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3-28-2024

### Smith v. State, 140 Nev. Adv. Op. 19 (Mar. 28, 2024)

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OFFICERS MUST FOLLOW THE SPECIFIC INSTRUCTIONS LISTED ON A WARRANT  
AND CANNOT USE ILLEGALLY OBTAINED EVIDENCE TO PROVE THE  
GOVERNMENT’S CASE.

**Summary**

This case raised several issues regarding the scope of a valid search warrant. Under Nevada law, an affidavit may be incorporated into a warrant to establish probable cause, but that affidavit cannot expand the scope of the search and seizure permitted under the warrant’s specific language. Absent an exception, officers only have a right to follow the specific instructions listed on a warrant. Further, exigent circumstances can allow police to warrantlessly seize a cell phone, but they cannot search the data on the phone unless a new warrant is obtained, or demanding circumstances independently justify the search of the data. In this case, the government violated the Fourth Amendment Constitutional rights afford by the U.S. Constitution, as well as the Nevada Constitution search and seizure provisions.

**Background**

Law enforcement became suspicious that Deva Smith might possess child pornography. Smith had been communicating with an individual who was known for sending images of child sex abuse through text message. As a result, officers sought a search warrant for Smith’s electronic devices, which included a declaration supporting probable cause that Smith possessed child pornography. The officers seized Smith’s phone from his person, outside of his home. However, the warrant only permitted a search and seize of items within Smith’s home. The next day officers searched through Smith’s phone and found child pornography on the device.

Before trial, Smith challenged the admissibility of the pictures from his phone, arguing that the officers had obtained them in violation of his constitutional rights. The district court found the photos to be admissible, ruling that the probable cause declaration expanded the scope of the search and that the officers reasonably believed in good faith that their actions were consistent with the warrant. At trial, the images comprised a majority of the State’s case against Smith. Subsequently, the jury convicted Smith on two counts of possession of child pornography, to which Smith appealed his conviction.

**Discussion**

***A probable cause affidavit cannot expand the scope of the warrant to authorize the seizure of Smith’s cell phone found on his person outside his apartment***

To be valid, a warrant must contain a statement “particularly describing the place to be searched, and the persons or things to be seized.”<sup>2</sup> A valid search warrant may only be issued on a showing of probable cause.<sup>3</sup> When a magistrate issues a warrant, Nevada law permits the statements in support of probable cause to be incorporated by reference.<sup>4</sup> The issue presented in this case is whether the incorporation of a probable cause affidavit may broaden what can be searched or seized beyond the four corners of the search warrant. The Court looked to the Ninth

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<sup>1</sup> By Makai Zuniga.

<sup>2</sup> U.S. Const. amend. IV; Nev. Const. art. 1, § 18 (substantially similar language).

<sup>3</sup> *State v. Allen*, 119 Nev. 166, 170 (2003).

<sup>4</sup> NRS 179.045(6)(b).

Circuit Court of Appeals which had previously held that allowing an affidavit to expand the scope of a warrant “would permit a kitchen sink probable cause affidavit to overrule the express scope limitations of the warrant itself.”<sup>5</sup> The Court also held that allowing a probable cause affidavit to effectively control the scope of a warrant would render the particularity requirements of said warrant meaningless. Without a second warrant, the officers could not widen the original warrant’s scope, and therefore could not search and seize Smith’s phone, because he was not inside his home when they decided to search it.

***Good faith reliance does not apply when officers improperly exceed the scope of the warrant***

Courts will generally not suppress evidence when officers reasonably and in good faith believe that their warrant was valid, even if a reviewing court later determines that it was invalid. Even if relying on a warrant, an officer must still “have a reasonable knowledge of what the law prohibits” when acting in their official capacity. An officer cannot, therefore, rely in good faith upon a valid warrant to save its invalid execution.

In this case, the warrant was valid. Nevertheless, a reasonable officer would have looked at the warrant and understood that the scope of the search was limited to Smith’s apartment. The officers improperly executed the warrant, by seizing Smith’s phone from his person, outside of his apartment, when Smith’s person was not authorized by the warrant as a place the officers could search. Therefore, the officers cannot claim a good faith belief that the warrant covered Smith’s person because they are required “to have a reasonable knowledge of what the law prohibits” when acting in their official capacity.

***The imminent destruction of evidence exigency justifies the seizure of the cell phone from Smith, but the forensic search is unjustified***

Warrants are not required under exigent circumstances; “the exigent circumstances exception to the warrant requirement applies where the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.”<sup>6</sup> The United States Supreme Court has recognized that an officer may secure a cell phone without a warrant to prevent the destruction of evidence contained on that device.<sup>7</sup>

In the present case, the Court held that the officers were justified in seizing Smith’s phone, even without a warrant, under the imminent destruction of evidence exigency. The forensic search of Smith’s phone the next day, however, was not justified by exigent circumstances. The warrant that officers possessed did not cover the forensic search because that warrant authorized the forensic search only of the devices seized from Smith’s apartment, and this device was not seized from Smith’s apartment. Therefore, the Court held that exigent circumstances could not justify the admission of the evidence obtained from Smith’s cell phone.

***Suppression is appropriate in this case because the search of Smith's cell phone violated his constitutional rights***

Without a valid warrant, or some exception to the warrant requirement, a search is per se unreasonable. The government may not benefit from evidence obtained through violation of an individual’s right to be safe from unreasonable searches and seizures.<sup>8</sup> Officers had to obtain the

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<sup>5</sup> United States v. Sedaghaty, 728 F.3d 885, 913 (9th Cir. 2013).

<sup>6</sup> Howe v. State, 112 Nev. 458, 466-67 (1996); *see also* Cupp v. Murphy, 412 U.S. 291, 296 (1973).

<sup>7</sup> Riley v. California, 573 U.S. 373, 388 (2014).

<sup>8</sup> Beckman, 129 Nev. at 491, 305 P.3d at 919 (citing Florida v. Jardines, 569 U.S. 1, 11-12 (2013)).

evidence legally to use it against Smith. The incorporated affidavit of probable cause cannot expand the scope of the warrant itself. Further, officers could not have relied in good faith on the valid warrant they held when they improperly executed that warrant. Finally, no exigent circumstances justified the forensic search of Smith's cell phone after the officers seized it. The government's activity was a per se unreasonable search and illegal. The government then used that illegally obtained evidence against Smith to secure his conviction. Suppression of the evidence from the cell phone is required to ensure that the government does not benefit from the evidence it obtained illegally.

### **Conclusion**

Absent an exception, officers only have a right to follow the specific instructions listed on a warrant. Further, illegally obtained evidence cannot be used by the government to prove their cases. Therefore, this Court ruled that the lower court's conviction of Smith must be reversed and remanded for further proceedings consistent with the Court's opinion.