

SUPREME COURT OF ARKANSAS

Blanchett v. State

247 S.W.3d 477, 368 Ark. 492 (2007) · No. No. CR 06-879 · Decided January 18, 2007

SUMMARY

The Supreme Court of Arkansas affirmed Gerard Blanchett's conviction after concluding that an arrest warrant issued based on sworn but unrecorded testimony and other materials satisfied Arkansas Rule of Criminal Procedure 7.1(b). The court held that the warrant complied with the Fourth Amendment and article 2, section 15 of the Arkansas Constitution and therefore did not reach the good-faith exception issue.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	January 18, 2007
DOCKET	No. CR 06-879
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment and commitment order entered after appellant entered a conditional guilty plea while reserving the right to challenge the denial of his motion to suppress evidence seized during an arrest on a bench warrant.
STANDARD OF REVIEW	The denial of a motion to suppress is reviewed de novo based on the totality of the circumstances, with respectful consideration given to the trial court's findings. Issues of statutory or rule construction are also reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Gerard Blanchett v. State of Arkansas

TOPICS

- suppression of evidence
- search and seizure
- probable cause
- warrant requirement
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Fourth Amendment and article 2, section 15 of the Arkansas Constitution require an arrest warrant to be supported by a contemporaneous written affidavit or recording of the testimony establishing probable cause.
2. Whether Arkansas Rule of Criminal Procedure 7.1(b) permits an arrest warrant to issue based on sworn testimony and other information that is not contained in an affidavit or contemporaneous recording.
3. Whether the good-faith exception to the exclusionary rule applied.

HOLDINGS

1. The Fourth Amendment and article 2, section 15 of the Arkansas Constitution require probable cause supported by oath or affirmation but do not prescribe that the supporting basis be contained in a written affidavit or contemporaneously recorded testimony.
2. Arkansas Rule of Criminal Procedure 7.1(b)'s reference to 'other information' permits a judicial officer to issue an arrest warrant based on sworn testimony and other materials presented to the officer, even when the testimony is not contained in an affidavit or contemporaneous recording.

KEY QUOTATIONS

“The Fourth Amendment does not contain any prescription as to the form or manner in which probable cause must be shown; it merely provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation[.]”” (480)

“Based upon the plain reading of Rule 7.1(b), this sworn testimony satisfies the “other information” requirement.” (481)

FACTUAL BACKGROUND

Appellant was stopped for a traffic violation and fled after an officer conducted a pat-down search, during which the officer felt a bulge. Crack cocaine was found in appellant's underwear after he was apprehended. Following the filing of a felony information, an arrest warrant was issued based on the sworn testimony of Investigator William Tapley and other materials presented to the issuing judge. When appellant was arrested on that warrant, officers found additional crack cocaine and drug paraphernalia, which became the subject of the suppression motion.

PROCEDURAL HISTORY

After a felony information was filed, a circuit judge issued an arrest warrant based on sworn testimony and other materials presented to the judge. Evidence was seized during appellant's arrest, and appellant moved to suppress it, arguing that the warrant violated the Fourth Amendment, the Arkansas Constitution, and Arkansas Rule of Criminal Procedure 7.1(b). The Faulkner County Circuit Court denied the motion, appellant entered a conditional guilty plea, and the Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Davis v. State, 351 Ark. 406, 94 S.W.3d 892 (2003)
- McNabb v. State, 367 Ark. 93, 238 S.W.3d 119 (2006)
- Giordenello v. United States, 357 U.S. 480 (1958)
- Sherrick v. Eyman, 389 F.2d 648 (9th Cir. 1968)
- Gillespie v. United States, 368 F.2d 1 (8th Cir. 1966)
- Newman v. State, 327 Ark. 339, 939 S.W.2d 811 (1997)
- Reed v. State, 280 Ark. 316, 657 S.W.2d 557 (1983)
- United States v. Leon, 468 U.S. 897, 104 S. Ct. 3430, 82 L. Ed. 2d 677 (1984)

OPINION

CORBIN, J.

247 S.W.3d 477 (2007) Gerard BLANCHETT, Appellant, v. STATE of Arkansas, Appellee. No. CR 06-879. Supreme Court of Arkansas. January 18, 2007. *478 Jeff Rosenzweig, Little Rock, for appellant. Mike Beebe, Att'y. Gen., by: Vada Berger, Ass't Atty. Gen., for appellee. DONALD L. CORBIN, Justice. Appellant Gerard Blanchett appeals the Faulkner County Circuit Court's judgment and commitment order convicting him of possession of a controlled substance with intent to deliver.[1] Appellant filed a conditional plea of guilty, pursuant to Ark.

R.Crim. P. 24.3(b), whereby he reserved his right to appeal from the trial court's denial of his motion to suppress evidence seized pursuant to a search conducted when he was arrested on a bench warrant. On appeal, Appellant argues that the trial court erred in denying his motion to suppress because the arrest warrant was issued without any affidavit or contemporaneous recording of the basis for the finding of probable cause in violation of (1) the Fourth Amendment to the United States Constitution, (2) article 2, section 15 of the Arkansas Constitution, and (3) Arkansas Rule of Criminal Procedure 7.1(b).

Appellant also argues that the good-faith exception, see United States v. Leon, 468 U.S. 897, 104 S. Ct. 3430, 82 L. Ed. 2d 677 (1984), should not apply in this situation. As this case involves an issue of constitutional interpretation and the construction of a rule, jurisdiction is proper pursuant to Ark. Sup. Ct. R. 1-2(a)(1) and (b)(6).

We find no error and affirm. On March 16, 2005, Appellant was stopped for a traffic violation by Officer Clay Smith of the Conway Police Department. When Officer Smith asked Appellant to

step out of the vehicle, he saw that Appellant had a small knife on him. Officer Smith performed a pat-down search during which he felt a bulge around Appellant's buttocks area.

At that time, Appellant *479 grabbed the officer's wrist, tried to spin away from him, and took off running. When Appellant was caught and taken into custody, about an ounce of crack cocaine was found in his underwear. Felony charges were filed against Appellant on April 1, 2005, when the State filed a felony information, CR 2005-404, charging Appellant with possession of cocaine with intent to deliver and possession of drug paraphernalia.

This felony information also contained the signature of Circuit Judge David Reynolds and the following statement: Based upon the sworn testimony of Inv. William Tapley and other materials presented therewith, I am satisfied that there is probable cause to believe that the offense alleged in the above Felony Information was committed by the person above described and that there exist probable cause for the issuance of a Warrant for Arrest.[2] An arrest warrant for Appellant was issued that same day.

On April 4, 2005, Officer Smith took Appellant into custody based upon the April 1 warrant. During the execution of the arrest warrant, Officer Smith again found Appellant to be in possession of crack cocaine and drug paraphernalia. This led to the April 6, 2005, filing of another felony information, CR 2005-411, charging Appellant with possession of cocaine with intent to deliver and possession of drug paraphernalia.

On November 30, 2005, in CR 2005-411, Appellant filed a motion to suppress evidence seized during the search pursuant to his arrest on the CR 2005-404 bench warrant. The trial court held a suppression hearing on January 10, 2006.

After the hearing, on January 19, 2006, the trial court issued a letter opinion denying the motion to suppress. On February 21, 2006, the trial court entered an order denying Appellant's motion to suppress. That same day Appellant entered a guilty plea reserving his right to appeal pursuant to Rule 24.3 and the trial court issued its judgment and commitment order.

This appeal followed. Appellant's sole argument for reversal is that the trial court erred when it denied his motion to suppress evidence seized during his April 4 arrest. In reviewing the denial of a motion to suppress, we conduct a de novo review based on the totality of the circumstances, giving respectful consideration to the findings of the trial judge.

Davis v. State, 351 Ark. 406, 94 S.W.3d 892 (2003). Similarly, we review issues of statutory construction de novo, as it is for this court to determine what a statute or rule means. McNabb v. State, 367 Ark. 93, 238 S.W.3d 119 (2006).

In this respect, we are not bound by the trial court's decision; however, in the absence of a showing that the trial court erred in its interpretation of the law, that interpretation will be accepted as

correct on appeal. *Id.* In the present case, Appellant raises both federal and state constitutional violations, as well as an Arkansas criminal procedure rule violation.

Initially, Appellant argues that the Fourth Amendment and article 2, section 15 require that no warrants shall issue but upon probable cause supported by oath or affirmation. Based upon these constitutional requirements, Appellant contends that it is not possible for an arrest warrant to be issued without *480 there being a contemporaneous recording of any oral testimony presented for issuance of an arrest warrant.

This argument is contrary to the state of the law and is without merit. Under the Fourth Amendment, an arrest warrant must be supported by probable cause. *Giordenello v. United States*, 357 U.S. 480, 78 S. Ct. 1245, 2 L. Ed. 2d 1503 (1958).

The Fourth Amendment does not contain any prescription as to the form or manner in which probable cause must be shown; it merely provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation[.]" U.S. Const. amend. 4. See also *Sherrick v. Eyman*, 389 F.2d 648 (9th Cir.1968); *Gillespie v. United States*, 368 F.2d 1 (8th Cir.1966).

Similarly, article 2, section 15 does not contain any instructions as to the manner in which probable cause must be shown in issuing a warrant but merely states verbatim the language contained in the Fourth Amendment.

As such, Appellant's argument must fail as it relates to his constitutional claims. Although the constitutional provisions do not provide explicit directions as to the manner of issuing a warrant beyond that of probable cause supported by oath or affirmation, Rule 7.1 contains requirements set forth by this state for issuing an arrest warrant. Rule 7.1(b) states: In addition, a judicial officer may issue a warrant for the arrest of a person if, from affidavit, recorded testimony, or other information, it appears there is reasonable cause to believe an offense has been committed and the person committed it.

In the present case, the arrest warrant was not issued based upon an affidavit or recorded testimony, but rather upon the sworn testimony of Investigator Tapley and other materials presented. Thus, the issue becomes whether this falls within the term "other information." [3] We agree with the trial court and conclude that it does.

Although we have never been faced with the task of determining what "other information" means, we have upheld the validity of an arrest warrant in situations where the information was presented to the judicial officer who issued an arrest warrant and where a sheriff applied for an arrest warrant under oath. See *Newman v. State*, 327 Ark. 339, 939 S.W.2d 811 (1997); *Reed v. State*, 280 Ark.

316, 657 S.W.2d 557 (1983). In *Reed*, the court explained that Rule 7.1(b) authorizes a judicial officer to issue an arrest warrant if, from the information presented, it appears there is reasonable

cause to believe an offense has been committed and the person to be arrested committed it. There, the information regarding the offense was merely presented to the judicial officer as a basis for the arrest warrant.

This court found that the information was sufficient to satisfy Rule 7.1(b) and provided probable cause to support the issuance of an arrest warrant. *Id.* Similarly, in *Newman*, 327 Ark. 339, 939 S.W.2d 811, the sheriff applied for an arrest warrant and provided testimony under oath. This court found that the arrest warrant was valid and that the trial court did not err in denying the appellant's motion to suppress.

Id. In the present case, we are faced with a similar circumstance: after the filing of a *481 felony information, the arrest warrant was issued based upon both the sworn testimony of Investigator Tapley and other materials presented, and the judge's finding that this information established probable cause to issue the arrest warrant.

In denying Appellant's motion to suppress, the trial court found that, under Rule 7.1(b), "other information" means just that and that probable cause existed to issue the bench warrant after the magistrate listened to sworn testimony. Upon review, the trial court did not err in reaching this conclusion.

Although Rule 7.1(b) allows for the issuance of an arrest warrant based upon recorded testimony, it also allows for a warrant to be issued based upon other information. Here, the other information is the sworn testimony of Investigator Tapley. Based upon the plain reading of Rule 7.1(b), this sworn testimony satisfies the "other information" requirement. Furthermore, the fact that this testimony was sworn to satisfies the requirement of both the Fourth Amendment and article 2, section 15 that a warrant can only issue upon oath or affirmation.

Consequently, the trial court did not err in denying Appellant's motion to suppress. Appellant does not challenge that probable cause existed for the issuance of the warrant; therefore, it is unnecessary to address whether the arrest was supported by probable cause. Furthermore, because Rule 7.1(b) was not violated, it is unnecessary to address Appellant's argument that the good-faith exception in *Leon*, 468 U.S. 897, 104 S. Ct.

3430, is not applicable. Affirmed. IMBER, J., not participating. NOTES [1] Appellant also was convicted of possession of drug paraphernalia, but that conviction is not a subject of this appeal. [2] Investigator Tapley is an officer with the Conway Police Department and is assigned to the Conway Regional Drug Task Force. He was the lead investigator in CR 2005-404 and was responsible for seeking the arrest warrant for Appellant after the March 16 incident between Officer Smith and Appellant.

[3] In response to Appellant's argument, the State concedes that Rule 7.1(b) was violated because the arrest warrant was issued solely on the basis of unrecorded testimony. The State further argues,

however, that Appellant's claim must fail since any violation of Rule 7.1(b) was not a fatal defect as the arrest itself was supported by probable cause. Despite the State's attempted concession, we review Rule 7.1(b) as it is for this court to determine what a rule means.

See McNabb, 367 Ark. 93, 238 S.W.3d 119.