[Cite as *State v. Weimer*, 2009-Ohio-4983.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92094

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANNA WEIMER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-505878

BEFORE: Kilbane, P.J., Sweeney, J., and Jones, J.

RELEASED: September 24, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} The State of Ohio appeals the decision of the trial court that granted appellee Anna Weimer's motion to suppress evidence seized from her home. The State argues that the warrant was based upon evidence that satisfied probable cause, and that the officers who executed the warrant had an objective, good-faith reliance on the warrant's validity. After reviewing the facts and the applicable law, we affirm the decision of the trial court.

{¶ 2} On January 29, 2008, Weimer was indicted by the Cuyahoga County Grand Jury, together with one Calvin Locke. The charges pertaining to Weimer were drug trafficking, in violation of R.C. 2925.03(A)(2), a third degree felony that included both a firearm specification (R.C. 2941.141) and a schoolyard specification (R.C. 2925.03(C)(2)(b)); possession of drugs, in violation of R.C. 2925.11(A), a fourth degree felony; and possession of criminal tools, in violation of R.C. 2923.24(A), a fifth degree felony.

{¶ 3} The charges emanated from evidence seized pursuant to a search warrant executed upon Weimer's residence, 225 East 216th Street, Euclid, Ohio, in the early morning hours of July 20, 2007.

{¶ 4} The Euclid police first learned of Locke when it received "a complaint involving a known drug trafficking suspect residing at the above described premises [225 East 216th Street] located in the City of Euclid."[1]

{¶ 5} Subsequently, after learning from the Cleveland police in March of 2007 that Locke was the subject of a criminal investigation in Cleveland, Detective Thomas Arriza (Detective Arriza) of the Euclid Narcotics Unit decided to conduct surveillance on the residence. Once, in March of 2007, he "did a sort of surveillance,"[2] where he "drove past the house" and observed Locke operating Weimer's black SUV in front of the residence at 225 East 216th Street. Four months later, in July of 2007, Detective Arriza "had occasion to be driving down that street"[3] and he observed Locke standing outside the residence.[4] By the State's own admission, the surveillance conducted in this case was "limited,"[5] and between March and July of 2007, the Euclid police "didn't do anything for several months."[6]

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[1]See affidavit of Detective Arriza at ¶1.

[2]Tr. 20.

[3]Id.

[4]See affidavit of Detective Arriza at ¶3.

[5]Tr. 20.

[6]Id.

{¶ 6} On July 17, 2008, over one year after first learning the details of the Locke investigation from the Cleveland police, Detective Arriza conducted a trash pull of discarded refuse from Weimer's East 216th home. Among the items found as a result of the trash pull were two large plastic zip lock bags, two smaller sandwich-sized zip lock bags, and a metal spoon, all of which tested positive for cocaine. Also found was mail from the Cleveland Municipal Court addressed to Locke at the East 216th Street address.[7]

{¶ 7} On July 19, 2008, Detective Arriza presented an affidavit to a visiting judge of the Euclid Municipal Court in an effort to obtain a search warrant for the 225 East 216th Street residence. The search warrant itself named only Calvin Locke, not Weimer, as the focus of the search. It sought to obtain cocaine and other narcotics, along with evidence associated with narcotics trafficking, including firearms illegally possessed in the home. In the affidavit underlying the warrant, Detective Arriza represented to the issuing judge that Locke resided in the home with Weimer. However, Detective Arriza neglected to inform the issuing judge that he had contradicting information regarding Locke's residence at various addresses.

{¶ 8} Specifically, Arriza was aware that Locke's driver's license listed 3818 Standhill Road in Cleveland, Ohio as his address; that the Cuyahoga County Auditor listed Locke as the property owner of 365 East 161st Street,

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[7]See affidavit of Detective Arriza at ¶5.

Cleveland, Ohio; and that a LexisNexis search listed Locke's last known residence as his mother's home, on 18808 Neff Road, Cleveland, Ohio. This knowledge, when coupled with Detective Arriza's own limited observations of Locke at or near the East 216th Street address,[8] provides only inconclusive facts that do not establish that Locke lived at 225 East 216th Street.

{¶ 9} On July 20, 2008, at approximately 5:00 a.m., the Euclid police executed the search warrant on Weimer's home. The fruits of the search included a bag containing 16.3 grams of cocaine, a folded packet containing .07 grams of cocaine, and a scale that tested positive for cocaine residue. Locke was not present at the time of the search.

{¶ 10} On January 29, 2008, Weimer was indicted by a Cuyahoga County Grand Jury, alleging the charges outlined above.

{¶ 11} On August 27, 2008, Weimer's counsel filed a motion to suppress all evidence obtained, or derivatively obtained, from her residence.

{¶ 12} On September 2 and 3, 2008, the trial court conducted a hearing on Weimer's motion. Prior to commencing the hearing, on September 2, 2008, all charges against Locke were dismissed, without prejudice, by the State, upon the conditions that Locke would agree to pay $1,000 in fees to the

[8]Detective Arriza admittedly observed Locke once on East 216th Street and a second time on the property, in the driveway, for a total of two times in four months.

Euclid Police Department, which impounded his vehicle, and also that Locke would state that there was probable cause for the finding of his indictment.

{¶ 13} On September 11, 2008, the trial court journalized its written entry and opinion granting Weimer's motion to suppress, on the grounds that the search warrant and accompanying affidavit did not support a finding of probable cause, stating in part:

> **"The judge was not informed that there was conflicting information in the possession of the police as to the residence of Calvin Locke; that they did not observe Calvin Locke enter the residence of 225 E. 216th St., Euclid; that they observed Calvin Locke on the property one time in early March of 2007, and one time in July of 2007, without any further particulars regarding his presence on the property; that they did not observe any acts by Calvin Locke that any criminal activity was being conducted by Calvin Locke that would justify the unusual step of a garbage pickup; that they did not observe the garbage-container during the period from the inception of its placement on the tree lawn to the seizure of it for the search of its contents.**
>
> **"* * *
>
> **"The facts contained within the four corners of the Affidavit and the evidence adduced at the hearing of the Motion to Suppress did not support the probable cause standard which would allow the issuance of a search warrant for a 'night-time' search for the subject property * * *."**

{¶ 14} On September 18, 2008, this appeal followed.

{¶ 15} The State asserts one assignment of error for our review:

"The trial court erred in granting Defendant/Appellee's Motion to Suppress."

{¶ 16} A reviewing court is bound to accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. However, the reviewing court must independently determine, as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the appropriate legal standard. *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906.

{¶ 17} The Fourth Amendment to the United States Constitution, applied to the states via the Fourteenth Amendment, reads in part:

> **"[T]he 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."**

{¶ 18} Article I, Section 14 of the Ohio Constitution is nearly the same.

{¶ 19} In applying this amendment to the issues of the case, we are guided by *Illinois v. Gates* (1983), 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527, and *State v. George* (1989), 45 Ohio St.3d 325, 544 N.E.2d 640, in determining whether the search warrant is valid. As such, we have held that:

> **"Although the United States Constitution requires search warrants to issue only upon probable cause, *Gates* requires a reviewing court to defer to an issuing judge's discretion when deciding whether a warrant was validly issued. Thus, even though the existence of probable cause is a legal question to be determined on the historical facts presented, we will uphold the warrant if the issuing judge had a substantial basis for believing that probable cause existed." *State v. Reniff* (2001), 146 Ohio App.3d 749, 768 N.E.2d 667.**

{¶ 20} In reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant issued by a magistrate, neither a trial court nor an appellate court should substitute its judgment for that of the magistrate conducting a de novo determination as to whether the affidavit contains sufficient probable cause upon which that court would issue the search warrant. *City of Cincinnati v. Contemporary Arts Ctr.* (1990), 57 Ohio Misc.2d 9, 566 N.E.2d 207. A reviewing court affords great deference to a judge's determination of the existence of probable cause to support the issuance of a search warrant. *State v. Garner* (1995), 74 Ohio St.3d 49, 656 N.E.2d 623. Such a determination should not be set aside unless it was arbitrarily exercised. See *United States v. Spikes* (C.A. 6,1998), 158 F.3d 913, certiorari denied (1999), 525 U.S. 1086, 119 S.Ct. 836, 142 L.Ed.2d 692.

{¶ 21} In this case, the trial court ruled that the affidavit itself does not establish probable cause sufficient to issue a search warrant. There is nothing in the record before us that causes us to say otherwise. "To

successfully attack the veracity of a facially sufficient search-warrant affidavit, a defendant must show by a preponderance of the evidence that the affiant made a false statement, either 'intentionally, or with reckless disregard for the truth.'" *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, at ¶31, quoting *Franks v. Delaware* (1978), 438 U.S. 154, 155-156, 98 S.Ct. 2674, 57 L.Ed.2d 667. "Reckless disregard" means that the affiant had serious doubts about the truth of an allegation. Id., citing *United States v. Williams* (C.A.7, 1984), 737 F.2d 594, 602. Omissions count as false statements if "designed to mislead or * * * made in reckless disregard of whether they would mislead the [issuing judge]." (Emphasis deleted.) Id., citing *United States v. Colkley* (C.A.4, 1990), 899 F.2d 297, 301.

{¶ 22} Here, the averments contained in the affidavit underlying the search warrant are silent as to the date(s) of the anonymous complaints. The dates of the surveillance, aside from mentioning month and year, omit any specificity with respect to when Locke was found on the premises. From the record before us, we are given to believe he was observed at the premises only once, and then he was standing outside the residence. On a separate occasion, Locke was observed operating Weimer's black SUV in front of the residence on East 216th Street, but not at the address itself. Additionally, the affidavit itself omits conflicting material facts known to the police at the

time the warrant was issued. It therefore presents serious questions regarding the timeliness and completeness of the facts underlying the warrant. Specifically, while the affidavit references an Ohio Bureau of Motor Vehicles (BMV) check of Weimer's address, it neglects to mention that Locke's address, according to the BMV, is entirely different from the residence at 225 East 216th Street, which is the premises Euclid police sought to search in connection with Locke. The conflicts contained within the affidavit, together with the limited observations linking Locke to the premises at issue, make a finding of probable cause in this case unreliable. We agree with the trial court that the affidavit does not support a finding of probable cause.

{¶ 23} In so holding, we do not impugn the integrity of the police or their work in this case. When armed with such conflicting facts as are present here, it is often difficult to present a clear, concise picture of evidence gathered over the course of months, or even years. Yet the point in such instances would be to include more facts for the reviewing judge to consider, not fewer.

{¶ 24} With that said, we believe that merely observing someone driving down a street in a black SUV and observing them another time outside a residence, over a four-month period of time, does not establish probable cause to believe they were residing there and engaging in criminal activity of any

sort. Nor does it provide a conclusive determination that the target of the search warrant actually lives at the residence being targeted, especially in light of the additional facts known to the police at the time regarding the target's other addresses.

{¶ 25} Further, while the trash pull conducted by the Euclid Police was completely legal and revealed evidence of recent criminal activity in the form of empty plastic zip lock bags that tested positive for cocaine residue, the discovery of discarded contraband in Weimer's garbage from a single trash pull, for reasons discussed more fully below, must be viewed in isolation. When viewed in this light, it does not necessarily render the continued presence of suspected cocaine in her home probable, and does not, of itself, give rise to probable cause to issue a search warrant. See, e.g., *United States v. Elliott* (S.D. Ohio, 1984), 576 F.Supp. 1579. We are aware of the line of cases upholding warrants based upon evidence garnered from single trash pulls. However, in those cases, the facts underlying probable cause were much stronger, and including, for example, extensive and continuous surveillance by police, heavy foot traffic to and from the target residence that is indicative of drug transactions, controlled buys by police informants, and even observation of these transactions by the police. No such facts are present here.

{¶ 26} Here, according to the four corners of the affidavit presented to the issuing judge, the affiant lacked a substantial basis of knowledge from which to find probable cause. The police had no way of knowing how much cocaine was contained in the bags, how long it had been in the trash, whether it was a relatively small amount for personal use, or a larger amount used for sale. It is unclear when that past use or storage occurred, when the garbage was removed from the house, or when it was scheduled to be picked up. Without corroboration, we cannot say it supports a conclusion of the probable presence of contraband on the day of the search. Id. at 1581.

{¶ 27} In *Elliott*, the U.S. District Court held, inter alia, that because the averments in an affidavit underlying a search warrant lacked specificity regarding the dates of complaints of drug activity and the dates that the surveillance was conducted in the case, such information could not contribute to the basis for determining the existence of probable cause to issue a search warrant. Id.

{¶ 28} The affidavit in the present case presents some of the same constitutional hurdles. While Detective Arriza was assigned to investigate a complaint about a "known drug trafficking suspect" residing at 225 East 216th Street, nothing in the affidavit indicated when the initial "complaint" was received, who made the complaint, or how many complaints there were. In addition, as mentioned above, the limited "surveillance" and additional

information known to the police did not give any credence to the notion that Locke actually lived there. In short, it created no basis of knowledge from which probable cause would issue.

{¶ 29} Further, aside from conducting a one-time trash pull, the Euclid police conducted no follow-up investigation, such as a controlled buy linking Weimer to the activity suspected in the warrant. In fact, the Euclid police never observed Weimer (or Locke) engaging in any criminal activity, nor did they document any suspected criminal activity occurring in Weimer's home. We agree that the standard for finding probable cause does not require a prima facie showing of criminal activity, but only the probability of criminal activity. See *Gates* at syllabus. However, *Gates* requires a "common sense review" of "the totality of circumstances" surrounding the affidavit and evidence in this case. Id. When employing such a "common sense" approach, we must include the fact that the police were aware of conflicting information regarding Locke's actual residence and chose not to share this information with the judge, because such knowledge is highly relevant in determining probable cause. Id.

{¶ 30} Unfortunately, as discussed infra, we are unable to read the affidavit in its entirety because the law requires that we excise its offending portions. With the offending portions removed, the affidavit does not support a finding of probable cause, even with the legal trash pull.

{¶ 31} In this case, the Euclid police gave the issuing judge no information that they observed contraband or even reasonably suspicious activity such as a large amount of pedestrian traffic that would indicate drug selling in Weimer's home. Perhaps most important is that the police gave the issuing judge the inaccurate impression that Locke actually lived in the home with Weimer, based upon information purportedly related by an unknown source that occurred at an unknown time prior to the search. Though they bolstered that information with their own limited observations of Locke on only two occasions at the premises over several months, that in itself is not enough to establish probable cause to obtain a search warrant. This, coupled with the fact that Detective Arriza had reason to believe that Locke lived at a different address when he submitted his search warrant affidavit to the issuing judge, makes the warrant inherently unreliable. Generally, affidavits containing misrepresentations made with reckless disregard for the truth cannot form the basis for the issuance of a search warrant, where those statements are set aside and the remaining content is insufficient to establish probable cause. See, e.g., *Franks* at 2684.

{¶ 32} In *Franks*, the U.S. Supreme court enunciated the two-part test that we must use in evaluating claims of misleading statements contained in an affidavit. Id. The test was summarized in *United States v. Charles* (C.A.6, 1998), 138 F.3d 257, where the court said that:

> **"[A] court considering whether to suppress evidence based on an allegation that the underlying affidavit contained false statements must apply a two-part test: (1) whether the defendant has proven by a preponderance of the evidence that the affidavit contains deliberately or recklessly false statements and (2) whether the affidavit, without the false statements * * * provides the requisite probable cause to sustain the warrant."[9] Id. at 263.**

{¶ 33} Weimer's challenge satisfies both prongs. First, the record is clear that Detective Arriza knew that Locke had three other possible addresses before he submitted the warrant to the judge, yet he omitted these facts from the affidavit. Second, the actual observations of Locke on or in front of the premises twice over a span of four months, and never entering or leaving the residence, does not support the general statement in the affidavit that "[m]ore recent surveillance conducted in the past two weeks indicated that Locke was still residing at the premises with Ms. Weimer," especially in light of the Euclid police's knowledge that Locke had three other listed addresses. Third, the entire basis for conducting surveillance in the first instance was drawn from an unidentified complaint at an unknown and unspecified time. It lists an ongoing investigation of the premises; no

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[9]See, also, *State v. Frazer*, Cuyahoga App. No. 89097, 2007-Ohio-5954, where this court synthesized the analysis under *Franks* and *Charles* as follows: "The questions before us are (1) whether, under the totality of the circumstances, the affidavit provided a substantial basis for the magistrate's conclusion that there was a fair probability that marijuana or related paraphernalia would be found in the defendant's residence; and (2) if there remains sufficient content in the affidavit to support the warrant after any false information is excluded from it." *Frazer* at ¶25.

suspected criminal activity that would form a basis of knowledge to support probable cause. In short, what was known to the police was not stated in the affidavit; what was not known to police was stated as fact.

{¶ 34} Taken together, "[s]uch conjecture is more appropriate to the discussion of possibilities than it is to the discussion of probabilities." *Elliott* at 1581. While it arguably establishes probable cause, an "arguable basis" is not the standard for probable cause to issue, a substantial basis is. *State v. Reniff*, 146 Ohio App.3d 749, 2001-Ohio-4353, 768 N.E.2d 667. As this court has previously stated, a "substantial basis" on which a judge may base a probable cause must require some showing beyond even an "arguable" basis. Id.

{¶ 35} When the offending portions at paragraphs one through three of the affidavit are excised, as *Charles* requires, the remaining portions of the affidavit do not provide the requisite probable cause to sustain the search warrant. At paragraphs four and five, the affidavit describes the fruits of the trash pull upon Weimer's residence. While it is true that four sandwich bags and a metal spoon tested positive for cocaine residue, Detective Arriza also testified at the September 2, 2008 suppression hearing that the garbage was found in a public area where others had access to it, that the police did not know who took out the garbage and admitted that others could have placed the items in the trash.

{¶ 36} The discovery of this contraband, standing alone, is therefore insufficient to support a determination of probable cause. See *Elliott* at 1581. In *Elliot,* the court suppressed drug residue found in sandwich bags like those found here, as the result of a single trash pull, because it constituted "evidence of a single instance of past use," and did not render "the continued presence of contraband reasonably probable." Id. Such is the case here. Evidence of a single instance of past use, even in the immediate past, does not necessarily render the continued presence of the contraband reasonably probable. Id. While ordinarily this evidence can be coupled with other evidence in order to establish probable cause, such is not the case here where material omissions left out of the affidavit, together with its scant facts, render portions of the affidavit itself not constitutionally reliable. Here, as in *Gates*, there must be a "fair probability that contraband or evidence of crime will be found in a particular place." Id. at 237.

{¶ 37} Next, the affidavit outlines Locke's criminal history, portions of which are incorrect. As these are not material mistakes, they need not be excised. Finally, the affidavit states Detective Arriza's good faith belief that drugs and contraband are in the home.

{¶ 38} What we are left with in the affidavit is the statement that an unnamed, known felon has a criminal history, and a police detective has a good faith belief that drugs are present at a home that this unknown felon

has no documented connection with. In the past, we have upheld the suppression of search warrants in cases presenting more specific facts than these. See *State v. Kelly*,Cuyahoga App. No. 91137, 2009-Ohio-957; *Reniff*, supra.

{¶ 39} In *Kelly*, we upheld the suppression of evidence found as the result of a one-time trash pull, including suspected drug residue and mail addressed to the defendant, and where evidence over a six- to nine-month period of detailed, specific surveillance established pedestrian traffic in and out of the home, together with numerous citizen complaints of noise and drug activity. This case presents fewer facts than those in *Kelly*.

{¶ 40} In *Frazer*, we stated as follows:

> **"'[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.' * * * For example, an officer's statement that he has received 'reliable information from a credible person' and does 'believe' that contraband would be found at a home, is insufficient standing alone to create probable cause sufficient to support a search warrant. Id." *Frazer* at ¶ 23, citing *Gates* at 239.**

{¶ 41} The situation outlined the *Frazer* example presents an apt summary of the contents of the affidavit in this case.

{¶ 42} Because the affidavit contains material omissions and scant facts supporting it, we cannot say that it contains sufficient indicia of reliability for probable cause to issue. We are cognizant that, if this document did not

contain portions that must be excised under the law, the result in this case might be different.[10] Because of this, the trial court did not err in ruling that the affidavit underlying the search warrant in this case did not support a finding of probable cause.

{¶ 43} In the alternative, the State argues that even if the affidavit underlying the warrant was constitutionally infirm, the officers executing the search warrant acted in an objectively reasonable manner and in good faith reliance on the search warrant. See *George*, supra. In support of this, the State argues in its brief that "[d]efendant cannot show that the officers failed to act in an objectively reasonable manner when they relied upon the propriety of the warrant." We disagree.

{¶ 44} According to the "exclusionary rule," "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Mapp v. Ohio* (1961) 367 U.S. 643, 655. The "purpose of the exclusionary rule is to deter unlawful police conduct * * *." *United States v. Peltier* (1975), 422 U.S. 532, 542. The "good

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[10]Cf., *State v. Pustelnik*, Cuyahoga App. No. 91779, 2009-Ohio-3458, which dealt with the a similar issue regarding the veracity of information from confidential informants that is included in search warrant affidavits: "Although there was no evidence in the affidavit to demonstrate the affiant's prior knowledge of the veracity of the confidential informant, the informant's statements were corroborated by police investigation and the trash pulls. We find that this corroboration provided sufficient indicia of the reliability and veracity of the informant's statements." *Pustelnik* at ¶ 23, citing *Gates*, supra; *State v. Banna*, Cuyahoga App. Nos. 84901 and 84902, 2005-Ohio-2614.

faith exception" to the exclusionary rule was first set forth in *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, and applied in Ohio by *State v. Wilmoth* (1986), 22 Ohio St.3d 251, 490 N.E.2d 1236. The good faith exception holds that the Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. *Leon* at 918-923, 926.

{¶ 45} In its holding, the *Leon* court identified four situations where an officer's reliance on a warrant would not be objectively reasonable: (1) the magistrate or judge 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; (2) the issuing magistrate wholly abandoned his judicial role; (3) an officer purports to rely upon a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; (4) depending on the circumstances of the particular case, the warrant is so facially deficient that the executing officers cannot reasonably presume it valid. *George* at 331, citing *Leon*.

{¶ 46} We cannot discuss the good-faith exception to the warrant requirement in this case without considering our analysis of the facts known to the police at the time the search warrant was issued. "When analyzing

the 'indicia of probable cause' to determine whether police would reasonably rely on a warrant, courts have not allowed police officers to relegate all knowledge of search and seizure standards to the issuing judge or magistrate. * * * The good-faith exception does not allow police to rely blindly upon a judge's issuance of a warrant, but instead requires all law enforcement officials to have some 'minimum level of knowledge of the law's requirements.'" *Reniff* at 674, quoting *Leon* and *Gates*.

{¶ 47} Further, "Ohio courts have generally held police officers responsible for knowing not only when the warrant is based on a conclusory 'bare-bones' affidavit, but also for knowing whether allegations have sufficient factual basis or require further corroboration, and whether observed facts reasonably lead to an inference of wrongdoing." Id. (Internal citations omitted.)

{¶ 48} Here, we have already addressed the notion that, at the time the warrant was issued, the officer requesting the warrant was armed with information which, if known to the magistrate issuing the warrant, would materially change the allegations contained in the affidavit. We have also dismissed the argument that the affidavit itself contained sufficient indicia of reliability such that probable cause would issue. Based upon that analysis, there can be no objective good-faith reliance upon the warrant independent of the conflicting facts known to the affiant.

{¶ 49} The trial court did not err in suppressing the evidence in this case based upon the contents of the search warrant and the conflicting information in possession of the police at the time the warrant was issued.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

JAMES J. SWEENEY, J., CONCURS;
LARRY A. JONES, J., CONCURS IN JUDGMENT ONLY