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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. FRANK CRUZ RUIZ, III, Appellant.	2 CA-CR 2008-0153 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200700263

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
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Tucson
Attorneys for Appellee

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V Á S Q U E Z, Judge.

¶1 After a jury trial, Frank Ruiz was convicted in absentia of possession of methamphetamine with a weight of less than nine grams and possession of drug paraphernalia. The trial court sentenced him to a maximum prison term of three years for the methamphetamine conviction and to a concurrent, presumptive, one-year term for the paraphernalia conviction. On appeal, Ruiz argues the court erred by denying his motion to suppress the evidence of the methamphetamine and drug paraphernalia because, he claims, the warrant for his arrest was based on a deficient application. Thus he contends the search of his person incident to arrest was improper. For the reasons discussed below, we affirm Ruiz's convictions and sentences.

Factual and Procedural Background

¶2 In July 2006, Ruiz was placed on supervised probation following a misdemeanor conviction for an assault, classified as domestic violence. He was released from incarceration on September 21 and, under the terms of his probation, was required to report to his probation officer within seventy-two hours of his release. When Ruiz had still not reported by December 21, his probation officer filed a petition to revoke his probation and sought an arrest warrant. After a magistrate issued the warrant, an officer from the City of Benson Police Department arrested Ruiz on January 1, 2007. During a search of Ruiz's person incident to arrest, the officer found "an incriminating item" later determined to be methamphetamine. Ruiz was convicted as charged and sentenced as noted above.

Discussion

¶3 Ruiz argues the trial court erred in denying his motion to suppress the methamphetamine and drug paraphernalia found in his possession when he was arrested. He contends the evidence should have been suppressed because the warrant for his arrest was "legally deficient." "We review the trial court's ruling on a motion to suppress evidence for clear and manifest error." *State v. Weinstein*, 190 Ariz. 306, 308, 947 P.2d 880, 882 (App. 1997). In reviewing a ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing, and we view it in the light most favorable to upholding the trial court's factual findings. *In re Ilono H.*, 210 Ariz. 473, ¶ 2, 113 P.3d 696, 697 (App. 2005). But whether evidence obtained during the execution of an arrest warrant based on a deficient application should be suppressed is a "mixed question of law and fact [that] implicates constitutional rights," and our review is de novo. *State v. Buccini*, 167 Ariz. 550, 556, 810 P.2d 178, 184 (1991).

¶4 Pursuant to the Fourth Amendment to the United States Constitution, an application for an arrest warrant should contain "sufficient information to support an independent judgment that probable cause exists for the warrant," *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 564 (1971), such as an "affirmative allegation that the affiant [had] personal knowledge of the matters contained therein" or specific "sources for the complainant's belief," *Giordenello v. United States*, 357 U.S. 480, 486 (1958).[1] A

[1]Although Ruiz also invokes article II of the Arizona Constitution, he does not argue that its protections are more extensive than those of the Fourth Amendment; indeed, he provides no separate argument or authority with respect to any claims under article II. We

conclusory statement that the named individual "perpetrated the offense described" in the application is insufficient to support a magistrate's independent judgment to issue an arrest warrant. *Whiteley*, 401 U.S. at 565.

¶5 However, under the "good faith" exception to the exclusionary rule, "a reviewing court should not suppress evidence taken as a result of a magistrate's error [in issuing an arrest warrant based on a deficient application] unless the magistrate 'wholly abandon[ed]' his or her judicial role, or the police knew or should have known that the magistrate was acting as a 'rubber stamp' for a police investigation." *State v. Hyde*, 186 Ariz. 252, 275, 921 P.2d 655, 678 (1996), *quoting Aguilar v. Texas*, 378 U.S. 108, 111 (1964); *see United States v. Leon*, 468 U.S. 897, 923 (1984).

¶6 Here, the petition to revoke Ruiz's probation and for an arrest warrant alleged that Ruiz had violated "probation Condition Number 2" because "[o]n or about September 25, 2006, through the present, [he] ha[d] failed to report to his probation officer." The petition also included the date and nature of Ruiz's conviction. The second probation condition had required him to "[r]eport to probation officer as directed, within 72 hours of police contact, court appearances, release from incarceration or termination from residential treatment." However, the petition did not indicate when, or whether, any of these triggering events had occurred.

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therefore confine our analysis to his Fourth Amendment argument. *See State v. Nunez*, 167 Ariz. 272, 274 n.2, 806 P.2d 861, 863 n.2 (1991).

¶7 At the suppression hearing, the trial court found that, although the petition alleged Ruiz had "failed to report to the probation officer and that such failure occurred on or about a certain date," it failed to state "why reporting was required on that date, as it should." The court therefore concluded the petition "d[id] not contain sufficient information to truly establish probable cause." However, the court found there was no reason for the Benson Police Department or the arresting officer "to believe that there was anything amiss about th[e] warrant" and found the magistrate had not "abandoned his judicial role" in issuing it. The court therefore denied Ruiz's motion to suppress under the "good faith" exception to the exclusionary rule. *See Leon*, 486 U.S. at 922; *see also Hyde*, 186 Ariz. at 273, 921 P.2d at 676.

¶8 To establish that a magistrate "wholly abandoned" his judicial role in issuing an arrest warrant, it is not enough to show that "the magistrate's malfeasance, misfeasance, or nonfeasance was so egregious as to constitute total disregard for h[is] responsibilities." *Hyde*, 186 Ariz. at 274, 921 P.2d at 677. Rather, there must be evidence of "systemic or patent partiality," such as the magistrate's active participation in a police investigation or receipt of a salary based on the number of search warrants issued. *Id.* at 274-75, 921 P.2d at 677-78. Here, the only evidence Ruiz has offered is "the fact that the order approving the warrant was dated a day after the warrant itself" and his speculation that this suggests "the

[magistrate] had been engaged in a mere bureaucratic exercise."[2] Thus, he does not allege systemic or patent partiality, let alone provide any evidence to support such a claim.

¶9 Furthermore, "because of its deterrent purpose, the exclusionary rule 'necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct. . . .' Thus, a court should suppress evidence only upon a showing that the police knew or should have known that its [sic] actions were unconstitutional." *Hyde*, 186 Ariz. at 275, 921 P.2d at 678, *quoting Michigan v. Tucker*, 417 U.S. 433, 447 (1974). But here, as the trial court noted, the Benson Police Department "had no hand whatsoever in writing the petition that [secured] the arrest warrant." And Ruiz does not challenge the trial court's finding that the police had no reason to believe there was "anything amiss" with the warrant. Thus, the court did not err in denying Ruiz's motion to suppress pursuant to the "good faith" exception to the exclusionary rule. *See Leon*, 468 U.S. at 923; *Hyde*, 186 Ariz. at 275, 921 P.2d at 678.

Disposition

¶10 For the reasons stated, we affirm.

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GARYE L. VÁSQUEZ, Judge

[2]Ruiz's version of the magistrate's actions is based on speculation and is contrary to the magistrate's testimony at the suppression hearing that he had "read the allegation and found good cause appearing" before issuing the warrant.

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge