
**IN THE
Supreme Court of the United States**

Spring Term 2008

United States of America,

Petitioner,

- v. -

Henry Morton,

Respondent.

ORDER GRANTING CERTIORARI

Petitioner United States of America's petition for certiorari is hereby granted as to the following issues:

- I. Whether the warrant to search the Respondent's home was supported by probable cause; and
- II. Whether the search of the Respondent's global positioning system (GPS) was within the scope of the "plain view" exception.

**IN THE
United States District Court
for the District of Nevada – Las Vegas**

United States of America,

Plaintiff,

- v. -

Henry Morton,

Defendant.

Decided: July 7, 2006

OPINION AND ORDER DENYING DEFENDANT’S MOTION TO SUPPRESS

Defendant Morton is charged with kidnapping, burglary, and assault. Morton has filed a motion to suppress the evidence found through the search of the global positioning system (“GPS”) located inside his home. Defendant argues that there was insufficient probable cause to support the search warrant. Additionally, Defendant argues that the search of the GPS was beyond the scope of the Fourth Amendment. For the reasons stated below, this Court denies the motion to suppress.

I. Statement of Facts

On Friday, May 25, 2006, at 2:00 P.M., just before Memorial Day weekend, Stewart Marriott, a well-known and powerful hotelier and casino owner received a phone call from a restricted phone number. The anonymous caller told Marriott that his twenty-five-year-old daughter, Tess Marriott, had been taken from her home at 217 N. Kinzie Park. In addition, the caller stated that Tess’s life was in immediate jeopardy and that she would be harmed

unless \$3 million from his casino vault was brought to the Las Vegas International Airport by 4:00 P.M. Also, the caller said that Tess would be left in the long-term parking garage in the trunk of a black Hummer parked on the fourth floor. Before Marriott could gather additional information, the caller hung up the phone.

Marriott immediately called District Attorney Olivia Sykes. Marriott and Sykes were old friends and Marriott regularly contributed to her re-election campaigns. Sykes testified that Marriott told her that his daughter had been kidnapped, and Marriott thought that it was probably Henry Morton. Marriott told her that Morton has been his enemy for many years and was the only person he knew who could possibly do such a terrible thing. Then Marriott informed her of the kidnappers' requests. Sykes stated that Marriott was frantic and told her, "I am going to make the exchange within the hour to ensure Tess's safety, and then legal consequences **must** follow. The money in my vault is marked so we can get these scumbags." Stewart Marriott hung up before Sykes could obtain any further details.

After the call, Sykes had her assistant D.A. search the state's automobile records and confirm that a black Hummer was registered to Henry Morton. Sykes proceeded to fill out an application for a search warrant for Morton's home. (The warrant is reproduced in Appendix A of this record). Sykes presented the warrant application to magistrate Sophie Tate, and Tate granted a search warrant for evidence connecting Henry Morton to Tess Marriott's

kidnapping, the ransom money, anything related to the ransom money, and anything that could lead to the recovery of the ransom money.

Marriott walked down to his casino vault in the basement of his hotel and alerted the head of security, David Owen, of the situation. Owen quickly obtained the marked bills and reminded Marriott that the money would be replaced since his kidnappers' insurance policy had recently become effective. At 3:50 P.M., Marriott drove his white Bentley to the Las Vegas International Airport and approached a black Hummer on the fourth floor of the long-term parking garage. A man wearing a mask on his face got out of the Hummer and approached the Bentley. Marriott handed the money to the man after which Tess was released from the black Hummer. The masked man drove away in a red convertible Mustang that had been parked on the opposite side of the black Hummer.

At 5:00 P.M., police officers and D.A. Sykes arrived at Morton's home to execute the search warrant. Officers Hyde, Pierce, and Stark searched the home fully and were unable to locate the ransom money or any other evidence. Before ceasing their search, Officer Stark noticed a stack of papers on top of a 5"x 3.75" electronic device weighing roughly 8 ounces. Officer Stark testified that he did not know exactly what the device was but believed it could have been a personal digital assistant-type cellular phone, a tablet PC, or a global positioning system. Stark testified that he thought the device could lead the officers to the location of the ransom money because – although he had a lack

of experience with electronic devices – he was aware of three situations where an electronic device had provided officers with evidence of a crime.

Officer Stark removed the ½” stack of paper from the top of the device and pushed the “on” button. The small screen on the device showed a map. Stark testified that once he saw the map, he knew the device was a global positioning system (GPS). Stark used the “backtrack” feature to discover the vehicle’s previous location and address history. The GPS showed that at 12:00 p.m. on May 25, 2006, the GPS was programmed for 217 N. Kinzie Park. The officers were unable to locate the ransom money.

On June 20, 2006, Henry Morton filed a motion to suppress the information found in the GPS system based on the grounds that the evidence was illegally obtained.

II. Analysis

A. Probable Cause

The Warrant Clause of the Fourth Amendment states that: “[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” Here, the Plaintiff presented a sworn affidavit to a neutral and detached magistrate, Sophie Tate. The Defendant offers no evidence that the magistrate lacked neutrality or detachment from her decision to validate the warrant.

This Court acknowledges that it is a close question whether the facts support a finding of probable cause under *Illinois v. Gates*, 462 U.S. 213 (1983). Regardless, the good faith exception to the warrant requirement, as

introduced in *United States v. Leon*, 468 U.S. 897 (1984), applies in this situation. The *Leon* Court held that regardless of the inadequacy of the warrant, evidence is admissible if the police officers reasonably relied on the warrant. *Id.* at 930-31. Here, officers Hyde, Pierce, and Stark, relied on District Attorney Sykes's finding that a black Hummer was registered to Henry Morton. Also, the officers relied on Sykes's determination that Morton had a motive to kidnap Tess Marriott because of Morton and Marriott's animosity toward each other. Thus, the officers reasonably relied on the warrant granted by magistrate Sophie Tate, under the discretion of District Attorney Sykes. Therefore, the good faith exception applied; thus, the information obtained by the police officers upon execution of the warrant will not be suppressed.

B. The Search of the GPS

While this Court finds that the warrant is valid because of the good faith exception, we address the "plain view" doctrine notwithstanding the existence of the warrant.

The United States Supreme Court has said that for the "plain view" doctrine to apply to searches, probable cause is required. *Arizona v. Hicks*, 480 U.S. 321, 326 (1987). Because we have determined that the warrant was valid, the officers were lawfully inside the Defendant's home, and had a lawful right of access to the GPS. The dispositive issue, then, is whether the officers had probable cause to believe that the GPS contained evidence of the crime.

Under these circumstances, the officers had probable cause to believe the GPS would lead them to the ransom money. The lower courts have held

that a nexus must exist between the evidence for which they are searching and the crime. *United States v. Gray*, 484 F.2d. 352 (6th Cir. 1974). Here, the search of the GPS was not unrelated to the objective of the authorized intrusion. Officer Stark testified that although he was unsure of the device's exact capabilities, he thought the item could lead the officers to the ransom money. His personal experience coupled with his colleagues' past experience provides a sufficient basis for probable cause. As the Supreme Court has stated, "The principal components of a determination of...probable cause will be the events which occurred leading up to the...search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to... probable cause." *Ornealas v. United States*, 517 U.S. 690, 696 (1996). Thus, we find that there was the necessary nexus between the GPS and the crime being investigated.

Therefore, because the search of the Defendant's GPS falls within the scope of the "plain view" doctrine, this Court rejects the Defendant's second argument as well. The motion to suppress the evidence is denied.

IN THE
United States Court of Appeals for the Ninth Circuit

Henry Morton,

Defendant-
Appellant,

- v. -

United States of America,

Plaintiff-Appellee.

Decided: September 17, 2007

OPINION AND ORDER

Defendant appeals from the judgment of the United States District Court District of Nevada – Las Vegas (“District Court”), which denied his motion to suppress the evidence. Defendant argues the warrant was invalid due to a lack of probable cause and that the good faith exception does not apply. In addition, Defendant argues that even if the search warrant was valid, the search of the global positioning system (“GPS”) was outside of the scope of the warrant. As fully explained below, we unanimously concur with the Defendant and reverse the District Court’s ruling to deny the motion to suppress the evidence.

I. Standard of Review

We review the factual finding underlying the motion to suppress for clear error and review the legal determination *de novo*. *United States v. Kemmish*, 120 F.3d 937, 939 (9th Cir. 1997).

II. Analysis

A. The Search Warrant

The information provided in the warrant is based on the anonymous call received by Stewart Marriott. Such vague information does not meet the totality of circumstances test for probable cause set forth by the Court in *Illinois v. Gates*, 462 U.S. 213 (1983). Furthermore, the good faith exception to the warrant requirement, as stated in *United States v. Leon*, 486 U.S. 897 (1984), does not apply.

It was not reasonable for a police officer to rely on the information in the search warrant due to a lack of probable cause. The informant's tip stated that the exchange of Tess Marriott for the ransom money would take place in a black Hummer on the fourth floor of an airport parking garage. Based on this tip, the assistant District Attorney searched automobile records and found that a black Hummer was registered to Henry Morton – the same person that Stewart Marriott told D.A. Sykes had kidnapped his daughter. But there are hundreds of black Hummers registered in Las Vegas, which means that the black Hummer could have belonged to anyone.

Further, the District Court relied on the bad blood between Morton and Stewart Marriott as evidence that Morton was involved in the kidnapping. But courts cannot rely merely on animosity between men as evidence that a crime was committed; therefore, the information relied on by the court below was insufficient to give rise to probable cause.

Additionally, this Court takes issue with the previous decision of the Court in *United States v. Leon*. The Fourth Amendment of the Constitution states that “[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” The good faith exception directly contradicts the Constitution because probable cause is required, not just good faith. For these reasons, the Court suppresses the information obtained by the police officers after executing an improperly obtained warrant.

B. Search of the GPS Device

The District Court correctly stated that officers may search an object of an incriminating nature if the object is in “plain view.” However, this Court finds that the officers violated the Appellant’s Fourth Amendment rights because the GPS was outside the scope of the “plain view” doctrine.

First, there is no doubt that if Officer Stark had probable cause to believe that the GPS would lead to the ransom money, the “plain view” doctrine would have justified a search of the device. However, because an officer is required to have an objective belief that the search will amount to probable cause, we find that probable cause does not exist. The officer testified that he merely “thought” the device could have been a GPS. Further, Officer Stark testified that he was only aware of three situations where an electronic device contained evidence of a crime. Three instances, with nothing more than a presumption, is insufficient to give rise to probable cause. Thus, we find that Officer Stark had only a reasonable suspicion. Because the Supreme Court in *Arizona v. Hicks*, 480 U.S. 321, 326 (1987), held that the “plain view” doctrine must be

supported by probable cause, we find that the warrantless search of the GPS cannot be supported by the “plain view” doctrine.

Second, the contents of the GPS were not immediately apparent to Officer Stark. We agree with Justice Scalia’s opinion in *Hicks*, that a search unrelated to the objectives of an authorized intrusion cannot justify an officer’s actions on the basis of “plain view.” Similar to the officer in *Hicks*, Officer Stark manipulated the GPS by removing the ½” stack of papers, turning the device on, and enabling the “back-track” feature.

Under these facts, this Court cannot agree with the District Court’s holding that the search of the Appellant’s GPS was reasonable under the Fourth Amendment. Accordingly, the District Court ruling is reversed and remanded for proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX A: Affidavit for Search Warrant

AFFIDAVIT FOR SEARCH WARRANT

Please type or press hard.

Police Agency Report Number: 67-88945

Olivia Sykes, District Attorney for the District of Las Vegas, affiant(s), state that:

- 1. The person, place, or thing to be searched is described as and is located at:

Residence: 118 Waldron Street, Las Vegas, Nevada

- 2. The PROPERTY to be searched for and seized, if found, is specifically described as:

\$3 million in bills marked with UV Reactive Ink.

- 3. The FACTS establishing probable cause or the grounds for search are:

Informant tip: Stewart Marriott told Olivia Sykes that his daughter, Tess Marriott, had been kidnapped. Marriott thought that it was probably Henry Morton. Marriott told Sykes that Morton has been his enemy for many years.

Phone call received by Marriott stating: Tess Marriott would be harmed unless \$3 million from his casino vault is brought to the Las Vegas International Airport by 4:00 p.m. Tess will be left in the long-term parking garage in the trunk of a black Hummer on the fourth floor.

Assistant D.A. confirmed that Henry Morton drives a black Hummer and used this to obtain his address from the vehicle registry.

This affidavit consists of 1 page(s).

Olivia Sykes

Review on <u>5/25/2006</u> Date
By <u>Roman Burke</u> Prosecuting official

Subscribed and sworn to before me on <u>5/25/06</u> Date
<u>Las Vegas Municipal</u> _____ Court
<u>Sophie Tate</u> Judge/Magistrate