

SUPREME COURT OF NEVADA

State v. Allen, 118 Nev. 842

60 P.3d 475 (2002) · No. No. 38741 · Decided December 19, 2002

SUMMARY

The Supreme Court of Nevada held that a search warrant must contain a statement of probable cause and, when relying on incorporation by reference, must properly incorporate and accompany the supporting affidavit. Because the warrant in this case did not satisfy the requirements of NRS 179.045 and the affidavit was not provided at the search scene, the court upheld suppression of the seized evidence. The court also held that the Leon good-faith exception did not apply because the officer failed to reasonably comply with clear statutory requirements.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Young, C.J.; Rose, J.; Agosti, J.
JURISDICTION	Nevada
DECIDED	December 19, 2002
DOCKET	No. 38741
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the district court's order granting Ruth Allen's motion to suppress evidence seized during execution of a search warrant.
STANDARD OF REVIEW	The meaning of a statute is reviewed de novo. The court construed NRS 179.045 according to its plain meaning.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Nevada
PARTIES	State of Nevada v. Ruth Lamay Allen

TOPICS

- search and seizure
- warrant requirement
- probable cause
- exclusionary rule
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- constitutional criminal procedure
- search and seizure

QUESTIONS PRESENTED

1. Whether a search warrant complies with NRS 179.045(5)(b) when it references a probable-cause affidavit but does not include a statement of probable cause or properly incorporate the affidavit by reference.
2. Whether an unsealed probable-cause affidavit incorporated into a search warrant must accompany the warrant and be provided to the target of the search or left at the searched premises.
3. Whether the *United States v. Leon* good-faith exception to the exclusionary rule applies when officers fail to comply with NRS 179.045's warrant and affidavit requirements.

HOLDINGS

1. NRS 179.045(5) requires the search warrant itself to state the grounds or probable cause for its issuance; incorporation by reference of an affidavit does not eliminate that requirement.
2. When a probable-cause affidavit is not sealed and is incorporated by reference into a warrant, the affidavit must accompany the warrant and be provided to the target of the search or left at the searched residence.
3. The *Leon* good-faith exception does not apply where the officer fails to comply with the clear requirements of NRS 179.045 concerning the warrant and accompanying affidavit.

KEY QUOTATIONS

“The linchpin of a warrant, however, is the existence of probable cause.” (at 477)

“Simply because an affidavit is incorporated by reference does not eliminate the need to include a statement of probable cause in the warrant.” (at 479)

“This allows the person whose privacy is being invaded to know immediately why a warrant has been served and upon what grounds it was issued.” (at 479)

FACTUAL BACKGROUND

Deputy Mike Buxton investigated information that a drug deal had occurred and later searched Ruth Allen's trash, finding items bearing her name and pieces of marijuana. He submitted a probable-cause affidavit to a justice of the peace, who issued a search warrant for Allen's residence. The warrant referenced Buxton's affidavit but did not state probable cause or properly incorporate the affidavit, and Buxton neither brought the affidavit to the search nor left a copy with Allen. Investigators found drugs in the residence, and the district court suppressed the evidence.

PROCEDURAL HISTORY

A justice of the peace issued a warrant authorizing a search of Allen's residence based on Deputy Buxton's probable-cause affidavit. The district court suppressed the evidence because the warrant did not state probable cause, did not properly incorporate the affidavit, and did not have the affidavit delivered or left at the residence. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984)
- State v. Friend, 118 Nev. ___, 40 P.3d 436 (2002)
- Washington v. State, 117 Nev. ___, 30 P.3d 1134 (2001)
- City Council of Reno v. Reno Newspapers, 105 Nev. 886, 784 P.2d 974 (1989)
- Banegas v. SIIS, 117 Nev. 222, 19 P.3d 245 (2001)
- United States v. Calandra, 414 U.S. 338, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974)
- Stone v. Powell, 428 U.S. 465, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976)
- Powell v. State, 113 Nev. 41, 930 P.2d 1123 (1997)
- Arizona v. Evans, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995)
- United States v. Peltier, 422 U.S. 531, 95 S. Ct. 2313, 45 L. Ed. 2d 374 (1975)