The Court of Appeals affirmed the decision of the Trial Court denying Mr. Hoffman's motion to suppress. It is from this decision that Mr. Hoffman timely appeals to this Court.

Mr. Hoffman asserts there can be no good faith reliance on a warrant issued without a magisterial finding of probable cause. In support of this proposition, Mr. Hoffman presents the following argument.

## Argument in Support of Proposition of Law

**Proposition of Law No. 1:** There can be no good faith reliance on the validity of an arrest warrant issued without a magisterial finding of probable cause.

There can be no good faith reliance of the validity of an arrest warrant issued without a magisterial finding of probable cause. This is a constitutional fact. Every reasonably well trained law enforcement officer knows that a finding of probable cause is required for an arrest warrant. In *State v. Hobbs*, 132 Ohio St.3d 43, 2012-Ohio-3886, 975 N.E.2d 965, ¶24, this Court commented that “the issue of whether the Exclusionary Rule is an appropriate remedy for an invalidly issued arrest warrant is not properly before us.” Mr. Hoffman now presents the issue for decision.

There is no dispute that the warrants for Mr. Hoffman’s arrest were invalid. The Sixth District Court of Appeals held that the warrants were issued without a neutral finding of probable cause, and the complaints supporting the warrants did not provide a basis for finding probable cause. *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶16, 17, 19. At issue is the applicability of the good faith exception to the Exclusionary Rule first articulated in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 30405, 82 L.Ed.2d 677 (1984). Mr. Hoffman contends the Court of Appeals committed reversible error when it applied the good faith exception to the systemic issuing of arrest warrants without a probable cause determination.

Initially, Mr. Hoffman asserts the absence of magisterial review before issuing the arrest warrants precludes application of the *Leon* good faith exception to exclusion. The absence of neutral magisterial review is a significant factor in this analysis. The concept of good faith

reliance on a warrant first articulated in *Leon* is preconditioned on the existence of a warrant issued by a detached magistrate. The phrase “issued by a detached and neutral magistrate” appears twice in the *Leon* syllabus and five times in the majority opinion. *Leon* at syllabus ¶1 and 1(b), 900, 913, 913 n.9, 921, 104 S.Ct. At 3409, 3415, 3415 n.9, 3419. In creating this exception, the Supreme Court made it clear that “in so limiting the suppression remedy, we leave untouched the probable-cause standard and the various requirements for valid warrant.” *Leon* at 923, 104 S.Ct. At 3421.

The absence of a probable cause determination results in a warrant on which no officer can rely. *Leon* charges police officers with a certain amount of basic knowledge, including the rudimentary knowledge of probable cause. *Id.* at 922, 104 S.Ct. At 3420. The officer in Mr. Hoffman’s case acknowledged this basic knowledge of probable cause. It is clear from the record of the Trial Court that no probable cause determinations were made in the Toledo Municipal Court for at least 17 years. *Leon* holds that there could be no reasonable reliance where the magistrate “wholly abandoned his judicial role.” *Id.* at 923, 104 S.Ct. at 3421. It follows that there could be no reasonable reliance in a case where there was no magistrate. The clear dictates of *Leon* support Mr. Hoffman’s proposition of law. There can be no reliance, reasonable or otherwise, on a warrant issued without a probable cause determination made by a neutral and detached magistrate.

The unequivocal declarations of *Leon* clearly preclude application of the good faith exception to the Exclusionary Rule. However, a review of subsequent decisions also reveals that the exception is inapplicable here. Whether the Exclusionary Rule is appropriate in a particular context is an issue separate from whether the Fourth Amendment rights of a defendant were

violated by police conduct. *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995).

The Exclusionary Rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights by the Rule's deterrent effect. *United States v.*

*Leon*, 468 U.S. 897, 104, S.Ct. 30405, 82 L.Ed.2d 677 (1984).

The deterrent purpose of the Exclusionary Rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the Courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.

*Leon, supra*, at 918, 104 S.Ct. at 3418.

Application of the Exclusionary Rule is restricted to those instances where its remedial objectives are most efficaciously served. *Id.*

The decision of the Court of Appeals to apply the good faith exception to exclusion rests on a feeble legal foundation and requires consideration of facts not in the record. Ignoring the absence of a probable cause determination and relying on some very isolated language of United States Supreme Court opinions, the Appellate Court concluded that the systemic failure of the Toledo Police Department to secure warrants based on a magisterial of finding probable cause was not reckless or grossly negligent, and that 17 years of this practice was "isolated." *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶23.

The Court of Appeals relied chiefly on *Davis v. United States*, \_\_\_\_ U.S. \_\_\_\_, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), to support their holding that the arresting officers demonstrated a reasonable good faith belief that their conduct was lawful. *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶23. *Davis* held that good faith reliance by law enforcement officers on

binding precedent which is later overruled precludes exclusion. The Court of Appeals here did not say what precedent, and the holding completely fails to address the absence of a probable cause determination. None of the cases cited by the Court of Appeals endorse or even consider warrants issued with no probable cause determination. In fact, Mr. Hoffman found no case from any jurisdiction which permitted officers to rely in good faith on a warrant issued without a probable cause finding.

Although the cases cited by the Court of Appeals in support of their decision are clearly misapplied, many of the cases are still instructive. In *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009), the United States Supreme Court articulated that deterrent purposes are clearly served and exclusion is triggered when the police conduct is “deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Id.* at 144, 129 S.Ct. at 702; *Davis* at \_\_\_\_\_, 131 S.Ct. at 2428. The constitutional error illustrated here certainly rises to the level articulated in *Herring*. 17 years of arrest warrants issued with no probable cause determination transcends systemic negligence and reaches the level of systemic failure to protect Fourth Amendment rights.

An identical sentiment was articulated in *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). There, the Supreme Court held that evidence suggesting ignorance or subversion of the Fourth Amendment requires the application of the extreme sanction of exclusion. *Id.* at 11, 115 S.Ct. at 1191. In this case, the evidence adduced at hearing in the Trial Court demonstrates complete ignorance and subversion of Fourth Amendment rights, and exclusion is clearly warranted.

The Court of Appeals also bases its decision on the assertion that the arresting officers

had no reason to doubt the validity of the warrants. *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶28. This premise is inapposite. The logical extension of this poorly crafted argument is that all arrest warrant deficiencies can be cured by having other officers serve them.

The United States Supreme Court rejected this argument long ago.

Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where however, the contrary turns out to be true, and otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

*Whitely v. Warden, Wyoming State Penitentiary* 401 U.S. 560, 568, 91 S.Ct. 1031, 1037, 28 L.Ed.2d 306 (1971).

This obvious Constitutional percept was reaffirmed in *United States v. Leon, supra*, at 923 n.24, 104 S.Ct. at 3420 n.24.

Furthermore, the Court of Appeals here violated a basic rule of appellate practice by assuming facts not in the record. Their decision was based in part on the assumption that the information exchanged between officers at the scene of the homicide could have resulted in discovering a possible location of Mr. Hoffman independently from the arrest warrants. *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶26. This tenuous contention is unsupported by the evidence and should have no part in this discussion.

As a final matter, the decision of the Court of Appeals included discussing and weighing the societal cost of exclusion. *State v. Hoffman*, 6<sup>th</sup> Dist. No. L-12-1262, 2013-Ohio-1082, ¶27, 28. While generally this is an appropriate component of the analysis, Mr. Hoffman contends it is wholly premature. Mr. Hoffman's motion to suppress was denied, and the Court of Appeals affirmed this denial. Mr. Hoffman concedes there is a legitimate, good faith debate regarding the

scope of exclusion should this matter be remanded. Both sides have strong opinions of various degrees of merit as to what would be excluded. Despite this uncertainty, the Court of Appeals assumed that granting this motion results in Mr. Hoffman walking out the front door. This is not the case. However, the main point here is that the cost to society cannot be a legitimate factor in this legal calculus because there is no certainty regarding the evidentiary loss to the State should the Court of Appeals be reversed..

### Conclusion

In *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), the United States Supreme Court made it clear that the appropriate analytical framework for applying the good faith exception to exclusion is found in *United States v. Leon*, 468 U.S. 897, 104, S.Ct. 30405, 82 L.Ed.2d 677 (1984). *Leon* requires a warrant issued by a detached and neutral magistrate before any further assessment of reasonable reliance. Here, there is no warrant issued by a detached magistrate. According to the clear declarations of *Leon*, there can be no reasonable reliance on the validity of such a warrant.

This case extends the argument found in *State v. Hobbs*, 132 Ohio St.3d 43, 2012-Ohio-3886, 975 N.E.2d 965, ¶24. There, this Court acknowledged the constitutional necessity of third party review for probable cause to support an arrest warrant and reiterated the fundamental proposition that the Constitution absolutely requires this third party intercession between the police and a citizen they want to arrest. That crucial intercession is absent here and has been absent for at least 17 years in Toledo. Mr. Hoffman makes no attempt here to quantify Constitutional rights, but this case embraces the primary right to be free from indiscriminate

arrest. Consequently, Mr. Hoffman requests that this Court accept jurisdiction in this case so the important issue presented will be decided on the merits.

Respectfully Submitted,



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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](mailto:Ejarrett@co.lucas.oh.us), 700 Adams Street, Toledo, OH 43604 on May 3<sup>rd</sup>, 2013.



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David Klucas  
Counsel for Appellant Brandon Hoffman

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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.

**E-JOURNALIZED**

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 Holzhauser, who appeared to have been beaten to death. A crow bar was impaled in his skull. Schaller testified that he interviewed two of Holzhauser's neighbors who indicated that a man named "Brandon" had recently visited Holzhauser at his home, and that "Brandon" had recently borrowed a crow bar from Holzhauser. One of the neighbors gave Schaller a description of "Brandon."

{¶ 5} Toledo police detective Jeffery Clark testified that upon entering Holzhauser's home, he noticed an empty gun safe. A friend of Holzhauser's told Clark that Holzhauser had recently considered selling a gun to someone named "Brandon." Clark learned that "Brandon" used to live across the street from Holzhauser. 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 Holzhauser. Police were sent to Hoffman’s current address to arrest appellant for the active warrants. Though police obviously wanted to talk to Hoffman regarding Holzhauser’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 Holzhauser’s property, and Holzhauser’s cell phone was found in close proximity to Hoffman. He was ultimately arrested for the aggravated murder of Holzhauser.

{¶ 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. Hopper*, 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.” *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.

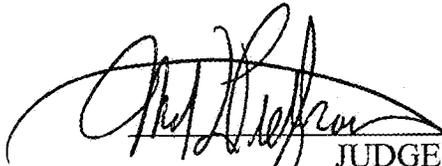
Judgment affirmed.

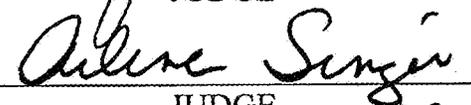
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

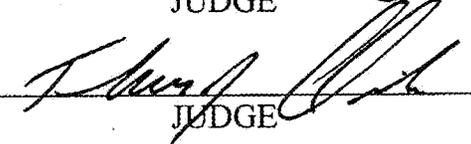
Mark L. Pietrykowski, J.

Arlene Singer, P.J.

Thomas J. Osowik, J.  
CONCUR.

  
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JUDGE

  
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JUDGE

  
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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>.