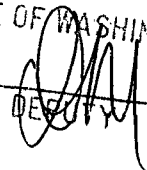


FILED
COURT OF APPEALS
DIVISION II

2015 MAY 28 AM 11:34

STATE OF WASHINGTON

BY  DEPUTY

No. 46919-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON

Respondent,

v.

AKEEM HENDERSON

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY
Cause No. 14-1-00930-7

STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW PURSUANT TO RAP 10.10

Akeem Henderson
DOC# 854980, GA-22
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

I, Akeem Henderson, (hereinafter Henderson), have received and reviewed the opening brief prepared by my attorney. Summarized below are the issues omitted in that brief that are significant and obvious in the record. This omission by counsel renders her performance deficient in reviewing and presenting Henderson's appeal to this Court.

Additional Ground 1

Henderson was charged and convicted of unlawful possession of a firearm in the first degree and 3 possessions of a controlled substance. 4VRP506, 16-18. Since the firearm and drugs were not found on Henderson's person, but rather found at 811 South Cushman apartment B, Tacoma, Washington, the State's theory of the case was Henderson had dominion and control over the house where the gun and drugs were found.

The State failed to show any nexus between Henderson, the residence, and criminal activity. The Fourth Amendment to the United State Constitution and Article 1 section 7 of our state constitution require that a search warrant issue only on a determination of probable cause. State

v. Fry, 168 Wn.2d 1, 5-6, 228 P.3d 1 (2010) (citing State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002)). Probable cause is established where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched. State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

The State's arguments at trial hinged on the assumption that Henderson had something more than a passing connection to 811 S. Cushman which they did not prove.

Q. "So you went to the address of Akeem Henderson's girlfriend, is that correct?"
1VRP78, 24-25

A. "Correct."

Q. "And what address was that?"

A. "811 South Cushman, Apartment No. B."
1VRP79, 1-3

Q. "How did you -- how did you know about that residence?"

I'm curious." 1VRP110, 25

A. "A fellow officer." 1VRP111, 1-2

Q. "According to the dispatch here, looking at the dispatch on the CAD, it says Akeem Henderson, 9835 Meadow Road, Lakewood, Washington. Is that where the defendant was found?" 1VRP94, 24-25.

A. "No."

Q. "According to the information brought here, it says that a certain Officer Shultz had informed you guys that the

residence -- that the defendant may be at that residence, his girlfriend's?"

A. "Yeah. I do recall something about that, yes." 1VRP95, 8-12

Further, Officer Boyd states that the defendant mentioned having a gun and being a drug dealer. From these statements the officer wrote a warrant for 811 S. Cushman Apartment B. 2VRP236, 4-6.

In the absence of any evidence establishing the nature of Henderson's relationship to the residence or its occupants, these facts are insufficient to support an inference that evidences of Henderson's criminal activity would be found inside. (No Nexus).

In the case State v. G.M.V., 135 Wn.App 366, 372, 144 P.3d 358 (2006), the defendant's boyfriend stayed at her house several days a week, but he did not live there. A confidential informant working with the police arranged to buy marijuana from the boyfriend. The first time, the boyfriend left G.M.V.'s house to meet the informant and then returned to the house after the sale. This evidence in addition to the fact that the suspect regularly stayed at the house was

sufficient to infer that additional drugs would likely be found inside.

By contrast, in this case, there was no evidence in the trial that established Henderson residing at 811 S. Cushman. Nor had any indication that Henderson, or anyone else had previously dealt drugs from the residence, stored drugs at the residence or transported drugs to the residence from some other location. There was no assertion that drugs were observed going into or coming out of the residence.

According to the officers, the only evidence was Henderson's statements that he has a gun and sold drugs. As in State v. Goble, 88 Wn.App 503, 945 P.2d 263 (1997) the insufficient nexus between the suspected criminal activity and the residence did not establish a reasonable basis to infer that the residence contained evidence of Henderson's alleged criminal activity.

Additional Ground 2

The State failed to show Henderson had constructive possession by dominion and control over the premises where the gun and drugs were found during the execution of the search warrant.

During trial, Officer Boyd, Officer Mead, and Officer Wimbles all stated that Henderson was not at the residence of 811 S. Cushman Tacoma Washington during the execution of the search warrant.

The officers mention there were several others there at the time, but not Henderson, who the officers say was detained outside of the residence a few hours later after they had seized the gun and drugs from the residence at 811 S. Cushman.

"Henderson was taken into custody on the front of the house on the street." 1VRP170

Q. "Was the defendant there when you first arrived?"

A. "Not initially, no."

Q. "Did you and your fellow officers execute the warrant?"

A. "Yes we did." 1VRP90, 20-23

Turning to Henderson's role as how many days he was observed at the residence, a sport coat/jacket containing the drugs in the closet, several documents with Henderson's name and different address than 811 S. Cushman, and an I.D. Badge with Henderson's picture on it. It is analogous to State v. Knapstad, 41 Wn.App 781, 706 P.2d 238; wherein the State sought to prove the

crime by establishing constructive possession by Knapstad by the premises where the contraband was seized. In granting review and affirming the trial court's dismissal of the case against Knapstad, the Supreme Court held, the trial court did not abuse its discretion in dismissing the information on the grounds of insufficient evidence to prove constructive possession. The Court relied on its holding in State v. Callahan, 77 Wn.2d 27, 31, 459 P.2d 400 (1969).

"constructive possession is established by proof that defendant had dominion and control over the premises where the contraband are found."

The Supreme Court reasoned the evidence of dominion and control in Knapstad's case was Detective Miller's observations of three visits by Knapstad to the premises and the presence of a gasoline credit card and traffic ticket to Knapstad at a different address. The premises was rented to Knapstad's brother. The court compared Knapstad to Callahan. Callahan was a visitor on a houseboat for three days. Articles of his clothing, several books, and a gun belonging to him was found on the boat. Callahan was the signal

case which persuaded the Knapstad Court that there was insufficient evidence to prove constructive possession.

Here, with the exception of Knapstad being found in the premises and Henderson being found walking up to the house, the evidence introduced at trial is the same. Moreover, testimony also reveals Henderson was not there during the execution of the search warrant. 1VRP97 and 1VRP170.

Under such circumstances, there exists no evidence from which the jury could have reasonably concluded Henderson was a resident or a co-occupant of 811 S. Cushman, Tacoma WA.

Further unlawful possession of a firearm requires proof of identity to establish the corpus delicti because the fact that the crime occurred cannot be established without identifying the person who committed it. State v. Wright, 76 Wn.App 811, 888 P.2d 1214 (1995). The corpus delicti of unlawful possession of a firearm, therefore, requires proof connecting the defendant with the firearm possession. Id at 818. Thus to sustain Henderson's conviction the state had to

establish prima facie that Henderson was the person who possessed the firearm.

Turning to Henderson's presence at the house. See State v. Davis, 16 Wn.App 657 (1977) which states:

"one cannot have constructive possession of contraband found in a house predicated upon his mere presence therein"

The record evidences that no matter which way this conviction is pursued, Mr. Henderson's convictions for firearm possession and drug possession cannot stand under Washington Law.

Additional Ground 3

Akeem Henderson appeals his convictions of unlawful possession of a firearm and 3 counts of possession of a controlled substance. Henderson contends that the search warrant (see attached search warrant) upon which the police relied to search and detain his person violated the Fourth Amendment requirement of particularity. State v. Carter, 79 Wn.App 154, 901 P.2d 335 (1995). The warrant authorized the search of "persons at the residence" at issue, but did not name or describe Carter. At Henderson's trial he raised this issue of an unnamed and undescribed search warrant as

being too general according to the particularity of the Fourth Amendment and asked the Court to dismiss under such issues of the Fourth Amendment. CP387-388 and CP389 11/5/14.

The Fourth Amendment, enforceable against the states through the due process clause of the Fourteenth Amendment, (states the amendment). To establish probable cause, the affiant must satisfy the magistrate that there are sufficient facts from which a reasonable person could conclude there is a probability that the persons to be subjected to search are involved in the criminal activity. State v. Cord, 103 Wash.2d 361, 365-66, 693 P.2d 81 (1985). In other words, there must be a sufficient nexus between the targets of the search and the suspected criminal activity. An affidavit must contain some underlying facts or circumstances from which a magistrate can find probable cause. State v. Seagull, 95 Wash.2d 898, 632 P.2d 44 (1981).

The fact that the affidavit in support of the warrant was not presented to the court for consideration by the jury but the warrant itself was marked and admitted as an exhibit question

whether it proves any element of the crimes charged. CP387, 6-16 11/5/14.

CONCLUSION

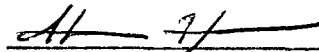
Petitioner asks this court to construe his claims liberally since he is acting pro-se and is inexperienced in legal matters. See Haines v. Kerner, 404 U.S. 519, 520 (1972)(per curiam)(pro se complaint held to less stringent standards than formal papers drafted by lawyers).

While any one of these issues by themselves should require the remedies sought, because of the number and severity of these errors, they should also be judged cumulatively. See Chambers v. Mississippi, 410 U.S. 284, 35 L.Ed.2d 297, 93 S.Ct. 1038 (1973)("The cumulative effect of such erroneous rulings required reversal of the conviction.")

For the reasons stated above, Mr. Henderson requests his convictions be vacated because they were obtained in violation of the Due Process clause in violation of the Fourth Amendment and because there was no evidence of his guilt. Scware v. Board of Bar Examiners, 353 U.S. 232, 1 L.Ed. 796; U.S. ex rel Vajtauer v. Commission of

Immigration, 273 U.S. 103, 71 L.Ed 560. In the alternative this case should be remanded for an evidentiary hearing.

DATED this 21 day of May, 2015 at
Connell, WA.


Akeem Henderson, #854980
Coyote Ridge Corrections Center
P.O. Box 769, GA-22
Connell, WA 99326-0769

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
PIERCE COUNTY
SEARCH WARRANT
(Evidence)

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAR 13 2014 P.

PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY 72373 DEPU

STATE OF WASHINGTON }
County of Pierce

ss.

No. 14 1 50

THE STATE OF WASHINGTON TO THE SHERIFF OR ANY PEACE OFFICE OF SAID COUNTY:

WHEREAS, Tacoma Police Officer J. Boyd #034 has this day made complaint on oath to the undersigned one of the judges of the above entitled court in and for said county that on or about the 12th day of March, 2014, in Pierce County, Washington, a crime, to-wit: Unlawful possession of firearm in the first degree RCW 9.41.040, and a violation of Title 69; the Uniform Controlled Substances Act RCW 69.50, Unlawful Possession of a Controlled Substance RCW 69.50.401, or Conspiracy RCW 69.50.407, was committed by the act, procurement or omission of another, and the following evidence, to-wit:

1. Controlled substances – heroin, and/or cocaine
2. Computers, books, records, receipts, notes, ledgers, and other documents relating to the transportation, ordering, purchase, and/or manufacture of controlled substances.
3. Address and/or telephone books and papers reflecting names, addresses, and/or telephone numbers of co-conspirators in the possession and/or delivery of controlled substances.
4. Computers, books, records, receipts, bank statements and records, money drafts, letters of credit, money order and cashiers check receipts, passbooks, bank checks and other items evidencing the obtaining, secreting, transfer, and/or concealment of assets and the obtaining, secreting, transfer, concealment, and/or expenditure of money.
5. Narcotics paraphernalia, including materials for using, packaging, cutting, weighing and distributing controlled substances, including but not limited to pipes, scales, baggies and heat sealers.
6. United States currency and coin.
7. Safes, lock boxes and other security containers used to conceal and/or protect Controlled Substances, documents and/or proceeds from the sale of Controlled Substances.
8. Firearms, and any ammunition.

43

FILED
MAR 13 2014
PIERCE COUNTY

The above listed items are material to the investigation or prosecution of the above described crimes and that said Officer J. Boyd #034 verily believes said evidence is concealed in or about a particular house or place to-wit:

1. The residence 811 So. Cushman Ave, Apt. "B" (upper), Tacoma, WA 98405. The residence is a two story wood frame construction duplex family residence that is brown in color with white trim. The address numbers 811 are clearly posted on the west side of the home, above the main entrance, in gold lettering. The search is to include any outbuilding and storage areas. The search is also to include any persons found on or associated with said property are to be detained, searched and identified.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from March 12th 2014, with necessary and proper assistance you enter into and/or search said residence:

1. The residence 811 So. Cushman Ave, Apt. "B" (upper), Tacoma, WA 98405. The residence is a two story wood frame construction duplex family residence that is brown in color with white trim. The address numbers 811 are clearly posted on the west side of the home, above the main entrance, in gold lettering. The search is to include any outbuilding and storage areas. The search is also to include any persons found on or associated with said property are to be detained, searched and identified.

And then and there diligently search for said evidence, and any other. And if same, or evidence material to the investigation or prosecution of said crime or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to the law.

A Copy of this warrant shall be served upon the person or persons found in or on said vehicle or place and if no person is found in or on said vehicle or place, a copy of this warrant shall be posted upon any conspicuous place in or on said vehicle, place, or thing, and a copy of this warrant and inventory shall be returned to the undersigned judge or his/her agent promptly after execution.

GIVEN UNDER MY HAND this 12th day of March, 2014.

Judge

1100 504 7102/2114 3/17/2014

RETURN OF OFFICER

A.M. MAR 13 2014 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] NO. DEPUTY
14 1 50472 3

STATE OF WASHINGTON }
COUNTY OF PIERCE } ss:

THIS IS TO CERTIFY that I received the within Search Warrant on the 12th day of March, 2014, and that pursuant to the command contained therein, I made due and diligent search of the property described therein and found the following:

- 1) 1 Sig-Sauer .40 caliber handgun. Model P-250/ Serial #
- 2) Misc. Prescription pills, found in coat pocket. Master bedroom closet
- 3) 1 photo ID badge belonging to Akeem Henderson
- 4) 4 pieces of mail made out to Akeem Henderson, Master bedroom closet
- 5) Folder containing misc. documents for Akeem Henderson, Master bedroom

Names of persons found in possession of property:
Akeem Henderson

Names of persons served with true and complete copy of Search Warrant:
Akeem Henderson and Tera Hill

Description of door or conspicuous place where copy of Search Warrant posted:
On top of coffee table in living room

Place where property is now kept:
Tacoma Police/Pierce County property room

DATED this 12th day of March, 2014.

Witnesses:
[Signature] #034
[Signature] #272

45

0011
405
3/17/2014

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
PIERCE COUNTY
SEARCH WARRANT
(Evidence)

STATE OF WASHINGTON }
County of Pierce }

ss.

No. _____

THE STATE OF WASHINGTON TO THE SHERIFF OR ANY PEACE OFFICE OF
SAID COUNTY:

WHEREAS, Tacoma Police Officer J. Boyd #034 has this day made complaint on oath to the undersigned one of the judges of the above entitled court in and for said county that on or about the 12th day of March, 2014, in Pierce County, Washington, a crime, to-wit: Unlawful possession of firearm in the first degree RCW 9.41.040, and a violation of Title 69 the Uniform Controlled Substances Act RCW 69.50, Unlawful Possession of a Controlled Substance RCW 69.50.401, or Conspiracy RCW 69.50.407, was committed by the act, procurement or omission of another, and the following evidence, to-wit:

1. Controlled substances – heroin, and/or cocaine
2. Computers, books, records, receipts, notes, ledgers, and other documents relating to the transportation, ordering, purchase, and/or manufacture of controlled substances.
3. Address and/or telephone books and papers reflecting names, addresses, and/or telephone numbers of co-conspirators in the possession and/or delivery of controlled substances.
4. Computers, books, records, receipts, bank statements and records, money drafts, letters of credit, money order and cashiers check receipts, passbooks, bank checks and other items evidencing the obtaining, secreting, transfer, and/or concealment of assets and the obtaining, secreting, transfer, concealment, and/or expenditure of money.
5. Narcotics paraphernalia, including materials for using, packaging, cutting, weighing and distributing controlled substances, including but not limited to pipes, scales, baggies and heat sealers.
6. United States currency and coin.
7. Safes, lock boxes and other security containers used to conceal and/or protect Controlled Substances, documents and/or proceeds from the sale of Controlled Substances.
8. Firearms, and any ammunition.

RETURN OF OFFICER

STATE OF WASHINGTON

NO. _____

COUNTY OF PIERCE

} ss:

THIS IS TO CERTIFY that I received the within Search Warrant on the 12th day of March, 2014, and that pursuant to the command contained therein, I made due and diligent search of the property described therein and found the following:

- 1- Sig Sauer .40 cal semi-auto handgun
- 2- Assorted prescription pills
- 3- Akeem Hendersons I.D. Badge
- 4- Assorted mail for Akeem Henderson

Names of persons found in possession of property:

Akeem Henderson

Names of persons served with true and complete copy of Search Warrant:

Akeem Henderson, TEZA HILL

Description of door or conspicuous place where copy of Search Warrant posted:

Coffee table in living room

Place where property is now kept:

Tacoma Police Dept.

DATED this 12th day of March, 2014.

Witnesses:

J. Boyd #034

M. Jany #292

The above listed items are material to the investigation or prosecution of the above described crimes and that said Officer J. Boyd #034 verily believes said evidence is concealed in or about a particular house or place to-wit:

1. The residence 811 So. Cushman Ave, Apt. "B" (upper), Tacoma, WA 98405. The residence is a two story wood frame construction duplex family residence that is brown in color with white trim. The address numbers 811 are clearly posted on the west side of the home, above the main entrance, in gold lettering. The search is to include any outbuilding and storage areas. The search is also to include any persons found on or associated with said property are to be detained, searched and identified.

THEREFORE, in the name of the State of Washington, you are commanded that within ten days from March 12th 2014, with necessary and proper assistance you enter into and/or search said residence:

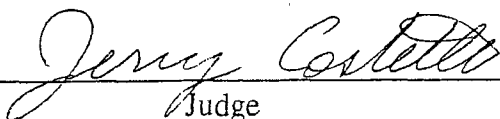
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And then and there diligently search for said evidence, and any other. And if same, or evidence material to the investigation or prosecution of said crime or any part thereof, be found on such search, bring the same forthwith before me, to be disposed of according to the law.

A Copy of this warrant shall be served upon the person or persons found in or on said vehicle or place and if no person is found in or on said vehicle or place, a copy of this warrant shall be posted upon any conspicuous place in or on said vehicle, place, or thing, and a copy of this warrant and inventory shall be returned to the undersigned judge or his/her agent promptly after execution.

GIVEN UNDER MY HAND this 12th day of March, 2014.

3:34 P.M.



Judge