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May 24, 2017

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

2016AP1491-CR

State of Wisconsin v. Maurice C. Coder (L.C. # 2014CF468)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Maurice Coder appeals a judgment of conviction for possession of THC, second or subsequent offense. Coder contends that the circuit court erred by denying Coder's motion to suppress evidence police obtained pursuant to an arrest based on a municipal court warrant. Based upon our review of the briefs and record, we conclude at conference that this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We summarily affirm.

On September 12, 2011, the municipal court issued an arrest warrant for Coder based on Coder's failure to pay municipal ordinance violation forfeitures.² On September 17, 2014, police arrested Coder pursuant to the warrant. Based on evidence obtained during the search incident to the arrest, Coder was charged in this case with possession of THC and drug paraphernalia. Coder moved to suppress the evidence obtained during the search, contending that the arrest warrant was invalid. The circuit court denied the motion, determining that the warrant was valid on its face and that the police reasonably relied on it. Coder then pled no contest to possession of THC, second or subsequent offense.

Coder argues that the municipal warrant was invalid because it was not supported by a valid finding that Coder had an ability to pay the forfeitures.³ *See* WIS. STAT. § 800.095(1)(b)2.a. (providing that a municipal court may not order a defendant imprisoned for nonpayment of a forfeiture unless the court finds that the defendant has the ability to pay the forfeiture). Thus, according to Coder, his arrest was not supported by a valid arrest warrant, rendering his arrest illegal and requiring suppression of the evidence obtained pursuant to the

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The document issued by the municipal court on September 12, 2011, is entitled "Commitment Upon Sentence." It states that Coder had failed to pay municipal ordinance forfeitures despite his ability to pay, and commands: (1) law enforcement to arrest Coder and deliver him to jail, and (2) the jail keeper to keep Coder in jail for eight days. Thus, the document served as both a warrant for Coder's arrest and an order for his imprisonment.

³ Coder acknowledges that the arrest warrant has a box checked indicating that a judicial determination was made that Coder had the ability to pay, but contends that the municipal court could not have made that determination because Coder never appeared at any hearing in the forfeiture cases.

arrest. *See State v. Anderson*, 165 Wis. 2d 441, 447-48, 477 N.W.2d 277 (1991) (evidence obtained by means of illegal police conduct subject to suppression). Coder also contends that the good faith exception does not apply because, according to Coder, the municipal court that issued the warrant lacked authority under the statute to issue the warrant. *See State v. Hess*, 2010 WI 82, ¶¶1-3, 327 Wis. 2d 524, 785 N.W.2d 568 (holding that good faith exception to exclusionary rule, which allows admission of evidence obtained by police in good faith reliance on facially valid warrant, is subject to limitations to preserve judicial integrity).

We conclude that the evidence obtained pursuant to Coder's arrest was admissible under the good faith exception to the exclusionary rule.⁴ *See id.* The warrant states that Coder had failed to pay municipal ordinance forfeitures ordered by the municipal court for ordinance violations, and that the municipal court had found that Coder had failed to pay the forfeitures despite Coder's ability to pay. Thus, the warrant was valid on its face, and Coder does not argue that police were not entitled to rely on it. *See id.*, ¶50 (“[T]he good faith exception applies where the State has shown, objectively, that the police officers reasonably relied upon a warrant issued by an independent magistrate.” (quoted source omitted)).

Coder contends, however, that the good faith exception does not apply under *Hess*. In *Hess*, 327 Wis. 2d 524, ¶¶1-10, 66-69, the supreme court held that the good faith exception did not allow use of evidence obtained pursuant to a civil bench warrant for Hess's arrest that was based on Hess's failure to meet with a Department of Corrections agent who was preparing

⁴ Because we conclude that the evidence was admissible pursuant to the good faith exception, we do not reach the parties' dispute as to the validity of the warrant. That is, assuming without deciding that the warrant was invalid, we conclude that the evidence obtained pursuant to the warrant was nonetheless admissible under the good faith exception to the exclusionary rule.

Hess's presentence investigation report. The court held that the arresting officer reasonably relied on the warrant, but that suppression was necessary to preserve judicial integrity. *Id.*, ¶3. The court explained that a circuit court has statutory authority to issue a civil bench warrant, a criminal bench warrant, or a contempt warrant, but that the warrant in that case—for Hess's arrest for failing to comply with the PSI procedure in a criminal case—did not fall under any of those statutes. Rather, "[t]he court issued what purported to be a civil bench warrant in a criminal case on the basis of Hess's failure to comply with an order the court never gave." *Id.*, ¶24. Thus, the court concluded, "because the statutes did not authorize a warrant under these circumstances, the warrant was void *ab initio*.... The warrant had no basis in fact or law and was void from the moment it was issued; therefore, the evidence seized pursuant to Hess's arrest is subject to the exclusionary rule." *Id.*, ¶32.

The court also determined that the warrant was void *ab initio* because it was not supported by affidavit, violating the requirement that the warrant be supported by oath or affirmation. *Id.*, ¶37. The court determined that, under the "unusual circumstances" of the case, the good faith rule did not save the evidence from exclusion. *Id.*, ¶¶63-67 ("[A]bsent unusual circumstances, when a Fourth Amendment violation has occurred because the police have reasonably relied on a warrant issued by a detached and neutral magistrate but ultimately found to be defective, the integrity of the courts is not implicated." (quoted source omitted)). The court summarized the "unusual circumstances" warranting deviation from the general rule that the good faith exception should apply:

The bench warrant civil that the court issued was void *ab initio* because it did not comply with any statute authorizing the court to issue a warrant. It was defective on its face because it was a civil warrant in a criminal case. It was not supported by a constitutionally required oath or affirmation. This should have been obvious because there was no affidavit at all. No law

enforcement officer or agency made a significant investigation to support an affidavit; no government attorney or informed officer scrutinized the warrant for probable cause. In short, the warrant was void *ab initio* because it was unauthorized and defective in nearly every respect.

Id., ¶66.

Coder argues that, here, the municipal court lacked statutory authority to issue the warrant absent a finding of Coder's ability to pay. Thus, Coder asserts, the warrant was void and the evidence obtained pursuant to the warrant must be suppressed to preserve judicial integrity. We are not persuaded.

We conclude that this case does not present the “unusual circumstances” presented in *Hess* that precluded application of the good faith exception. Here, Coder contends, the municipal court issued an arrest warrant that it was authorized to issue, but without the required factual support. In *Hess*, the circuit court did not only issue a warrant without sufficient supporting facts; it issued a warrant without any statutory authority. *Id.* Additionally, the *Hess* court explained that the warrant was not only lacking in statutory support, but was also “unauthorized and defective in nearly every respect.” *Id.* Coder has not alleged the same here.⁵

Therefore,

⁵ We do not reach Coder's argument, raised for the first time in the reply brief, that the warrant failed to comply with the requirements of WIS. STAT. § 800.02(5) and was unsupported by oath or affirmation. See *Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (we generally do not consider arguments raised for the first time in a reply brief).

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals