

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP878-CR

Cir. Ct. No. 2003CF80

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY J. MAYOTTE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Taylor County: DOUGLAS T. FOX, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jeremy Mayotte appeals a judgment convicting him of three counts of burglary as party to a crime. He also appeals an order denying his motion to suppress evidence seized in two searches of his home,

which were conducted pursuant to search warrants. Mayotte argues there was no probable cause to support the search warrants. We agree that the warrants lacked probable cause and reverse the judgment and order. However, we remand for the circuit court to determine whether the good faith exception to the exclusionary rule applies.

BACKGROUND

¶2 On October 10, 2003, Mayotte was charged in an amended criminal complaint with three counts of burglary as party to a crime, one count each of possession of paraphernalia and resisting an officer, and five counts of felony bail jumping. The charges were based in part on evidence seized in two searches of a residence located at S2778 Highway 13 in Spencer. The searches were performed pursuant to search warrants.

¶3 Mayotte pled not guilty. He moved to suppress the evidence seized in the two searches, attacking the validity of the search warrants. He argued the warrants were deficient because there was no probable cause to believe that the fruits of a burglary would be found at the address for which the warrants were issued.

¶4 The court denied Mayotte's motion. Mayotte pled guilty to the three burglary charges and the remaining charges were dismissed.

STANDARD OF REVIEW

¶5 Determining whether probable cause supports a search warrant involves making a “practical, commonsense decision whether, given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Ward*, 2000

WI 3, ¶23, 231 Wis. 2d 723, 604 N.W.2d 517 (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). We must consider whether the information before the magistrate provided “sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched.” *State v. Higginbotham*, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991) (internal quotes omitted).

DISCUSSION

¶6 Mayotte concedes that the search warrant applications contained probable cause that he possessed property obtained in the burglaries. However, he argues the applications did not show probable cause that he had contact with or stored the property at the residence to be searched: S2778 Highway 13, Spencer.

¶7 The State argues the facts contained in the warrant applications provided a sufficient link between Mayotte and the residence. The applications asserted the residence was “occupied by Jeremy J. Mayotte” and contained a detailed description of the exterior of the unit.¹ An informant’s written statement, which was attached to the first warrant application, asserted that Mayotte lived in the “Marshfield-Spencer area.” Taken together, the State argues, these facts demonstrated a link between Mayotte and the residence to be searched.

¹ The warrant applications stated, “Apartment #102 is accessed from the outdoors and has a ‘102’ on the door. The building is a one-story white, wood frame, apartment building. Each apartment has a separate entry door leading from the outside, with the apartment numbers on the door. It is the only apartment building within the surrounding area.”

¶8 While the applications assert that the residence was occupied by Mayotte, they do not show how the applicant knew that. This conclusory assertion does not support probable cause. *See Ward*, 231 Wis. 2d 723, ¶28 (A magistrate cannot rely on suspicions or conclusions in the search warrant application to find probable cause.). The more detailed description of the residence says nothing about whether Mayotte was connected with the residence. Nor does the informant's statement that Mayotte lived in the Marshfield or Spencer area link Mayotte to the specific residence to be searched.

¶9 If the application lacked probable cause, the State argues alternatively that the good faith exception to the exclusionary rule applies. The exception applies if

the State has shown, objectively, that the police officers reasonably relied upon a warrant issued by an independent magistrate. The burden is upon the State to also show that the process used in obtaining the search warrant included a significant investigation and a review by either a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion, or a knowledgeable government attorney.

State v. Eason, 2001 WI 98, ¶3, 245 Wis. 2d 206, 629 N.W.2d 625. The State contends that, here, the executing officers acted in objectively reasonable reliance on the warrants and therefore the fruits of those searches should not be suppressed.

¶10 Mayotte counters with a conclusory statement that the evidence does not support good faith. However, good faith was not raised in the circuit court so no evidence was taken on the issue. Mayotte does not argue waiver. Accordingly, we remand to the circuit court to take evidence, make findings of fact and determine whether the good faith exception to the exclusionary rule applies to this case.

By the Court.—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

