Court of Criminal Appeals

State of Alabama
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MEMORANDUM

CR-18-1288 Mobile Circuit Court CC-17-5256

State of Alabama v. Trenteon J. King

KELLUM, Judge.

The State of Alabama appeals the circuit court's ruling granting Trenteon M. King's motion to suppress evidence discovered as a result of the execution of a search warrant on King's residence.[1]

[1]The record shows that two search warrants were issued: one for King's home and one for a silver Toyota vehicle. The State argued that King would have no standing to challenge the

In October 2016, Mobile police were dispatched to an address on Lillian Drive in response to a 911 emergency telephone call. They discovered the dead body of Deanthony Means, the victim of an apparent shooting. After police interviewed witnesses, their investigation focused on King. Police sought two search warrants: one for King's home and one for a silver Toyota vehicle that had been seen at the murder scene. (C. 34; 37.) The two warrants were approved by a Mobile County District Judge. The warrants were directed to the "Sheriff of Mobile County" but were executed by Mobile City Police officers without any sheriff deputies present. As a result of the execution of the search warrant for King's residence, police discovered unfired .380 ammunition and a loaded .380 gun. The gun connected King to the shooting of Means. King was indicted for two counts of murdering Means, violations of § 13A-6-2, Ala. Code 1975.

King moved to suppress the gun and ammunition discovered from the search of his residence. In the motion, King argued that according to § 15-5-7, Ala. Code 1975, the search was illegal because, he asserted, "the warrant was issued to the Sheriff of Mobile County but was executed by the Mobile Police Department, which invalidates the warrant as per Anderson v. State, 212 So. 3d 252 (Ala. Civ. App. 2016)." (C. 8.) The State objected and argued that federal law did not support granting the motion and that the error was a clerical error that did not affect the validity of the warrant. A hearing was held. After the hearing, the circuit court granted King's motion to suppress based on the holding of the Alabama Court of Civil Appeals in Anderson. The State then filed this

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search of the vehicle. At the suppression hearing, testimony established that the vehicle belonged to Deandre Watters. (C. 24.) Thus, we agree that King would have no standing to challenge the search of a vehicle that did not belong to him. Hall v. State, 820 So. 2d 113, 133 (Ala. Crim. App. 1999). Nonetheless, the damaging evidence was discovered in King's home. The State's notice of appeal states that it is appealing the circuit court's ruling suppressing the evidence found at King's residence as a result of a search warrant. (C. 26.) Thus, the validity of the search warrant for Watters's vehicle is not properly before this Court in this State's appeal.

timely notice of appeal.[2]

This is an appeal from a circuit court's ruling granting a motion to suppress evidence. The underlying facts are uncontested.

> "When an appellate court reviews the findings and holdings of a trial court resulting from a hearing on a motion to suppress evidence, if the evidence before the trial court was undisputed, the 'ore tenus rule,' pursuant to which the trial court's conclusions on issues of fact are presumed correct, is inapplicable, and the reviewing court will sit in judgment on the evidence de novo, indulging no presumption in favor of the trial court's application of the law to those facts. State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996)."

Ex parte Kelley, 870 So. 2d 711, 714 (Ala. 2003). "The standard of review for pure questions of law in criminal cases is de novo. Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)." Ex parte Lamb, 113 So. 3d 686, 689 (Ala. 2011).

On appeal, the State argues that the circuit court's ruling granting the motion to suppress was erroneous because, it argues, a clerical error in a "search warrant designation" does not require that the evidence be suppressed. Specifically, the State argues that nonprejudicial clerical errors in warrants do not require suppression of evidence when the officers who executed the warrant acted in good faith. King argues that the ruling in Anderson controls the disposition of this case and supports the circuit court's ruling suppressing the evidence.

Section 15-5-7, Ala. Code 1975, the statute at issue in this case, provides:

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[2]Pursuant to Rule 15.7, Ala. R. Crim. P., the State has only 7 days to file a timely notice of appeal from a pretrial ruling suppressing evidence and must certify that the lower court's ruling is fatal to its prosecution. The State complied with the provisions of Rule 15.7, Ala. R. Crim. P.

"A search warrant may be executed by any one of the officers to whom it is directed, but by no other person except in aid of such officer at his request, he being present and acting in its execution."

(Emphasis added.)

At the suppression hearing, the following occurred:

"The Court: Who executed it? Who executed the warrant? Who --

"[Prosecutor]: Both, Detective [Jeff] Booth and Detective [Nick] Crepeau were participants in executing the search warrant.

"The Court: Have either of them ever been - what do you call it? Deputized by the Mobile County Sheriff's Office?

"[Prosecutor]: No.

"The Court: I'll let the record reflect. That they're shaking their heads left and right which in the western --

"[Prosecutor]: I can answer that question. Neither one has been.

"....

"The Court: All right. Let's talk about 15-5-7. I'm reading it. 'A search warrant may be executed by any one of the officers to whom it is directed but by no other person except in aid of such officer at his request, he being present and acting in its execution.'

"Was there anybody from the sheriff's department there when they executed the warrant?

"[Prosecutor]: No, sir.

"The Court: Okay.

> "[Defense counsel]: And I will say that there are no cases listed that contravene Anderson either."

(R. 15-16.)

Nick Crepeau, an investigator with the Mobile Police Department, testified that he was called to the scene of the shooting at around 1:00 a.m. on the morning of October 2, 2016. He said that one witness, Deandre Watters, told him that he had witnessed the shooting and that one of the shooters was King. After talking with Watters, Det. Crepeau and Det. Jeff Booth obtained warrants to search King's home and Watters's vehicle. Det. Booth testified that he was the individual who collected and typed the affidavit and search warrants.[3]

We agree with the circuit court that Anderson and § 15-5-7, Ala. Code 1975, control the outcome in this case. In Anderson, the Court of Civil Appeals considered the appeal of a civil forfeiture that resulted from the execution of a search warrant on Anderson's residence. In determining the merits of the action, the court addressed the validity of the search warrant. The Court, addressing every argument made by the State in this case, stated:

> "Anderson contends, and the undisputed testimony supports his contentions, that the search warrant was issued by a district-court judge to 'the Sheriff of Mobile County,' that Officer [Jimmy] Bailey is a municipal police officer employed by the City of Mobile, and that Anderson's residence is located in Mobile County outside the city limits of the City of Mobile. Further, the record indicates that Officer Bailey was not deputized and that he was not accompanied by a sheriff's deputy at the time he executed the search warrant. These facts, Anderson argues, support the conclusion that the search warrant was not validly executed.

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[3]At the suppression hearing, the State noted for the record that consistent with the holding in Anderson the county's warrant forms had been revised but that in this case an old form had been used.

"Anderson relies on Ala. Code 1975, §§ 15-5-5 and 15-5-7, to support his argument. Section 15-5-5 states:

> "'If the judge or the magistrate is satisfied of the existence of the grounds of the application or that there is probable ground to believe their existence, he must issue a search warrant signed by him and directed to the sheriff or to any constable of the county, commanding him forthwith to search the person or place named for the property specified and to bring it before the court issuing the warrant.'

"According to § 15-5-7, '[a] search warrant may be executed by any one of the officers to whom it is directed, but by no other person except in aid of such officer at his request, he being present and acting in its execution.'

"'It is undisputed that a search warrant may be executed only by the officers to whom it is directed.' Williams v. State, 505 So. 2d 1252, 1253 (Ala. Crim. App. 1986). Under § 15-5-5, a search warrant is to be directed to the county sheriff or constable, indicating that only sheriff deputies or constables may execute search warrants. When called upon to construe § 15-5-5, the Court of Criminal Appeals determined that the execution of search warrants by municipal officers is authorized in certain, particular instances. In Hicks v. State, 437 So. 2d 1344, 1345 (Ala. Crim. App. 1982), the Court of Criminal Appeals construed Ala. Code 1975, §§ 12-14-4 and 12-14-32, as permitting municipal judges to issue search warrants directed to municipal law-enforcement officers. The court noted that, '[w]ithout doubt, §§ 15-5-5 and 15-5-7 ... do not include municipal police officers as among those authorized to execute search warrants.' Hicks, 437 So. 2d at 1345. Similarly, in Williams, the Court of Criminal Appeals determined that a search warrant issued by a municipal judge and directed to the

county sheriff 'or other lawful officer' was properly executed by Evergreen municipal officers acting within the city limits. Williams, 505 So. 2d at 1253. The Williams court applied the principles set out in Hicks to reach its conclusion. Id.

"In other cases, the Court of Criminal Appeals has construed § 15-5-5 to allow municipal officers acting under the direction of, or with the authority of, sheriff's deputies to execute search warrants. In Cowart v. State, 488 So. 2d 497, 502 (Ala. Crim. App. 1985), overruled on other grounds, McClendon v. State, 513 So. 2d 102 (Ala. Crim. App. 1986), the court, relying on Walden v. State, 426 So. 2d 515 (Ala. Crim. App. 1982), stated that it is 'permissible for a municipal police officer who had been duly sworn as a deputy sheriff to execute a search warrant which was directed to the sheriff's department, even though th[e] deputy was not under the control and supervision of the sheriff.' Similarly, in Gamble v. State, 473 So. 2d 1188, 1196 (Ala. Crim. App. 1985)(citing United States v. Martin, 600 F.2d 1175 (5th Cir. 1979)), the court held that 'a search pursuant to an Alabama warrant executed by a municipal officer in cooperation with county sheriff's deputies was valid even if the deputies were present merely to legitimate the search.'

"As noted above, however, the search warrant in the present case was issued by a district-court judge, not a municipal judge, and the parties agree that it was directed to the county sheriff. Thus, the present case is unlike both Hicks and Williams, and Officer Bailey did not have the authority to execute the search warrant in the present case pursuant to §§ 12-14-4 and 12-14-32. Furthermore, according to the record, no deputies were present during the search, and Officer Bailey testified that he was not deputized at the time the search was conducted. Thus, Officer Bailey lacked authority to execute the search warrant under the principles announced in Gamble and Cowart.

"....

"The State ... argues that Rule 3.10, Ala. R. Crim. P., expands the authority to execute search warrants to all police officers within the state. The rule states, in pertinent part: 'The search warrant shall be directed to and served by a law enforcement officer, as defined by Rule 1.4(p) [, Ala. R. Crim. P.].' Rule 1.4.(p), Ala. R. Crim. P., defines a 'law enforcement officer' as 'an officer, employee or agent of the State of Alabama or any political subdivision thereof....' Thus, the State argues, Rule 3.10 allows any law-enforcement officer of any political subdivision of the state to serve or execute any search warrant in the state. However, as noted by Justice Lyons in his concurring-in-the-result opinion in State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1030-31 (Ala. 1999) (Lyons, J., concurring in the result), Rule 3.10 does not indicate that it supersedes § 15-5-7, which provides specifically that a search warrant is to be executed by the officer to whom it is directed. Justice Lyons explained:

> "'One of the grounds upon which the trial court predicated its dismissal [of the forfeiture action in Property at 2018 Rainbow Drive] was that the search was improper, under § 15-5-7, Ala. Code 1975, because the warrant was executed by officers other than those to whom it was directed. The trial court found that this defect in the execution of the warrant required the suppression of the evidence seized at the subject property.
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> "'Section 15-5-7 provides:
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> > "'A search warrant may be executed by any one of the officers to whom it is directed, but by no other person except in aid of such officer at his request, he being present and acting in its execution.'

"'This statute has been strictly construed, and compliance with its formality has been required. See Yeager v. State, 500 So. 2d 1260 (Ala. Crim. App. 1986); Rivers v. State, 406 So. 2d 1021 (Ala. Crim. App. 1981), cert. denied, 406 So. 2d 1023 (Ala. 1981); see, also, United States v. Martin, 600 F.2d 1175 (5th Cir. 1979) (recognizing that strict compliance with § 15-5-7 is required), overruled on other grounds, United States v. McKeever, 905 F.2d 829 (5th Cir. 1990). Failure to comply with § 15-5-7 requires suppression of the evidence seized pursuant to the warrant. See Rivers, supra. Furthermore, the exclusionary rules applicable in criminal prosecutions are equally applicable in forfeiture proceedings. Nicaud v. State ex rel. Hendrix, 401 So. 2d 43, 45 (Ala. 1981).

"'In the present case, members of the Gadsden Police Department and an officer of the Alcoholic Beverage Control Board executed a search warrant authorizing a search of the subject property for illegal controlled substances. That search warrant, however, was addressed to "The Sheriff of [Etowah C]ounty." It is undisputed that the members of the Gadsden Police Department and the ABC officer who searched the subject property were not deputized members of the Etowah County Sheriff's Department. It is also undisputed that no member of the Etowah County Sheriff's Department was present and acting in the execution of the warrant. Thus, the warrant was neither executed by "any one of the officers to whom it [was] directed" nor executed by a person "in aid of such officer at his request, he being present and acting in its execution," as § 15-5-7 requires. Therefore, the trial court correctly suppressed the evidence and correctly dismissed the action.

"'....

"'Last, one could argue that Rule 3.10, Ala. R. Crim. P., has modified § 15-5-7. Rule 3.10 provides, in pertinent part:

"'The search warrant shall be directed to and served by a law enforcement officer, as defined by Rule 1.4(p). It shall command such officer to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property specified and to bring an inventory of said property before the court issuing the warrant.... The judge or magistrate shall endorse the warrant, showing the hour, date, and the name of the law enforcement officer to whom the warrant was delivered for execution, and a copy of such warrant and the endorsement thereon shall be admissible in evidence in the courts.'

"'(Emphasis added.) Rule 1.4(p) states:

> "'"Law Enforcement Officer' means an officer, employee or agent of the State of Alabama or any political subdivision thereof who is required by law to:
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> "'"(I) Maintain public order;
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> "'"(ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
>
> "'"(iii) Investigate the commission or suspected commission of offenses."

"'Therefore, Rule 3.10 does not specifically authorize the execution of a

warrant by a law-enforcement officer other than the officer to whom the warrant is directed. As noted above, § 15-5-7 condemns the execution of a warrant by an officer other than the one to whom the warrant is directed. The Rules of Criminal Procedure displace statutes that conflict with the rules. See § 15-1-1, Ala. Code 1975; Ex parte Oswalt, 686 So. 2d 368, 370 (Ala. 1996). However, if the Advisory Committee thought § 15-5-7 conflicted with Rule 3.10, the Committee easily could have referred to the conflict in the Committee Comments to Rule 3.10. Instead, the Comments, speaking to the statutes modified by the rule, state, "This rule is taken from and modifies Ala. Code 1975, §§ 15-5-5, 15-5-8, and 15-5-12." I am not prepared to expand on that list in the absence of any reason for thinking the omission of § 15-5-7 was an oversight.

"'_____

"'[2]The fact that the members of the Gadsden Police Department and the ABC officer were not deputized by the Etowah County Sheriff's Department distinguishes this case from Cowart v. State, 488 So. 2d 497, 502 (Ala. Crim. App. 1985), in which the Court of Criminal Appeals held that a warrant directed to the "Sheriff of Mobile County" was properly executed by an officer of the Mobile Police Department because the officer "had been personally deputized by the sheriff of Mobile County and had taken an oath to discharge the duties of a deputy sheriff." The fact that no member of the Etowah County Sheriff's Department was present during the search distinguishes this case from Yeager, supra, and Gamble v. State, 473 So. 2d 1188 (Ala. Crim. App. 1985).'

"Property at 2018 Rainbow Drive, 740 So. 2d at 1030-31 (Lyons, J., concurring in the result) (second emphasis added).

"We agree with the analysis performed by Justice Lyons in his opinion concurring in the result in Property at 2018 Rainbow Drive. Section 15-5-7 requires that a search warrant be executed by the officers to whom it is directed, and it is undisputed that the search warrant in the present case was directed to the sheriff of Mobile County, not to the Mobile Police Department or to 'any law-enforcement officer.' The testimony at trial established that Officers Bailey and Walton, who are both officers of the Mobile City Police Department, executed the search warrant without assistance from the Mobile County Sheriff's Office. Furthermore, Officer Bailey admitted that he was not deputized by the sheriff. Thus, we agree with Anderson that the search warrant was not properly executed.

"The State argues that, even if the search warrant was not properly executed, no ground for reversal exists because of the 'good-faith exception.' That exception prevents the exclusion of evidence gathered during a defective search when the officers executing the search reasonably relied on a warrant later held to be invalid. Rivers v. State, 695 So. 2d 260, 262 (Ala. Crim. App. 1997) (citing United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984)). The Court of Criminal Appeals has explained that '[t]he good faith exception provides that when officers acting in good faith, that is, in objectively reasonable reliance on a warrant issued by a neutral, detached magistrate, conduct a search and the warrant is found to be invalid, the evidence need not be excluded.' Rivers, 695 So. 2d at 262.

"However, in the present case, it is not the search warrant that is invalid. Instead, our conclusion is that Officer Bailey improperly executed the search warrant in violation of the established law set out in § 15-5-7. We cannot agree

> that the good-faith exception applies to permit a municipal officer to execute a search warrant directed to a county sheriff in violation of § 15-5-7. Officer Bailey's reliance on what appears to be an illegal practice of the Mobile City Police Department is not reasonable in light of the statutory directive of § 15-5-7 that a search warrant be executed by the officer to whom it is directed or at his or her direction and in his or her presence."

Anderson, 212 So. 3d at 254-58.

Here, the warrant was directed "to the Sheriff of Mobile County" but was executed by Mobile City Police officers. The officers did not have any sheriff deputy present nor were the officers deputized by the sheriff's department. Also, as Anderson held, the good-faith exception would not apply to the facts of the case. While Alabama has recognized that clerical errors may occur in a warrant, Alabama courts have never held that a clerical error waives compliance with § 15-5-7, Ala. Code 1975. See Ex parte Tyson, 784 So. 2d 357 (Ala. 2000) (wrong apartment number in warrant did not invalidate warrant when police had verified the correct apartment number before search); State v. Graham, 571 So. 2d 1267 (Ala. Crim. App. 1990) (address that was "two digits off" did not invalidate warrant when the address on warrant did not exist and correct address was easily identifiable). Indeed, if this Court were to hold that the error in this case was a clerical error we would, in essence, be rendering § 15-5-7, Ala. Code 1975, obsolete.

Moreover, in the circuit court the State argued that according to federal law the evidence should not be suppressed. It relied on the case of United State v. Gilbert, 942 F.2d 1537 (11th Cir. 1991), to support its argument. The Gilbert Court stated:

> "In the instant case, constitutional considerations, rather than the demands of state law, direct our resolution of this issue. As the Supreme Court noted in Elkins v. United States, 364 U.S. 206, 223-24, 80 S.Ct. 1437, 1447, 4 L.Ed.2d 1669 (1960), a federal court's inquiry in search and

seizure matters necessarily differs in scope from that which a state court must resolve:

> "'In determining whether there has been an unreasonable search and seizure by state officers, a federal court must make an independent inquiry, whether or not there has been such an inquiry by a state court, and irrespective of how any such inquiry may have turned out. The text is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed.'
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> "(emphasis supplied).
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> "We recognize that a Florida state court has suppressed evidence from a 'fatally defective [warrant] ... directed to one category of peace officers [when] ... another category of police executed the warrant.' Hasselrode v. State, 369 So. 2d 348, 350 (Fla. Dist. Ct. App. 1979), cert. den. 381 So. 2d 766 (Fla. 1980). In Hasselrode, the Florida court indicated that it will regulate searches by suppressing evidence gathered by one not named in a warrant, but otherwise authorized to gather such evidence. That is for Florida to say. Our construction of the warrant at issue here, however, forces us to determine that the warrant did not violate federal constitutional law. We may agree that state authority did not empower these municipal officers to execute this particular warrant. State authority, however, clearly empowered them to execute warrants at the location at issue in this search; the State Attorney obtaining the warrant merely neglected to include them within the scope of those authorized to execute this search."

Gilbert, 942 F.2d at 1541-42 (emphasis in original). Here, the issue is not the validity of the grounds supporting the issuance of the warrant but the validity of the execution of that warrant, an issue exclusively governed by Alabama law.

"Statutes authorizing searches are strictly construed against the prosecution in favor of the liberty of the citizen." Kelley v. State, 55 Ala. App. 402, 403, 316 So. 2d 233, 234 (Ala. Crim. App. 1975). "The appellate courts, including this one, are duty-bound to preserve the rule of law in the issuance of search warrants. Suppression of evidence seized pursuant to a search warrant issued contrary to the rule of law is necessary to preserve the rule of law itself." Ex parte Turner, 792 So. 2d 1141, 1151 (Ala. 2000). The execution of the search warrant violated § 15-5-7, Ala. Code 1975.

Based on the holding in Anderson and § 15-5-7, Ala. Code 1975, we hold that the circuit court correctly granted King's motion to suppress. For these reasons, we must affirm the circuit court's ruling suppressing the evidence recovered as a result of the execution of the search warrant on King's residence.

AFFIRMED.

Windom, P.J., and Minor, J., concur. McCool, J., concurs specially, with opinion. Cole, J., concurs in the result.