Court of Appeals, State of Michigan

ORDER

People of MI v Duane Harrison

Docket No. 299108

LC No. 10-001321-01-FC

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Christopher M. Murray
Judges

On July 16, 2010, this Court held the application in abeyance, stayed the proceedings below, and directed the filing of an answer and the transcripts of the hearings. The Court removes the application for leave to appeal from abeyance, and, in lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), orders that the July 2, 2010, order granting defendant's motion to suppress evidence seized during a search of his home is REVERSED.

In granting the motion, the trial court compared the affidavit prepared in this matter to the affidavit recited in *People v Russo,* 439 Mich 584; 487 NW2d 698 (1992), and declared "it's not half as specific as the *Russo* affidavit was that I think that would lead the police officer to realize that it didn't establish probable cause." The trial court subsequently rejected the prosecution's argument that suppression was not required by the exclusionary rule. First, the trial court erred as a matter of law by failing (1) to examine the search warrant and underlying affidavit in a commonsense and realistic manner, (2) to pay deference to the magistrate's determination that probable cause existed, and (3) to ask only whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. *Id.* at 602-604. Second, the information set forth in the affidavit prepared by the officer, who interviewed the victim, provided the magistrate with a substantial basis to infer a fair probability that the recording of defendant sexually assaulting the victim was still present in defendant's home and that a search of defendant's home would reveal the recording. The affidavit contained allegations that defendant's friend recorded defendant's criminal sexual assault against his stepdaughter on a hand-held digital video camera, which the victim had seen at the house where she used to live. The victim also stated that she had seen defendant watch and record pornography on his computers and that defendant would also force her to perform fellatio. *Id.* at 611-614. Although four years had passed since the videotaping of the sexual assault occurred, the passage of time is weighed and balanced with other variables. *Id.* at 605. Therefore, the trial court erred in determining that the search warrant was not supported by probable cause. Third, the trial court erred in suppressing the evidence where the police officers' reliance on the search warrant affidavit was objectively reasonable. *People v Goldston,* 470 Mich 523, 542-543; 682 NW2d 479 (2004).

Given our ruling, the stay is LIFTED, and the matter is REMANDED for further proceedings consistent with this order, which is to have immediate effect. MCR 7.215(F)(2). The Court retains no further jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 08 2010
Date

Sandra Schultz Mengel
Chief Clerk