

IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION

Time: 1248 pm
9/17/20 TS
Terry S. Fielding
CLERK OF COURTS

AMERICAN SAMOA GOVERNMENT,)	CR No. 67-20
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO SUPPRESS
)	
MATAELE TOKE,)	
)	
Defendant.)	
)	
)	

Before KRUSE, Chief Justice, FA'AMAUSILI, Associate Judge, and MUASAU, Associate Judge.

Counsel: For Plaintiff, Laura Garvey, Assistant Attorney General
For Defendant, Robert McNeill, Assistant Public Defender

Background

On May 20, 2020, Central Police Station received an anonymous phone call in which the caller claimed that Mataele Toke ("Defendant"), a resident of Ofu, would be transporting methamphetamine from Tutuila to Manu'a on a boat scheduled to depart the following day. A search warrant for Defendant was then obtained based on an officer's affidavit that recounted the allegations made in the anonymous call and stated that the officer believed that crimes under Am. Samoa Code Ann. §13.1022(a) and §13.0120(a) had been committed. When police executed the warrant, they found methamphetamine on the Defendant's person and in his luggage. Defendant now moves to suppress the evidence from this search because the affidavit submitted to the court did not provide sufficient probable cause

to justify the issuing of the search warrant.

Analysis

"[A]fter-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate's determination of probable cause should be paid great deference by reviewing courts." *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (internal quotations omitted). A magistrate's decision to issue a warrant will be upheld so long as there is "a substantial basis for determining the existence of probable cause." *Id.* at 230.

When making a probable cause determination courts must consider the "veracity," "reliability," and "basis of knowledge" for the information provided. *Id.* at 230. However, "these elements should [not] be understood as entirely separate and independent requirements to be rigidly exacted in every case." *Id.* at 230. Instead the court should consider the totality of the circumstances when making a probable cause determination. *Gates* at 230.

In the context of relying on anonymous tips, the Supreme Court has stated that "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *Ala. v. White*, 496 U.S. 325, 329 (1990). However, when an anonymous tip contains accurate "details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted," those details may provide the veracity needed for a finding of

probable cause. *Gates* at 245. If police are able to corroborate details, such as travel plans, contained in an anonymous tip, "a magistrate could properly conclude that it was not unlikely that [the informant] also had access to reliable information of alleged illegal activities." *Gates* at 246.

Here, the anonymous tip received by police contained details and information not easily available. However, nothing in the affidavit used to secure the search warrant provided any indication that any of the details alleged in the tip had been corroborated by police. An affidavit that merely recounts accusations against a person contained in an anonymous tip coupled with a bare assertion by an officer that they believe a crime has taken place, is not sufficient grounds for determining the existence of probable cause. Something more is needed. The search warrant in this case is defective because the magistrate lacked a substantial basis for determining the existence of probable cause.

The government, citing to federal precedent of the Third Circuit, argues that even if the warrant was defective, the contraband seized by the officers is nonetheless admissible if the officers acted in good faith on the strength of the defective warrant. But as the government also conceded, the good faith doctrine is not without exception. Moreover the doctrine is not of general application amongst the states. *See e.g. People v. Bigelow*, 488 N.E.2d 451 (N.Y. 1985). In *American Samoa v. Stephens*, 29 A.S.R.2d 6 (Trial Div. 1995), we previously

addressed the applicability of the doctrine to the Territory in light of the fact that American Samoa's exclusionary rule is, unlike the federal rule, a constitutional one. While our counterpart to the Fourth Amendment's Search and Seizure requirements, viz; REV. CONST. OF AM. SAMOA, Art I, sec 5, tracks verbatim the language of the Fourth Amendment, section 5 goes on to add the following sentence: "Evidence obtained in violation of this section shall not be admitted in any court." Read in conjunction with the preceding "no warrants shall issue, but upon probable cause" there is really no room for judicial supply of a "good faith" exception to the Territory's exclusionary rule.

On the federal side, the exclusionary was "judicially created" since it was not mandated by the Fourth Amendment. *United States v. Leon*, 468 U.S. 897 (1984). Thus we noted in *Stevens*:

In the landmark case *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court modified the exclusionary rule so as not to bar evidence obtained by the police through objective "good faith" reliance on a facially valid warrant that is ultimately found to be unsupported by probable cause. This principle is based on the premise that the exclusionary rule is not mandated by the Fourth Amendment to the United States Constitution as a matter of right, but rather is a judicially created enforcement mechanism for the protection of Fourth Amendment values. *Leon, supra* at 906. This mechanism properly functions only as a deterrent to future Fourth Amendment violations, and is in no way intended to "cure the invasion of the defendant's rights which he has already suffered." *Stone v. Powell*, 428 U.S. 465, 486 (1976). Because the exclusionary rule is not mandated, nor remedial for the individual defendant, there is wide latitude under the United States Constitution for the creation of reasonable exceptions. Since suppressing evidence obtained in "good faith," pursuant to an invalid

warrant would have little deterrent value, the Supreme Court held that "good faith" provides an exception to the exclusionary rule when a warrant is found to be invalid after the search has been conducted. *Leon*, *supra* at 919-23.

Id. at 8. In light of American Samoa's constitutionally mandated exclusionary rule, the High Court is not given the corresponding "wide latitude...for the creation of reasonable exceptions."

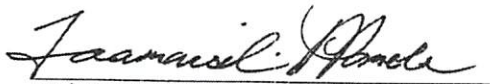
Defendant's motion is, therefore, granted; but any contraband and paraphernalia obtained in connection with the seizure pursuant to the warrant is nonetheless forfeited to the government. A.S.C.A. § 13.1032(1)(2)and(3).

It is so ordered.

Dated: 9/17/20



F. MICHAEL KRUSE
Chief Justice

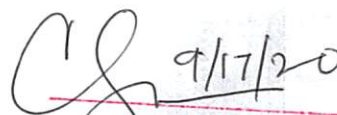


FA'AMAUSILI P. POMELE
Associate Judge



MUASAU T. TOFILA
Associate Judge

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on file in the Office of the Clerk of Courts



Terry S. Fielding
CLERK OF COURTS

