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Summary of State v. Kincade, 129 Nev. Adv. Op. 102

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State v. Kincade, 129 Nev. Adv. Op. 102 (Dec. 26, 2013)¹

CRIMINAL PROCEDURE: EXCLUSION OF EVIDENCE

Summary

The Court determined whether the district court properly excluded evidence seized pursuant to a search warrant that did not comply with NRS 179.045(5) because it failed to include either a statement of probable cause or the affidavit upon which probable cause was based.

Disposition

A search warrant that fails to comply with NRS 179.045(5) triggers exclusion. This decision reaffirms the Nevada Supreme Court's decision in *State v. Allen*² ("*Allen I*") despite the U.S. Supreme Court's contrary holding in *United States v. Grubbs*³ because a state may provide broader protections to its citizens than those provided by the U.S. Constitution.

Factual and Procedural History

During an investigation of respondent Michael Kincade for sexual abuse, the Lincoln County Sheriff's Department filed an affidavit for a warrant to search Kincade's residence. Although the warrant was granted, when it was served on Kincade, it failed to include either a statement of probable cause or the affidavit upon which the warrant had been granted. The search yielded pornographic images of children on Kincade's computer.

After the State filed criminal charges, Kincade moved to suppress the evidence found on his computer. The district court granted the motion based on the conclusion that the search violated NRS 179.045(5), which requires the warrant include either a statement of probable cause or the supporting affidavit.

Discussion

The search warrant's failure to comply with NRS 179.045(5) mandates exclusion of evidence seized pursuant to the warrant

The State argued that the omission of the statement of probable cause or the affidavit upon which probable cause is based poses merely a ministerial violation. The Court, however, analogized this case to the factually similar *Allen II*, where the Court upheld exclusion of evidence obtained under a search warrant similarly lacking compliance with NRS 179.045(5).

¹ By Shaina Plaksin

² 119 Nev. 166, 168, 69 P.3d 232, 233 (2003).

³ 547 U.S. 90, 97 (2006).

The State further argued that *United States v. Grubbs* abrogated *Allen II* by holding that the Fourth Amendment only requires a search warrant to specifically state the place and items to be seized. The Court declined to accept this argument, explaining that a state can provide greater protections to its citizens than those afforded by the U.S. Constitution.

Leon's good-faith exception does not apply

The suppression of evidence requires a case-by-case balancing test,⁴ unless exclusion is warranted based on unreasonableness described by the four exceptions in *United States v. Leon*.⁵ This Court held in *Allen II*, and reaffirmed here, that failure to comply with “the requirements of NRS 179.045(5) rendered reliance on the warrant unreasonable, thus the warrant in question did not trigger *Leon's* good-faith exception.”

Conclusion

The district court properly excluded the computer evidence obtained with a defective search warrant that failed to comply with NRS 179.045(5). *Allen II* is controlling law despite *Grubbs* because *Allen II* provides for greater protection to Nevada's citizens.

⁴ *United States v. Leon*, 468 U.S. 897, 918 (1984).

⁵ *Id.* at 923.