No. SC98376

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,

Appellant,

vs.

JAMES CHRISTOPHER BALES,

Respondent.

On Appeal from the Circuit Court of Pulaski County
Honorable John Beger, Circuit Judge
No. 19PU-CR00610

SUBSTITUTE BRIEF OF RESPONDENT

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STATEMENT OF FACTS

On March 28, 2019, the State filed a "Complaint and Application for Search Warrant to Authorize the Search for Evidence of Violations of Chapter 568 et seq. RSMO" (hereinafter "application"). D35. The application for search warrant alleged that evidence of a crime would be located on "[a] cell phone located at 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as a black in colored Samsung with a black case cell phone number 573-855-6174 belonging to James Christopher Bales." D35.

The Honorable Michael Headrick signed the warrant granting the police permission to search and seize "[a] cell phone located at, 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as Black Samsung with black case." D36. Unlike the application for warrant, the warrant itself did not provide the cell phone number or the name James Christopher Bales. D35; 36.

On April 4, 2019, Respondent and his attorney went to the Sheriff's office for an interview. Tr. 11, 15. During that interview, Detective Thomas Fenton seized a black Samsung cell phone from Respondent's person. Tr. 11, 15. Detective Fenton then signed a return and inventory that said he went to the "location and premises described [in the warrant] and searched the same for the articles described therein, and that upon said premises I discovered the following articles described in the warrant which I then and there took into my possession: Samsung cell phone phone number 573-855-6174 Model: SM-G891A Ser# R38H9050ALM." D31, p. 2.

Respondent filed a motion to quash the warrant alleging that "Black Samsung with black case" does not "particularly describe the place to be searched, and the persons or things to be seized" and that the "description set out in the warrant is fatally defective[.]" D29, p. 2. The motion also alleged that the return on the warrant was not true. D29, p. 3.

On June 11, 2019, a hearing on Respondent's motion was held before the Honorable John Beger. D32. During the hearing, Detective Fenton testified that the phone was taken from Respondent during a police interview at the Sheriff's office. Tr. 11, 15.

In granting Respondent's motion and ordering the suppression of evidence seized from the cell phone, the trial court made the following specific findings:

> On April 4, 2019, the Court issued a search warrant to seize "[a] cell phone located at 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as [a] Black Samsung with black case."
>
> Subsequently, a black Samsung cell phone was seized from defendant and the contents thereof examined, allegedly pursuant to the aforementioned search warrant before a second search warrant was acquired for and issued for the search of the phone. The second warrant described the cell phone as belonging to defendant but being in the possession of the Pulaski County Sheriff's Office and had the serial number and phone number of the phone.
>
> Although the Affidavit in support of the second search warrant said the phone was seized pursuant to the first warrant the evidence was the

phone was taken from or surrendered by defendant in the course of a police interview at the Pulaski County Sheriff's Office and not at 13251 Highway O Dixon.

If the State claims the phone was surrendered by defendant it bears the burden in that regard and the Court finds the phone was seized from defendant.

Defendant relies on *Groh v. Ramirez*, 540 U.S. 551 (S. Ct 2004) for the proposition the warrant of April 4, 2019 does not "particularly describe the things to be seized." The court notes Black Samsung cell phones in Black Cases are numerous if not ubiquitous. (The undersigned has one). The Court does find the warrant of April 4, 2019 fails to adequately describe the thing to be seized and "was so facially deficient the executing officers could not reasonably presume it to be valid." *United States v. Leon*, 468 U.S. 897 at 923 (S. Ct. 1984).

The search warrant of April 4, 2019 is quashed. . . .

D32, pp.1-2.

The State appealed and this Court accepted transfer after opinion by the Court of Appeals, Southern District.

ARGUMENT

Response to Point I.

The trial court did not err in quashing the search warrant served on April 4, 2019 because the warrant does not satisfy the Fourth Amendment's particularity requirement in that it "fails to adequately describe the thing to be seized."

Appellant argues in Point I that the search warrant served on April 4, 2019 was facially valid because 1) it was "issued by a judge after a finding of probable cause" and 2) it "adequately described the particular item to be seized with sufficient precision." App. Br. 10, 12. Much of Appellant's argument is that "[t]he trial court failed to apply the proper analysis, which is whether or not the issuing judge on consideration of all material and information on the application and affidavit could reasonably believe there was probable cause." App. Br. 12-13, 16.

However, the issuing judge's initial determination of probable cause is not at issue. The trial court did not find that the warrant was invalid due to a lack of probable cause. Consequently, Respondent sees no need to address the probable cause argument and instead focuses on defending the trial court's finding that the search warrant did not satisfy the Fourth Amendment's particularity requirement because it "fails to adequately describe the thing to be seized." D32, p.2.

A. Standard of Review

The trial court's "ruling on a motion to suppress must be supported by substantial evidence." *State v. Douglass*, 544 S.W.3d 182, 188 (Mo. banc 2018). The appellate court

"reviews the facts and reasonable inferences therefrom favorably to the circuit court's ruling and disregards contrary evidence and inferences." *Id.* "Whether a search is 'permissible and whether the exclusionary rule applies to the evidence seized' are questions of law reviewed *de novo." Id.* (quoting *State v. Johnson*, 354 S.W.3d 627, 632 (Mo. banc 2011)). The appellate court is "primarily concerned with the correctness of the trial court's result, not the route the trial court took to reach that result, and the trial court's judgment must be affirmed if cognizable under any theory, regardless of whether the trial court's reasoning is wrong or insufficient." *Id.* (quoting *State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 736 (Mo. banc 2017)).

B. Legal Principles

The Fourth Amendment of the United States Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Additionally, RSMo. § 542.276.10(5) provides that "[a] search warrant shall be deemed invalid . . . [i]f it does not describe the person, place, or thing to be searched or the property, article, material, substance, or person to be seized with sufficient certainty."

Regarding degree of specificity, the Fourth Amendment "requires that the government describe the items to be seized with as much specificity as the government's knowledge and circumstances allow, and warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized." *Douglass*, 544 S.W.3d at 192 (quoting *United States v. Sells*, 463

F.3d 1148, 1154 (10th Cir. 2006)). "The particularity 'requirement is met if the warrant's description enables the searcher to reasonably ascertain and identify the items to be seized.'" *Id.* (quoting *State v. Tolen*, 304 S.W.3d 229, 232 (Mo. App. 2009)).

Significantly, the specific characteristics of the place to be searched and items to be seized must be found in the warrant's description regardless of whether those details were included in the application or affidavit. "The fact that the *application* adequately describe[s] the 'things to be seized' does not save the *warrant* from its facial invalidity." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). The Fourth Amendment "requires particularity in the warrant, not in the supporting documents." *Id.* This is because "a search warrant serves a high function," which "is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection." *Id.* (quoting *McDonald v. United States,* 335 U.S. 451, 455 (1948)).

An exception is that "a court may construe a warrant with reference to a supporting application or affidavit *if* the warrant uses appropriate words of incorporation, *and if* the supporting document accompanies the warrant." *Id.* at 557-558 (emphasis added). In *Groh*, "the warrant did not incorporate other documents by reference, nor did either the affidavit or the application (which had been placed under seal) accompany the warrant." *Id.* So, the Supreme Court did "not further explore the matter of incorporation." *Groh*, 540 U.S. at 557–58.

The Missouri Court of Appeals has criticized and found to be invalid warrants that lacked details about the places to be searched and items to be seized when the State had knowledge of those details as evidenced by the fact that those details were contained in the application or affidavits supporting the warrants. *See e.g. State v. Tolen*, 304 S.W.3d 229, 232–33 (Mo. App. 2009) ("In this case it is troubling that the warrant did not list the items sought as evidence of the sexual abuse crimes with which Tolen was charged with more particularity when the supporting affidavit provided in the record on appeal contains more than sufficient detail regarding certain items officers could have expected to find in Tolen's home.")

C. Analysis

In this case, the search warrant application described the item to be seized as "[a] cell phone located at 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as a black in colored Samsung with a black case cell phone number 573-855-6174 belonging to James Christopher Bales." D35.

By contrast, the warrant permitted the police to seize "[a] cell phone located at, 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as Black Samsung with black case." D36. Unlike the search warrant application, the warrant did not provide the phone number associated with the phone or describe the phone as belonging to James Christopher Bales. In fact, Respondent's name appears nowhere on the warrant.

Appellant argues "[i]t is difficult to imagine how the Detective could have been more descriptive without first seizing the phone from the defendant to check for serial

numbers or a specific model number." App. Br. 15. Appellant claims that "t]he trial court's reasoning is contrary to the Constitutional requirement to obtain a warrant **before** a seizure with as much specificity as the government's knowledge and circumstances allow, as the Detective did in this case." App. Br. 16 (emphasis in original).

But it is not difficult to imagine how the warrant could have been more descriptive given that the application for the warrant was more descriptive. There is no reason why the warrant could not have included verbatim the additional "cell phone number 573-855-6174 belonging to James Christopher Bales" language from the application. D35.

Given the fact that the application contains more detail about the phone than the warrant contains, the warrant did not describe the phone to be seized with "as much specificity as the government's knowledge and circumstances allow[ed]." *Douglass*, 544 S.W.3d at 192.

As in *Groh*, the application in support of this search warrant cannot cure the facial invalidity. The search warrant stated, "the Judge of this Court, from the sworn allegations, of said Complaint and from the supporting written affidavit filed therewith, has found that there is probable cause to believe the allegations of the Complaint to be true and probable cause for the issuance of a Search Warrant herein." D36. No part of the warrant stated that the application or affidavit were incorporated by reference. And any inference of incorporation would violate the standard of review because such an inference would be contrary to the trial court's ruling that the warrant lacked particularity. Moreover, there is no evidence or finding by the trial court that the application or

affidavit accompanied the warrant. Hence, this Court need "not further explore the matter of incorporation." *Groh*, 540 U.S. at 557–58.

Appellant compares this case to *State v. Brown*, 708 S.W.2d 140, 143 (Mo. banc 1986) where the search warrant described over 200 items stolen from a hardware store, including "1 XL-12 Homelite," "1 Bench grinder (Dark gray)," and "3 saw sprocket." App. Br. 15. The defendant in *Brown* argued that the warrant was facially invalid, but the trial court overruled the defendant's motion to suppress. *Id.* at 142.

On appeal, this Court affirmed the trial court and held that the descriptions were "sufficient to ensure the property taken was not left to the caprice of the officer conducting the search[.]" *Id.* at 143. This Court did "not find the warrant fatally defective simply because the descriptions could have been more precise, by for example indicating brand name or serial number. Such precision is not required, particularly in this circumstance where so many articles were stolen." *Id.*

Several facts distinguish this case from *Brown*. First, in *Brown* this Court was reviewing the denial of a motion to suppress; thus, all evidence and inferences therefrom were viewed in the light most favorable to the ruling that the warrant was facially valid. *Id.* at 143. In the instant appeal, however, this Court is viewing all evidence and inferences therefrom in the light most favorable to the trial court's ruling that the warrant was facially invalid.

Second, there was no finding by the trial court in *Brown* that the more than 200 items stolen from a hardware store to be searched for and seized at the defendant's home were items that you would expect to find anywhere. By contrast, the trial court in this

case made a specific finding that "Black Samsung cell phones in Black cases are numerous if not ubiquitous[.]" D32, p. 2.

Third, although this Court mentioned in *Brown* that the descriptions in the warrant could have indicated a brand name or serial number, that note seems to be a general suggestion of how a description may be made more definite. *Id.* at 143. The *Brown* opinion does not indicate that anything in the record demonstrated that the owner of the items actually had the brand names or serial numbers of all items to provide to the police when the warrant was obtained. At trial, the owner of the items identified certain items by brand and some by descriptions such as red tape or a code that the owner had written on a sticker on the item, but the opinion does not mention that the owner had serial numbers or gave such information to the State prior to the search. *Id.* at 142 n 4.

Significantly, the appellant in *Brown* failed to include in the record on appeal a transcript of the motion to suppress hearing or a copy of the application or affidavit supporting the warrant, so it is not apparent whether or not the application contained a more precise description than the warrant. *Id.* at 144-145. By contrast, we know that the warrant in this case could have contained verbatim the additional description of the phone that was contained in the application.

Finally, Appellant also compared this case to *State v. Johnson*, 576 S.W.3d 205 (Mo. App. 2019) where the description contained in the warrant was for "all cell phones" without any specific identifiers. App. Br. 15. Appellant argues that the black Samsung with black case language in this case "is much more limited than the one in *Johnson*." App. Br. 16.

Appellant's reliance on *Johnson* is misplaced because the issue in *Johnson* was not whether the "all cell phones" language gave the police authority to seize and search the phone. The *Johnson* court did not even discuss whether the "all cell phones" language in the warrant was sufficiently particular to authorize a search of the phone as that issue was not raised on appeal. Rather, the *Johnson* defendant's particularity argument pertained to the terms "data" and "software" and the overbreadth of the data being collected from the phone. *Id.* at 222.

For all of these reasons, Point I fails and the trial court's ruling should be affirmed.

Response to Point II.

The trial court did not err in finding that the good faith exception to the exclusionary rule did not apply because the warrant was so facially deficient that the executing officers could not reasonably presume it to be valid and the officers did not properly execute the warrant.

Appellant argues in Point II that even if the warrant is facially invalid, the evidence obtained from the phone should not be excluded. In this case, the executing officers knew that the warrant did not contain all of the descriptors known to the government. So, the facial invalidity of the warrant was obvious. Moreover, the officers did not properly execute the warrant and in fact, exceeded the scope of the warrant. Thus, the trial's court's ruling that the exclusionary rule applies and that the evidence from the phone is inadmissible should be affirmed.

A. Standard of Review

The trial court's "ruling on a motion to suppress must be supported by substantial evidence." *State v. Douglass*, 544 S.W.3d 182, 188 (Mo. banc 2018). The appellate court "reviews the facts and reasonable inferences therefrom favorably to the circuit court's ruling and disregards contrary evidence and inferences." *Id.* "Whether a search is 'permissible and whether the exclusionary rule applies to the evidence seized' are questions of law reviewed *de novo." Id. (*quoting *State v. Johnson,* 354 S.W.3d 627, 632 (Mo. banc 2011)). The appellate court is "primarily concerned with the correctness of the trial court's result, not the route the trial court took to reach that result, and the trial

court's judgment must be affirmed if cognizable under any theory, regardless of whether the trial court's reasoning is wrong or insufficient." *Id.* (quoting *State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 736 (Mo. banc 2017)).

B. Legal Principles

Evidence obtained as a direct result of an unlawful search or seizure is considered "fruit of the poisonous tree" and is generally inadmissible at trial. *State v. Lucas*, 452 S.W.3d 641, 642 (Mo. App. 2014). However, in *United States v. Leon,* 468 U.S. 897 (1984), "the United States Supreme Court provided for a good-faith exception to the traditional Fourth Amendment exclusionary rule." *State v. Brown*, 708 S.W.2d 140, 145 (Mo. 1986). Under the exception announced in *Leon*, "'evidence seized pursuant to an invalid search warrant may still be admitted if the police officers conducting the search and seizure relied in good faith on the warrant.'" *Lucas*, 452 S.W.3d at 642 (quoting *State v. Trenter,* 85 S.W.3d 662, 679 (Mo. App. 2002)).

The good-faith exception does not apply and, therefore, suppression remains an appropriate remedy "if the warrant is so facially deficient the executing officers cannot reasonably presume it to be valid." *State v. Brown*, 741 S.W.2d 53, 59 (Mo. App. 1987) (citing *Leon,* 104 S.Ct. at 3421).

Moreover, "use of the good-faith exception announced in *Leon* assumes that the warrant was properly executed." *Lucas*, 452 S.W.3d at 643 (citing *Leon,* 468 U.S. at 918 n.19; *Trenter,* 85 S.W.3d at 679 (citing *United States v. Medlin,* 798 F.2d 407, 410 (10th Cir. 1986))).

A search warrant is limited by the terms of its authorization. *State v. Varvil*, 686 S.W.2d 507, 509 (Mo. App. 1985); *Walter v. United States*, 447 U.S. 649, 646 (1980) ("the scope of the search warrant is limited by the terms of its authorization."); *United States v. Heldt*, 668 F.2d 1238, 1262 (D.C. Cir. 1981) ("It is well accepted that the authority to search granted by any warrant is limited to specific places described in it, and does not extend to additional or different places.").

"Therefore, if the good faith exception is to apply, the officers executing the warrant may search 'only those places and for those objects that it was reasonable to believe were covered by the warrant.'" *Lucas*, 452 S.W.3d at 643.

C. Analysis

The trial court specifically found that *Leon*'s good-faith exception does not apply because the warrant served on "April 4, 2019 fails to adequately describe the thing to be seized and 'was so facially deficient the executing officers could not reasonably presume it to be valid.' *United States v. Leon*, 468 U.S. 897 at 923 (S. Ct. 1984)." D32, p. 2. This finding is supported by the fact that the description in the warrant was not sufficiently specific in that the court found that "Black Samsung cell phones in Black cases are numerous if not ubiquitous[.]" D32, p. 2. This finding is also supported by the evidence that the application contained a more specific description of the phone than the warrant did. D35, pp. 1; D36.

Leon's good-faith exception also does not apply because the warrant was not executed properly. *Lucas*, 452 S.W.3d at 643. The terms of the warrant served on April 4, 2019 were that the police could seize "[a] cell phone located at 13251 Highway O Dixon,

in Pulaski County Missouri." The trial court found that the phone was not seized pursuant to the terms of the warrant because the phone was seized from Respondent at the Sheriff's Office:

> On April 4, 2019, the Court issued a search warrant to seize "[a] cell phone located at 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as [a] Black Samsung with black case."
>
> Subsequently, a black Samsung cell phone was seized from defendant and the contents thereof examined, allegedly pursuant to the aforementioned search warrant before a second search warrant was acquired for and issued for the search of the phone. The second warrant described the cell phone as belonging to defendant but being in the possession of the Pulaski County Sheriff's Office and had the serial number and phone number of the phone.
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> Although the Affidavit in support of the second search warrant said the phone was seized pursuant to the first warrant the evidence was the phone was taken from or surrendered by defendant in the course of a police interview at the Pulaski County Sheriff's Office and not at 13251 Highway O Dixon.
>
> If the State claims the phone was surrendered by defendant it bears the burden in that regard and the Court finds the phone was seized from defendant.

D32, p. 1.

"'The authority to search granted by any warrant is limited to the specific places described in it and does not extend to additional or different places." *United States v. Alberts*, 721 F.2d 636, 639 (8th Cir. 1983) (quoting *United States v. Heldt,* 668 F.2d 1238, 1262 (D.C. Cir. 1981)). In *Alberts*, the police were looking for evidence of stolen checks made payable to Lavonne Alberts. *Id.* at 637. The police obtained a warrant to search Lavonne Alberts' personal belongings. *Id.* at 638. The warrant stated that Alberts' belongings were believed to be contained in large green garbage bags located at the Linda Alberts Thompson residence. *Id.*

When police went to the Thompson residence, Mrs. Thompson told police that she was not storing any of Alberts' property but suggested that the police might look at the residence of Laverne Goodbird. *Id.* The police went to Mrs. Goodbird's residence and told her that they had a search warrant for Lavonne Alberts' property. *Id.* Mrs. Goodbird directed the officers around the outside of the house where the garbage bags containing Alberts' property were located. *Id.* The police searched the bags and located checks, which they seized. *Id.*

The district court denied Alberts' motion to suppress, finding that the search of Alberts' property was made under the warrant, which named the garbage bags as the place to be searched. *Id.* at 639. On appeal, Alberts argued that the search of the garbage bags at the Goodbird residence violated her rights because "the search warrant described as the place to be searched a place (the Linda Alberts Thompson residence) other than the place that actually was searched (the Laverne Goodbird residence)." *Id.*

The Eighth Circuit reversed, holding that the evidence must be suppressed because "[t]he only place authorized to be searched under this warrant was the Linda Alberts Thompson residence." *Alberts*, 721 F.2d at 639-40. "If it could be said that the garbage bags constituted the place to be searched, the officers would have been justified in searching anywhere that the bags conceivably might have been located. To adopt this position would, in essence, condone the use of a general warrant." *Id.* "'The authority to search granted by any warrant is limited to the specific places described in it and does not extend to additional or different places.'" *Id.* (quoting *Heldt,* 668 F.2d at 1262).

As in *Alberts,* the search warrant in this case described as the place to be searched a place (13251 Highway O Dixon, in Pulaski County Missouri) other than the place that actually was searched (Respondent's person). The only difference is that in *Alberts* a second residence was searched, whereas in this case Respondent's person was searched.

Appellant argues that it "seems counterintuitive that a court would require a detective not to seize an item that could be easily destroyed or erased, such as a phone, at the earliest possible time with the least amount of intrusion on a defendant." App. Br. 23. First, the interview at the police station when the phone was seized from Respondent was not the earliest possible time that the phone could have been seized. The warrant was signed on March 28, 2019 and the phone was seized from Respondent on April 4, 2019. D31, pp. 1-2. If the police were so concerned that evidence on the phone was going to be destroyed, they could have immediately gone to the residence listed in the warrant instead of waiting seven days to seize the phone from Respondent at the Sheriff's office.

Second, it does not matter if Appellant thinks that taking the phone from Respondent at the Sheriff's Office was "the least amount of intrusion on a defendant" since that intrusion was not authorized by the warrant. App. Br. 23. Not only did the warrant not even mention Respondent's name, it also did not give the police permission to go out into the world and seize anything from Respondent wherever they came into contact with him. Allowing the police to take Respondent's cell phone from him under these circumstances would, "in essence, condone the use of a general warrant." *Alberts*, 721 F.2d 636, 639 (8th Cir. 1983).

The seizure of the phone from Respondent's person exceeded the scope of the warrant and, therefore, was invalid.

For the above-stated reasons, *Leon*'s good-faith exception does not apply and the trial court's ruling should be affirmed. Point II should be denied.

Additional Argument in Support of Trial Court's Ruling

The trial court did not err in sustaining the motion to suppress because the officers exceeded the scope of the warrant in that the officers seized the phone from Respondent's person at the sheriff's office instead of from 13251 Highway O Dixon, in Pulaski County Missouri in violation of the 4th Amendment of the United States Constitution and Article I, Section 15 of the Missouri Constitution.

Appellant focuses on whether the warrant was valid on its face; and if not, whether the good-faith exception from *Leon* applies. But an appellate court "will affirm the judgment of the trial court if there is sufficient evidence which would support the trial court's decision to sustain the motion to suppress on any ground alleged in the respondent's motion." *State v. Edwards*, 36 S.W.3d 22, 26 (Mo. App. 2000) (citing *State v. Kriley*, 976 S.W.2d 16, 19 (Mo. App. 1998)).

Respondent's argument here is similar to his response to Point II. However, Respondent is presenting it separately because even if this Court grants Point I or II, the trial court's ruling should still be affirmed on the ground that the seizure of the phone from Respondent's person at the sheriff's office exceeded the scope of the warrant.

A. Standard of Review

The trial court's "ruling on a motion to suppress must be supported by substantial evidence." *State v. Douglass*, 544 S.W.3d 182, 188 (Mo. banc 2018). The appellate court "reviews the facts and reasonable inferences therefrom favorably to the circuit court's ruling and disregards contrary evidence and inferences." *Id.* "Whether a search is

'permissible and whether the exclusionary rule applies to the evidence seized' are questions of law reviewed *de novo." Id.* (quoting *State v. Johnson,* 354 S.W.3d 627, 632 (Mo. banc 2011)). The appellate court is "primarily concerned with the correctness of the trial court's result, not the route the trial court took to reach that result, and the trial court's judgment must be affirmed if cognizable under any theory, regardless of whether the trial court's reasoning is wrong or insufficient." *Id.* (quoting *State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 736 (Mo. banc 2017)).

B. Legal Principles

A search warrant is limited by the terms of its authorization. *State v. Varvil*, 686 S.W.2d 507, 509 (Mo. App. 1985); *Walter v. U.S.*, 447 U.S. 649, 646 (1980) ("the scope of the search warrant is limited by the terms of its authorization."). Thus, when police officers search or seize items or persons not specified in a search warrant the search or seizure exceeds the scope of the warrant and is invalid. *U.S. v. Alberts*, 721 F.2d 636, 639 (8th Cir. 1983) (where warrant authorized search of garbage bags at a specific residence, subsequent search of garbage bags at a second residence held unauthorized by warrant and invalid); *U.S. v. Heldt*, 668 F.2d 1238, 1262 (D.C. Cir. 1981) ("It is well accepted that the authority to search granted by any warrant is limited to specific places described in it, and does not extend to additional or different places.").

Further, the seizure "of items beyond the authorization of a valid warrant is unconstitutional and the items illegally seized" may be excluded from evidence. *State v. Hagan*, 113 S.W.3d 260, 264 (Mo. App. 2003) (citing *Mapp v. Ohio*, 367 U.S. 643, 649 (1961)).

C. Legal Analysis

One of the issues raised by Respondent before the trial court was that contrary to the warrant that authorized the police to seize a cell phone from 13251 Highway O Dixon, the police instead seized a phone from Respondent's person at the Sheriff's Office (this argument was phrased in Respondent's motion as the return on the warrant not being true). D29, p. 3. At the hearing, several questions to Detective Fenton focused on the fact that he was untruthful in his return on the warrant when he stated that he seized the phone at the 13251 Highway O Dixon residence when in fact he seized it from Respondent at the Sheriff's office. Tr. 15-17.

And in its order, the trial court made specific findings regarding the phone being seized from Respondent at the Sheriff's Office and not from Respondent's residence as authorized by the warrant:

> On April 4, 2019, the Court issued a search warrant to seize "[a] cell phone located at 13251 Highway O Dixon, in Pulaski County Missouri. This cell phone is described as [a] Black Samsung with black case."
>
> Subsequently, a black Samsung cell phone was seized from defendant and the contents thereof examined, allegedly pursuant to the aforementioned search warrant before a second search warrant was acquired for and issued for the search of the phone. The second warrant described the cell phone as belonging to defendant but being in the possession of the Pulaski County Sheriff's Office and had the serial number and phone number of the phone.

> Although the Affidavit in support of the second search warrant said the phone was seized pursuant to the first warrant the evidence was the phone was taken from or surrendered by defendant in the course of a police interview at the Pulaski County Sheriff's Office and not at 13251 Highway O Dixon.
>
> If the State claims the phone was surrendered by defendant it bears the burden in that regard and the Court finds the phone was seized from defendant. . . .

D32, p. 1.

If this seizure of Respondent's phone from his person is upheld as lawful, then the police will essentially be permitted to search a defendant's workplace, vehicle, storage unit, or body pursuant to a search warrant issued to search a specific residence. Such a result would, "in essence, condone the use of a general warrant." *Alberts*, 721 F.2d 636, 639 (8th Cir. 1983).

General warrants are prohibited by the Fourth Amendment. *Douglass*, 544 S.W.3d at 190. "Familiar history teaches that indiscriminate searches and seizures conducted pursuant to general warrants, known in the colonies as writs of assistance, 'were the immediate evils that motivated the framing and adoption of the Fourth Amendment.'" *U.S v. Christine*, 687 F.2d 749, 755 (3d Cir. 1982) (quoting *Payton v. New York*, 445 U.S. 573, 583 (1980)).

Because the seizure of the phone from Respondent exceeded the scope of the warrant, the trial court's ruling should be affirmed.

CONCLUSION

The ruling of the trial court should be affirmed for three reasons. First, the search warrant served on April 4, 2019 does not satisfy the Fourth Amendment's particularity requirement in that it "fails to adequately describe the thing to be seized." Second, the good faith exception to the exclusionary rule does not apply because the warrant was so facially deficient that the executing officers could not have reasonably presumed it to be valid and the officers did not properly execute the warrant. Third, the officers exceeded the scope of the warrant when they seized the phone from Respondent's person at the sheriff's office instead of from 13251 Highway O Dixon, in Pulaski County Missouri.

For all of these reasons, Points I and II fail and the trial court's ruling should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have prepared this brief using Microsoft Word in Times New Roman size 13 font. I further certify that this brief complies with the limitations of Rule 84.06 (b) and contains 6,379 words. I further certify that the brief and appendix have been scanned for viruses through the Kaspersky Anti-Virus software and were found to be virus-free.

/s/ Erica Mynarich
Erica Mynarich

CERTIFICATE OF SERVICE

I hereby certify that, on August 7, 2020, I filed a true and accurate Adobe PDF copy of this Substitute Brief of Respondent and its Appendix via the Court's electronic filing system, which notified the following of that filing:

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