

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Appellant,

v.

PHILLIP S. DOUGLASS and JENNIFER M. GAULTER,

Respondents.

DOCKET NUMBER WD78328
(Consolidated with WD78329)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 29, 2016

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Robert M. Schieber, Judge

JUDGES

Ahuja, C.J., and Howard, Hardwick, Welsh, and Martin, JJ., CONCURRING IN MAJORITY
OPINION of Mitchell, J.

Witt, J., DISSENTING in separate opinion in which Newton and Gabbert, JJ., and Ellis, Sr. J.,
concur.

Pfeiffer, J., DISSENTING in separate opinion in which Newton, J., and Ellis, Sr. J., concur.

ATTORNEYS

Chris Koster, Attorney General, and Rachel Flaster, Assistant Attorney General, Jefferson City,
MO, Attorneys for Appellant.

John R. Humphrey, Kansas City, MO, Attorney for Respondents.

The Majority Opinion holds:

1. *United States v. Leon*, 468 U.S. 897 (1984), does not address the validity of warrants; rather, it accepts the invalidity of the underlying warrant and addresses only the scope of the appropriate remedy for a search conducted pursuant to an invalid warrant.
2. There are two constitutional requirements for a valid warrant: (1) probable cause to believe that the place to be searched will contain contraband or evidence of a crime; and (2) particularity of the description of the place to be searched and items to be seized.
3. When a defendant seeks to suppress the fruits of a search conducted pursuant to a warrant, the defendant bears the burden of proving that the warrant is invalid.
4. If a defendant proves that only part of a warrant is invalid, the court should not automatically suppress all evidence seized under the warrant; rather, the court must consider whether application of the severance doctrine is required.
5. Under the severance doctrine, the infirmity of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant, but does not require the suppression of anything described in the valid portions of the warrant (or lawfully seized—on plain view grounds, for example—during execution of the valid portions). If the invalid portions make up a “greater part of the warrant,” resulting in a broader search than would otherwise have been authorized, the severability doctrine is inapplicable because the warrant has then been transformed into a prohibited general one.
6. In deciding whether to apply the severance doctrine, the concern is not *why* parts of a warrant are invalid, only *if* they are. To the extent that officer misconduct is relevant at all to application of the severance doctrine, the issue is subsumed within the “greater part of the warrant” analysis.
7. There is no “law enforcement convenience” exception to the warrant requirement, nor is there any justification for including items in a warrant application when the applicant knows there is no probable cause to support them.
8. Here, the circuit court failed to apply the severance doctrine and instead automatically applied wholesale suppression. Because wholesale suppression was not warranted, the matter is reversed and remanded.

Majority Opinion by: Karen King Mitchell, Judge

March 29, 2016

Dissenting Opinion by Gary D. Witt, Judge:

The dissent would hold that the trial court appropriately suppressed the evidence seized in this case pursuant to the defective warrant.

Where law enforcement deliberately acts in bad faith to undermine the protections of the Fourth Amendment by including items in a search warrant for which they know there is no

probable cause to search, the severance doctrine is inapplicable. Multiple courts have held that the absence of bad faith or pretext is necessary before redaction may be considered, as ignoring bad faith by the police or prosecution would undermine many of the purposes of the Warrant Clause as identified by *United States v. Christine*, 687 F.2d 749 (3rd Cir. 1982).

The policy behind the severance doctrine mandates this conclusion, as the doctrine was developed because courts have determined that, in certain instances, the exclusion of all evidence found pursuant to a partially defective warrant was not justified. Given that the exclusionary rule's primary purpose is to sanction police misconduct, in cases where a warrant is partially defective for more benign reasons, excluding all the evidence under the warrant may not be justified. However, where police misconduct and bad faith are the very reason why the warrant needs be severed, the severance doctrine cannot and must not be allowed to protect police or prosecutors from their own misconduct.

Therefore, the relevant question is whether the application of the exclusionary rule is warranted under the particular facts of the case. In this case, the benefits of the application of the exclusionary rule would outweigh the costs. The trial court found that the detective acted intentionally and in bad faith by indicating on the warrant application he had probable cause to search for items he knew were not supported by probable cause. The conduct at issue here, the deliberate circumvention of fundamental Fourth Amendment protections for the sake of convenience, is exactly the type of conduct that the exclusionary rule was crafted to deter.

The trial court's suppression of the evidence in this case should be affirmed because the application of the exclusionary rule would lead to appreciable deterrence of the intentional misconduct demonstrated by the Kansas City Police Department and the benefits of applying the rule here would outweigh the costs.

Dissenting Opinion by Mark D. Pfeiffer, Judge:

The dissent would hold that the corpse provision within the subject search warrant, which authorizes a search for any part of a deceased human fetus or corpse, is so broad as to swallow everything else identified in the warrant, no matter how particularized the remaining items may be. The corpse provision denotes the idea of a homicide investigation, but no homicide was being investigated. Thus the corpse provision was so broad and invasive as to contaminate the entire subject warrant. The resulting warrant allowed a general exploratory rummaging in a person's belongings with unbridled discretion such that the warrant was effectively a general warrant, which the Fourth Amendment sought to prohibit. It is beyond doubt that all evidence seized pursuant to a general warrant must be suppressed, and therefore this dissent would have suppressed the evidence in this case.

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