

SUPREME COURT OF TENNESSEE

State of Tennessee v. Timothy Wade Davis

Davis · No. E2003-02162-SC-R11-CD · Decided March 16, 2006

SUMMARY

Justice Adolpho A. Birch, Jr. dissents from the Tennessee Supreme Court's holding concerning whether an expressly incorporated affidavit must be furnished as part of a search warrant under Tennessee Rule of Criminal Procedure 41(c). The dissent would find the search warrant procedure deficient and exclude the physical evidence and subsequent statements as fruit of the poisonous tree.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Adolpho A. Birch, Jr.
JURISDICTION	Tennessee
DECIDED	March 16, 2006
DOCKET	E2003-02162-SC-R11-CD
DISPOSITION	other
PROCEDURAL POSTURE	Dissent from the Tennessee Supreme Court's decision on an appeal by permission from the Court of Criminal Appeals in a criminal case involving the validity of a search warrant and the admissibility of evidence obtained through the search.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	State of Tennessee v. Timothy Wade Davis

TOPICS

- search and seizure
- warrant requirement
- exclusionary rule
- suppression of evidence
- criminal procedure

PRACTICE AREAS

- criminal procedure
- search and seizure
- evidence
- constitutional law

QUESTIONS PRESENTED

- Whether an affidavit expressly incorporated into a search warrant is part of the warrant for purposes of Tennessee Rule of Criminal Procedure 41(c).

2. Whether failure to furnish the defendant an exact copy of the expressly incorporated affidavit violated Rule 41(c).
3. Whether physical evidence and subsequent statements obtained as a result of the allegedly illegal search were inadmissible as fruit of the poisonous tree.

HOLDINGS

1. In Justice Birch's dissenting view, an affidavit expressly incorporated into a search warrant is part of the warrant and is subject to Rule 41(c); failure to furnish the defendant an exact copy violates the rule.
2. In Justice Birch's dissenting view, the physical evidence and the defendant's subsequent statements obtained as a result of the unlawful search were inadmissible as fruit of the poisonous tree.

KEY QUOTATIONS

“Because I would hold that failure to furnish the defendant an exact copy of the expressly incorporated affidavit violates Tennessee Rule of Criminal Procedure 41(c), I respectfully dissent and fear that the majority holding dilutes the essence of Rule 41(c).” (-2-)

“I would also hold that the physical evidence and the defendant’s subsequent statements obtained as a result of the search are inadmissible as fruit of the poisonous tree because such evidence was obtained as a result of this illegality.” (-2-)

FACTUAL BACKGROUND

The search warrant expressly incorporated an affidavit, but the defendant was not furnished an exact copy of that affidavit. The dissent maintains that the affidavit was part of the warrant and therefore had to satisfy Tennessee Rule of Criminal Procedure 41(c). Justice Birch would have treated the physical evidence and the defendant's subsequent statements obtained as a result of the search as inadmissible derivative evidence.

PROCEDURAL HISTORY

The case came to the Tennessee Supreme Court by permission from the Court of Criminal Appeals. The underlying proceeding was in the Criminal Court for Knox County before Judge Richard Baumgartner under case number 69067. Justice Birch dissented from the majority's treatment of an affidavit expressly incorporated into the search warrant.

DISPOSITION

other

CASES CITED

- O’Brien v. State, 14 S.W.2d 51, 51 (Tenn. 1929)
- State v. Lowe, 949 S.W.2d 300, 304 (Tenn. Crim. App. 1996)
- United States v. Blakeney, 942 F.2d 1001, 1024 (6th Cir. 1991)
- State v. Henning, 975 S.W.2d 290, 296 (Tenn. 1998)

- United States v. Watkins, 179 F.3d 489, 495 (6th Cir. 1999)
- State v. Huddleston, 924 S.W.2d 666, 674 (Tenn. 1996)
- Wong Sun v. United States, 371 U.S. 471, 488 (1963)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF TENNESSEE AT KNOXVILLE September 7, 2005 Session
STATE OF TENNESSEE v. TIMOTHY WADE DAVIS Appeal by permission from the Court of
Criminal Appeals Criminal Court for Knox County No. 69067 Richard Baumgartner, Judge No.
E2003-02162-SC-R11-CD - Filed March 16, 2006 ADOLPHO A. BIRCH, JR., J., dissenting.

Because I would hold that failure to furnish the defendant an exact copy of the expressly incorporated affidavit violates Tennessee Rule of Criminal Procedure 41(c), I respectfully dissent and fear that the majority holding dilutes the essence of Rule 41(c). Expressly incorporated affidavits are considered by courts when needed to satisfy a deficiency in the warrant.

See O'Brien v. State, 14 S.W.2d 51, 51 (Tenn. 1929) ("In such case the description is a part of the search warrant."); State v. Lowe, 949 S.W.2d 300, 304 (Tenn. Crim. App. 1996), perm. app. denied (Tenn. 1997) (citing United States v. Blakeney, 942 F.2d 1001, 1024 (6th Cir. 1991) ("If... there is explicit reference to the affidavit in the search warrant, the affidavit may be considered part of the warrant.")).

The Court adopts a rule today that an expressly incorporated affidavit is not to be considered as part of the search warrant when it would render the search warrant legally deficient. The case that the majority cites as precedent for this rule, State v. Henning, 975 S.W.2d 290, 296 (Tenn. 1998), is distinguishable from this case. Henning did not hold, as the majority suggests, that an expressly incorporated affidavit was not subject to the requirements of Rule 41 (c).

What Henning did determine was that an affidavit merely referenced on the search warrant was not subject to the requirements of Rule 41(c).¹ There is a difference, of course, between a mere reference to an affidavit on a search warrant and a clause expressly incorporating an affidavit into a search warrant.

For example, in United States v. Watkins, the Sixth Circuit Court of Appeals determined that two 1 "There is a printed reference on the search warrant to the affidavit made by Capt. Thomas Coleman." Henning, 975 S.W 2d at 296.

The Court did not hold that this reference constituted an express incorporation of the affidavit into the search warrant. references to an affidavit in a warrant were not sufficient to incorporate the affidavit.² Since the warrant in this case expressly incorporates the affidavit, I would hold that the

affidavit was subject to the requirements of Rule 41(c) and that those requirements were not fulfilled.

I would also hold that the physical evidence and the defendant's subsequent statements obtained as a result of the search are inadmissible as fruit of the poisonous tree because such evidence was obtained as a result of this illegality. See *State v. Huddleston*, 924 S.W.2d 666, 674 (Tenn. 1996) (adopting *Wong Sun v. United States*, 371 U.S. 471, 488 1963).

The decision by the majority today, in my view, allows the State to "have its cake and eat it too." As the majority view is applied, an incorporated affidavit is only considered as part of the search warrant when it is needed to satisfy a deficiency in the warrant; if however, the affidavit would instead cause a defect in the warrant, it is treated as a completely separate document that should not be considered.

I fear that the implications of this decision will impinge upon the right of our citizens to be free from unreasonable searches and seizures, a right that this Court has in the past zealously protected. For the foregoing reasons, I respectfully dissent. _____

ADOLPHO A. BIRCH, JR., JUSTICE 2 The only two references to the affidavit in the warrant were a statement that an affidavit had been "made before [the magistrate judge]," and that the magistrate judge was "satisfied that the affidavit... establis[ed] probable cause to believe that [the items sought would be found on the... premises above-described]."...

The warrant contained no "words of reference" that can be said to have incorporated the affidavit into it. *W atkins*, 179 F.3d 489, 495 (6 th Cir. 1999). -2-