IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COREY JAMES MOEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71836

ORDER OF AFFIRMANCE

Corey James Moen appeals from a judgment of conviction entered pursuant to a no contest plea of trafficking in a controlled substance. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Moen challenges the district court's denial of his pretrial motion to suppress evidence obtained during the execution of a search warrant.[1] "Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo." *State v. Beckman*, 129 Nev. 481, 485-86, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

Moen claims the district court erred in finding he did not properly raise his falsity-in-the-affidavit claims as required by *Franks v. Delaware*, 438 U.S. 154 (1978), because his claims were raised under *United States v. Leon*, 468 U.S. 897 (1984), and therefore did not have to conform with the procedural requirements established in *Franks*. We disagree.

[1]Moen preserved his claims for appeal pursuant to NRS 174.035(3).

Franks established the procedural requirements a defendant must follow to challenge the veracity of the search warrant affidavit. 438 U.S. at 155-56. First, the defendant must make a preliminary showing the affidavit contains an intentional or reckless false statement that was necessary for the finding of probable cause. *Id.* at 155-56. Second, after making a successful preliminary showing, the defendant must request a hearing. *Id.* at 156. And, third, during the hearing, the defendant must prove the existence of the false statement by a preponderance of the evidence. *Id.*

Leon creates an exception to the exclusionary rule in cases where police officers obtained evidence in "objectively reasonable reliance" of a search warrant that was later found to be invalid. 468 U.S. at 922. *Leon* cites to *Franks*, for the proposition that this good faith exception does not extend to cases where "the magistrate or judge issuing a 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." *Id.* at 923. *Leon* does not state that *Franks*' procedural requirements for challenging the veracity of the search warrant affidavit do not apply.

The district court made the following findings. Moen did not make an offer of proof that Police Officer Tyler Thomas "knowingly and intentionally, or recklessly, mislead the magistrate." Moen's supplemental brief stated his claims of falsity and/or recklessness should be analyzed under *Leon*, he "does not need to and does not request a hearing to present his evidence of falsity and/or recklessness," and he has "not requested a *Franks* hearing because he doesn't need one and he doesn't want one." And Moen has not made a substantial showing of intentional or reckless falsity.

The record supports the district court's factual findings. We conclude nothing in *Leon* allows a defendant to by-pass *Franks*' procedural requirements for challenging the veracity of a search warrant affidavit, Moen failed to follow *Franks*' procedural requirements, and the district court did not err by denying Moen's suppression motion in this regard.

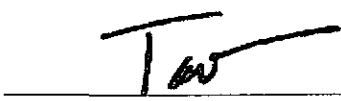
Moen also claims the district court erred in finding the search warrant affidavit provided the magistrate with a substantial basis to find probable cause. He further claims the district court erred by finding that even if the search warrant affidavit was deficient, the police officers executed the search warrant in good faith. We disagree.

Probable cause to support a search warrant exits where the facts and circumstances within a police officer's knowledge warrant a reasonable belief that an offense has been or is being committed, *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949), and "there is a fair probability that contraband or evidence of [the] crime will be found in a particular place," *Illinois v. Gates*, 462 U.S. 213, 238 (1983). "[We] will not overturn a magistrate's finding of probable cause for a search warrant unless the evidence in its entirety provides no substantial basis for the magistrate's finding." *Garrettson v. State*, 114 Nev. 1064, 1068-69, 967 P.2d 428, 431 (1998).

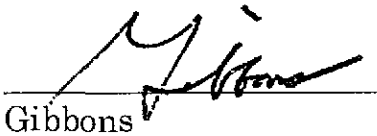
Although evidence obtained pursuant to an invalid search warrant may be suppressed as a remedial measure, it need not be suppressed if the police officer relied on the validity of the warrant in good faith. *Leon*, 468 U.S. at 922. "[A] warrant issued by a magistrate normally suffices to establish that a [police] officer has acted in good faith in conducting the search." *Id.* (internal quotation marks omitted).

Even assuming the affidavit was deficient, we conclude the district court did not err in determining exclusion was unwarranted. Here, the good faith exception applied because the police officers reasonably relied upon the magistrate's probable-cause determination and on the technical sufficiency of the search warrant when executing the warrant. Therefore, we conclude no relief is warranted, and we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Tao



_____, J.
Gibbons

SILVER, C.J., dissenting:

I dissent.

_____, C.J.
Silver

cc: Hon. Nancy L. Porter, District Judge
Gary D. Woodbury
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk