STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WADE EUGENE ALLEN,

Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 357451
St. Joseph Circuit Court
LC No. 19-0022973-FC

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying defendant's motion to suppress evidence of a dismembered body located in a cooler in defendant's apartment. The trial court ruled that an initial warrantless search that revealed the body parts was unconstitutional, that portions of an affidavit subsequently submitted in support of a warrant application were problematic and could not be taken into consideration, that the remaining language in the affidavit was nonetheless sufficient to establish probable cause to issue a warrant, which was issued by the magistrate and led to recovery of the body parts, and that, regardless, the good-faith exception to the exclusionary rule would apply. We affirm, albeit for a reason that differs from those given by the trial court.

I. FACTUAL AND PROCEDURAL HISTORY

On the evening of May 22, 2019, an individual identifying himself as "Steven" called St. Joseph County Central Dispatch and advised the dispatcher that a Sturgis man named Wade Allen, defendant, had killed Kelly Jean Warner, dismembered her body, and stuffed her remains in a cooler in defendant's apartment. Steven provided a general location of the apartment. On the basis of that information, central dispatch believed that defendant's address was 229 North Maple Street in Sturgis, and Sturgis Police Officers Wiard, Freds, and Edgington went to that address. When the officers arrived at 229 North Maple Street, they discovered a single-family residence, not a building with apartment units.

Officer Freds then called Steven at the number he had provided to central dispatch in an attempt to gather additional information to locate defendant's residence. According to an

unofficial but undisputed transcript of the phone call, Steven told Officer Freds that defendant resided in an apartment near the intersection of Maple and Hatch Streets and close to West Street. He described the building in which defendant lived as "a big ugly building with a green . . . metal roof," along with vehicles parked in front and a "real shitty" driveway. Steven described defendant as heavyset with brown hair and a goatee. Steven indicated that he had known defendant for nearly ten years and had been at defendant's apartment the previous Tuesday. Defendant had lived in the apartment for a month or two. Steven also stated that defendant sought his assistance in disposing of Warner's remains. Steven declined the request for assistance, as well as defendant's offer to view the remains. According to Steven, defendant and Warner had been in an on-again, off-again relationship for a few years. Defendant told him that Warner "kind of got mouthy with him, he back handed her and accidentally killed her." Defendant further informed Steven that he kept Warner in the bathtub for "a little while" before "chopping her up" and putting her in the cooler.

On the basis of the information provided by Steven to Officer Freds, the three officers located defendant's apartment and knocked on his door at 11:12 p.m. Defendant answered the door, stepped out of his apartment, and closed the apartment door behind him. The officers inquired about whether defendant knew of Warner's whereabouts and asked him if she was present in his apartment. Defendant denied that Warner was in his apartment or that he had recently seen her. Defendant indicated that the last he had heard was that Warner was in Kalamazoo. He suggested that the police check with a shelter there. When the officers asked if they could enter his apartment and look to make sure that Warner was not present, defendant declined the request. Defendant also informed the officers that his apartment was a mess and that if the officers came back after he had a chance to clean it up, he would allow them entry. The officers then directed defendant to put on a pair of shoes because they were going to detain him outside the apartment while they secured a search warrant. In response, defendant agreed to allow one officer into the apartment to take a quick look to make sure that Warner was not present.

Officer Wiard entered the apartment with defendant. As the officer moved through the apartment, he observed a closed cooler in the living room. He asked defendant about the contents of the cooler. Defendant responded that he was getting ready for summer. Officer Wiard then requested permission to open the cooler and look inside. Defendant denied the request, refusing to allow Officer Wiard to look inside the cooler. Officer Wiard then handcuffed defendant, escorted him outside the apartment, and placed him in the backseat of a police cruiser, informing defendant that he had to wait there until he would be taken to jail while the officers sought a search warrant. Defendant was advised that it was going to take some time to type up and submit a warrant request to the magistrate. Defendant began to experience symptoms of anxiety and claustrophobia soon after being placed in the patrol car. He asked Officer Wiard whether he would remove the handcuffs if defendant allowed the police to go back into the apartment. Officer Wiard agreed, and defendant then indicated that if he could accompany the officer into the apartment to get his wallet he would allow Officer Wiard to peek into the cooler.

Officer Wiard and defendant returned to the apartment. Defendant permitted Officer Wiard to open and look into the cooler. When the officer opened the cooler, he saw what appeared to be body parts and immediately closed the cooler. Officer Wiard then arrested defendant, took him into custody, and drafted an affidavit for a search warrant covering the apartment. In Officer Wiard's affidavit in support of the warrant application, he set forth five paragraphs of averments, (a) through (e). In ¶ (a), Officer Wiard recounted the first phone call from Steven to central

dispatch and the officers arrival at the wrong address. In ¶ (b), Officer Wiard averred that the officers had initially gone to a local Speedway station where defendant had previously worked in an unsuccessful effort to obtain defendant's correct address. In ¶ (c), Officer Wiard explained that defendant's correct address was obtained through the second phone conversation with Steven, but he did not include any averments describing the particulars of that second phone call, which had revealed that Steven was well-acquainted with defendant. In ¶ (d), Officer Wiard described the events that transpired once the officers arrived at defendant's apartment up until the point that defendant agreed to let Officer Wiard enter the apartment and take a peek into the cooler. Included in this paragraph was a later-acknowledged false assertion that the officers "could smell a foul odor" when defendant opened the door of his apartment. Finally, in ¶ (e), Officer Wiard discussed his entry into the apartment with defendant and his observation of body parts in the cooler. The magistrate authorized a search warrant, and then a different group of police officers executed the warrant, seizing the cooler containing Warner's remains the next day.

Defendant moved to suppress the evidence, arguing that his Fourth Amendment rights were violated by a warrantless and unreasonable search of his apartment and by a subsequent search and seizure pursuant to an invalid warrant that was not supported by a proper affidavit. The trial court held a hearing over multiple days, and it ultimately denied defendant's motion to suppress. Although the trial court's reasoning is a bit difficult to follow at times, it appears that it reached the following conclusions: (1) the first warrantless entry into the apartment based on "consent" was not proper because the late night knock on the door to begin with was not valid under knock-and-talk precedent; (2) the first entry would have been proper under the "exigent circumstances" exception to the warrant requirement, but the officers did not take that approach; (3) the second warrantless entry in which Officer Wiard looked into the cooler was unconstitutional because the claimed consent was improperly coerced by taking defendant into custody and threatening incarceration while a search warrant was procured; (4) certain components of Officer Wiard's affidavit could not be considered in light of the court's findings on the first two entries into the apartment and the false claim of a foul odor being detected; (5) the remaining valid aspects of the affidavit were nonetheless adequate to establish probable cause to issue the warrant; (6) had details of Steven's second phone call with Officer Freds been set forth in an affidavit there clearly would have been more than sufficient information to issue the search warrant; and (7) the good-faith exception to the exclusionary rule applies in this case because the officers who actually executed the search warrant had nothing to do with the events that transpired earlier at defendant's apartment and could reasonably rely on the warrant. Defendant filed an application for leave to appeal, and this Court granted the application. *People v Allen*, unpublished order of the Court of Appeals, entered August 13, 2021 (Docket No. 357451).

II. ANALYSIS

A. STANDARD OF REVIEW

A trial court's factual findings at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Hornsby*, 251 Mich App 462, 466; 650 NW2d 700 (2002). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress."

Williams, 472 Mich at 313. "Application of the exclusionary rule to a constitutional violation is a question of law that is reviewed de novo." *People v Frazier*, 478 Mich 231, 240; 733 NW2d 713 (2007).

B. SEARCH WARRANT JURISPRUDENCE

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." US Const, Am IV.[1] "[T]he Fourth Amendment protects citizens from unreasonable searches and seizures[,]" and "[t]he federal constitutional protections against unreasonable searches and seizures have been extended to state proceedings through the Due Process Clause of the Fourteenth Amendment." *People v Stevens*, 460 Mich 626, 634; 597 NW2d 53 (1999).

"A magistrate shall only issue a search warrant when he or she finds that there is a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Franklin*, 500 Mich 92, 101; 894 NW2d 561 (2017). "Generally, in order for a search executed pursuant to a warrant to be valid, the warrant must be based on probable cause." *People v Hellstrom*, 264 Mich App 187, 192; 690 NW2d 293 (2004). "Probable cause sufficient to support issuing a search warrant exists when all the facts and circumstances would lead a reasonable person to believe that the evidence of a crime or the contraband sought is in the place requested to be searched." *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001) (quotation marks and citation omitted).

"When probable cause is averred in an affidavit, the affidavit must contain facts within the knowledge of the affiant rather than mere conclusions or beliefs." *Id.* "The affiant may not draw his or her own inferences, but rather must state matters that justify the drawing of them." *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006). The affidavit in support of a warrant request must be read in a common-sense and realistic manner. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). "[A]ppellate scrutiny of a magistrate's decision involves neither de novo review nor application of an abuse of discretion standard[;] [r]ather, the preference for warrants . . . 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." *Id.* An affiant officer's personal experience is relevant to the establishment of probable cause. *Ulman*, 244 Mich App at 509. And police officers are presumptively reliable. *Id.* It is also presumed that

[1] "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation." Const 1963, art 1, § 11.

affidavits supporting search warrants are valid. *People v Mullen*, 282 Mich App 14, 23; 762 NW2d 170 (2008).[2]

C. EXCLUSIONARY RULE JURISPRUDENCE

Our Supreme Court "has repeatedly held that evidence obtained through an illegal search or seizure is tainted by that initial illegality unless sufficiently attenuated from it." *People v Frederick*, 500 Mich 228, 243; 895 NW2d 541 (2017). The exclusionary rule, which provides for the suppression of illegally seized evidence, reaches not only primary evidence that is obtained as a direct result of an illegal search or seizure, but also evidence that is discovered later and found to be derivative of the illegality, i.e., fruit of the poisonous tree. *People v Randolph*, 502 Mich 1, 16 n 31; 917 NW2d 249 (2018). In other words, the exclusionary rule forbids the use of direct and indirect evidence acquired through governmental misconduct, such as an illegal search by the police. *Id.*

The Fourth Amendment says nothing about excluding evidence at trial when its commands are violated; rather, the exclusionary rule is a prudential doctrine created by the United States Supreme Court to compel respect for the prohibition against unreasonable searches and seizures. *Davis v United States*, 564 US 229, 236; 131 S Ct 2419; 180 L Ed 2d 285 (2011). The sole purpose of the exclusionary rule is to deter future Fourth Amendment violations. *Id.* at 236-237. Where suppression would fail to yield any appreciable deterrence, exclusion of the evidence is unwarranted. *Id.* at 237. The deterrence benefits of exclusion vary with the culpability of a police officer's conduct. *Id.* at 238. When the police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs to society in excluding evidence of criminal wrongdoing. *Id.* When, however, the police act with an objectively reasonable good-faith belief that their conduct falls

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[2] MCL 780.653 provides:

> The judge or district court magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:
>
> (a) If the person is named, affirmative allegations from which the judge or district court magistrate may conclude that the person spoke with personal knowledge of the information.
>
> (b) If the person is unnamed, affirmative allegations from which the judge or district magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

within the confines of the law or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force and exclusion serves no valid purpose. *Id.*

D. DISCUSSION AND RESOLUTION

On appeal, defendant argues that the trial court erred by refusing to suppress evidence that was obtained as a result of unconstitutional searches by the police. Defendant contends that the good-faith exception to the exclusionary rule was inapplicable under the circumstances presented because the police acted in bad faith by supporting the affidavit with information derived from unlawful searches and with a false assertion that the police detected a foul smell when at defendant's door.

The trial court ruled that the first two searches of defendant's apartment, i.e., when Officer Wiard initially walked through the apartment and saw the cooler and when he subsequently entered the apartment and looked inside the cooler, were unconstitutional, and we shall proceed on the assumption that the court's determinations were correct. We shall also assume that the trial court erred by finding that Officer Wiard's affidavit supplied the necessary probable cause even upon elimination of tainted aspects of the affidavit. Additionally, we will operate on the assumption that the trial court erred by invoking the good-faith exception to the exclusionary rule on the basis that the officers involved in executing the warrant were not involved in the earlier searches of defendant's apartment and the preparation of the affidavit in support of the warrant application. We conclude that the inevitable-discovery exception to the exclusionary rule applied; therefore, the trial court properly denied defendant's motion to suppress the evidence, albeit for a reason that differs from the trial court's reasoning.

In *Stevens*, 460 Mich at 637, the Michigan Supreme Court discussed the inevitable-discovery exception, observing as follows:

> The inevitable discovery exception generally permits admission of tainted evidence when the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been revealed in the absence of police misconduct. If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means then the deterrence rationale has so little basis that the evidence should be received. If the evidence would have been inevitably obtained, then there is no rational basis for excluding the evidence from the jury. In fact, suppression of the evidence would undermine the adversary system by putting the prosecution in a worse position than it would have been in had there been no police misconduct. [Quotation marks, citations, and ellipses omitted.]

"This Court has cited several factors in determining whether the inevitable-discovery rule applies, including (1) whether the legal means were truly independent, (2) whether the use of the legal means and the discovery by the legal means were truly inevitable, and (3) whether application of the inevitable-discovery doctrine could incentivize police misconduct or significantly weaken the protection provided under the Fourth Amendment." *People v Mahdi*, 317 Mich App 446, 469; 894 NW2d 732 (2016).

In this case, had the police simply supplied the magistrate with the information garnered from *both* phone calls by and to Steven, there would have been an abundance of untainted evidence supporting issuance of a search warrant. There was a preponderance of evidence that the presence of the body parts in the cooler in defendant's apartment ultimately or inevitably would have been revealed in the absence of police misconduct through the submission of additional information to the magistrate in the form of the phone conversation between Steven and Officer Freds. See *Stevens*, 460 Mich at 637. Steven described defendant's apartment and defendant himself, indicated that he had known defendant for ten years, stated that he had been at defendant's apartment within the past week, knew the length of time that defendant had resided at the location, and provided detailed information regarding a direct conversation wherein defendant explained how he killed Warner and asked Steven for help in disposing of Warner's body. From this information and regardless of whether Steven is characterized as a "named" or "unnamed" person, a magistrate could conclude that Steven spoke with personal knowledge of the information and that Steven was credible and that the information was reliable. See MCL 780.653(a) and (b). We conclude that utilizing the two phone conversations to obtain a search warrant would truly be independent of any misconduct, that discovery of the body parts in the cooler was inevitable by legal means—a search warrant issued on the basis of the two phone conversations, that use of an affidavit to encompass both phone conversations was inevitable in the absence of the presumed misconduct, and that application of the inevitable-discovery doctrine here would not incentivize police misconduct. See *Mahdi*, 317 Mich App at 469.

In *Mahdi*, *id.* at 470, this Court, rejecting application of the inevitable-discovery exception to the exclusionary rule in a case in which no search warrant was ever procured by the police, stated:

> There is no indication that the officers would have inevitably discovered the wallet, keys, and cell phone through legal means. Even assuming that the officers had probable cause to obtain a warrant for the keys, wallet, and cell phone, the officers were not in the process of obtaining a warrant when they seized the items. See *People v Hyde*, 285 Mich App 428, 445; 775 NW2d 833 (2009) (reasoning that the evidence at issue in the case should have been excluded because, even though there was probable cause to obtain a warrant, and the evidence would have been obtained through a warrant, the police were not in the process of obtaining the warrant at the time of the seizure). Additionally, application of the inevitable-discovery doctrine in this context would incentivize police misconduct and significantly weaken Fourth Amendment protections because it would permit police officers to evade the warrant requirement and would permit the seizure of an item whenever there is probable cause. See *id.* ("To allow a warrantless search merely because probable cause exists would allow the inevitable discovery doctrine to act as a warrant exception that engulfs the warrant requirement."). Therefore, the inevitable-discovery doctrine does not apply to the seizure of the cell phone, wallet, and set of keys.

In this case, the obvious distinction when compared to this Court's opinions in *Mahdi* and *Hyde* is that the police did in fact engage in the process of obtaining a search warrant before the cooler was seized; there was no evasion of the warrant requirement but merely a failure to more fully support the warrant application with the information provided by Steven to Officer Freds. In

sum, the inevitable-discovery exception to the exclusionary rule applies in this case and, therefore, the evidence seized in defendant's apartment, i.e., the cooler holding Warner's remains, is admissible at trial.

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Riordan