



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II/IV

March 11, 2016

To:

Hon. Terence T. Bourke
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Joseph R. DeCecco
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Daniel Goggin II
Goggin & Goggin
P.O. Box 646
Neenah, WI 54957-0646

Tiffany M. Winter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

2015AP447-CR

State of Wisconsin v. Constance B. Arrivi
(L. C. #2012CF692)

Before Higginbotham, Sherman, and Blanchard, JJ.

Constance Arrivi appeals a judgment of conviction for possession with intent to deliver heroin, possession of a narcotic drug (methadone) without a valid prescription, and neglect of a child. Based upon our review of the briefs and record, we conclude at conference that this case

is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. § 809.21 (2013-14).¹

This matter arises out of a search of a residence at 1412 Carl Avenue in Sheboygan, pursuant to a search warrant. When police conducted the search, Arrivi was at the residence along with Timothy Gahagan. The search revealed extensive evidence of drug dealing and both were arrested. Arrivi was charged with nine drug-related offenses. After a hearing on a suppression motion, the circuit court concluded that the search warrant affidavit was insufficient. Significantly, the court did not conclude the affidavit was insufficient to establish probable cause that drugs were being sold from the residence. Rather, the court concluded the affidavit was insufficient to establish that Gahagan lived at that address.

After concluding the affidavit was insufficient in this respect, the circuit court held a good faith hearing, where the State established that a significant investigation had been conducted by police and that the address was verified before applying for the warrant. Because there was no police misconduct and the address was confirmed, the court concluded that the exclusionary rule should not apply.

After the motion to suppress was denied, Arrivi pleaded no contest to charges of possession with intent to deliver heroin, possession of methadone, and child neglect. Arrivi now appeals.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Courts uphold a search under the good faith exception to the exclusionary rule where police officers act in objectively reasonable reliance upon a search warrant issued by a detached and neutral magistrate. See *United States v. Leon*, 468 U.S. 897 (1984); *State v. Eason*, 2001 WI 98, ¶74, 245 Wis. 2d 206, 629 N.W.2d 625. The State must satisfy two requirements before the good faith exception can apply: (1) the process used in obtaining the search warrant included a significant investigation; and (2) a review was conducted by either a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion, or a knowledgeable government attorney. See *Eason*, 245 Wis. 2d 206, ¶74.

Arrivi argues that a sufficient investigation was not conducted because there was no evidence the police conducted an investigation of Arrivi. This argument is misguided. Arrivi was not the subject of the warrant, but she was present at the address at the time the warrant was executed.

The search warrant here was a premises warrant. Our supreme court has explained that premises “warrants are not directed at persons,” but instead “authorize the search of ‘places’ and the seizure of ‘things.’” See *State v. Andrews*, 201 Wis. 2d 383, 400, 549 N.W.2d 210 (1996) (quoted source omitted). A third party’s presence during the execution of a search warrant does not invalidate the warrant. On the contrary, officers are permitted to “search all items on the premises that could contain the contraband or evidence sought under the warrant, except those items worn by, or in the physical possession of, persons whose search is not authorized.” *Id.* at 403-04.

As the circuit court observed, the good faith hearing established that there was a significant investigation, indicating that Gahagan was selling controlled substances from 1412

Carl Avenue, and evidence of the suspected criminal activity would be located at the premises. For several months, informants had provided information that Gahagan was distributing heroin. Police officers set up surveillance, and while watching the residence, a car parked in front of the building and an individual entered the side door. After only three to five minutes, the individual returned to the vehicle and drove away. The officers followed and conducted a traffic stop and found heroin outside of the vehicle on top of fresh snow.

The officers arrested the individual, who stated the heroin had been purchased from Gahagan. The individual went to the location to purchase heroin, going to the back door on the east side of the building and upstairs to make contact with Gahagan. Arrivi was observed at the residence, and Gahagan took heroin out of a baggie and placed it in a paper bindle, which was purchased.

Another informant had recently been to Gahagan's residence and observed a pistol. The informer advised that Gahagan lived in the upper unit, and Gahagan and Arrivi were selling heroin, marijuana, and possibly prescription pills from the upper unit. The informant was known to be reliable and had been utilized in the past to conduct controlled buys and gather information for search warrants.

Before applying for the warrant, an officer went to the building at issue and walked up to the front of the residence, noting the address of 1414 Carl Avenue posted near the front door and 1412 Carl Avenue posted near the east door. The address of 1412 Carl Avenue was confirmed through the City's database as a valid address, and it was further confirmed that 1412 Carl Avenue was the address for the upper unit. The residence was kept under surveillance while police were applying for the warrant.

The circuit court summarized as follows the evidence most relevant to the conclusion that the warrant was executed in good faith:

So to boil it all down, there was information gathered in November connecting Mr. Gahagan with [the] selling [of] heroin. There was information that two weeks prior to December 20th an individual ... observed Mr. Gahagan dealing heroin, marijuana, and pills in the residence on Carl Avenue.

That residence was under surveillance. [A confidential informant] was observed going into the residence on December 20th, stayed about three to five minutes, left, and was immediately stopped. He or she was in possession of heroin and said the heroin came from Tim Gahagan and that that person got it at his residence. Sergeant Reineke confirmed the address as being 1412 Carl Avenue.

Additionally the evidence establishes that there was a knowledgeable government attorney who did review the evidence.

The circuit court found the evidence presented at the good faith hearing satisfied the *Eason* requirements. The court correctly concluded that the good faith exception applied, and the evidence was admissible. Because the officers acted in good faith and there was no police illegality, application of the exclusionary rule was not warranted, as exclusion would not serve to deter police misconduct. *See Eason*, 245 Wis. 2d 206, ¶2. The circuit court properly denied the suppression of the evidence.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals