

IN THE UTAH COURT OF APPEALS

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State of Utah,) MEMORANDUM DECISION
) (Not For Official Publication)
 Plaintiff and Appellee,) Case No. 20090263-CA
)
 v.) F I L E D
) (December 23, 2010)
 Andrew Hunter Cone,)
)
 Defendant and Appellant.) 2010 UT App 378

Fourth District, Provo Department, 071400089
The Honorable Claudia Laycock

Attorneys: Shelden R. Carter, Provo, for Appellant
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake
City, for Appellee

Before Judges Davis, McHugh, and Orme.

McHUGH, Associate Presiding Judge:

Andrew Hunter Cone appeals the denial of his motions to suppress evidence found after a search of his bedroom pursuant to a search warrant. After the search, Cone was charged with possession of psilocybin in a drug-free zone with intent to distribute, possession of marijuana in a drug-free zone, and possession of paraphernalia in a drug-free zone. He entered a conditional guilty plea to amended charges,¹ preserving his right to appeal the orders denying his motions to suppress, see generally State v. Sery, 758 P.2d 935, 939 (Utah Ct. App. 1988). We affirm.

Cone's bedroom was searched pursuant to a search warrant obtained by a Provo City police officer. In his first motion to suppress, Cone argued that the search warrant was invalid because there was extra language, typically associated with an affidavit, at the bottom of the warrant signed by the magistrate. In his second motion to suppress, Cone claimed that because the

¹Cone pleaded guilty to possession of psilocybin, a third degree felony, and possession of marijuana, a class B misdemeanor.

affidavit did not specify the date on which Cone's roommate saw the marijuana in Cone's bedroom, the search warrant was based on stale information and therefore lacked probable cause. The trial court denied both motions concluding that the "extra words" did not invalidate the search warrant and that the information in the affidavit supported the inference that the observation was recent. In addition, the trial court concluded that even if the warrant were deficient, the evidence obtained in good faith reliance on its validity should not be excluded. See United States v. Leon, 468 U.S. 897, 918-25 (1984).

Cone appeals, challenging the trial court's conclusions regarding the validity of the search warrant, but fails to address the trial court's alternative ground for denying the motions to suppress under the good-faith exception to the exclusionary rule applicable under the federal constitution.² "A good-faith exception to the [federal] exclusionary rule exists" in a number of circumstances, including "when an officer acts in reasonable reliance on a warrant." State v. Baker, 2010 UT 18, ¶ 36, 229 P.3d 650 (citing Leon, 468 U.S. at 920). The good-faith exception allows the admission of evidence obtained by officers acting in "reasonable reliance" on a search warrant issued by a "detached and neutral magistrate," even if the warrant is later determined to be invalid. See generally Leon, 468 U.S. at 913-25 (defining the good-faith exception to the exclusionary rule). That exception is applicable here.

The officer obtained a search warrant from a neutral magistrate before conducting the search of Cone's apartment. Even if the extra language rendered the signature invalid or the magistrate lacked probable cause to issue the warrant due to the insufficiency of the supporting affidavit, the trial court properly denied the motions to suppress evidence under the federal good-faith exception to the exclusionary rule, see id. Because we affirm the trial court's decision on this alternative

²Our supreme court has not yet determined whether the protections provided by the Utah Constitution would allow unconstitutionally-obtained evidence to be admitted upon a showing of good faith. See State v. Baker, 2010 UT 18, ¶ 35 n.2, 229 P.3d 650. Because the State has limited its argument to federal constitutional arguments and the defense has not suggested that greater protection is available under our state constitution, we "limit our analysis to the federal good-faith exception." See id.

ground, we need not consider whether the search warrant was actually invalid.

Affirmed.

Carolyn B. McHugh,
Associate Presiding Judge

WE CONCUR:

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge