STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2016AP1289-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARCUS L. PANTOJA,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE CAROLINA STARK, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State believes that neither oral argument nor publication is necessary. The parties have fully developed the arguments in their briefs and the issues presented involve the application of well-settled legal principles to the facts.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

The State will supplement the procedural history and facts of Pantoja's case as appropriate in its argument.

SUMMARY OF THE ARGUMENT

Based on controlled buys of heroin and information from confidential informants, officers obtained two search warrants. On January 17, 2014, a commissioner issued the first warrant for the upper unit at 1927 South Winona Lane, Milwaukee. (12:22.) Three days later, another commissioner issued the second warrant for unit three in an apartment building located at 1100 South 1st Street in Milwaukee. (12:31.) The commissioner also authorized the officers to execute the 1st Street warrant in a "no-knock" manner. (12:31.)

Based on the evidence seized during the execution of the 1st Street warrant, the State charged Marcus Pantoja with possession of heroin with intent to deliver, in violation of Wis. Stat. § 961.41(1m)(d)3., and felon in possession of a firearm, in violation of Wis. Stat. § 941.29(2). (1:1.)

Pantoja moved to suppress evidence seized during the search of the 1st Street residence. (12.) First, he alleged that the affidavit in support of the search warrant did not state

probable cause. (12:9-10.) Second, Pantoja contended that the officers did not have a "reasonable basis to execute [the 1st Street warrant] in a manner justifying dispensation of the knock-and-announce rule." (12:10.)

The circuit court denied Pantoja's motion. It concluded that Pantoja had not "met the burden of showing that the facts presented in the affidavit [for the 1st Street warrant] were clearly insufficient to sustain a probable cause finding." (42:9.) In addition, the circuit court upheld the commissioner's decision to authorize the "no-knock" execution of the warrant. (42:17.) Following the circuit court's denial of his motion to suppress evidence, Pantoja pled guilty to the charges of possession with intent to deliver heroin and possession of a firearm by a felon. (23:1.)

On appeal, Pantoja first argues that the search warrant affidavit failed to establish probable cause for the 1st Street residence. (Pantoja's Br. 8-16.) Pantoja has failed to demonstrate that the affidavit was clearly insufficient to support the commissioner's probable cause determination. The affidavit relies on information from two reliable informants who conducted controlled buys at the Winona Lane residence. The affidavit also establishes a nexus between Pantoja, his drug trafficking activity, and both the Winona Lane and 1st Street residences.

Second, Pantoja contends that the affidavit did not establish reasonable suspicion to support the commissioner's authorization for the warrant's "no-knock" execution at the 1st Street residence. The State disagrees. The affidavit establishes reasonable suspicion to support a no-knock execution of the search warrant. But even if it does not, suppression is not a remedy for a violation of the rule of announcement.

Third, though not raised in his issues statement, Pantoja contends that the good faith exception to the exclusionary rule does not apply in his case. (Pantoja's Br. 1, 20-22.) Because the circuit court found that the search warrant affidavit stated probable cause and supported the no-knock authorization, it did not consider whether the good faith exception applied. Should this Court find that the affidavit was clearly insufficient to support the warrant's issuance or the no-knock authorization, it should remand the matter to the circuit court for a good faith determination.

ARGUMENT

I. The affidavit provided the probable cause necessary to support the commissioner's issuance of the search warrant for the 1st Street residence.

Pantoja argues that the affidavit was insufficient to establish probable cause for the search warrant at the 1st Street apartment. (Pantoja's Br. 8-16.) The circuit court reviewed the affidavit and found that it provided the commissioner with a substantial basis to issue the search warrant. (42:9, 14.) The affidavit supported the commissioner's probable cause determination and this Court should affirm the circuit court's denial of Pantoja's motion to suppress evidence.

A. General legal principles guiding the review of a search warrant.

The Fourth Amendment to the United States Constitution, and Article I, Section 11 of the Wisconsin Constitution protect people from unreasonable searches and establish the requirements for the issuance of a search

warrant. *State v. Tate*, 2014 WI 89, ¶ 27, 357 Wis. 2d 172, 849 N.W.2d 798.[1]

The Fourth Amendment's Warrant Clause requires an officer seeking a search warrant to obtain prior judicial authorization from a neutral and detached magistrate. The officer must demonstrate on oath or affirmation that probable cause exists to believe that the evidence sought will aid in the apprehension or conviction for a particular offense. The search warrant must describe with particularity the place to be searched and the items to be seized. *Id.* ¶ 28.

Courts determine whether probable cause exists based on the totality of the circumstances. *State v. Ward*, 2000 WI 3, ¶ 26, 231 Wis. 2d 723, 604 N.W.2d 517. "Probable cause [for a search warrant] is not a technical, legalistic concept[,] but a flexible, common-sense measure of the plausibility of particular conclusions about human behavior." *State v. Petrone*, 161 Wis. 2d 530, 547-548, 468 N.W.2d 676 (1991), *overruled on other grounds by, State v. Greve*, 2004 WI 69, 272 Wis. 2d 444, 681 N.W.2d 479. Probable cause exists when the facts would lead a reasonable person to conclude that the evidence sought is likely to be found in a particular location, even if it is reasonable to conclude that the evidence may be located in a second or third location. *Ward*, 231 Wis. 2d 723, ¶ 34. The quantum of evidence necessary to support a determination of probable cause for a search warrant is much less than that required for conviction, or even for bindover following a preliminary examination. *State*

[1] The Wisconsin Supreme Court has generally interpreted Article I., Section 11 of the Wisconsin Constitution and its protections against unreasonable searches and seizures in a manner consistent with the United States Supreme Court's interpretations of the Fourth Amendment. *State v. Tate,* 2014 WI 89, ¶ 27 n.16, 357 Wis. 2d 172, 849 N.W.2d 798.

v. Sloan, 2007 WI App 146, ¶ 23, 303 Wis. 2d 438, 736 N.W.2d 189.

Standard of review. A reviewing court accords "great deference" to a search warrant-issuing magistrate's probable cause determination. It will uphold the magistrate's probable cause determination unless the defendant establishes that the facts asserted in support of the warrant are "clearly insufficient" to support probable cause. *Ward*, 231 Wis. 2d 723, ¶ 21. This deferential standard of review furthers "the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." *State v. Romero*, 2009 WI 32, ¶ 18, 317 Wis. 2d 12, 765 N.W.2d 756 (citation omitted).

B. Pantoja has not demonstrated that the facts presented in the affidavit were clearly insufficient to support the commissioner's probable cause determination.

Pantoja asserts that the affidavit failed to establish a sufficient nexus between the drug trafficking documented at the Winona Lane residence and the 1st Street residence. Therefore, he contends that the commissioner lacked probable cause to issue a warrant for the 1st Street residence. (Pantoja's Br. 8-16.)

Investigator Jason Baranek, a law enforcement officer experienced in drug investigations, prepared the affidavit in support of the search warrant for the 1st Street residence. (12:32-40.) His affidavit provided probable cause to believe that Pantoja was involved in the distribution of heroin from the Winona Lane residence, that Pantoja was connected to the 1st Street residence, and that he was using the 1st Street residence to facilitate heroin trafficking.

1. Controlled buys at the Winona Lane residence demonstrate that Pantoja and his brother, Miguel Pantoja,[2] distributed heroin at that location.

Baranek's affidavit established an ongoing pattern of heroin sales at the Winona Lane residence and Pantoja's involvement in those sales.

First controlled buy at the Winona Lane residence. In October 2013, the affiant conducted a controlled buy of heroin through Informant #1[3] at the Winona Lane address. (12:34.) Informant #1 reported to Baranek what happened during the controlled buy. Informant #1 met with Christian, whom the Informant knew to be a runner and to do the hand-to-hand transactions for Pantoja. The informant gave Christian money, and Christian gave the Informant heroin.[4] During the controlled buy, Baranek saw Pantoja standing on the Winona Lane residence's porch. Baranek also observed two vehicles of significance nearby. The first car was

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[2] To avoid confusion with the appellant Marcus Pantoja, the State will refer to Miguel Pantoja by his first name throughout its brief.

[3] The affidavit relies upon information and controlled buys conducted by two people, designated as "Informant #1" and "Informant #2." (12:33-35.) For consistency, the State uses the same designations in its brief.

[4] With respect to each controlled buy, Baranek conducted a field test and determined that the results of those tests were consistent with the presence of heroin or another opiate. Further, based on the informants' statements, Baranek's observations of the packaging and substances' appearance, he believed the substance was heroin. (12:37.)

registered to CVR, a person believed to be Pantoja's girlfriend, with the 1st Street address.[5] The second car, which had a plate number of 457-UST, was registered to Pantoja at the Winona Lane residence. (12:34.)

Second controlled buy at the Winona Lane residence. Within two weeks of his application for the search warrant, Baranek conducted another controlled buy with Informant #2 at the Winona Lane residence. Informant #2 reported to Baranek that he gave Carlos, whom the Informant knew was a runner and conducted hand-to-hand transactions for Pantoja, money and that Carlos gave him heroin in return. (12:35.)

Third controlled buy at the Winona Lane residence. Within five days of the search warrant application, Baranek used Informant #1 to conduct another controlled buy at the Winona Lane residence. Following the buy, Informant #1 advised Baranek that he gave Miguel money and Miguel gave Informant #1 heroin. (12:33.)

2. The affidavit establishes a nexus between Pantoja, drug trafficking, and the 1st Street residence

Relying on *Sloan*, 303 Wis. 2d 438, Pantoja asserts that there is an insufficient nexus between the drug trafficking activity at the Winona Lane residence and the 1st Street residence. (Pantoja's Br. 11-12.)

In *Sloan*, this Court declined to find that probable cause existed to search the residence at the return address listed on a package in which a shipping company found

[5] Utility records also identified CVR's address as the 1st Street residence.

drugs. *Id*. ¶ 38. In reaching its decision, this Court noted that (a) no one reported seeing anyone at the residence; (b) there was no other evidence of Sloan's involvement with drug related activity; or (c) there were no reports of drug activity at this address. *Id*. ¶ 32.

In contrast, Baranek connected Pantoja to drug trafficking activity at the 1st Street residence through his own observations, Miguel's statements to Informant #1, Informant #1's assisting Pantoja with transporting heroin to and from the 1st Street residence, and Pantoja's statements to Informant #2.

Baranek's personal observations. Within 72 hours of the search warrant application, Baranek observed Pantoja leave the 1st Street residence and drive a Toyota with plate 457-UST. (12:36.) Informant #2 had previously seen Pantoja transport heroin in this car. (12:36.)

Miguel's statements to Informant #1. Within five days of the search warrant application, Miguel told Informant #1 that Pantoja lived on 1st Street. Miguel stated that they kept heroin at 1st Street because Miguel and Marcos feared a police raid or robbery at the Winona Lane residence. (12:36.)

Informant #1's assistance to Pantoja moving heroin to and from the 1st Street residence. Within one week of the search warrant application, Informant #1 drove Pantoja and with a quantity of heroin from the 1st Street residence to the Winona Lane residence. Informant #1 then gave Pantoja a ride to another location where Informant #1 believed that Pantoja had made a large-scale heroin purchase. Informant #1 then drove Pantoja back to the 1st Street residence. Informant #1 informed Baranek that Informant #1 could see Pantoja in the windows at the 1st Street residence. (12:35.)

Pantoja then left the apartment and he and Informant #1 drove back to the Winona Lane residence. Informant #1 claimed that he observed approximately 40 bags of heroin being transported to the Winona Lane residence during this tip. Informant #1 told Baranek that Pantoja had provided Informant #1 with heroin in exchange for his driving Pantoja. (12:36.)

Pantoja's statements to Informant #2. Within two weeks of Baranek's application for the search warrant, Pantoja told Informant #2 that he was concerned about the police raiding the Winona Lane residence and that he had moved in with his girlfriend at the 1st Street residence. Pantoja identified the 1st Street address where he was currently living. Informant #2 also saw Pantoja go to the 1st Street residence. (12:36.)

Based on the detailed investigation documented in the affidavit, the commissioner could reasonably conclude that Pantoja used the 1st Street residence to store heroin distributed from the Winona Lane residence. *See Ward*, 231 Wis. 2d 723, ¶ 34 (recognizing that probable cause may simultaneously exist for several locations). Because of Pantoja's and Miguel's concerns that they might be robbed or raided at Winona Lane, the commissioner could also reasonably conclude that they kept the heroin and the proceeds from heroin sales at the 1st Street residence where Pantoja resided.

3. The affidavit establishes a basis to believe Informant #1's and Informant #2's statements.

Pantoja asserts that the affidavit failed to establish the credibility of either informant. (Pantoja's Br. 13-16.) But based on the totality of the circumstances as alleged in the

affidavit, the commissioner could find that the informants were reliable and that they had personal knowledge of Pantoja's distribution of heroin and the nexus to the 1st Street residence.

Both an informant's veracity and the basis of the informant's knowledge are closely intertwined considerations in assessing probable cause. *Romero*, 317 Wis. 2d 12, ¶ 20. But both factors should be viewed in light of the totality of the circumstances rather than as discrete elements of a more rigid test. *State v. Rutzinski*, 2001 WI 22, ¶ 18, 241 Wis. 2d 729, 623 N.W.2d 516.

To this end, the affidavit must contain facts to enable the magistrate to "evaluate either the credibility of the declarant or the reliability of the particular information furnished." *Romero*, 317 Wis. 2d 12, ¶ 21. The facts may permit the magistrate to infer that the declarant has supplied reliable information on a particular occasion by corroboration of details. *Id.* This corroboration may be sufficient to support a search warrant. *Id.* "If a declarant is shown to be right about some things, it may be inferred that he is probably right about other facts alleged." *Id.*

"The basis of a declarant's knowledge is most directly shown by an explanation of how the declarant came by his or her information." *Id.* ¶ 22. "The extent to which a search warrant's supporting affidavit must demonstrate the veracity and basis of knowledge of a declarant may vary depending on the circumstances specific to each case." *Id.* ¶ 23.

In a drug investigation, a single, rigorously conducted controlled buy may be sufficient to establish an informant's veracity. *State v. Hanson*, 163 Wis. 2d 420, 423-24, 471 N.W.2d 301 (Ct. App. 1991) ("After all, there must always be

a first time for the use of an informant, and if sufficient care is taken to verify his or her information, such as through a controlled buy, there is no constitutional reason for us to consider it insufficient.").

The affidavit established the informants' prior reliability. Here, both informants had a past history of reliability. With respect to Informant #1, Baranek stated that Informant #1 had previously made three controlled substance buys that resulted in charges and convictions of two individuals for drug offenses. In addition, Informant #1 had provided information to the affiant and other officers that Baranek corroborated through a review of law enforcement records. (12:37-38.)

Informant #2 had made three successful controlled substances buys in pending, ongoing cases. In addition, Informant #2 also provided information to the affiant and other officers that Baranek corroborated through a review of law enforcement records. (12:38.)

Basis of knowledge with respect to Pantoja. To be sure, some of the informant's assertions were conclusory because those assertions, standing on their own, did not demonstrate how the informants knew that information. (12:36.) But as explained in Sections I.B.1.-2. above, the affidavit explains the basis for the informants' knowledge. Baranek used both informants to conduct controlled buys. Baranek corroborated Pantoja's participation in the drug activity. During the October buy, Baranek saw Pantoja standing on the porch and that he "appeared to be overseeing the drug transactions taking place." (12:34.) Baranek also saw Pantoja exiting the 1st Street residence, which corroborated the informants' information connecting him to that location. (12:36.) Finally, Pantoja's prior arrests for possession of narcotics in 2010

and 2011 also corroborate the informants' claims about Pantoja's drug involvement. (12:40.)

Based upon the totality of information, the commissioner could reasonably determine that Informants #1 and #2 both had a prior track record of reliability and that their participation in the controlled buys substantiated the basis of their knowledge regarding Pantoja's drug trafficking activity.

* * * * * *

Pantoja has failed to meet his burden of establishing that the facts asserted in support of the warrant were clearly insufficient to support the commissioner's probable cause determination. Based on the totality of circumstances, Investigator Baranek's affidavit establishes probable cause to believe that evidence of the crime of delivery of heroin would be found at 1st Street residence. Under the circumstances, this Court should affirm the circuit court's order denying Pantoja's motion to suppress physical evidence.

II. Because suppression is not a remedy for a violation of the rule of announcement, this Court need not address whether reasonable suspicion supported the commissioner's authorization for "no-knock" execution of the search warrant.

Pantoja asserts that the allegations in the affidavit do not establish reasonable suspicion to support the commissioner's authorization for a no-knock execution of the search warrant at the 1st Street address. He contends that the circuit court should have granted his motion to suppress evidence based on the violation of the announcement requirements. (Pantoja's Br. 16-20.)

The State disagrees. First, suppression of physical evidence is not a remedy for a violation of the rule of announcement. Second, the affidavit in Pantoja's case supported the commissioner's determination that reasonable suspicion supported the "no-knock" authorization.

A. Suppression is not a remedy for a violation of the rule of announcement.

Pantoja's argument rests on the assumption that suppression is the remedy when officers fail to comply with the rule of announcement. But in *Hudson v. Michigan*, 547 U.S. 586 (2006), the Supreme Court held that suppression is not a remedy for a violation of the rule of announcement:

> In sum, the social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrences against them are substantial—incomparably greater than the factors deterring warrantless entries when *Mapp*[6] was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified.

Id. at 599; *see also id.* at 603 (Kennedy, J., concurring) (stating that majority opinion holds that suppression is not a remedy for violation of the knock-and-announce requirement); *id.* at 604 (Breyer, J., dissenting) (same).

Wisconsin courts have consistently applied the *Hudson* holding. For example, in *State v. Brady*, 2007 WI App 33, 298 Wis. 2d 782, 729 N.W.2d 792, this Court declined to suppress evidence to remedy the defendant's valid complaint that officers failed to knock and announce before executing a search warrant. *Id.* ¶ 7. Relying on

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[6] *Mapp v. Ohio*, 367 U.S. 643 (1961).

Hudson, this Court observed that the rule of announcement "protects three things: the safety of the officers and residents, the integrity of personal property, and residents' dignity" and that none of these interests were present in Brady's case. *Id.* ¶¶ 10, 16. Accordingly, it declined to apply the exclusionary rule for what it characterized as a "technical violation of the knock-and-announce rule." *Id.* ¶ 16.

And in *State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775, the Wisconsin Supreme Court declined to apply the exclusionary rule to a statement and physical evidence obtained after an unlawful arrest. *Id.* ¶ 4. It observed that "[t]he Hudson Court declined to apply the exclusionary rule for a violation of the knock-and-announce rule, because the minimal deterrent effect was far outweighed by the social costs of suppressing the evidence." *Id.* ¶ 47.

Based on *Hudson*, *Brady*, and *Felix*, this Court should conclude that suppression is not a remedy for a violation of the rule of announcement. Under the circumstances, this Court need not decide whether the affidavit articulated reasonable suspicion that supports the commissioner's decision to authorize "no-knock" execution of the search warrant.

B. Reasonable suspicion supported the commissioner's authorization to execute the search warrant in a "no-knock" manner.

1. General legal principles associated with the rule of announcement.

The Fourth Amendment to the United States Constitution and Article 1, § 11 of the Wisconsin Constitution require officers to conduct searches in a

reasonable manner. Whether officers complied with the rule of announcement when they execute a search warrant is part of the inquiry into reasonableness. *Brady*, 298 Wis. 2d 782, ¶ 8 n.3. Before forcibly entering a home to execute a search warrant, officers must (1) announce their presence; (2) announce their purpose; and (3) wait a reasonable time to allow the occupants to open the door or refuse the officer admittance. *State v. Eason*, 2001 WI 98, ¶ 17, 245 Wis. 2d 206, 629 N.W.2d 625.

Officers may dispense with the rule of announcement and execute the warrant in a "no-knock" manner if they have "reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (rejecting blanket rule authorizing no-knock execution of search warrants in felony drug cases).

2. The affidavit establishes reasonable suspicion that justifies the commissioner's authorization for a "no-knock" entry.

Baranek's affidavit established reasonable suspicion to support execution of the search warrant in a no-knock manner. Baranek's request for no-knock authorization relied upon (a) his general knowledge regarding drug trafficking; and (b) information specific to his investigation.

With respect to his general knowledge, Baranek had prior experience conducting controlled buys and participating in the execution of drug-related search warrants. (12:32.) Further, he knew that "drug dealers frequently possess weapons to guard against robberies by drug abusers and rival drug dealers." (12:39.) Baranek also

asserted that he knew that "drug dealers will often carry firearms between a stash house and the residence where drugs are being sold, so that they can protect the drugs and monies being transported between these two locations." (12:39-40.)

With respect to Pantoja's case, Baranek also provided specific information that supported the commissioner's reasonable suspicion determination. First, because Miguel expressed concern that they may be robbed at the Winona Lane address (12:36), it was reasonable to believe that Pantoja and Miguel would possess firearms to protect their operations. Consistent with this concern, the affidavit documented Miguel's effort to obtain a firearm. During the controlled buy that occurred just five days before the commissioner issued the warrant, Informant #1 heard Miguel ask another person if Miguel could purchase a handgun from that person. (12:34.) Baranek also reported that he monitored a conversation with Miguel in which Miguel attempted to arrange the purchase of a handgun from a customer. (12:39.)[7]

Second, Informant #2 reported that he observed an unknown individual at the Winona Lane residence to be armed with a handgun during prior heroin purchases. (12:39.) Informant #2 also observed a person armed with a semi-automatic handgun at the residence within the previous 30 days. (12:39.) Considering Pantoja's involvement "overseeing" a drug transaction during a controlled buy (12:34) and Informant #1's shuttling of Pantoja between the 1st Street residence and the Winona Lane residence with heroin (12:35), it was reasonable to infer that Pantoja

[7] The State presumes that the conversation that Baranek monitored involved the conversation that Miguel had in Informant #1's presence.

possessed a firearm at the 1st Street residence to protect his heroin and the proceeds from heroin sales.

Under the circumstances, the commissioner properly authorized no-knock execution of the search warrant. Should this Court disagree and conclude that suppression remains a remedy for a violation of the rule of announcement, the State asserts that good faith exception to the exclusionary rule may apply in this case.

III. Should this Court conclude that the affidavit did not support the commissioner's issuance of the search warrant or no-knock authorization, it should remand the case to determine whether the good faith exception to the exclusionary rule applies.

Pantoja asserts that the good faith exception to the exclusionary rule does not apply in his case. (Pantoja's Br. 20-22.) The good faith exception applies when "officers act in objectively reasonable reliance upon the warrant, which had been issued by a detached and neutral magistrate." *State v. Eason*, 2001 WI 98, ¶ 74, 245 Wis. 2d 206, 629 N.W.2d 625.

The State must satisfy two additional requirements for the good faith exception to apply in Wisconsin. *Id.* ¶ 63. First, "the State must show that the process used attendant to obtaining the search warrant included a significant investigation. . . ." *Id.* Second, the warrant application must have been "review[ed] by a police officer trained in, or very knowledgeable of, the legal vagaries of probable cause and reasonable suspicion, or a knowledgeable government attorney." *Id.* (footnote omitted). In *Eason*, the court also considered "whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization, [such that it] would render the officer's reliance on the warrant unreasonable." *State v.*

Scull, 2015 WI 22, ¶ 37, 361 Wis. 2d 288, 862 N.W.2d 562 (citing *Eason*, 245 Wis. 2d 206, ¶ 66).

When an appellate court determines that an affidavit fails to establish probable cause, it may remand the case to the circuit court to determine if the evidence seized under the search warrant is nonetheless admissible under the good faith exception. *See State v. Marquardt*, 2001 WI App 219, ¶ 22, 247 Wis. 2d 765, 635 N.W.2d 188 (court remands case to trial court to determine whether good faith exception applies when the trial court had not addressed that issue).

Because the circuit court upheld the commissioner's issuance of the search warrant with the "no-knock" authorization, it was unnecessary for the State to present evidence on the issue of good faith. The circuit court also had no reason to decide whether the good faith exception applied.

Based on this record, this Court lacks the necessary information to assess whether the good faith exception should apply. While the affidavit demonstrates a significant investigation, a factual question exists as to whether Baranek himself had adequate knowledge on issues of probable cause and reasonable suspicion or if another knowledgeable officer or prosecutor reviewed the affidavit. *Eason*, 245 Wis. 2d 206, ¶ 63. Under the circumstances, this Court should remand the case to the circuit court to determine whether the officers could reasonably rely in good faith on the search warrant.

CONCLUSION

For the above reasons, the State respectfully requests this Court to affirm Pantoja's judgments of conviction.

Dated this 22nd day of November, 2016.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4556 words.

_____
DONALD V. LATORRACA
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 22nd day of November, 2016.

_____
DONALD V. LATORRACA
Assistant Attorney General