

No. 70652-7-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

JUAN MARTINEZ-CASILLAS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary I. Yu

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to support the jury's verdict that Mr. Martinez-Casillas was guilty of second degree criminal trespass.

2. The trial court erred in failing to suppress the cycle seized pursuant to a defective search warrant.

3. The search warrant authorizing the search of Mr. Martinez-Casillas' apartment for the cycle was not supported by probable cause in violation of the Fourth Amendment and article I, section 7.

4. To the extent it may be considered a finding of fact, in the absence of substantial evidence, the trial court erred in entering Conclusion of Law 10, ruling the search warrant for the bicycle was supported by probable cause.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process requires the State prove every element of the offense beyond a reasonable doubt. Mr. Martinez-Casillas was convicted of second degree criminal trespass, yet the State failed to prove that he entered the residence. Is Mr. Martinez-Casillas entitled to reversal of his conviction for a failure of the State to prove he was guilty of second degree criminal trespass beyond a reasonable doubt?

2. Under the Fourth Amendment and article I, section 7, a search warrant may only be issued upon probable cause. A police officer's opinion, without more, does not provide probable cause. Here, an officer's opinion was the only facts purporting to supply the necessary probable cause for the issuance of a search warrant for a search of Mr. Martinez-Casillas' residence. Is this Court required to suppress the bicycle seized as a result of the search pursuant to the search warrant where the warrant lacked probable cause?

C. STATEMENT OF THE CASE

On August 9, 2012, Lynn Christiansen returned to her house and discovered several items missing, including two laptop computers. 6/4/2013RP 47-48. There were no signs of forced entry into the home. 6/3/2013RP 159. Police officers investigating discovered one of the screens for one of the windows in the shrubbery. 6/5/2013RP 160. Ms. Christiansen claimed the screen was attached to the window when she left in the morning. 6/4/2013RP 52. The police obtained fingerprints on the screen that matched Mr. Martinez-Casillas' prints. 6/3/2013RP 166-67, 6/5/2013RP 32-35. Based upon this evidence, Mr. Martinez-Casillas was charged with residential burglary. CP 16-17.

In an unrelated investigation into a pair of robberies, Issaquah Police officers obtained a search warrant to search Mr. Martinez-Casillas' apartment for evidence of the robberies. 5/28/2013RP 127, 142-43. While searching the residence, Sergeant Nash noticed a bicycle he characterized as "expensive" that had no front wheel attached. 5/28/2013RP 143. Nash, a self-described bicycle enthusiast, stated he owned a bicycle that was the same brand as the bicycle he observed in Mr. Martinez-Casillas' residence. 5/28/2013RP 145. Nash opined this was a very expensive bicycle and nothing *he* observed in the rest of the residence lead *him* to believe Mr. Martinez-Casillas was a bicycle enthusiast. 5/28/2013RP 148-50. Nash seized the bicycle and turned it over, looking for a serial number. 5/28/2013RP 151. Nash left the bicycle where he found it. 5/28/2013RP 152. Recognizing the initial search warrant did not authorize the search and/or seizure of the bicycle, and based upon Nash's observations, the police obtained a search warrant to seize the bicycle. 5/28/2013RP 153-55. The affidavit for the search warrant did not include any reference to the Nash's seizing the bicycle, turning it over, and recording the serial number. CP Supp \_\_\_\_, Pretrial Exhibit 9.

Mr. Martinez-Casillas was charged with first degree possession of stolen property. CP 16. Following the evidentiary hearing on Mr. Casillas' motion to suppress, the trial court ruled Nash's act of seizing the bicycle and turning it over was a material omission and ordered the bicycle suppressed. 5/29/2013RP 6-8. On reconsideration, the court added the subsequent information that Nash had disclosed and that was not in the affidavit, reweighed the probable cause, and found the seizure of the bicycle pursuant to the search warrant lawful. CP 150-51; 5/29/2013RP 83.

Mr. Martinez-Casillas was tried for two counts of first degree robbery, one count of residential burglary, and one count of first degree possession of stolen property. CP 15-17. Mr. Martinez-Casillas was convicted of the robberies and the possession of stolen property, but was acquitted of residential burglary. CP 129-32. The jury convicted Mr. Martinez-Casillas of the lesser included offense of second degree criminal trespass. CP 133.

D. ARGUMENT

1. THERE WAS NO EVIDENCE MR.  
MARTINEZ-CASILLAS ENTERED MS.  
CHRISTIANSEN'S RESIDENCE

- a. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt.

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

b. The State failed to prove Mr. Martinez-Casillas entered or remained unlawfully on Ms. Christiansen's premises.

A person is guilty of second degree criminal trespass if "he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." RCW 9A.52.080; *State v. Bellerouche*, 129 Wn.App. 912, 915, 120 P.3d 971 (2005). Second degree criminal trespass is applicable only in those situations where the defendant allegedly enters or remains unlawfully on private property not constituting a building, such as fenced land. *State v. Brittain*, 38 Wn.App. 740, 746, 689 P.2d 1095 (1984).

The only evidence presented by the State was that items were missing from Ms. Christianson's home, Mr. Martinez-Casillas' palm print was found on the damaged window screen outside the closed window. There was no evidence of forced entry into Ms. Christianson's residence. 6/3/2013RP 159. In fact, the police made no attempt at finding any fingerprints inside the residence. 6/4/2013RP 124-25.

The State failed to prove Mr. Martinez-Casillas was guilty of second degree criminal trespass.

c. Mr. Martinez-Casillas is entitled to reversal of his conviction with instructions to dismiss. Since there was insufficient evidence to support the conviction for second degree criminal trespass, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

2. THE SEARCH WARRANT AUTHORIZING SEIZURE OF THE BICYCLE LACKED PROBABLE CAUSE

a. A search warrant must be supported by probable cause. The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution protect individuals from unreasonable searches and seizures. The police must therefore have a search warrant issued upon probable cause in order to search unless an exception to the warrant requirement justifies a warrantless search. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-

55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); *State v. McKinnon*, 88 Wn.2d 75, 79, 558 P.2d 781 (1977).

The warrant clauses of the Fourth Amendment and article I, section 7 require that a trial court issue a search warrant only upon a determination of probable cause. *State v. Vickers*, 148 Wn.2d 91, 108, 112, 59 P.3d 58 (2002). Probable cause to issue a warrant is established if the supporting affidavit sets forth facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity. *State v. Huft*, 106 Wn.2d 206, 209, 720 P.2d 838 (1986). Probable cause for a search “requires a nexus between criminal activity and the item to be seized and between that item and the place to be searched.” *State v. Neth*, 165 Wn.2d 177, 183, 196 P.3d 658 (2008).

The affidavit in support of the search warrant must also adequately show circumstances that extend beyond suspicion and mere personal belief that evidence of a crime will be found on the premises to be searched. *State v. Klinger*, 96 Wn.App. 619, 624, 980 P.2d 282 (1999), citing *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). The affidavit must be tested in a commonsense fashion. *State v. Stenson*, 132 Wn.2d 668, 692, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008 (1998); *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136

(1977). The existence of probable cause is a legal question which a reviewing court considers *de novo*. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). Review is limited to the four corners of the affidavit. *Neth*, 165 Wn.2d at 182. “[T]he information [the court] may consider is the information that was available to the issuing magistrate.” *State v. Olson*, 73 Wn.App. 348, 354, 869 P.2d 110 (1994).

b. The warrant was based solely on the officer’s unsubstantiated “opinion” regarding the bicycle. Before a magistrate issues a search warrant, there must be an adequate showing of “circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched.” *State v. Patterson*, 83 Wn.2d 49, 58, 515 P.2d 496 (1973).

“The point of the Fourth Amendment, . . . which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.”

*State v. Peterson*, 3 Wn.App. 946, 947, 478 P.2d 745 (1970). Thus, the mere expression of an officer’s opinion, without more, cannot form the

basis for the issuance of a search warrant. *State v. Spencer*, 9 Wn.App. 95, 97, 510 P.2d 833 (1973); *Peterson*, 3 Wn.App. at 947.

Here, the sole basis for the search warrant was the officer's opinion that Mr. Martinez-Casillas would not own a bicycle such as the one the observed. The officer based this entirely on what he observed inside the area where he discovered the bicycle, noting that there were no other bicycle accessories and also noting that the bicycle was missing its front tire and was laying amongst other non-bicycle related personal belongings. Yet the officer knew nothing about Mr. Martinez-Casillas; knew nothing about his hobbies, his income level, his interests or his willingness to spend a substantial sum for a bicycle. The warrant was based on nothing more than the officer's unsubstantiated belief that the bicycle was not Mr. Martinez-Casillas' bicycle. This was simply not enough to provide probable cause for the issuance of the search warrant.

c. Since the warrant lacked probable cause, the cycle must be suppressed. Where evidence is obtained as a direct result of an unconstitutional search, that evidence must . . . be excluded as “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

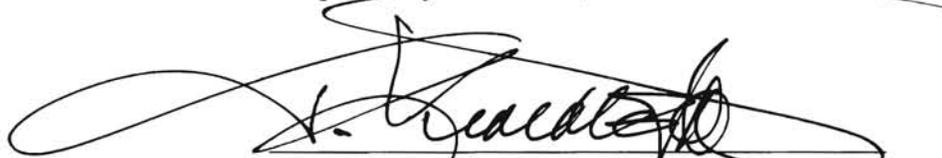
The affidavit in support of the search warrant failed to establish probable cause for the search and seizure. Thus, the search warrant was without probable cause, and the fruit of the illegal search, the bicycle, must be suppressed.

E. CONCLUSION

For the reasons stated, Mr. Martinez-Casillas asks this Court to reverse his conviction for second degree criminal trespass with instructions to dismiss. In addition, Mr. Martinez-Casillas asks that the bicycle be suppressed as the fruit of an illegal search and seizure and his conviction for possession of stolen property reversed.

DATED this 29<sup>th</sup> day of April 2014.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'T. Kummerow', is written over a horizontal line. The signature is highly cursive and loops around the line.

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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 70652-7-I
v.	)	
	)	
JUAN MARTINEZ-CASILLAS,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 29<sup>TH</sup> DAY OF APRIL, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> JUAN MARTINEZ-CASILLAS 367784 WASHINGTON STATE PENITENTIARY 1313 N 13 <sup>TH</sup> AVE WALLA WALLA, WA 99362	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

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**SIGNED** IN SEATTLE, WASHINGTON THIS 29<sup>TH</sup> DAY OF APRIL, 2014.

X \_\_\_\_\_ 

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