

Thursday, August 30, 2007

Suppress the evidence when the warrant lacks a substantial basis for finding probable cause.

A Court of Appeals Judge Lynne A. Battaglia dissents, saying to suppress the evidence when found pursuant to a warrant lacking a substantial basis for finding probable cause. (Image from Maryland State Archives website.) If I had a choice of fora in presenting a criminal appeal, I would generally expect my best shot to be in the Maryland Court of Appeals, rather than in the other appellate courts where I am licensed to appear (the District of Columbia, Virginia, and the District of Columbia; the Fourth and District of Columbia federal circuits; and the United States Supreme Court). For instance, I was stunned into ecstasy when the Court of Appeals handed me a victory finding that Maryland's double jeopardy common law precludes a conviction if a trial judge dismisses a criminal prosecution by relying on facts outside the four corners of the criminal charging document. However, sometimes people give with one hand and take away with the other, which is what the Maryland Court of Appeals did on August 24, in *Patterson v. Maryland*, ___ Md. _ (Aug. 24, 2007). In *Patterson*, Maryland's Court of Appeals agreed that the defendant was prosecuted using evidence seized pursuant to a search warrant that lacked a substantial basis for finding probable cause. Nevertheless -- and sadly and strangely -- a 5-2 court majority decided that: "Although we hold that the affidavit, in the present case, lacked a substantial basis to support the issuing judge's conclusion that probable cause existed; nonetheless, we hold that the affidavit was substantial enough to warrant application of the good faith exception. Officer Haak's affidavit was not 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'." [U.S. v.] *Leon*, 468 U.S. [897] at 923, 104 S.Ct. at 3421, 82 L.Ed. at 699 [1984]. Therefore, the evidence obtained as a result of the search of Patterson's temporary residence was properly admitted." Praised be dissenting Judge Lynn Battaglia (a former Maryland United States Attorney, certainly without criminal defense bias), joined by Chief Judge Murphy, for setting this wrongly-decided case straight: "Simply because 'probable cause is a fluid concept,' *Gates*, 462 U.S. at 232, 103 S. Ct. at 2329, 76 L. Ed. 2d at 544, does not mean that police officers "may [not] properly be charged with knowledge[] that [a] search was unconstitutional under the Fourth Amendment," under appropriate circumstances. *Leon*, 468 U.S. at 919, 104 S. Ct. at 3419, 82 L. Ed. 2d at 696, quoting *United States v. Peltier*, 422 U.S. 531, 542, 95 S. Ct. 2313, 2320, 45 L. Ed. 2d 374, 384 (1975). To hold that under the circumstances presented, the police acted in good faith in presenting their warrant application would call into question whether it is even possible for a reviewing court to find an absence of good faith. As then Judge Bell pointed out in his dissenting opinion in *Minor*, 'a reasonably well-trained police officer would not submit an affidavit to a magistrate for a probable cause determination that the officer knows, or should know, does not establish probable cause,' 334 Md. at 727, 641 A.2d at 223 (Bell, J., dissenting), because that hypothetical officer is chargeable with knowledge of what the Fourth Amendment prohibits, subject to its subsequent interpretation in *Gates* and *Leon*. Id. at 724-26, 641 A.2d at 222-23. I would hold that, in the case sub judice, Officer Haak knew or should have known that Patterson almost certainly possessed neither the weapon nor the accessories referenced in the warrant application and therefore, the good faith exception does not apply. I respectfully dissent." In any event, Judge Battaglia's dissent and Judge Clayton Greene, Jr.'s majority opinion in this *Patterson* case are particularly important reads for providing a good overview of the state of the federal and Maryland caselaw applying to stale warrants, the implications of allowing a search so long as it is conducted by the police in good faith, and the exceptions to permitting a search for such good faith. In discussing the good faith doctrine *Patterson* stated: "The *Leon* Court outlined four situations in which an officer's reliance on a search warrant would not be reasonable and the good faith exception would not apply: (1) the magistrate was misled by information in an affidavit that the officer knew was false or would have known was false except for the officer's reckless regard for the truth; (2) the magistrate wholly abandoned his detached and neutral judicial role; (3) the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable; and (4) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U.S. at 923, 104 S.Ct. at 3421, 82 L.Ed.2d at 699. As the Supreme Court noted, 'searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.' *Leon*, 468 U.S. at 922, 104 S.Ct. at 3420, 82 L.Ed.2d at 698." Unfortunately, if Mr. Patterson seeks and obtains certiorari review in the United States Supreme Court, he is likely not only to have his conviction affirmed, but to have a new Supreme Court opinion that shreds the Fourth Amendment all the more. Jon Katz. A A

Posted by Jon Katz in Criminal Defense at 00:00