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STATE OF NEBRASKA, APPELLEE, V. BENJAMIN J. SPRUNGER, APPELLANT.

811 N.W.2d 235

Filed March 23, 2012. No. S-11-100.

1. **Constitutional Law: Search and Seizure: Motions to Suppress: Appeal and Error.** In reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, an appellate court applies a two-part standard of review. Regarding historical facts, an appellate court reviews the trial court's findings for clear error. But whether those facts trigger or violate Fourth Amendment protections is a question of law that an appellate court reviews independently of the trial court's determination.
2. **Search and Seizure.** Application of the good faith exception to the exclusionary rule is a question of law.
3. **Constitutional Law: Search Warrants: Probable Cause.** The execution of a search warrant without probable cause is unreasonable and violates the Fourth Amendment.
4. **Search Warrants: Affidavits: Probable Cause.** A search warrant, to be valid, must be supported by an affidavit that establishes probable cause.
5. **Search Warrants: Probable Cause: Words and Phrases.** Probable cause sufficient to justify issuance of a search warrant means a fair probability that contraband or evidence of a crime will be found.
6. **Search Warrants: Probable Cause: Proof: Time.** Proof of probable cause justifying issuance of a search warrant generally must consist of facts so closely related to the time of issuance of the warrant as to justify a finding of probable cause at the time.
7. **Search Warrants: Affidavits: Probable Cause: Appeal and Error.** In reviewing the strength of an affidavit submitted as a basis for finding probable cause to issue a search warrant, an appellate court applies a "totality of the circumstances" test. The question is whether, under the totality of the circumstances illustrated by the affidavit, the issuing magistrate had a substantial basis for finding that the affidavit established probable cause.
8. **Search Warrants: Affidavits: Evidence: Appeal and Error.** In evaluating the sufficiency of an affidavit used to obtain a search warrant, an appellate court is restricted to consideration of the information and circumstances contained within the four corners of the affidavit, and evidence that emerges after the warrant is issued has no bearing on whether the warrant was validly issued. An appellate court's review is guided by the principle that sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.
9. **Search Warrants: Probable Cause.** The requirement of particularity for a search warrant is closely related to the requirement of probable cause.
10. **Search Warrants.** A purpose of the particularity requirement for a search warrant is to prevent the issuance of warrants on loose, vague, or doubtful bases of fact.
11. **Search Warrants: Probable Cause: Proof.** To establish probable cause for the issuance of a search warrant, it must be probable that (1) the described items

are connected with criminal activity and (2) they are to be found in the place to be searched.

12. **Constitutional Law: Search and Seizure.** A general search for evidence of any crime is unconstitutional.
13. ____: ____. That a Fourth Amendment violation occurred does not necessarily mean that the exclusionary rule applies.
14. **Search Warrants: Affidavits: Police Officers and Sheriffs: Evidence: Search and Seizure.** The good faith exception provides that even in the absence of a valid affidavit to support a search warrant, evidence seized under the warrant need not be suppressed when police officers act in objectively reasonable good faith in reliance upon the warrant.
15. **Motions to Suppress: Search Warrants: Affidavits: Police Officers and Sheriffs: Evidence.** Evidence suppression is appropriate if one of four circumstances exists: (1) The magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth; (2) the issuing magistrate wholly abandoned his judicial role; (3) the supporting affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid.
16. **Search and Seizure: Police Officers and Sheriffs.** The good faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite a magistrate's authorization.
17. **Police Officers and Sheriffs: Presumptions.** Officers are assumed to have a reasonable knowledge of what the law prohibits.
18. **Search Warrants: Affidavits: Police Officers and Sheriffs: Appeal and Error.** In assessing the good faith of an officer's conducting a search under a warrant, an appellate court must look to the totality of the circumstances surrounding the issuance of the warrant, including information not contained within the four corners of the affidavit.
19. **Search Warrants: Affidavits: Police Officers and Sheriffs: Probable Cause: Appeal and Error.** When evaluating whether a warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, an appellate court should address whether the officer, considered as a police officer with a reasonable knowledge of what the law prohibits, acted in objectively reasonable good faith in relying on the warrant.
20. **Search Warrants: Probable Cause: Evidence.** A magistrate's signature cannot render reasonable an objectively unreasonable failure to support a warrant application with evidence necessary to demonstrate probable cause.

Appeal from the District Court for Sarpy County: MAX KELCH, Judge. Reversed and remanded for further proceedings.

Jason E. Troia, of Dornan, Lustgarten & Troia, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, Erin E. Tangeman, and James D. Smith for appellee.

HEAVICAN, C.J., CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

The State charged Benjamin J. Sprunger with 20 counts of possessing child pornography. After a bench trial, a court convicted him of four of those counts. The court sentenced him to 18 months of probation on each conviction, with the terms to run concurrently. Sprunger appeals; he challenges the search that uncovered the images and the sufficiency of the evidence to support the convictions. We conclude that the affidavit for the warrant failed to establish probable cause. Further, we also conclude that the officers' belief that the information contained in the affidavit had created probable cause was not objectively reasonable. We reverse, and remand for proceedings consistent with this opinion.

BACKGROUND

On July 25, 2009, the Washington County, Nebraska, sheriff's office received a complaint of credit card fraud from a man in Blair, Nebraska. The man reported that about 2 weeks earlier, someone had used his bank debit/check card without his authorization to purchase computer equipment from a California company.

The deputies contacted the California company, and the company confirmed the purchase on the man's card. The computer equipment was sent to an address in New Jersey. The deputies later learned, however, that the Internet protocol (IP) address used to make the purchase belonged to Sprunger at his apartment in Gretna, Nebraska.

Deputies from Washington and Sarpy Counties then went to Sprunger's apartment for a "knock-and-talk." There, they questioned Sprunger about the purchase. Sprunger denied any knowledge of the purchase. The deputies, however, observed several computers and other computer equipment in his apartment. When the deputies asked if he would allow them to take

the computers, Sprunger denied permission and told them that they would need a warrant to take his computers.

In talking with Sprunger, the deputies learned that Sprunger worked at a bank data processing center, where he had access to account information. In addition, they also learned that Sprunger was going to school to become a computer technician and, thus, was likely well versed in computers.

The deputies left and applied for a search warrant. Their supporting affidavit recounted the facts that we have set out. On October 29, 2009, the county court issued a warrant to seize "[a]ny and all computer equipment" at Sprunger's apartment.

The deputies later returned to execute the warrant. While they were executing the warrant, the deputies learned additional facts that led them to request a second search warrant. When the deputies told Sprunger that they were there to take his computers, Sprunger asked if he could delete some files before the deputies took his computers. The deputies denied him permission. Then, one deputy asked Sprunger if he had any child pornography on his computers. When Sprunger said he did not, the deputy told Sprunger that if there was no child pornography on the computers, Sprunger had nothing to worry about. A few days later, a lawyer representing Sprunger called the deputies. The lawyer asked about the child pornography case the deputies were working on. The lawyer stated that Sprunger had told him "his computers had been taken to look for Child Pornography."

Using these additional facts—Sprunger's request to delete some files and the call from his attorney—the deputies applied for a second search warrant. On November 5, 2009, the county court granted a second warrant. It authorized a search of the computers for evidence of child pornography.

The deputies did not uncover any evidence of the credit card crime. But they did find what they believed to be child pornography. The State charged Sprunger with 20 counts of possession of child pornography.[1]

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[1] See Neb. Rev. Stat. § 28-813.01 (Cum. Supp. 2010).

Sprunger moved to suppress the results of the search warrants. Regarding the first warrant, Sprunger challenged the information as stale because 3 months had passed between the alleged fraud and the application for the warrant. Sprunger claimed that the affidavit did not state why the deputies believed evidence would still be on his computers. Sprunger also claimed that the deputies were required to explain the significance of an IP address and had failed to do so. Regarding the second warrant, Sprunger claimed the affidavit simply did not establish probable cause.

The court issued a separate order for each search warrant. The court concluded that probable cause supported the first warrant. It rejected Sprunger's argument that the 3-month window between the alleged fraud and the application for the search warrant rendered the information stale. The court reasoned that the information would still have been on the computers unless Sprunger had deleted it. Further, the court reasoned that finding the user's physical address from the computer's IP address would take time. The court thus ruled that the information was not stale. The court also rejected Sprunger's argument that the deputies were required to explain the significance of an IP address. The court ruled that because "computers are now prevalent in our society," it could take judicial notice of the significance of an IP address. In sum, the court rejected Sprunger's arguments challenging the warrant and found that probable cause supported it.

The court also overruled Sprunger's motion to suppress the second search. The court agreed that probable cause did not support the warrant for the child pornography search. But the court concluded that the good faith exception[2] saved the search. The court determined that there would be little deterrent effect from excluding the evidence because Sprunger had not alleged maliciousness or intentional misconduct. The court recognized that the inquiry into good faith must be conducted from the vantage point of the officer. The court concluded that the possibility that Sprunger's attorney called the deputies about a child

[2] See, *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984); *State v. Nuss*, 279 Neb. 648, 781 N.W.2d 60 (2010).

pornography investigation because Sprunger had mentioned having child pornography on his computer to his attorney was reasonable enough to allow the deputies to rely on the warrant in good faith.

The court found Sprunger guilty of four counts of possessing child pornography. The court sentenced Sprunger to four concurrent 18-month terms of probation.

ASSIGNMENTS OF ERROR

Sprunger assigns, restated, that the district court erred as follows:

(1) in denying Sprunger's motions to suppress the fruits of the searches; and

(2) in concluding that there was sufficient evidence to convict Sprunger beyond a reasonable doubt.

STANDARD OF REVIEW

[1,2] In reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, we apply a two-part standard of review.[3] Regarding historical facts, we review the trial court's findings for clear error.[4] But whether those facts trigger or violate Fourth Amendment protections is a question of law that we review independently of the trial court's determination.[5] Further, application of the good faith exception to the exclusionary rule is a question of law.[6]

ANALYSIS

[3-8] Sprunger challenges the validity of the search warrant that uncovered the images. We begin with some general propositions of law that relate to search warrants.

> The Fourth Amendment to the U.S. Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

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[3] *State v. Borst*, 281 Neb. 217, 795 N.W.2d 262 (2011).

[4] *Id.*

[5] *Id.*

[6] See, e.g., *U.S. v. Nolan*, 199 F.3d 1180 (10th Cir. 1999); *Marshall v. State*, 415 Md. 399, 2 A.3d 360 (2010).

> searches and seizures . . . ," and further provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." . . . The execution of a search warrant without probable cause is unreasonable and violates [the Fourth Amendment]. Accordingly, a search warrant, to be valid, must be supported by an affidavit [that] establishes probable cause. Probable cause sufficient to justify issuance of a search warrant means a fair probability that contraband or evidence of a crime will be found. Proof of probable cause justifying issuance of a search warrant generally must consist of facts so closely related to the time of issuance of the warrant as to justify a finding of probable cause at the time. In reviewing the strength of an affidavit submitted as a basis for finding probable cause to issue a search warrant, an appellate court applies a "totality of the circumstances" test. The question is whether, under the totality of the circumstances illustrated by the affidavit, the issuing magistrate had a substantial basis for finding that the affidavit established probable cause.
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> In evaluating the sufficiency of an affidavit used to obtain a search warrant, an appellate court is restricted to consideration of the information and circumstances contained within the four corners of the affidavit, and evidence [that] emerges after the warrant is issued has no bearing on whether the warrant was validly issued. . . . Our review is guided by the principle that "[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others."[7]

As litigated by the parties in this court, the search that uncovered the images depends on either the second warrant itself or the officers' good faith reliance on it. The State does not contend that the officers happened upon (or would have happened upon) the child pornography while searching for

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[7] *Nuss, supra* note 2, 279 Neb. at 652-54, 781 N.W.2d 65-66.

evidence of the credit card fraud. So, this case turns on whether probable cause supported the second warrant authorizing the search for child pornography or, if probable cause did not support the warrant, whether the officers' reliance on the warrant was objectively reasonable.

The district court concluded that probable cause did not support the second search warrant. Nonetheless, the court denied Sprunger's motion to suppress, based upon the good faith exception to the exclusionary rule found in *United States v. Leon*.[8] On appeal, the State argues that probable cause supported the warrant but, if not, exclusion of the evidence is inappropriate because of the *Leon* good faith exception. Sprunger argues that not only was the warrant lacking probable cause, it was lacking probable cause to such a degree that reliance on the warrant was not objectively reasonable, and so exclusion is appropriate.

Probable Cause

The State contends that two facts contained in the affidavit for the second warrant establish probable cause: (1) Sprunger's request to delete files when the deputies came to seize his computers and (2) Sprunger's lawyer's call to the sheriff's office in the days after the deputies executed the first warrant.

The district court concluded that there were two possible explanations—both of which the court considered "reasonable"—for the call from Sprunger's lawyer. First, that Sprunger had told his attorney what a deputy had said and that his attorney called based on this fact. Second, that Sprunger had admitted to his lawyer he had child pornography on his computers and that the lawyer unwittingly alerted the deputies to this fact. We interpret the district court's order as concluding that there was no probable cause because the State did not present any evidence to show that Sprunger had admitted to his lawyer that he had child pornography on his computers. We agree.

The fact that Sprunger's lawyer called the deputies about their investigation does not establish that Sprunger had admitted to possessing child pornography. First, believing that a

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[8] See *Leon, supra* note 2.

lawyer would unwittingly suggest to investigators that a client may have committed a crime without knowing the reason for their investigation requires a leap of faith; the lawyer would have to be living in a mental darkroom. But more important, a deputy had told Sprunger that he "should have nothing to worry about" if no child pornography was found on his computers. Unsurprisingly, Sprunger then talked to a lawyer, as a reasonable person would do after law enforcement had seized that person's property. The lawyer likely would have inquired about what the deputies said and did during the search. And the lawyer would have reasonably interpreted the one deputy's statement to mean that Sprunger was under investigation for possessing child pornography. So the attorney's inquiry did not establish probable cause. It merely reflected the deputy's statement. We conclude that Sprunger's attorney's call to the deputies does not add to a finding of probable cause to search for child pornography.

This leaves only Sprunger's request that he be allowed to delete some files before the deputies took his computers away. But because this fact alone does not create probable cause for finding any particular evidence on the computers, it is insufficient.

The Fourth Amendment contains a particularity requirement, stating that "no Warrants shall issue, but upon probable cause . . . and *particularly describing the place to be searched, and the persons or things to be seized*." (Emphasis supplied.) The Founding Fathers' abhorrence of the English King's use of general warrants—which allowed royal officials to engage in general exploratory rummaging in a person's belongings[9]—was the impetus for the adoption of the Fourth Amendment.[10] Simply put, the Fourth Amendment prohibits "fishing expeditions."

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[9] 79 C.J.S. *Searches* § 229 n.11 (2006).

[10] See, e.g., *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011); *Virginia v. Moore*, 553 U.S. 164, 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990). See, also, Samantha Trepel, *Digital Searches, General Warrants, and the Case for the Courts*, 10 Yale J.L. & Tech. 120 (2007).

[9-11] The requirement of particularity for a search warrant is closely related to the requirement of probable cause.[11] A "purpose [of] the particularity requirement . . . is to prevent 'the issuance of warrants on loose, vague or doubtful bases of fact.'"[12] This case illustrates this connection. To establish probable cause for the issuance of a search warrant, it must be probable that (1) the described items are connected with criminal activity and (2) they are to be found in the place to be searched.[13] Based only on the fact that Sprunger wanted to delete some files, the deputies could never say with particularity what it was that they wanted to seize. They had no idea what files Sprunger might have wanted to delete. How could the deputies have had probable cause to believe that what they were looking for would be found on his computers when they did not even know what they were looking for?

[12] To allow a search based only on the fact that Sprunger wanted to hide something would sanction the type of general exploratory rummaging the Founders wished to prohibit. As we have stated before, "'[a] general search for evidence of any crime,'" such as the one that would be issued based solely on this fact, is unconstitutional.[14]

It is true that the fact Sprunger asked to delete some files might have raised a suspicion. But this suspicion did not amount to a fair probability that child pornography would be found on his computers. Based solely on this fact, the deputies would have no idea what would be found. Their search would have amounted to a rummaging through a treasure trove of information. "'[T]he modern development of the personal computer and its ability to store and intermingle a huge array of one's personal papers in a single place increases law enforcement's ability to conduct a wide-ranging search into

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[11] 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 4.6(a) (4th ed. 2004).

[12] *Id.* at 606, quoting *Go-Bart Co. v. United States*, 282 U.S. 344, 51 S. Ct. 153, 75 L. Ed. 374 (1931).

[13] 2 *LaFave*, *supra* note 11.

[14] *State v. Thomas*, 240 Neb. 545, 561, 483 N.W.2d 527, 538 (1992).

a person's private affairs.'"[15] It thus makes the particularity and probable cause requirements all the more important. To sanction a search based solely on Sprunger's request to delete some unknown files would trivialize the protections of the Fourth Amendment.

Summed up, the call from Sprunger's attorney to the deputies established nothing more than that the deputy had made an offhand remark that led Sprunger to believe he was being investigated for child pornography. And Sprunger's desire to delete some files does not mean that any particular evidence would be found. Taken together, there was no probable cause to support the warrant.

Accordingly, we agree with Sprunger and with the district court that the affidavit did not establish probable cause. We now consider whether the officers' reliance on the warrant was objectively reasonable.

Good Faith

[13] That a Fourth Amendment violation occurred does not necessarily mean that the exclusionary rule applies.[16] The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands.[17] The U.S. Supreme Court has held that for the exclusionary rule to apply, the benefits of its deterrence must outweigh its costs.[18]

[14,15] Recognizing that the benefits of deterrence often do not outweigh the social costs of exclusion, the U.S. Supreme Court created the good faith exception[19] to the exclusionary

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[15] *Mink v. Knox*, 613 F.3d 995, 1010 (10th Cir. 2010), quoting *U.S. v. Otero*, 563 F.3d 1127 (10th Cir. 2009).

[16] *Herring v. United States*, 555 U.S. 135, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009).

[17] *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995).

[18] See, e.g., *Herring, supra* note 16.

[19] See, *Davis v. United States*, 564 U.S. 229, 131 S. Ct. 2419, 180 L. Ed. 2d 285 (2011); *Herring, supra* note 16; *Evans, supra* note 17; *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987); *Massachusetts v. Sheppard*, 468 U.S. 981, 104 S. Ct. 3424, 82 L. Ed. 2d 737 (1984); *Leon, supra* note 2.

rule. The good faith exception provides that even in the absence of a valid affidavit to support a search warrant, evidence seized under the warrant need not be suppressed when police officers act in objectively reasonable good faith in reliance upon the warrant.[20] Nevertheless, evidence suppression will still be appropriate if one of four circumstances exist: (1) the magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth; (2) the issuing magistrate wholly abandoned his judicial role; (3) the supporting affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid.[21] Here, Sprunger argues that the affidavit was so lacking in indicia of probable cause as to render the deputies' belief in its existence unreasonable.

[16,17] The "good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite a magistrate's authorization."[22] Officers are assumed to "have a reasonable knowledge of what the law prohibits."[23]

[18,19] In assessing the good faith of an officer's conducting a search under a warrant, an appellate court must look to the totality of the circumstances surrounding the issuance of the warrant, including information not contained within the four corners of the affidavit.[24] When evaluating whether the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, an appellate court should address whether the officer,

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[20] *Nuss, supra* note 2; *State v. Tompkins*, 272 Neb. 547, 723 N.W.2d 344 (2006), *modified on denial of rehearing* 272 Neb. 865, 727 N.W.2d 423 (2007).

[21] See *Leon, supra* note 2. Accord *Nuss, supra* note 2.

[22] *Leon, supra* note 2, 468 U.S. at 922 n.23.

[23] *Id.*, 468 U.S. at 919 n.20.

[24] *State v. Edmonson*, 257 Neb. 468, 598 N.W.2d 450 (1999).

considered as a police officer with a reasonable knowledge of what the law prohibits, acted in objectively reasonable good faith in relying on the warrant.[25]

We have already explained why the facts in the affidavit do not establish probable cause. Summed up, the only reasonable explanation for the attorney's call to the deputies was that the deputies had led Sprunger to believe they were taking his computers to search for child pornography. This establishes nothing more than what the deputies said to Sprunger; it did not show that Sprunger had admitted to possessing child pornography on his computers. Similarly, Sprunger's request to delete some files does not create probable cause either, because it does not create a likelihood of finding any particular evidence on the computers. We believe that a reasonably trained officer should know that "'a general search for evidence of any crime'" is unsupported by probable cause.[26]

Moreover, not only would a reasonable officer know that a general search warrant was illegal, a reasonable officer would also know that telling a person that he had "nothing to worry about" if he had no child pornography on his computer would lead that person to believe he was being investigated for child pornography. The deputy had effectively planted the idea in Sprunger's head. Given this, we do not see how the deputies could have objectively relied on the warrant. The deputies knew—or certainly should have known—that the only fact showing any connection to child pornography was of their own making.

[20] Here, "the evidence offered in the warrant application [was] so deficient as to preclude reasonable belief in the existence of probable cause."[27] And "a magistrate's signature cannot render reasonable an objectively unreasonable failure to support a warrant application with evidence necessary to demonstrate probable cause."[28]

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[25] See *id.*

[26] See *Thomas, supra* note 14, 240 Neb. at 561, 483 N.W.2d at 538.

[27] See *U.S. v. Doyle*, 650 F.3d 460, 473 (4th Cir. 2011).

[28] *Id.* at 476.

In this case, excluding the evidence serves the deterrence aim of the exclusionary rule by forbidding the use of evidence obtained through an obvious Fourth Amendment violation. Conversely, to ignore such a blatant lack of probable cause would set a low bar for future police conduct.[29]

We conclude that the deputies' reliance on the warrant was not reasonable and thus did not bring it within the *Leon* good faith exception to the exclusionary rule. The court erred in overruling Sprunger's second motion to suppress.

CONCLUSION

We conclude that probable cause did not support the warrant to search Sprunger's computers for child pornography. We also conclude that it was lacking probable cause to such a degree that reliance on the warrant was not objectively reasonable. Accordingly, the court should have suppressed fruits of the search. We reverse, and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WRIGHT, J., not participating.

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[29] See *State v. Gorup*, 279 Neb. 841, 782 N.W.2d 16 (2010).

EDWARD M. SMALLEY, APPELLEE AND CROSS-APPELLANT, V. NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, APPELLANT AND CROSS-APPELLEE.

811 N.W.2d 246

Filed March 23, 2012. No. S-11-151.

1. **Judgments: Appeal and Error.** The trial court's factual findings in a bench trial of an action at law have the effect of a jury verdict and will not be set aside unless clearly erroneous.
2. **Administrative Law: Statutes: Appeal and Error.** To the extent that the meaning and interpretation of statutes and regulations are involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.