

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRISTOPHER LAMAR HAWKINS,

Defendant-Appellee.

UNPUBLISHED

October 26, 2004

No. 230839

Kent Circuit Court

LC No. 99-012537-FH

ON REMAND

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Before: Cavanagh, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order quashing a search warrant, suppressing the evidence seized under the search warrant, and dismissing several charges against defendant. We reverse the circuit court's order and remand for reinstatement of the charges against defendant.

I. Procedural History

After the prosecutor filed his claim of appeal, we initially affirmed the trial court's ruling, noting (1) that the issuance of the search warrant violated MCL 780.653 and (2) that the Supreme Court in *People v Sloan*, 450 Mich 160, 183-184; 538 NW2d 380 (1995), ruled that evidence obtained in violation of MCL 780.653 must be suppressed. See *People v Hawkins (Hawkins I)*, unpublished opinion per curiam of the Court of Appeals, issued September 28, 2001 (Docket No. 230839), slip op at 2-3. The prosecutor appealed to the Supreme Court, which subsequently overruled *Sloan* and concluded that evidence should not be suppressed solely because it was obtained in violation of MCL 780.653. See *People v Hawkins (Hawkins II)*, 468 Mich 488, 513; 668 NW2d 602 (2003). The Supreme Court remanded the case to our Court so that we could address the additional arguments raised by the prosecutor. See *id.* at 512.

II. Nature of Issue

Although the Supreme Court in *Hawkins II* directed us to address the prosecutor's additional *arguments*, the prosecutor in fact raises only one additional argument: that the suppression of the search warrant was incorrect because, in executing the warrant issued by the

magistrate, the police acted in good faith. Significantly, the prosecutor does not contest the trial court's finding of a constitutional deficiency with regard to the search warrant;<sup>1</sup> he merely argues that *even if* a constitutional deficiency existed, the good-faith actions of the police in executing the search warrant preclude an application of the exclusionary rule.

### III. *Goldston*

The Supreme Court addressed the good-faith exception to the exclusionary rule in *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004). In *Goldston, id.* at 527, the search warrant at issue was suppressed by the circuit court because “the search warrant affidavit did not connect the place to be searched with defendant and did not state the date that the police observed defendant [unlawfully] soliciting money.” The Supreme Court adopted the good-faith exception to the exclusionary rule, see *id.* at 541, and stated the following:

Applying the good-faith exception to the exclusionary rule in this case, we conclude that the circuit court erred by suppressing the [evidence seized pursuant to the search warrant]. The police officers' reliance on the district judge's determination of probable cause and on the technical sufficiency of the search warrant was objectively reasonable. The information in the affidavit was not false or misleading, and the issuing judge did not wholly abandon her judicial role. A review of the affidavit and search warrant can lead to no other logical conclusion than that the address listed was that of defendant. Indeed, it probably did not even occur to the magistrate or executing officers that the address was not defendant's address. Further, the affidavit was not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

Although the warrant was later determined to be deficient, excluding the evidence recovered in good-faith reliance on the warrant would not further the purpose of the exclusionary rule, i.e., to deter police misconduct. Because the exclusionary rule should be employed on a case-by-case basis and only when exclusion would further the purpose of the rule, it should not be employed in this case. [*Id.* at 542-542 (internal citations and quotations omitted).]

We must determine whether the good-faith exception to the exclusionary rule, as set forth in *Goldston*, applies to the case before us.

### IV. Pertinent Facts

On November 3, 1999, a detective of the Grand Rapids Police Department, after receiving tips on two separate dates that drug sales were being conducted by defendant from his residence, sought and received a search warrant for the premises. The affidavit in support of the search warrant averred that on October 14, 1999, “an informant” had observed someone named “Chris,” who lived at the residence and for whom a physical description was provided, selling

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<sup>1</sup> As noted *infra*, the circuit court found both a statutory violation and a constitutional violation with regard to the search warrant.

crack cocaine. It further averred that the detective supplying the affidavit had met on November 3, 1999 (the day the warrant was issued), with “a reliable and credible informant” who “had observed the controlled substance cocaine available for sale from the residence within the past 36 hours.” Plaintiff claims, although the affidavit does not state, that this “reliable and credible informant” was not the same person as the “informant” who had observed the sale on October 14, 1999. After adding that he had been “advised by the informant” that the door to the residence was reinforced to delay police entry, and after having detailed his own experience with the police department, the detective concluded, “WHEREFORE, your affiant for the foregoing reasons does verily believe that evidence of further narcotics trafficking, proceeds of narcotics trafficking, and/or records/documents or other indicia of narcotics trafficking will be discovered within the above described premises and/or person(s).” The affidavit did not name the informant or informants, and nor did it set out, apart from what has already been stated, the detective’s basis for believing that the informant who met with the detective on November 3, 1999, was “reliable and credible.”

On the basis of this affidavit, a search warrant was issued. The warrant authorized a search of defendant and his residence for any cocaine or related materials, including money related to cocaine sales or firearms used for protecting cocaine. The warrant’s sole finding with regard to the existence of probable cause was as follows: “On this day your, [sic] affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exist [sic].”

The police searched the residence and found cocaine, three guns, materials typically used in cocaine production, and mail and receipts with defendant’s name on them. On the same date, defendant was arrested in his vehicle. He was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); maintaining a drug house, MCL 333.7405(1)(d); being a felon in possession of a firearm, MCL 750.224f; driving with a suspended license, MCL 257.904; and two counts of receiving and concealing a stolen firearm, MCL 750.535b.

Defendant later moved to quash the search warrant, suppress the evidence, and dismiss the criminal charges because the warrant did not contain a finding of probable cause and because there was no evidence showing that the informants on whose word the warrant was issued to be reliable and or credible.

#### V. Circuit Court’s Ruling

The circuit court conducted a hearing with regard to the motion on September 22, 2000. The court noted that it was unclear whether the affidavit referred to one informant or two and that there was no information supplied from which the reliability of the informant or informants could be determined. The court also found that evidence of cocaine sales on or around October 14, 1999, was too “stale” to allow a warrant to be issued on November 3, 1999, but that information regarding cocaine sales within the prior thirty-six hours would be enough to support a warrant, were it not for the lack of information from which the credibility of the informant or informants could be determined. The court noted the importance of a zone of privacy in the home and stated that “all of us have a higher degree of sensitivity when viewing searches of homes.” The court concluded that the warrant was both statutorily and constitutionally deficient,

given that it lacked “something in it to verify the believability – or credibility – of the unnamed informant in paragraph two.”

The court rejected an application of the good-faith exception to the exclusionary rule but stated the following with regard to the issue of good faith:

I think it’s entirely possible that the officer who filled out the warrant [Officer Todd Butler] was operating in good faith; that is to say, I don’t think there’s any reason to believe he, knowingly or intentionally, was trying to perpetrate a fraud on the Court. I happen to know Officer Butler, at least professionally, from his many appearances in this court, and he strikes me as being, in all respects, above-board, honorable and professional; and I don’t think there’s any reason to believe he’s trying to pull a fast one on anybody. I think the problem is, he just put together an affidavit that doesn’t make the grade.

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If there was an officer falsifying an affidavit, it seems to me he’s probably committed a crime in the nature of perjury, and should be prosecuted. There’s nothing suggested [sic] that Officer Butler did anything of the sort, and I don’t believe it for a minute.

But I don’t believe the fact that he acted in good faith can satisfy an otherwise missing element in the warrant.

#### VI. Application of *Goldston*

The pertinent question is whether the police in this case truly acted in “good faith” under the standards from *Goldston*. In discussing the standard for determining when an officer acts in “good faith,” the *Goldston* the Court referred to *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984):

The [*Leon*] Court emphasized . . . that a police officer’s reliance on a magistrate’s probable cause determination and on the technical sufficiency of a warrant must be objectively reasonable. Evidence should also be suppressed if the issuing magistrate or judge is misled by information in the affidavit that the affiant either knew was false or would have known was false except for his reckless disregard of the truth. Further, the Court stated that the good-faith exception does not apply where the magistrate wholly abandons his judicial role or where an officer relies on a warrant based on an affidavit ““so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.”” *Id.* at 923, quoting *Brown v Illinois*, 422 US 590, 610; 95 S Ct 2254; 45 L Ed 2d 416 (1975) (Powell, J., concurring in part). [*Goldston, supra* at 531.]

There is no evidence here that the affidavit contained false information. Moreover, we conclude that the reliance by the police on the search warrant authorized by the magistrate was objectively reasonable, that the magistrate did not wholly abandon his judicial role, and that the affidavit was not ““so lacking in indicia of probable cause as to render official belief in its

existence entirely unreasonable.””” *Id.*, quoting *Leon, supra* at 923, quoting *Brown, supra* at 610. Indeed, while it is true that “[a] search warrant affidavit prepared on the basis of information provided to the affiant by an unnamed person must provide sufficient facts from which a magistrate could find that the information supplied was based on personal knowledge and that either the unnamed person was credible or that the information was reliable,” *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999),<sup>2</sup> and that such information regarding credibility or reliability was missing here, there was still significant information in the affidavit. The affidavit referred to an informant who specifically identified defendant’s address and appearance and the type of drug involved, crack cocaine. The affidavit also referred to an informant who purported to know that “the entry door to the suspects [sic] apartment has been reinforced to delay a police entry.” This type of specific information lends some facial credibility to the informant’s statements. Additionally, the officer completing the affidavit referred to a “reliable and credible informant” when discussing the information regarding cocaine having been for sale in the prior thirty-six hours, and the trial court specifically noted that the officer who completed the affidavit “acted in good faith” and was “above-board, honorable and professional.” Nothing to the contrary is evident from the record.

While the search warrant was, in actuality, based on inadequate information, the inadequacy was not so overwhelming so as to preclude a finding of good faith under the standards expressed in *Goldston, supra* at 531. Under the specific circumstances of this case, the good-faith exception is applicable. Accordingly, we reverse the circuit court’s orders and remand this case for reinstatement of the charges against defendant.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Michael R. Smolenski  
/s/ Patrick M. Meter

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<sup>2</sup> *Echavarria* cited MCL 780.653 for this proposition. We acknowledge that MCL 780.653 is not at issue in this case because of the Supreme Court’s conclusion in *Hawkins II* that a violation of MCL 780.653 does not require an application of the exclusionary rule. Nevertheless, the *Echavarria* Court was concerned with the general question concerning whether the search warrant in that case was supported by probable cause. *Echavarria, supra* at 366. The issues of credibility and reliability are germane to a determination of probable cause.