

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,

*Appellant,*

v.

JUAN CARLOS GUERRA,

*Appellee.*

) NOT FOR PUBLICATION  
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) Case No. S-2016-296  
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FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

NOV 28 2016

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**LEWIS, JUDGE:**

Appellee, Juan Carlos Guerra, was charged with Count 1, aggravated trafficking in illegal drugs, in violation of 63 O.S.Supp.2014, § 2-415(C)(4)(c); and Count 2, tampering with security equipment, in violation of 21 O.S.2011, § 1993; in Stephens County District Court, Case Number CF-2015-315. Appellee filed a pre-trial motion to suppress evidence. After an evidentiary hearing on April 6 and 8, 2016, the Honorable Ken Graham, District Judge, granted the motion to suppress. The State of Oklahoma appeals. We exercise jurisdiction pursuant to 22 O.S.2011, § 1053(5) and (6).

On review of a trial court's order suppressing evidence, this Court defers to the trial court's findings of fact unless clearly erroneous. *Seabolt v. State*, 2006 OK CR 50, ¶ 5, 152 P.3d 235, 237. We review the trial court's ultimate legal conclusions *de novo*. *Id.* The questions presented here are whether the protective sweep of Appellee's residence after his arrest on a warrant violated the Fourth Amendment; and whether the exclusionary rule applies to evidence later seized pursuant to a judicial warrant.

The United States and Oklahoma Constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV, XIV; Okla. Const. art. 2, § 30. Police officers executing an arrest warrant of a suspect in his home may conduct a warrantless protective sweep of the premises if officers possess a reasonable belief based on specific and articulable facts, and rational inferences from those facts, that the area swept harbors one or more persons posing a danger to the officer or others. *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990).

A protective sweep is a “quick and limited search,” for the safety of officers or others, and is “narrowly confined to a cursory visual inspection of those places in which a person might be hiding.” *Id.*, 494 U.S. at 327. On *de novo* review, we find the objective facts and reasonable inferences from those facts indicated a potential danger sufficient to justify the officers’ protective sweep of Appellee’s residence. During that brief entry, they searched only those areas in which a person might be hiding. This protective sweep did not violate the Fourth Amendment.

During the protective sweep, officers saw incriminating items in plain view and applied for a search warrant. After a magistrate issued a search warrant, officers seized the evidence now offered against the Appellee. The Fourth Amendment’s exclusionary rule generally does not apply to evidence obtained by officers acting in objectively reasonable reliance upon a warrant issued by a neutral magistrate, even where the warrant is later found to be defective. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *State v. Sittingdown*, 2010 OK CR 22, ¶ 17, 240 P.3d 714, 718.

Suppression of unlawfully seized evidence is “designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *Leon*, 468 U. S., at 906 (quoting *United States v. Calandra*, 414 U. S. 338, 348, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974)). In *Leon*, the Court rejected the exclusion of evidence obtained in objectively reasonable reliance on a warrant ultimately found to be defective. The Court reasoned that the deterrent effect of exclusion was particularly lacking when the officer, in objective good faith, obtained a search warrant from a magistrate and acted within its scope. The Court observed that “[i]n most such cases, there is no police illegality and thus nothing to deter.” *Id.*, 468 U. S., at 920-921.

The trial court’s order suppressing this evidence is contrary to *Leon*’s interpretation of the Fourth Amendment. Officers here saw contraband in plain view, submitted the question of whether to seize it to a neutral magistrate, and abided that ruling. The officers’ sole responsibility after obtaining the search warrant was to carry out the search commanded by it. Excluding the evidence they seized on this warrant could have no deterrent effect on future Fourth Amendment violations. *Id.*, 468 U.S. at 921. We therefore respectfully conclude that the brief protective sweep of Appellee’s residence following his arrest did not violate the Fourth Amendment, and that the evidence was seized in objectively reasonable reliance upon a neutrally issued search warrant supported by probable cause. The exclusionary rule does not apply.

**DECISION**

The order suppressing evidence is **REVERSED**. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY  
HONORABLE KEN GRAHAM, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

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OPINION BY LEWIS, J.  
SMITH, P.J.: Concurs  
LUMPKIN, V.P.J.: Concurs  
JOHNSON, J.: Concurs  
HUDSON, J: Concurs