

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2017AP000603 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

RYAN L. SCHULTZ,

Defendant-Appellant.

RESPONSE BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM CONVICTION AND
SENTENCE ENTERED ON
JANUARY 27, 2017, IN THE CIRCUIT COURT
FOR FOND DU LAC COUNTY, BRANCH 2,
THE HON. PETER L. GRIMM, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not believe this case meets the statutory criteria to justify publication or oral argument.

STATEMENT OF THE ISSUES

- I. Did the search warrant affidavit contain sufficient facts to establish probable cause?

Trial Court Answered: Yes

- II. Did the search warrant affidavit leave out facts which—if added—would lead a magistrate not to find probable cause?

Trial Court Answered: No

- III. If there was not probable cause to issue the search warrant, whether the good faith exception to the exclusionary rule applies?

STATEMENT OF THE CASE

At approximately 3:33 a.m., on January 19, 2016, Fond du Lac County Sheriff's deputies were dispatched to a one-vehicle accident. R.21-1. The vehicle—a truck—had rolled over into a ditch. R.21-2. The deputies immediately requested a tow truck to ensure that the driver was not trapped under the truck. *Id.*

Dispatch advised that the registered owner of the truck was Sonia Schultz, who lived only two tenths of a mile away. R.43-5. Deputy Laura Halfmann went to Sonia's residence and spoke with her. R.21-2. Sonia told Deputy Halfmann that her husband, Ryan Schultz, "should" have been the driver of the truck and she believed he was alone during the crash. *Id.* Sonia also said Mr. Schultz was home in bed. *Id.*

Sonia took Deputy Halfmann to Mr. Schultz's bedroom. *Id.* Deputy Halfmann saw that Mr. Schultz was awake, shivering, and that his skin was reddened, as if he had been out in the cold. *Id.* The thermostat on Deputy Halfmann's squad car read negative 7 degrees Fahrenheit. *Id.* Deputy Halfmann saw that Mr. Schultz had a fresh abrasion on his nose, blood inside of it, and some puffiness on the right side of his forehead and left cheek. *Id.*

Deputy Halfmann spoke with Mr. Schultz. *Id.* Mr. Schultz denied driving the truck. *Id.* Mr. Schultz denied being in an accident. *Id.* Mr. Schultz said the injuries to his face were caused by him scratching himself.

Id. When Mr. Schultz got out of bed, Deputy Halfmann saw an abrasion on his lower back and blood on his boxer shorts in the upper area of his buttocks. *Id.* Deputy Halfmann observed that Mr. Schultz emitted a strong odor of intoxicants and had slow, slurred speech. *Id.*

Ambulance workers arrived at the residence and tended to Mr. Schultz. *Id.* Deputy Halfmann spoke some more with Sonia. *Id.* Sonia said that she heard the truck in the driveway at around 8:00 p.m. *Id.* After Sonia fell asleep, she woke up at around midnight and saw that both Mr. Schultz and the truck were not at home. *Id.* Sonia later heard Mr. Schultz come home, but was unsure of precisely when. *Id.* Sonia said that Mr. Schultz usually drinks at Lakeshore Mart and that he does not drink alcohol at home. *Id.*

Deputy Halfmann then spoke with R.S., Mr. Schultz's fourteen-year-old daughter. R.21-2. R.S. said that sometime after 2:00 a.m., she heard Mr. Schultz outside the backdoor of the home, yelling for help. *Id.* R.S. said she thought Mr. Schultz was locked out of the house, but he eventually got inside. R. 21-3. R.S. could hear Mr. Schultz banging around in the bathroom and swearing about being frostbit. *Id.* R.S. showed Deputy Halfmann the bathroom and pointed to a laundry hamper, which had blood and dirt on the lid. *Id.* R.S. also pointed out a hand towel, which had fresh blood on it. *Id.* R.S. said Mr. Schultz did not consume alcohol after coming home. *Id.*

Afterwards, Deputy Halfmann told Mr. Schultz that she believed he was operating the truck when it crashed. *Id.* Mr. Schultz denied this. *Id.* He said he had consumed alcohol at Lakeshore Mart earlier in the afternoon, but a bartender or the bar owner dropped him off at home afterwards. *Id.* He said he drank brandy at home after returning from Lakeshore Mart. *Id.*

Next, Deputy Halfmann had Mr. Schultz perform field sobriety tests. *Id.* Mr. Schultz exhibited numerous signs of impairment. R.21-3; 21-4. Consequently, Deputy Halfmann arrested Mr. Schultz. R.21-4.

Deputy Halfmann read Mr. Schultz the Informing the Accused form and asked him to submit to an evidentiary chemical test of his breath. *Id.* Mr. Schultz refused. *Id.* Accordingly, Deputy Halfmann filled out an affidavit, warrant paperwork, and called Judge Dale English to obtain a search warrant for a blood draw. *Id.* The affidavit was written out on a standardized, fill-in-the-blank form, which did not contain all of Deputy Halfmann's observations. R.17-7. Deputy Halfmann read the affidavit and search warrant verbatim to Judge English over the telephone. R.17-14. Afterwards, Judge English said "[t]he record speaks for itself and I am including all of the observations that the deputy testified to." R.17-21. Accordingly, Judge English found there was probable cause to believe Mr. Schultz's blood contained evidence of a crime and issued a search warrant.

Id. The test results indicated that Mr. Schultz had a blood alcohol content of 0.254%. R.3-2.

At the trial court, Mr. Schultz sought to suppress the blood test. R.17-1. Mr. Schultz argued that the search warrant affidavit did not establish probable cause or, in the alternative, that the search warrant omitted facts that would have—if included—negated probable cause. *Id.* The trial court refused to suppress the blood test on either ground. R.42-10; 42-22. Now, on appeal, Mr. Schultz raises those issues again. Def. Br. 5.

SUMMARY OF THE ARGUMENT

The trial court did not err when it denied Mr. Schultz's motion to suppress. First, the affidavit contained sufficient facts to find there was probable cause that Mr. Schultz's blood contained evidence of a crime. Second, if omitted facts were added to the affidavit, a reasonable magistrate would still find probable cause to issue a search warrant. Lastly, even if the trial court erred and the affidavit did not establish probable cause, the exclusionary rule should not apply because of Deputy Halfmann's good faith reliance on the search warrant.

STANDARD OF REVIEW

A search warrant "may issue only upon a finding of probable cause by a neutral and detached magistrate." *State v. Ward*, 2000 WI 3, ¶ 21, 231 Wis. 2d 723, 604 N.W.2d 517 (quoting *State v. Higginbotham*, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991)). On review, this Court gives deference to the warrant-issuing court's probable cause determination, which will stand "unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause." *Higginbotham*, 162 Wis. 2d at 989. This Court must consider whether—objectively viewed—there were sufficient facts before the issuing magistrate "to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that they will be found in the place to be searched." *Ward*, 2000 WI 3, ¶ 27.

ARGUMENT

I. DEPUTY HALFMANN’S AFFIDAVIT LAID OUT SUFFICIENT FACTS TO FIND THERE WAS PROBABLE CAUSE THAT MR. SCHULTZ’S BLOOD CONTAINED EVIDENCE OF A CRIME.

“A finding of probable cause is a common sense test.” *Ward*, 2000 WI 3, ¶ 23. It is determined by examining the totality of the circumstances. *Id.* ¶ 26. The magistrate’s job is to decide “whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* ¶ 23 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317 (1983)). The affidavit need not contain elaborate specificity and officers “are entitled to the support of the usual inferences which reasonable people draw from facts.” *State v. Lopez*, 207 Wis. 2d 413, 425-26, 559 N.W.2d 264 (Ct. App. 1996). Magistrates may also “make the usual inferences reasonable persons would draw from the facts presented.” *Ward*, 2000 WI 3, ¶ 28.

Mr. Schultz, however, has a differing view of the law governing search warrant affidavits. Mr. Schultz, more or less, states that the Wisconsin Supreme Court has held that search warrant affidavits must answer “the five basic questions: what, who, where, when, why as well as the sixth ‘W’—who says so.” Def. Br. 14 (citing *State ex rel. Evanow v.*

Seraphim, 40 Wis. 2d 223, 230, 161 N.W.2d 369 (1968)). Mr. Schultz then goes on to direct his analysis through this lense, arguing that the affidavit did not provide sufficient facts about “when” he drove the vehicle or “why” Deputy Halfmann thought he was the driver. Def. Br. 16-20.

But the document at the center of *Seraphim* was not an affidavit but a criminal complaint. *Seraphim*, 40 Wis. 2d at 225-26. Notably, Mr. Schultz does not cite—nor can the State find—any case that applies *Seraphim*’s criminal complaint requirements to a search warrant affidavit. Additionally, the State cannot find—and Mr. Schultz fails to cite—any case that mandates the *precision* about the time of driving that Mr. Schultz seems argue is required.¹ Def. Br. 15-16. Despite officers’ common practice of over-including facts in the affidavit to ward off a potential suppression motion, elaborate specificity is not a requirement. *Lopez*, 207 Wis. 2d at 425. All that is necessary is that the affidavit “excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that they will be found in the place to be searched.” *Ward*, 2000 WI 3, ¶ 27.

Deputy Halfmann’s affidavit passes that test. To start, Deputy Halfmann averred that she has specialized training in investigating drunk driving cases, 9 ½ years of law enforcement experience, and that the

¹ In any event, the *Seraphim* Court also said defendants are not entitled “to some encyclopedic listing of all evidentiary facts upon which the state intends to rely for his conviction.” *Seraphim*, 40 Wis. 2d at 229.

investigation was based on her personal observations and on the observations of others she believed to be truthful and reliable. R.17-7. Deputy Halfmann, moreover, explained that alcohol is absorbed into the bloodstream and a blood test can show the presence of alcohol in the blood. R.17-7. Furthermore, Deputy Halfmann stated that Ryan Schultz was the driver and that he drove on January 19, 2016, “at or about 2:00 a.m.” in Fond du Lac County, Wisconsin. *Id.* Deputy Halfmann also noted that Mr. Schultz’s vehicle was in an accident, that he admitted to consuming intoxicants at a gas station bar, and that Mr. Schultz was injured and that his injuries were consistent with being in a car accident. R.17-8. Even more, Deputy Halfmann averred that she made contact with Mr. Schultz and observed that Mr. Schultz’s speech, eyes, conduct, and balance were impaired and that those impairments were consistent with the consumption of intoxicants. R.17-9. Lastly, Deputy Halfmann observed many clues indicating impairment on the field sobriety tests and that Mr. Schultz had one prior Operating While Intoxicated conviction. *Id.* Therefore, based on the totality of the circumstances, the affidavit established probable cause because there were sufficient facts “to excite an honest belief in a reasonable mind” that Mr. Schultz did drive drunk and that his blood would contain evidence of the crime. *Ward*, 2000 WI 3, ¶ 27. As Judge English noted, “[t]he record speaks for itself.” R.17-21.

Accordingly, this Court should affirm the trial court's ruling because there were sufficient facts in the affidavit and because Mr. Schultz has failed to show that the facts contained in the affidavit were "clearly insufficient" to establish probable cause. *Higginbotham*, 162 Wis. 2d at 989.

II. IF ADDITIONAL FACTS FROM DEPUTY HALFMANN'S INVESTIGATION WERE INCLUDED IN THE AFFIDAVIT, THOSE FACTS WOULD ONLY HAVE STRENGTHENED—NOT WEAKENED—THE PROBABLE CAUSE DETERMINATION.

A search warrant affidavit must establish probable cause. It does not need to contain elaborate specificity. *Lopez*, 207 Wis. 2d at 425. Nonetheless, when a defendant makes substantial preliminary showing that material facts have been omitted from a search warrant affidavit, and that inclusion of those facts was necessary for impartial judge to determine probable cause, a hearing must be held at the defendant's request. *State v. Mann*, 123 Wis. 2d 375, 385-86, 367 N.W.2d 209 (1985). "[O]mitted facts have to be undisputed, capable of single meanings and critical to a probable cause determination." *Id.* at 388. At the motion hearing, the defendant bears the burden of showing by a preponderance of the evidence that a critical fact has been omitted. *Id.*

Mr. Schultz argues that Deputy Halfmann made "numerous material omissions" from her affidavit and that without those omissions, a warrant would not have been issued. Def. Br. 20. Mr. Schultz raised this issue with

the trial court, presided over by Judge Peter Grimm. R.17-4. At the trial level, Mr. Schultz cited twenty omitted facts. *Id.* A motion hearing was held, and Judge Grimm, after being apprised of the alleged “material omissions,” said:

I think those additional facts make the case stronger for the prosecution, and the omission of these facts was not a reckless disregard for the truth. It actually weakened their own affidavit for the search warrant, and now the Court knowing these facts makes it stronger.

R.42-21.

Therefore, the trial court denied Mr. Schultz’s motion. R.42-22.

On appeal, Mr. Schultz has now whittled down his list of omissions to just nine facts. Def. Br. 22-24. Amongst these nine are Mr. Schultz’s denials of driving, drinking outside of the home, being in an accident, and his explanation for his injuries. Def. Br. 23-24. But while Mr. Schultz has zeroed in on nine omissions and framed them in a way that is helpful to him, Deputy Halfmann’s report also contains additional facts that are bad for Mr. Schultz’s case. If Deputy Halfmann had included in the affidavit every last fact known to her, the State’s case for probable cause would have been stronger not weaker.

For instance:

1. Dispatch informed Deputy Halfmann that the truck was registered to Sonia A. Schutz, Mr. Schultz’s wife. R.21-1.
2. Dispatch also provided Sonia’s address which was approximately two tenths of a mile away from the crash site. R.43-5.

3. Earlier in the day, Deputy Halfmann observed the truck at the Lakeshore Mart, which is a gas station/tavern combination business. R.43-6.
4. After arriving at the residence, Deputy Halfmann spoke with Sonia. Ms. Schultz said that Mr. Schultz should have been the driver. *Id.*
5. Sonia also said that Mr. Schultz was home. Deputy Halfmann met Mr. Schultz in his bedroom. Deputy Halfmann observed that Mr. Schultz appeared to be awake and that his skin was reddened, as if he had been out in the cold. Mr. Schultz was visibly shivering. The thermostat in Deputy Halfmann's squad car indicated that the temperature was -7 degrees Fahrenheit. R.21-2.
6. Deputy Halfmann saw that Mr. Schultz had an abrasion on his nose, blood in his nose, and some puffiness on the right side of his forehead and left cheek. *Id.*
7. Deputy Halfmann asked Mr. Schultz to get out of bed. When he did, Deputy Halfmann saw that Mr. Schultz also had abrasion on his lower back and that there was blood on his boxer shorts in the upper area of his buttocks. *Id.*
8. After ambulance workers tended to Mr. Schultz, Deputy Halfmann again spoke with Sonia. Sonia said that Mr. Schulz usually drinks at Lakeshore Mart. *Id.*
9. Sonia said that around 8 p.m. she heard the truck in the driveway. Sonia also said that around midnight, she noticed that neither the truck nor Mr. Schultz were at home. *Id.*
10. Sonia told Deputy Halfmann that Mr. Schultz does not drink alcohol at home. *Id.*
11. Deputy Halfmann did not observe any alcohol or its receptacles while at the residence. *Id.*
12. Deputy Halfmann also spoke with R.S., Mr. Schultz's daughter. She said she thought it was after 2:00 a.m. when she heard Mr. Schultz outside the backdoor, yelling for help. *Id.*

13. R.S. said she heard Mr. Schultz banging around in the bathroom and swearing about being frostbit. R.21-3.

14. R.S. showed Deputy Halfmann the bathroom and point to a plastic laundry hamper which had blood and dirt on the lid. *Id.*

15. R.S. also pointed out a hand towel hanging in the bathroom which had fresh blood on it. *Id.*

16. R.S. said that Mr. Schultz did not consume any alcoholic beverages after coming home. *Id.*

To sum up, even if Deputy Halfmann's affidavit contained an encyclopedic recounting of every fact known to her, those facts would not have weakened the State's case for probable cause. Instead, it would have made it ironclad.

For that reason, this Court should affirm the trial court's ruling.

III. EVEN IF THE AFFIDAVIT DID NOT CONTAIN SUFFICIENT FACTS TO ESTABLISH PROBABLE CAUSE, THE RESULTS OF THE BLOOD TEST SHOULD NOT BE EXCLUDED BECAUSE OF DEPUTY HALFMANN'S GOOD FAITH RELIANCE ON THE SEARCH WARRANT.

Ordinarily, under the exclusionary rule, when the search warrant is invalid, the uncovered evidence is not admissible. *State v. Eason*, 2001 WI 98, ¶ 2, 245 Wis. 2d 206, 629 N.W.2d 625. One departure from that rule, however, is the "good faith" exception. *Id.* The "good faith" exception applies where:

[T]he State has shown, objectively, that the police officers reasonably relied upon a warrant issued by an independent magistrate. The burden is upon the State to also show that the process used in obtaining the search warrant included a

significant investigation and a review by either a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion, or a knowledgeable government attorney.”

Id. ¶ 3.

In this case, even if the affidavit did not establish probable cause, the good faith exception applies because: (a) Deputy Halfmann reasonably relied upon the warrant issued by Judge English, (b) there was a significant investigation before Deputy Halfmann sought the warrant, and (c) Deputy Halfmann is trained and knowledgeable in the requirements of probable cause.

A. Deputy Halfmann reasonably relied upon a warrant issued by an independent magistrate.

After Deputy Halfmann arrested Mr. Schultz, Mr. Schultz refused to submit to an evidentiary chemical test of his breath. R.21-4. As a result, Deputy Halfmann completed the warrant affidavit, warrant paperwork, and called Judge English to get a search warrant to obtain a sample of Mr. Schultz’s blood. *Id.* After Deputy Halfmann read the affidavit and search warrant over the telephone to Judge English, Judge English made several findings of fact, found that there was probable cause to believe that Mr. Schultz’s blood contained evidence of a crime, and issued the search warrant. R.17-21. On account of the warrant, a sample of Mr. Schultz’s blood drawn and then sent to the State Lab of Hygiene for testing. R.21-4.

In short, Deputy Halfmann did reasonably rely upon the warrant issued by Judge English, an independent magistrate.

B. Deputy Halfmann engaged in a significant investigation before seeking the search warrant.

Without rehashing her entire report, which has been recounted in length in this brief and is already in the record, Deputy Halfmann did undertake a serious investigation prior to seeking the warrant. Between the time she was dispatched—3:33 a.m.—and the time that the warrant was issued—4:58 a.m.—Deputy Halfmann investigated the cause of the accident. R.21-1; 17-11. Deputy Halfmann responded to the scene of the accident, went to the home of the registered owner, spoke with Mr. Schultz’s wife, spoke with Mr. Schultz, observed his injuries, spoke with Mr. Schultz’s daughter, observed the bloody hand towel, and administered field sobriety tests prior to arresting Mr. Schultz and seeking a search warrant. R.21.

In brief, Deputy Halfmann undertook a significant investigation concerning the cause of the crash and Mr. Schultz’s impairment before obtaining a search warrant. It was not mere coincidence that Deputy Halfmann thought Mr. Schultz drove drunk.

C. Deputy Halfmann is knowledgeable about the requirements of probable cause.

As stated in the affidavit, at the time of this incident, Deputy Halfmann had 9 ½ years of law enforcement experience and was trained in investigating drunk driving cases. R.17-7. In her motion hearing testimony, Deputy Halfmann further explained that prior to becoming a patrol deputy she earned a bachelor's degree in criminal justice, attended recruit school, and is trained in how to administer field sobriety tests. R.43-3. Deputy Halfmann is, moreover, required to take annual refresher trainings to ensure that she remains proficient in administering field sobriety tests. R.43-4. In addition, Deputy Halfmann has also attended crash reconstruction school. *Id.* Thus—given her education, training, and long experience as a law enforcement officer—Deputy Halfmann is trained and knowledgeable about the requirements of probable cause as they relate to a drunk driving investigation.

For those reasons, even if the affidavit failed to establish probable cause, the evidence should not be excluded because of Deputy Halfmann's good faith reliance on the search warrant.

CONCLUSION

For the above stated reasons, this Court should deny Mr. Schultz's appeal.

Dated this 2nd day of October, 2017.

Respectfully submitted,

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CERTIFICATION TO FORM AND LENGTH

I hereby certify that this brief conforms to the rule contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with proportional and serif font. The length of this brief is 4,068 words.

Dated this 2nd of October, 2017,

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT § 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. § 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 2nd day of October, 2017.

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