IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA,	)	CRIMINAL ACTION NO. 3:96CR50034
v.	)	ORDER
RAY WALLACE METTETAL, JR.	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

Upon consideration of the defendant's Motion to Dismiss, dated May 15, 2000, the subsequent memoranda in support of defendant's Motion to Dismiss and in opposition thereto, both dated May 24, 2000, and subsequent briefings by both parties on the issue, and for the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED AND ORDERED

that the defendant's Motion to Dismiss shall be, and hereby is, DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

_____
Date

IN THE UNITED STATES DISTRICT COURT
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CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA,	)	CRIMINAL ACTION NO. 3:96CR50034
	)	
v.	)	MEMORANDUM OPINION
	)	
RAY WALLACE METTETAL, JR.	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

I. PROCEDURAL POSTURE

The defendant was tried in this court on a two-count indictment and found guilty by a jury on July 31, 1998. The defendant was sentenced to serve ten years in federal prison. The defendant appealed his convictions to the Fourth Circuit on the grounds that there was no probable cause for his initial arrest in Tennessee, which lead to the Virginia investigation that resulted in the indictment. In an opinion dated May 3, 2000, the Fourth Circuit concluded as a matter of law that there was no probable cause to arrest the defendant and vacated the defendant's conviction. In its May 12, 2000 order, the Fourth Circuit remanded the matter to this court to handle any further question concerning the defendant's custody status.

Before this court is Defendant's motion, dated May 15, 2000, to dismiss the indictments against him on the ground that the Fourth Circuit excluded the evidence used to convict him. Also before the court is the government's opposition to defendant's motion to dismiss, based on its argument that the good faith exception applies to the evidence excluded by the Fourth Circuit.

II. FACTUAL BACKGROUND

This case has a complex fact pattern that has been recounted in the recent Fourth Circuit opinion. This court does not undertake to recount the factual background of this case in its entirety. However, the pertinent facts for the purposes of this opinion are set forth below.

Ray Wallace Mettetal, Jr. was arrested by Vanderbilt University Medical Center Police Officers while he was walking along on a sidewalk on the campus of Vanderbilt University on August 22, 1995. From this encounter, Mettetal was indicted in Tennessee on charges of attempted murder, but the Tennessee court found no probable cause for the arrest and suppressed all evidence against Mettetal on October 8, 1999. The arrest was also determined by the Fourth Circuit to have been without probable cause. Thus, the evidence seized from the search incident to the arrest was procured in violation of the Fourth Amendment. The arresting officers from Vanderbilt University, who erred in their determination that there was probable cause to arrest Mettetal, did not conduct the subsequent investigation of Mettetal. After the arrest, Detective David Miller of the Homicide Unit of the Metro Nashville Police, Nashville, Tennessee, began an investigation of Mettetal for attempted murder. Detective Miller was not present at the time of Mettetal's arrest, nor did he have any involvement in the case until after the arrest. For purposes of this opinion, it is assumed that Detective Miller discussed the circumstances of Mettetal's arrest with the arresting officers.

The investigation revealed an animus of Mettetal toward Dr. George Allen, Chairman of the Neurosurgery Department at the Vanderbilt University Medical Center; a grudge dating back to the mid 1980s. At that time, while performing a neurosurgery residency at Vanderbilt, Mettetal, who is a physician, received a sub-par review from Dr. Allen. From that point on, although he eventually completed a neurology residency, Mettetal apparently blamed Dr. Allen for denying him a career as

a neurosurgeon. For years, Mettetal apparently kept close watch on most aspects of Dr. Allen's professional and personal life, from which it could be inferred that Mettetal had some maligned motive toward Dr. Allen.

All of this was learned from Detective Miller's investigation. He gleaned this information from sources such as the Federal Bureau of Investigation and people who knew Mettetal, including his ex-wife, Linda Mettetal, and his son, Ray Wallace Mettetal, III. The interview with Mettetal's son revealed that he had recently seen in his father's Harrisonburg office and/or residence an article about Dr. Allen, Soldier of Fortune type magazines (known to contain information on how to kill, disguise, etc.), several high-powered firearms, and a portable gun case that Mettetal was altering to shield the contents from x-ray or metal detection devices.

Detective Miller of the Nashville Police Department reached Investigator T.D. Hoover of the Harrisonburg Police Department and informed him of the Mettetal investigation. Subsequently, on August 25, 1995, Investigator Hoover applied for and was granted warrants to search Mettetal's Harrisonburg residence and office. The four page, single spaced affidavit in support of the search warrants included the aforementioned information and more.

Harrisonburg Police Investigator D.W. Cox executed the search warrant of Mettetal's office, from which no items were seized. Investigator Hoover executed the search warrant for Mettetal's residence, which produced, among other things, bogus identification documents in the name of Steven Ray Maupin, fake hair, moustaches, makeup, a hospital uniform from the Vanderbilt medical center, and a book on disguise techniques that contained notes describing the home, cars, and personal history of Dr. Allen. Mettetal's photo was on the Maupin identifications. Steven Ray Maupin is the name given by Mettetal to the Vanderbilt Police Officers.

The arrest and searches were reported in a local Virginia paper. After reading the article, Brent Yoder, an employee at a Harrisonburg mini-storage unit facility, reported to the police that he had rented a unit in December 1994 to someone using the name Steven Ray Maupin. Yoder provided police with the fake social security number of Maupin from the storage facility, which matched the one used in the bogus identification documents recovered from Mettetal's residence. This number had not been reported in the newspaper.

Adding this information to the original affidavits for the other warrants. Hoover applied for and was granted a search warrant for the storage unit rented to Maupin. Execution of that search warrant on August 28, 1995 turned up, among other things, a large jar of ricin, a deadly toxin.

Mettetal was indicted on two counts in the Western District of Virginia. Count I charged Mettetal with possession of a toxin (ricin) for use as a weapon, in violation of §18 U.S.C. 175; Count II charged possession with intent to use unlawfully five or more false identification documents, in violation of §18 U.S.C. 1028(a)(3).

In 1998, before his trial, Mettetal moved to suppress the evidence against him, including the false identifications found at his home and the ricin found in the storage unit, on the ground that it was all gathered as the fruit of his unlawful arrest in Nashville. Both Mettetal and the government briefed the court as to the legality of the arrest and also on the good faith exception to the exclusionary rule. This court held a suppression hearing and considered evidence about the events leading up to Mettetal's arrest in Tennessee. This court determined that there was probable cause for the arrest and therefore, did not reach arguments about fruit of the unlawful arrest or the good faith exception. The Fourth Circuit reversed this court, finding that there was no probable cause to arrest Mettetal and vacated his convictions.

III. DISCUSSION

A. Authority of the Court to Consider the Instant Matter

In the Fourth Circuit opinion in this case, the court stated:

> We conclude as a matter of law that the police did not have probable cause to arrest Mettetal. The evidence used to convict Mettetal in district court – that is, the ricin found in the storage unit and the false identification documents and other evidence found in his home (or in the storage unit) – was discovered as a result of information obtained from his unlawful arrest and the search incident to that arrest. This evidence should have been excluded as the fruit of the unlawful arrest. *See United States v. Seidman*, 156 F.3d 542, 548 (4th cir. 1998). Mettetal's convictions are therefore vacated."

United States v. Mettetal, No. 99-4013, at 12-13 (4th Cir. May 3,2000).

The defendant contends that the opinion of the Fourth Circuit disposes of the matter, thereby meriting the dismissal of the indictments against him. The government contests such an interpretation, arguing that the decision of the Fourth Circuit to vacate the convictions rather than dismiss the case or reverse and remand with instructions, returns this court to the point in time when it decided that there was probable cause to arrest Mettetal. Under this theory, the government argues that this court should now consider exceptions to the exclusionary rule, that were before the court in 1998 but not decided upon due to this court's determination that there was probable cause. While this court agrees with the government's theory to some extent, it recognizes that the government is mistaken in its characterization that the case is returned to the point where this court erred in its determination of probable cause: the Fourth Circuit decided more than the issue of probable cause.

This court recognizes that the Fourth Circuit properly applied the exclusionary rule to evidence it deemed tainted by Mettetal's unlawful arrest, namely the ricin and the false identification documents recovered in Harrisonburg, Virginia. Further, this court interprets the Fourth Circuit's reference to *United States v. Seidman*, in support of its decision to apply the exclusionary rule, as indicative that the court considered whether anything in the chain of events between the unlawful arrests in Tennessee and the execution of the search warrants in Virginia purged the taint of the constitutional violation. In referencing *Seidman*, the Fourth Circuit implies that it considered whether the search warrants were too attenuated to the arrest to apply the exclusionary rule, and concluded they were not. Thus, it would be improper for this court to make any determination as to whether the evidence to convict Mettetal was fruit of the unlawful arrest.

Once the decision is made to apply a rule, it is then proper to determine whether there are any judicially recognized exceptions to the application of said rule. The good faith exception has been applied in certain cases where the exclusionary rule is otherwise applicable. *See United States v. Leon*, 468 U.S. 897 (1984). In this case, the Fourth Circuit did not reach the issue of whether the good faith exception applies to the evidence subject to the exclusionary rule, as indicated by its sole reference to *Seidman* and its holding to merely vacate the convictions. If the Fourth Circuit had considered the good faith exception, it could have cited cases that examine the good faith exception, just as it cited *Seidman* as evidence that it considered the fruit of the poisonous tree doctrine. Furthermore, given that the Fourth Circuit did not instruct this court to dismiss the indictment against the defendant, this court interprets the Fourth Circuit's mandate to vacate the convictions and remand for custody as leaving open the possibility that exclusion of the

evidence does not foreclose consideration of exceptions to the exclusionary rule. Thus, it is proper for this court to consider whether the good faith exception applies to the ricin and the false identification documents recovered from the search warrants in Virginia. This issue has yet to be the subject of a judicial ruling by any court dealing with the present case.

B. Waiver

The defendant argues that, by not briefing the Fourth Circuit on the good faith exception, the government is precluded from now presenting this issue. In support of his argument, the defendant cites the Fourth Circuit cases of *Taylor v. McDuffie*, 155 F.3d 479, 480, n.2 (4th Cir. 1998), and *Canady v. Crestar Mortgage Corp.*, 109 F.3d 969, 973 (4th Cir. 1997), for the proposition that issues not briefed are deemed waived. These cases are distinguishable from the present matter on several grounds.

Both *Taylor* and *Canady* are civil cases where the appellant failed to brief the Fourth Circuit as to why a particular act of the lower court was allegedly improper, thereby waiving the argument. In *Mettetal*, this court never reached the good faith exception, so there was nothing in that respect for the government to challenge as an improper decision. Further, the cases from other circuit courts dealing with waiver, as cited by the Fourth Circuit in *Taylor* and *Canady*, offer no additional support for the defendant's argument the government has waived its right to argue the good faith exception before this court. Therefore, this court finds that the government is not precluded from arguing the good faith exception before this court.

In consideration of this case, this court has drawn a conceptual distinction between the evidence collected by officers in Tennessee and that collected by officers in Virginia. Under the

ruling of the Fourth Circuit, the Tennessee evidence must be excluded. There is nothing presently before this court that would indicate that any exceptions to the exclusionary rule should operate with respect to the Tennessee evidence. Likewise, the Fourth Circuit's ruling also excludes the evidence used in the Harrisonburg proceeding as "fruit of the unlawful arrest." Upon remand to this court, however, the government has asserted an exception to the exclusionary doctrine, stating that the good faith of the Harrisonburg officers would preclude the exclusion of the Harrisonburg evidence. While the good faith exception has appeared in certain briefings of the parties, the good faith exception issue has not been argued nor decided in any proceeding thus far. A decision as to that exception was rendered unnecessary when this court initially found that there was probable cause for the arrest of the defendant in Tennessee, a finding made by this court well before the decision of the Tennessee court that the evidence had been improperly obtained. From the opinion of that Tennessee court, it does not appear that the good faith exception to the rule was presented there. Similarly, the good faith argument was apparently either not presented in the Fourth Circuit arguments nor from the language of the Fourth Circuit opinion, it does not appear to have been considered there. Thus, so far as can be determined from the records in the case, the possibility of a good faith exception to the exclusionary rule has not been presented to nor argued for at any level in the federal proceedings, noting, however, that there have been occasional references as to that good faith doctrine in certain of the pleadings in the federal prosecution. Consequently, because the issue now has been squarely presented by the government's pleadings, it becomes necessary to consider and resolve the issue of a possible good faith exception to the exclusionary rule.However, in considering arguments before this court regarding the second set of evidence, collected in Virginia, this court must undertake an

examination of the possible application of the good faith exception

C. The Good Faith Exception

The good faith exception was first announced in *United States v. Leon*, 468 U.S. 897 (1984), and has been widely followed by lower courts, including the Fourth Circuit. *See, e.g.*, *United States v. Hyppolite*, 65 F.3d 1151, 1155 (4th Cir. 1996); *United States v. Bullard*, 103 F.3d 121, 121 (4th Cir. 1995); *United States v. Legg*, 18 F.3d 240, 243 (4th Cir. 1994). In *Leon*, the Supreme Court concluded that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." 468 U.S. at 922, *quoted in Hyppolite*, 65 F.3d at 1155. The invalidation of the warrant in *Leon* was based on a determination that the magistrate improperly found that the affidavit supported probable cause to issue a warrant. In this case, the issue is not magistrate error, but whether the good faith exception applies when the error is that of a police officer other than the officer applying for and executing the search warrant.

The defendant relies heavily on *United States v. Reilly*, 76 F.3d 1271, 1280 (2d Cir. 1996), where Judge Calabresi pointed out, "Good Faith is not a magic lamp for police to rub whenever they find themselves in trouble." However, the Second Circuit's decision not to apply the good faith exception in *Reilly* was based largely on the fact that the officer who committed the constitutional violation was the same one who applied for the search warrant. Furthermore, that officer deliberately withheld information from the magistrate. This is clearly distinguishable from the present case, where there have been no allegations that Officer Hoover of Harrisonburg mislead the magistrate in any way. Finally, in *Reilly*, the Second Circuit also held that, "For the

good faith exception to apply, the police must reasonably believe that the warrant was based on a valid application of law to the known facts." 76 F.3d at 1280.

1. Objective Reasonableness

Objective reasonableness of the officer procuring and executing a warrant is a factor in the application of the good faith exception to the exclusionary rule. *See United States v. Lalor*, 996 F.2d 1579, 1583 (4th Cir. 1993) (evidence will only be suppressed if "the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause"(quoting *Leon*, 468 U.S. at 926)). In *Leon*, the Supreme Court explained that where the officer's conduct is objectively reasonable, the purpose of the exclusionary rule is not served, as exclusion will only make an officer less willing to perform his duty in the future. *See* 468 U.S. at 919-920.

This case is distinguishable from *Leon* because, in *Leon*, entirely legal evidence was presented to a magistrate, who erred in his determination that there was probable cause. In this case, the information presented to the magistrate was not entirely legal, but the officer presenting such information reasonably believed that it was. As explained by the Fourth Circuit in *Hyppolite*, "Under *Leon*, the proper test of an officer's good faith is whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization. This objective test requires a determination of the knowledge of a reasonable officer, not an examination of an officer's subjective motives." 65 F.3d at 1156 (internal quotations and citations omitted).

It was objectively reasonable for Officer Hoover to believe that both the underlying arrest

and the search warrants were valid. *See United States v. Legg*,18 F.3d 240, 243 (4th Cir. 1994) (searches pursuant to a warrant rarely require a deep inquiry as to reasonableness and normally suffice to establish that the officer acted in good faith in conducting the search). Officer Hoover received information about an ongoing Tennessee investigation from the Nashville police department. Assuming *arguendo* that both the Vanderbilt University Medical Center Police Officers and Detective Miller acted in bad faith in their investigation of Mettetal, no indicia of any such bad faith was communicated in any way to Officer Hoover, who had no apparent reason to question the validity of the decisions or actions of the other officers involved. Further, it was reasonable to believe that, based on the information from Yoder, further evidence could be recovered from the storage unit. Thus, the actions of Officer Hoover in applying for and executing the search warrants were objectively reasonable.

However, because it has since been determined that the underlying arrest and all of the information related to Officer Hoover by Detective Miller of Tennessee is tainted, it must now be determined whether the good faith exception can apply where the information used to obtain the warrant was, in fact, procured in violation of the Fourth Amendment.

2. Applying the good faith exception when
the underlying activity supporting the warrant is invalid.

The defendant argues in its motion to dismiss that, where the underlying event is unconstitutional, the good faith exception does not apply. In support of this argument, the defendant cites cases from the Fifth and Ninth Circuits. These cases do not support the defendant's position to the degree claimed. For example, the defendant's characterizations of

United States v. Rivas, 157 F.3d 364 (5th Cir. 1998), are slightly misguided. In *Rivas*, the Fifth Circuit excluded subsequent evidence obtained from a warrant search as fruit of the poisonous tree under *Wong Sun v. United States*, 371 U.S. 471, 484, (1963), because the government did not produce evidence of an intervening event to break the chain of the Fourth Amendment violation from the initial border search. *See Rivas*, 157 F.3d at 368. Thus, *Rivas* addresses the fruit of the poisonous tree doctrine, but does not evaluate the good faith exception. Because the Fourth Circuit has already determined the fruit of the poisonous tree issue in this case, the defendant's reference to *Rivas* does not further his position for purposes of this opinion.

The defendant also relied on the Ninth Circuit case of *United States v. Vasey*, 834 F.2d 782 (9th Cir. 1987), for the proposition that *Leon* is inapplicable where evidence from a warrantless search was used to support the issuance of a search warrant. The Ninth Circuit does not make a blanket rule to this effect. *See Vasey*, 834 F.2d at 788. However, that court applies a test where it excises the tainted evidence from the affidavit and then evaluates the remaining untainted evidence to determine whether the magistrate still had probable cause to issue the warrant. *See id.* This court does not apply the *Vasey* test because whether there was sufficient evidence, tainted or untainted, to support probable cause for a warrant need not be determined to evaluate whether the good faith exception applies. *See United States v. Legg*, 18 F.3d 240, 243 (4th Cir. 1994) ("a reviewing court may proceed to the good faith exception without first deciding whether the warrant was supported by probable cause")(citing *Leon*, 468 U.S. at 925) . Whether the search warrants were supported by probable cause, as the defendant argues they were not, need not be determined prior to analysis of the good faith exception.

The Ninth Circuit renders the good faith exception of *Leon* inapplicable to *Vasey* because

the officer who obtained the search warrant was the same one who made the illegal search that supplied the basis for the warrant. *See Vasey*, 834 F.2d at 789. Furthermore, in his application for a search warrant, the officer in *Vasey* misrepresented the legality of the underlying search to the magistrate. *See id.* at 790. Thus, the court held that the officer was precluded from relying on the good faith exception. *See id.* *Vasey* is distinguishable from the present case, where the officer who obtained the Virginia search warrants is not the one who performed the illegal search of the defendant. Furthermore, there is no evidence that Investigator Hoover mislead the Harrisonburg magistrate in any way when applying for the search warrants for Mettetal's home, office, and storage unit.

In support of its argument that the good faith exception applies to this case, the government cites several courts of appeals holdings that when information derived from an invalid detention is used to obtain a warrant, the evidence seized under the warrant is admissible under *Leon* as long as the officers had a good faith, objectively reasonable belief in the validity of the detention and subsequent warrant. *See United States v. Fletcher*, 91 F.3d 48 (8th Cir. 1996); *United States v. Thomas*, 757 F.2d 1359 (2d Cir. 1985); *United States v. Thornton*, 746 F.2d 39 (D.C. Cir. 1984). The government is correct in its argument that the Eighth Circuit does not necessarily suppress evidence obtained from a warrant where the underlying detention supplying the basis for the warrant was invalid. *See Fletcher*, 91 F.3d at 51. The cases from the D.C. and Second Circuits are also good law, but the Eighth Circuit appears to be the most firm in applying this rule. The Eighth Circuit applies the *Leon* exception to warrant-authorized searches, even when the underlying detention supporting the warrant was unconstitutional. *See Fletcher*, 91 F.3d at 51.

As the Fourth Circuit has not addressed the issue, this court follows the precedent of the Eighth, D.C. and Second Circuits in applying the good faith exception analysis to a warrant search where the information used to support the warrant was later determined to be in violation of the Fourth Amendment.

The defendant is understandably concerned that basing admissibility of the evidence seized pursuant to a search warrant on the state of mind of the affiant for the warrant could sanitize the unconstitutional behavior of the officers who participated in gathering the underlying information to support the affidavit. However, application of the good faith exception to a warrant search does not erase the underlying Fourth Amendment violation; it is simply a determination that there exists an exception to the exclusionary rule. *See Leon*, 468 U.S. at 918 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule."). Furthermore, application of the good faith exception would create no new infringement on the defendant's constitutional rights because no new constitutional wrong is committed when evidence seized contrary to the Fourth Amendment is admitted into evidence. *See Leon*, 468 U.S. at 906.

3. Deterrence

An important factor in applying the good faith exception to exclusionary rule is whether suppression of the illegally obtained evidence will deter future Fourth Amendment violations. *See Leon*, 468 U.S. at 916-922.

Behavior Subject to the Deterrence Analysis

The government focuses on the state of mind of the officer obtaining the search warrant for testing whether applying the exclusionary rule in this case would deter police misconduct and concludes that it would not. The defendant focuses on the Vanderbilt Police Officers and their alleged bad faith arrest as the necessary subject of deterrence, in order to deter the passing of tainted information on to an unsuspecting fellow officer, whose lack of awareness could sanitize the underlying unlawfully procured information.

In applying the requisite balance of deterrence and exclusion, this court is concerned with the behavior of all of the officers in this case. However, a rule where the behavior of all officers ever involved in an investigation are the subject of a deterrence analysis could prove impracticable. Furthermore, the evidence at issue at this point is that which was recovered from the execution of the search warrants. Thus, the state of mind of the affiant for those warrants is the proper subject of deterrence analysis.

Deterring Investigator Hoover

Investigator Hoover of Harrisonburg appears to have acted in good faith reliance on information received from Detective Miller of Tennessee and Brent Yoder, the citizen informant. Although, in its most recent brief on the subject, the defendant argues that Officer Hoover acted in bad faith, there is nothing in the record to support such an allegation. Thus, because Officer Hoover acted with objective reasonableness, the good faith exception should apply to the evidence recovered from the execution of the warrants. *See Leon*, 468 U.S. at 919 (the exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable

law enforcement activity”).

Furthermore, the Court in *Leon* held that penalizing a law officer for a magistrate’s error “cannot logically contribute to the deterrence of Fourth Amendment violations.” 468 U.S. at 921. Following the Court’s logic, penalizing a law officer for the error of another officer would also fail to contribute to deterrence of Fourth Amendment violations. Thus, penalizing Officer Hoover for executing the search warrants in Harrisonburg in good faith reliance on information received from Detective Miller about his (Miller’s) investigation of the Vanderbilt Police arrest, would fail to deter a Fourth Amendment violation because Investigator Hoover did not commit any constitutional error. *See, e.g., Leon*, 468 U.S. at 920-21 (“when an officer acting with objective good faith has obtained a search warrant...and acted within its scope...there is no police illegality and thus nothing to deter”). The error occurred two levels removed from Hoover, when the Vanderbilt Officers arrested and searched Mettetal without probable cause. Thus, the exclusionary rule’s purpose is not served in excluding the evidence recovered by Hoover.

Deterring the Vanderbilt Police

The defendant argues that application of the good faith exception would allow the unconstitutional behavior of the Vanderbilt Officers to go unpunished. Even assuming *arguendo* that the Vanderbilt Officers acted in bad faith when they arrested and searched Mettetal, their behavior would not be deterred by suppression of the Virginia evidence. The Vanderbilt Officers never had any contact with Officer Hoover, nor was there any direct connection between them and the Harrisonburg activities. Thus, although they passed the information about the arrest on to Detective Miller, they played no role in the subsequent Virginia warrants. As a result, the errant

officers' connection with the current proceedings is minimal at best, so they cannot be deterred by the outcome of this motion. Further, if there is deterrence to be found, the Vanderbilt Officers have already been deterred by the exclusion of the evidence by the Tennessee court in the attempted murder proceedings, that ruling having come over four years after their arrest of the defendant.

Based on the analysis of this court, the good faith exception applies to the operation of exclusionary rule in this case because the behavior of Officer Hoover was objectively reasonable and no deterrent function will be served by suppressing the evidence.

D. Exceptions to the Good Faith Exception

Having determined that the good faith exception applies in this case, it is proper to determine whether any exceptions prevent its application. The defendant argues that there was no probable cause for the issuance of the search warrants. However, searches pursuant to a warrant rarely require a deep inquiry as to reasonableness and normally suffice to establish that the officer acted in good faith in conducting the search. *See United States v. Legg*, 18 F.3d 240, 243 (4th Cir. 1994). Thus, an improper issuance of a search warrant later determined to lack probable cause will not affect whether an officer acted in good faith unless one of four situations exists: (1) magistrate was misled by information the officer knew was false or should have known except for his reckless disregard for the truth; (2) the magistrate was not detached and neutral, but rather acted as a rubber stamp for police activity; (3) the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant was so

facially deficient that the executing officers cannot reasonably presume it to be valid. *See United States v. Hyppolite*, 65 F.3d 1151, 1156 (4th Cir. 1995).

The defendant's argument that the eleven minute deliberation of the magistrate indicates that the magistrate was neither detached nor neutral is a weak argument that appears unsupported by precedent. Even if the time was recorded accurately, this is insufficient to declare that the magistrate acted as a rubber stamp for the actions of law enforcement. The affidavits as submitted by Officer Hoover were complete and compelling: sufficient for a brief determination that there was probable cause to issue the warrants.

The defendant also argues that the warrant for the storage unit was so lacking in probable cause that Investigator Hoover was entirely unreasonable in his reliance on the warrant. This allegation is unsupported by the facts of this case. For reasons stated in Parts III.C.1 and III.C.3. of this opinion, this court finds that Officer Hoover was objectively reasonable in relying on the search warrants.

The other two situations contemplated in *Hyppolite* are not at issue in this case. Thus, no exceptions to the good faith exception are applicable to this case.

IV. CONCLUSION

This court interprets the Fourth Circuit opinion in *Mettetal* as properly applying the exclusionary rule, but leaving open the issue of whether there are applicable exceptions to that rule. This court finds that the good faith exception applies to the operation of the exclusionary rule on the evidence seized from the Virginia search warrants. Furthermore, no exceptions to the operation of the good faith exception apply in this case. On this reasoning, the evidence seized in

Virginia is admissible.

Accordingly, the defendant's motion to dismiss is DENIED.

An appropriate order this day shall issue.

ENTERED: _____
Senior United States District Judge

_____
Date