[Cite as *State v. Scott*, 2017-Ohio-358.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. LEDAIL SCOTT Appellant	C.A. Nos. 15CA010844 15CA010846 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE Nos. 11CR084217 11CR084218

DECISION AND JOURNAL ENTRY

Dated: January 31, 2017

CARR, Presiding Judge.

{¶1} Appellant LeDail Scott, and several other men, participated in a home invasion in Lorain County. The next night, Scott and others robbed a drug dealer. Both offenses were committed with firearms. Scott was charged with Aggravated Burglary and Aggravated Robbery. After the trial court denied his motion to suppress, Scott entered a no contest plea. He now appeals and has argued that the trial court erred when it denied his motion to suppress. This Court affirms the trial court's judgment.

I.

{¶2} The brief introduction above belies the procedural complexity of this case. After Scott committed these offenses, the Lorain Municipal Court issued complaints and arrest warrants. Scott was arrested at his mother's house, where he consented to a search of his

bedroom, and contraband from the offenses was discovered. At the police station, Scott made incriminating statements.

{¶3} Scott, through his first attorney, moved to suppress the statements he made at the police station. Because Scott was dissatisfied with his attorney's representation, the trial court appointed new counsel, who represented Scott throughout the rest of the trial court proceedings.

{¶4} New counsel moved to withdraw the previously filed motion to suppress and filed his own. The new motion to suppress argued that the complaint and arrest warrant were invalid because they were not signed or time-stamped and because there was no oath or affidavit to demonstrate probable cause. At the hearing scheduled for Scott's motion to suppress, the prosecutor provided signed, time-stamped copies of the complaint and warrant. Scott's counsel told the trial court that, just before the hearing, the prosecutor provided him with copies of the complaint and warrant which appeared to be properly executed. Scott maintained, however, that the complaint and warrant did not demonstrate probable cause. The trial court ordered the State to respond to the motion to suppress and also allowed Scott time to file a response.

{¶5} The prosecutor responded to Scott's motion to suppress on December 6, 2012. The trial court held a hearing on December 12, 2012, and then denied the motion to suppress on December 19, 2012, before Scott filed his response. Scott moved the trial court to reconsider its decision and argued in opposition to the state's response. The trial court denied the motion to reconsider.

{¶6} Scott renewed the previously-withdrawn motion to suppress and the trial court held several hearings on those suppression issues, after which it denied the motion; that motion to suppress is not at issue in this appeal. After unsuccessfully attempting to have the trial court lower his bond, Scott finally posted bond. He failed to appear until he was arrested about a year

later. Scott entered no contest pleas to the two offenses and appealed the trial court's denial of the motion to suppress regarding defects in the complaint and warrant.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY NOT SUPPRESSING ALL EVIDENCE OBTAINED FROM THE UNLAWFUL ARREST OF APPELLANT BASED ON A WARRANT ISSUED WITHOUT PROBABLE CAUSE.

{¶7} Scott argues that the trial court erred when it denied his motion to suppress all evidence obtained from the unlawful arrest warrant. More specifically, Scott argues that the arrest warrant was issued without probable cause.

{¶8} A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Thus, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside* at ¶ 8. "Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

{¶9} Scott argues that the outcome of this case is dictated by a recent Ohio Supreme Court decision, *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795. *Hoffman* had not been decided at the time the trial court denied Scott's motion to suppress, but the same argument was presented in this case as was considered by the Supreme Court.

{¶10} *Hoffman* involved the issuance of complaints and arrest warrants in Toledo. The facts from the suppression hearing demonstrated that warrants were issued without any determination of whether probable cause existed. The purpose of a complaint or affidavit is to set forth sufficient information to enable the person reviewing the complaint and warrant to decide, based on the facts, whether it is likely that an offense has been committed by the defendant named in the complaint. *Id.* at ¶ 14. The flaw recognized in *Hoffman* is that a "mere conclusory statement that the person whose arrest is sought has committed a crime is insufficient to justify a finding of probable cause." *Id.* A person authorized under Crim.R. 4(A)(1) must make a probable-cause determination before an arrest warrant can be issued. *Id.*

{¶11} The *Hoffman* Court extensively reviewed the procedure used in Toledo, based on the testimony taken at the suppression hearing. The procedure involved the use of a form complaint and form arrest warrant. The deputy clerk who completed the form testified about the clerk's role in preparing the warrant. The Supreme Court concluded that a "complaint or affidavit that merely concludes that the person whose arrest is sought has committed a crime is not sufficient to support a finding that probable cause exists for an arrest warrant." *Id.* at ¶ 23, citing *Giordenello v. United States*, 357 U.S. 480, 486 (1958). The complaint or affidavit must recite some of the underlying circumstances if the person authorized by Crim.R. 4(A)(1) can be expected to perform the function of a neutral and detached decision maker. *Id.* quoting *United States v. Ventresca*, 380 U.S. 102, 109 (1965). The *Hoffman* Court concluded that it was "clear from the testimony and documentary evidence offered at the suppression hearing that Hoffman's misdemeanor warrants were issued without a probable-cause determination and therefore are invalid." *Id.*

{¶12} Notwithstanding the invalid arrest warrant, the Supreme Court held that suppression of the evidence is not an automatic remedy. *Hoffman* at ¶ 24. The exclusionary rule serves to protect Fourth Amendment rights through its deterrent effect rather than creating a personal constitutional right for an aggrieved party. "Whether the exclusionary rule's remedy of suppression is appropriate in a particular context is a separate analysis from whether there has been a Fourth Amendment violation." *Id.* at ¶ 24. The question that must be answered before evidence is ordered excluded is "whether suppression of the evidence in this case will create a sufficient deterrent effect to prevent future violations of the Fourth Amendment and Article I, Section 14." *Id.* at ¶ 26. The Court ultimately determined that the evidence should not be suppressed because the officers relied on the arrest warrant and acted in good faith. This conclusion was bolstered by an appellate court decision that sanctioned the procedure used in this case to issue an arrest warrant, and that decision would have informed law enforcement officers that the method used was proper. *Id.* at ¶ 44.

{¶13} With this background, we turn to address the suppression issue in Scott's case. Here, the trial court denied Scott's motion to suppress two years before the Supreme Court decided *Hoffman*. The trial court initially concluded that the complaints and warrants were valid, a conclusion with questionable validity in light of *Hoffman*. Even the State has not strongly argued that the procedure here complied with the requirements of *Hoffman*. We need not resolve that question, however, to decide this matter.

{¶14} Assuming that the complaints and warrants in this case were not properly issued, the exclusion remedy is not automatic in this case, as Scott has argued. The next question is whether the good-faith exception to the exclusionary rule should apply.

{¶15} Scott has argued that the good-faith exception should not apply. As noted above, the question is whether suppression of the evidence in this case will create a sufficient deterrent effect to prevent future violations of the Fourth Amendment or the Ohio Constitution. The exclusionary rule should not be applied to bar use of evidence obtained by police officers acting in objectively reasonable reliance on a warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. *Hoffman* at ¶ 29.

{¶16} The trial court, perhaps recognizing there may be a problem with the method used to issue the complaints and warrants in this case, also addressed the exclusionary rule in its order denying the motion to suppress. The trial court concluded that

> [e]ven assuming there was some flaw in the process, the arresting officers were acting in good faith. The officers received arrest warrants which appeared to be sufficient on their face. In this case, the officers investigated the case, presented the information to the prosecutor, a complaint was signed by authorized court personnel, filed and a warrant issued. There was no reason for the arresting officers to believe that the arrest warrant was not based upon probable cause.

{¶17} The trial court made these factual findings about the actions of the arresting officers. This Court cannot review these findings in accordance with our standard of review, however, because Scott has not provided this Court with a transcript of proceedings of the suppression hearing. It appears from the record that a suppression hearing was held in December 2012, but the transcript of that hearing is not among the many transcribed hearings included in the record. Because Scott has not provided this Court with the necessary transcript, this Court must presume regularity and will accept the validity of these facts.

{¶18} In light of the facts found by the trial court, we agree with the trial court's conclusion that the officers acted in good faith when they arrested Scott. The good-faith exception has been extended to the execution of invalid arrest warrants. *Hoffman* at ¶ 33. Scott has not argued that there were any other problems with the issuance of the complaints and

warrants, so our review is limited to the sole ground set forth in the motion to suppress and argued on appeal.

{¶19} Finally, we note that Scott has argued that the good-faith exception should not apply in this case because the Lorain City prosecutor could not have acted in good faith in obtaining the complaints and arrest warrants. The focus, however, is on whether the *officers*, not a prosecutor, acted in good faith in executing the warrants. There is nothing in the record to suggest that the prosecutor did not act in good faith and, in fact, at least one appellate district had recognized a similar procedure was valid, a position that did not change until the Supreme Court held otherwise in *Hoffman*.

III.

{¶20} Even assuming the arrest warrants were invalid, the officers acted in good faith when they executed them, so the exclusionary rule does not apply. Scott's assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

MOORE, J.
HENSAL, J.
CONCUR.

APPEARANCES:

STEPHEN P. HANUDEL, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.