

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS LENNART HELLSTROM,

Defendant-Appellant.

FOR PUBLICATION

October 21, 2004

9:10 a.m.

No. 252984

Macomb Circuit Court

LC Nos. 2003-001463-FH

2003-001464-FC

Official Reported Version

Before: Neff, P.J., and Smolenski and Zahra, JJ.

SMOLENSKI, J.

Defendant Thomas L. Hellstrom appeals by leave granted the order denying his motion to suppress evidence of child pornography seized from a home computer following the execution of a search warrant. Defendant was charged with four counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), and four counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a). The instant case gives this Court its first opportunity to determine whether the "good-faith" exception to the exclusionary rule, recently adopted in Michigan,¹ precludes suppression of evidence found during a search of defendant's home. We find that the circumstances presented here are precisely those to which the exception is meant to apply. Therefore, we affirm the trial court's decision, but for a different reason.

I

In defendant's motion to suppress, he challenged the validity of the search on the grounds that (1) the warrant(s) lacked probable cause and (2) the warrant(s) constituted "general warrants" that allowed the police unfettered discretion to seize evidence. The original search warrant described the property to be searched and seized as follows:

¹ *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004).

2. The property to be searched for and seized, if found is specifically described as: any and all forms of pornography, to include but not limited to all computer generated images and files, photographs, drawings, videotapes, film, printed materials, any sexually explicit material and devices. also to be included all computers, cd's [sic], dvd's [sic], floppy disc[s] all camera's [sic] and camcorders. Any and all equipment used in the storage, manufacturing, gathering or distribution of sexually explicit material. Further[,] any paperwork to establish ownership or residence of all occupants, and any mailing or billing lists related to pornography.

The affidavit to support the search warrant provided the following facts to establish probable cause:

3. The facts establishing probable cause or the grounds for search are:

a) On 03-05-03[,] Detective Bergeron received two different complaints . . . of a criminal sexual conduct against the suspect at 30018 Manhattan, St. Clair Shores, Michigan, 48082.

b) Detective Bergeron has been a police officer for the past 15 years. He is currently assigned to the investigations bureau.

c) The named suspect is a resident of the address in question.

d) There are two different victim's [sic] claiming that they were both sexually assaulted by the same suspect.

e) The victim's [sic] are both neighbor's [sic] to the suspect and have been alone with him at 30018 Manhattan in the past.

f) The search of the above listed premises should help to further this investigation.

g) Based on my experince [sic] as a detective investigating sexual assaults it is known that this activity may also lead to the use of pornography for sexual gratification of the suspect.

h) It is aslo [sic] known that child sexual assault predators are known to have items of sexual gratification inside their homes, computers and other devices.

Several computers, videos, DVDs, CDs, and a camera were seized from defendant's home. However, the original search warrant did not authorize the police to look inside the computers that were taken from defendant's home. An amended search warrant was executed, which modified the type of property to be seized or searched, but did not alter the supporting facts in the affidavit. Subsequently, several images of pornographic material depicting children were found on at least one of the computers seized from defendant's home.

In making its probable-cause determination, the trial court took into consideration the affiant's experience as a police officer that items of a pornographic nature were often found in crimes of this type. The court concluded that there was a more than sufficient nexus between the affidavit, evidence, and area to be searched because (1) defendant lived at the location and (2) the complainants alleged that the offenses occurred at defendant's home. The court also held that the warrant was not overly broad under the circumstances because the electronic equipment and accessories identified to be seized all related to devices capable of recording or storing pornography. Accordingly, the court denied defendant's motion to suppress.

II

It is well settled that both the United States Constitution and the Michigan Constitution² "guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). A search or seizure is considered unreasonable when it is conducted pursuant to an invalid warrant or without a warrant where the police officer's conduct does not fall within one of the specific exceptions to the warrant requirement. *Id.* at 418. Generally, in order for a search executed pursuant to a warrant to be valid, the warrant must be based on probable cause. *Id.* at 417. Probable cause "exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *Id.* at 417-418 (citation omitted). It is also well settled that a search may not stand on a general warrant. *People v Toodle*, 155 Mich App 539, 548; 400 NW2d 670 (1986). A search warrant must particularly describe the place to be searched and the persons or things to be seized. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.654(1). The purpose of this requirement is to provide reasonable guidance to the officers executing the search with regard to the items to be seized and to prevent unfettered discretion in this determination. *People v Fetterley*, 229 Mich App 511, 543; 583 NW2d 199 (1998).

Ordinarily, if a warrant is determined to be invalid because it lacked a probable-cause basis or was technically deficient in some other manner, any evidence seized pursuant to that warrant, or seized subsequently as a result of the initial illegal search, is inadmissible as substantive evidence in related criminal proceedings. *Kazmierczak*, *supra* at 418. Certain exceptions to this exclusionary rule have been recognized in Michigan,³ but our courts had declined to recognize a "good-faith" exception to the exclusionary rule. See, e.g., *People v Scherf*, 251 Mich App 410, 411; 651 NW2d 77 (2002), rev'd 468 Mich 488, 512-513 (2003); *People v Hill*, 192 Mich App 54, 56; 480 NW2d 594 (1991); *People v Tanis*, 153 Mich App 806, 813; 396 NW2d 544 (1986).

² US Const, Am IV; Const 1963, art 1, § 11.

³ These exceptions are (1) the independent source exception, (2) the attenuation exception, and (3) the inevitable discovery exception. *People v Stevens (After Remand)*, 460 Mich 626, 636; 597 NW2d 53 (1999), quoting *People v LoCicero (After Remand)*, 453 Mich 496, 508-509; 556 NW2d 498 (1996).

A

Such an exception has been recognized in the federal courts for twenty years as a result of the United States Supreme Court's decision in *People v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The "good-faith" exception renders evidence seized pursuant to an invalid search warrant admissible as substantive evidence in criminal proceedings where the police acted in reasonable reliance on a presumptively valid search warrant that was later declared invalid. *Id.* at 905. Recently, relying on the reasoning put forth in the *Leon* decision, our Supreme Court, in *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004), adopted the good-faith exception to the exclusionary rule.

In *Goldston*, the defendant was observed impersonating a firefighter allegedly raising money for his colleagues in New York after the September 11, 2001, terrorist attacks. Following a search of his home, the defendant was charged with larceny by false pretenses, two counts of possession of marijuana, possession of a firearm during the attempt or commission of a felony, and felon in possession of a firearm. The defendant filed a motion to suppress evidence, which the trial court granted. "The court ruled that 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 soliciting money." *Id.* at 527. Thus, the court concluded that the affidavit did not establish the probable cause necessary to issue a warrant and, accordingly, dismissed all charges against the defendant except the charge of larceny by false pretenses. *Id.* The Court of Appeals denied leave to appeal, but our Supreme Court granted leave limited to the question whether Michigan should adopt the good-faith exception to the exclusionary rule. *People v Goldston*, 467 Mich 939 (2003).

In addressing the question whether to adopt the good-faith exception in Michigan, our Supreme Court analyzed the *Leon* decision. In *Leon*, the Court found that the exclusionary rule was not derived from the text of the Fourth Amendment, but rather was a judicially created remedy. *Goldston, supra* at 528-529, citing *Leon, supra* at 906. Therefore, application of the remedy involved weighing its benefits and costs. *Id.* at 529. "The primary benefit of the exclusionary rule is that it deters official misconduct by removing incentives to engage in unreasonable searches and seizures." *Id.* The Court concluded that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." *Id.* at 530, quoting *Leon, supra* at 922. *Leon* further stated:

It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. . . . Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations. [*Leon, supra* at 921.]

The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 919.

Leon also found that there was no basis for believing that the exclusionary rule had any significant deterrent effect on judges and magistrates with regard to their errors. *Goldston, supra* at 539-540, citing *Leon, supra* at 916-917.

Imposition of the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors, and we cannot conclude that admitting evidence obtained pursuant to a warrant while at the same time declaring that the warrant was somehow defective will in any way reduce judicial officers' professional incentives to comply with the Fourth Amendment, encourage them to repeat their mistakes, or lead to the granting of all colorable warrant requests. [*Leon, supra* at 917.]

After determining that the exclusionary rule was not mandated by the Michigan Constitution, our Supreme Court in *Goldston* concluded:

Because we find the reasoning of *Leon* persuasive, we choose to embrace *Leon* as a matter of our interpretive right under the common law and retreat from the judicially created exclusionary rule announced in *Marxhausen*.⁴ The goal of the exclusionary rule, as expressed in *Leon*, is to deter police misconduct. Thus, the goal of the exclusionary rule would not be furthered where police officers act in objectively reasonable good-faith reliance on a search warrant. [*Goldston, supra* at 538 (citations omitted).]

Accordingly, the *Goldston* Court held, "Because the exclusionary rule in Michigan is a judicially created, nonbinding rule, we interpret Const 1963, art 1, § 11 consistent[ly] with the *Leon* Court's interpretation of the Fourth Amendment and adopt the good-faith exception to the exclusionary rule in Michigan." *Id.* at 541. Applying the exception to the facts before it, the Court concluded that the officers' reliance on the search warrant was objectively reasonable and that suppression of the firearm, marijuana, and firefighter paraphernalia seized "would not further the purpose of the exclusionary rule, i.e., to deter police misconduct." *Id.* at 543. As a result, the lower court's ruling suppressing the evidence was reversed and the original charges were to be reinstated against the defendant on remand.

Therefore, as stated in *Leon* and adopted by our Supreme Court in *Goldston*, we are guided by the following principles with regard to application of the good-faith exception to Michigan's exclusionary rule:

We do not suggest [] that exclusion is always inappropriate in cases where an officer has obtained a warrant and abided by its terms. "[Searches] pursuant to a warrant will rarely require any deep inquiry into reasonableness," for "a warrant issued by a magistrate normally suffices to establish" that a law enforcement officer has "acted in good faith in conducting the search."

⁴ *People v Marxhausen*, 204 Mich 559; 171 NW 557 (1919).

Nevertheless, the officer's reliance on the magistrate's probable-cause determination and on the technical sufficiency of the warrant he issues must be objectively reasonable, and it is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued.

Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant 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. The exception we recognize today will also not apply in cases where the issuing magistrate wholly abandoned his judicial role in the manner condemned in *Lo-Ji Sales, Inc v New York*, 442 US 319 [99 S Ct 2319; 60 L Ed 2d 920] (1979),⁵ in such circumstances, no reasonably well trained officer should rely on the warrant. Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

In so limiting the suppression remedy, we leave untouched the probable-cause standard and the various requirements for a valid warrant. Other objections to the modification of the Fourth Amendment exclusionary rule we consider to be insubstantial. The good-faith exception for searches conducted pursuant to warrants is not intended to signal our unwillingness strictly to enforce the requirements of the Fourth Amendment, and we do not believe that it will have this effect. As we have already suggested, the good-faith exception, turning as it does on objective reasonableness, should not be difficult to apply in practice. When officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time. [*Leon, supra* at 922-924 (citations omitted).]

In sum, "In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." *Id.* at 926.

⁵ In *Lo-Ji Sales*, the local justice wholly abdicated his duty as a "detached and neutral magistrate" when he assisted in the search himself, and abandoned his judicial role when he authorized a search warrant that, except for specification of copies of two "adult" films previously purchased by an investigator, did not particularly describe the items to be seized, but, instead, left it entirely to the discretion of the officials conducting the search to decide which items were likely to be obscene and thus subject to seizure. *Id.* at 325, 327-328.

Leon further instructs:

If the resolution of a particular Fourth Amendment question is necessary to guide future action by law enforcement officers and magistrates, nothing will prevent reviewing courts from deciding that question before turning to the good-faith issue. Indeed, it frequently will be difficult to determine whether the officers acted reasonably without resolving the Fourth Amendment issue. Even if the Fourth Amendment question is not one of broad import, reviewing courts could decide in particular cases that magistrates under their supervision need to be informed of their errors and so evaluate the officers' good faith only after finding a violation.^[6] In other circumstances, those courts could reject suppression motions posing no important Fourth Amendment questions by turning immediately to a consideration of the officers' good faith. We have no reason to believe that our Fourth Amendment jurisprudence would suffer by allowing reviewing courts to exercise an informed discretion in making this choice. [*Id.* at 925.]

B

Applying these principles to the case before us, we find that the officers conducting the search of defendant's home acted in good-faith reliance on the magistrate's determinations of probable cause and technical sufficiency with regard to the search warrants. The supporting affidavits were not "so lacking in indicia of probable cause" that the officers could not objectively believe that the warrant was supported by probable cause. *Leon, supra* at 923 (citations omitted); *Goldston, supra* at 543. And there was no reason to believe the facts alleged in the affidavit were false or that the magistrate was misled by false information. *Leon, supra* at 923. Also, although there were no allegations in the affidavit that defendant had videotaped or taken pictures of the complainants, it did assert that the crimes happened in defendant's residence. Given the affiant's knowledge that pedophiles generally possess pornographic images for sexual gratification,⁷ it was entirely reasonable to believe that evidence of a crime would be

⁶ In this regard, we note that the good-faith exception to the exclusionary rule does not change the reviewing court's standard for determining whether a search warrant is invalid. *Leon, supra* at 923. Appellate scrutiny of a magistrate's decision "requires the reviewing court to ask only whether a reasonably cautious person could have concluded that there was a 'substantial basis' for the finding of probable cause." *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). A trial court's factual findings are reviewed on appeal for clear error. *Stevens (After Remand), supra* at 631. To the extent the court's ruling on a motion to suppress "involves an interpretation of the law or the application of a constitutional standard to uncontested facts," appellate review is de novo. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

⁷ *People v Darwich*, 226 Mich App 635, 639; 575 NW2d 44 (1997) (An affiant's representations based on his experience can be considered in determining whether probable cause exists.).

found in defendant's home, whether it be images taken of the complainants without their knowledge or possession of other material that would constitute child pornography. Michigan's probable-cause standard relates to whether "contraband or evidence of a crime will be found in a particular place." *Kazmierczak, supra* at 417-418 (emphasis added). It does not require that the evidence sought be particular to the specific offense a defendant is alleged to have committed.

Nor are we convinced that the warrant was so facially deficient that it rendered the officers' reliance wholly unreasonable. The warrant described the items to be seized with sufficient particularity that it was reasonable for the officers to presume that the warrant was facially valid. *Leon, supra* at 923. Furthermore, there is no evidence to indicate that the issuing magistrate abandoned his judicial role. *Id.* Here, we can discern no reason to invoke the extreme sanction of exclusion. Accordingly, we hold that the good-faith exception to the exclusionary rule, as recently recognized in Michigan, is applicable in this case and, therefore, suppression of the evidence on the basis of an allegedly invalid search warrant is not appropriate.⁸ Because we agree with the trial court's ultimate ruling denying defendant's motion to suppress evidence, we affirm its ruling albeit on different grounds.

In responding to the dissent, we note that this case is not so different from *Goldston* as the dissent suggests. In *Goldston*, the search warrant was technically deficient and lacked probable cause. The prosecutor conceded on appeal that the search warrant was not based on probable cause. *Id.* at 542 n 11. Despite both these problems, the *Goldston* Court nevertheless found that "[t]he police officers' reliance on the district judge's determination of probable cause and on the technical sufficiency of the search warrant was objectively reasonable." *Id.* at 542. Specifically, regarding probable cause, the Court stated that "the affidavit was not 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Id.* at 543 (citations omitted).

The dissent likens this case to one from the United States Court of Appeals for the Ninth Circuit, *United States v Weber*, 923 F2d 1338, 1346 (CA 9, 1990), in which the court found that the affidavit was so lacking probable cause that the good-faith exception did not apply. In *Weber*, the United States Customs Service sent the defendant a fake catalog of child pornography and he ordered four sets of pictures from it. In anticipation of the package's arrival, a customs agent filled out an affidavit in which he stated that the items to be searched for included the four sets of pictures sent to the defendant and all other child pornography. The court found that probable cause existed to search for the pictures the government sent, but there was no reason to believe that the defendant possessed additional pornography.

The defendant in *Weber* was targeted because two years earlier, a customs inspector had seized two pieces of advertising material addressed to "P. Webber" that he concluded

⁸ We note that our ruling does not address whether the evidence requires suppression on other grounds. That is a separate issue that is not before us and may be raised by defendant before the trial court.

"apparently depicted" child pornography. *Id.* at 1340 (emphasis in original). A notice of the seizure was sent to the defendant, who acknowledged the receipt of the notice. But the defendant never made any attempt to collect the materials, nor was it ever determined if the defendant had actually ordered the materials or if they were unsolicited advertisements.

Unlike in *Weber*, where the government had no reason to believe that the defendant possessed additional pornography, the police in this case had reason to believe that the defendant had a sexual interest in young girls because of the two separate complaints of sexual assault made just before the search warrant was executed. Both complainants alleged that defendant had molested them in his home. Assuming that the reports were true, the police could reasonably infer that defendant was a pedophile. Our Supreme Court has recognized that "pornography is used in connection with child molestation, for arousal and fantasy and as a means of lowering the intended victim's inhibitions through peer pressure effects," *People v Russo*, 439 Mich 584, 600; 487 NW2d 698 (1992), that "the single most persuasive characteristic of pedophilia is the obsession for, and the collection of, child pornography," *id.* at 601, citing S Rep No 99-537, 99th Cong (2nd Sess), and that pornography of this type is likely to be kept in the home, *id.* at 612. Being a police officer for fifteen years, the affiant was aware of this connection, and we believe it to be inconsequential that the affiant had specific limited experience in investigating sexual assault crimes. Given that defendant was alleged to have sexually assaulted two young girls, and that those who do so usually possess child pornography in their home, a reasonable inference could be made that defendant would have child pornography in his home. Accordingly, we disagree with the dissent's evaluation of the affidavit and find that it was not so lacking in indicia of probable cause that official reliance on the magistrate's probable-cause determination was unreasonable. *Leon, supra* at 923.

Affirmed.

Zahra, J., concurred.

/s/ Michael R. Smolenski

/s/ Brian K. Zahra