

SUPREME COURT OF LOUISIANA

No. 98-KK-0188

STATE OF LOUISIANA

v.

ARISTIDE LANDRY AND RAYMOND SCARDINO

On Writ of Certiorari to the
Fourth Circuit Court of Appeal

PER CURIAM:*

Resolving a credibility choice between state and defense witnesses with regard to the circumstances under which both defendants accompanied police officers from their residence to the Homicide Division of the New Orleans Police Department, where they gave videotaped statements at issue here concerning the death of Lester Hansen, the trial court found that the police had arrested the defendants in their home without arrest warrants in violation of Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). The court further ruled that "[e]verything that happened thereafter was fruits of the poisonous tree, and thus should be suppressed." The court of appeal found "no error in the trial court's ruling." State v. Scardino, 97-2582 (La. App. 4th Cir. 12/18/97). We granted the state's application not to review the exercise of the trial court's factfinding discretion but to consider its ruling in light of New York v. Harris, 495 U.S. 14, 21, 110 S.Ct. 1640, 1644-45, 109 L.Ed.2d 13 (1990), which held that "where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the

* Kimball, J., not on panel. See La.S.Ct. Rule IV, Part II, § 3.

home in violation of Payton." See also State v. Galliano, 96-1736, pp.

13-14 (La. App. 1st Cir. 6/20/97), 696 So.2d 1043, 1051. The trial court apparently concluded that the inquiry into the probable cause basis for arresting the defendants had been foreclosed not only by the Payton violation but also by the opinion of the lead investigating officer, Detective Dwight Deal, expressed in response to a direct question from the court during the suppression hearing, that he did not have probable cause to arrest the defendants at the time he went to their residence because the officer "didn't have everything that I wanted to have to satisfy myself." Detective Deal therefore did not apply to a magistrate for arrest warrants because he "wanted to build this and make it a stronger case."

We have made clear that "the determination of reasonable grounds for an investigatory stop, or probable cause for an arrest, does not rest on the officer's subjective beliefs or attitudes but turns on a completely objective evaluation of all of [the] circumstances known to the officer at the time of his challenged action." State v. Kalie, 96-2650, p. 1 (La. 9/19/97), 699 So.2d 879, 880 (emphasis in original) (citing Whren v. United States, ____ So.2d ____, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) and State v. Wilkens, 364 So.2d 934, 937 (La. 1978)). Detective Deal's opinion about the status of his investigation, or his desire to obtain more information before applying to the magistrate for arrest warrants, therefore did not preclude the trial court from inquiring into the probable cause basis for Deal's actions, once it found that the detective had, in fact, arrested the defendants in their home. See United States v. Hoffa, 385 U.S. 293, 310, 87 S.Ct. 406, 417 (1966) ("The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon

Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction."); cf., State v. Rodrigue, 437 So.2d 830, 833, n. 5 (La. 1983) ("[T]hat a better showing of probable cause could have been made, if the officers seeking the warrant had waited for the development of available information does not detract from the showing of probable cause that was made.").

In its application, the state has provided this Court with information which it contends supplied the probable cause basis for taking the defendants into custody before they gave their videotaped statements. Deal testified at the hearing that he had interviewed Benjamin Scardino, the brother of Raymond Scardino and cousin of Aristide Landry, approximately 12 hours before he led a team of officers to the defendants' home. In that statement, Benjamin Scardino told the detective that shortly after Hansen's murder the defendants confided to him that they had gone to Hansen's home in Lake Catherine, Louisiana, on the day of the crime with Ricky Alford and eventually helped Alford tie the victim up and beat him, apparently in an effort to make Hansen confess to abusing Alford's children sexually. Alford then took a large knife, slit the victim's throat so viciously that Hansen's head hung only by the flesh at the back of his neck, and stabbed him in the back with enough force to sever Hansen's ribs and penetrate one of his lungs. The defendants and Alford wrapped the victim's body in a sail from his sailboat, put the body in a car they had borrowed earlier that day, and disposed of the body, weighted by a large brick tied to its feet, in some water, possibly a canal, "near the Interstate."

According to the state, details of the stabbing provided in Benjamin Scardino's account matched the results of the autopsy on

Hansen after his nearly decapitated body, wrapped in a sail and bound hand and foot and weighted, was recovered from Bayou Sauvage half a mile from U.S. 90 in Lake Catherine. Those details, the state argues, vouched for the reliability of his information, as did the way in which Benjamin Scardino acquired the information. See Spinelli v. United States, 393 U.S. 410, 425, 89 S.Ct. 584, 593, 21 L.Ed.2d 637 (1969) (White, J., concurring) ("[I]f, for example, the informer's hearsay comes from one of the actors in the crime in the nature of admission against interest, the affidavit giving this information should be held sufficient."). The state also argues that Benjamin Scardino's familial relationship with the defendants further vouched for the reliability of his information. See 2 W.R. Lafave, Search and Seizure, § 3.3(c), pp. 136-37 (West 1996) ("[T]here may be circumstances in which the informant's implication of someone whom he could be expected to protect will sufficiently show the reliability of his information.").

It appears, however, that the state failed to introduce any of this information pertinent to the question of probable cause at the suppression hearing. The trial judge therefore could not have ruled on the question even if it had been so inclined. In fact, the court sustained the state's objections when defense counsel sought to question Detective Deal about Benjamin Scardino's statement, thereby foreclosing any inquiry into the factual basis for Deal's suspicions that the defendants had been involved in Hansen's murder. Under these circumstances, in which the trial court misapplied derivative taint analysis to a Payton violation possessing no causal relationship to the subsequent stationhouse statements, Harris, 495 U.S. at 19, 110 S.Ct. at 1644, a remand to the district court for retrial of the motion to suppress as to the issue of probable cause is appropriate. See State v. Jackson, 424 So.2d 997, 1000 (La. 1983) (remanding for retrial of the motion to suppress to provide the state with an

opportunity to carry its burden "of establishing the admissibility of the defendant's confession by either showing that probable cause existed to arrest the defendant or that the causal connection between an unlawful arrest and a subsequent confession had been broken for Fourth Amendment purposes."); State v. Simmons, 328 So.2d 149 (La. 1976) (remand for retrial of motion to suppress as opposed to reversal of the defendant's conviction is appropriate when the state has failed to carry its burden of rebutting the defendant's specific allegations of coercion leading to his confession); State v. Haynie, 395 So.2d 669 (La. 1981) (applying Simmons in a pre-trial context); see also United States v. Little, 18 F.3d 1499, 1503 (10th Cir. 1994) (even when the result on a motion to suppress is favorable to the defendant, "[i]f the district court's factual findings are based on an erroneous interpretation of law, a remand is appropriate unless the record is such that only one resolution of the factual issue is possible.") (internal quotation marks and citations omitted), appeal after remand, 60 F.3d 708 (10th Cir. 1996). The state may thereby have the opportunity to show, if it can, that Detective Deal had probable cause for taking the defendants into lawful custody before they gave their statements. In making that determination, the court may consider all of the information known collectively to the law enforcement personnel involved in the investigation. See United States v. Klein, 93 F.3d 698, 701 (10th Cir. 1996) ("Probable cause can rest upon the collective knowledge of the police, rather than solely on that of the officer who actually makes the arrest.") (citation and internal quotation marks omitted); United States v. Butler, 74 F.3d 916, 921 (9th Cir. 1996) ("Probable cause can also be demonstrated through the collective knowledge of police officers involved in an investigation, even if some of the information known to other officers is not communicated to the arresting officer."); see also Rodrigue, 437 So.2d at 833, n. 5. If the trial court finds

that probable cause existed, it must then consider the defendants' claims that the police physically abused them in the Homicide Division and thereby rendered their subsequent statements involuntary. See Harris, 495 U.S. at 20, 110 S.Ct. at 1644 ("Statements taken during legal custody would of course be inadmissible, for example, if they were the product of coercion, if Miranda warnings were not given, or if there was a violation of the rule of Edwards v. Arizona, 451 U.S. 477, 100 S.Ct. 1880, 68 L.Ed.2d 378 (1981)").

JUDGMENT VACATED; CASE REMANDED.