

TO: John Hays
Attorney At Law
1402 Broadway st
Longview, WA 98632
And

Court Of Appeals Division 11
950 Broadway, Suite 300
Tacoma, Wa 98402-4454

RECEIVED
OCT 17 2007
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

RE: **State of Washington -v- Rodney Cecil**
35979-1-11

10/10/07

STATEMENT OF ADDITIONAL GROUNDS

Issue 1. **In addition to Argument 1&2 Filed by my attorney in my appeal brief: affidavit.**

I believe that the Affidavit for Search Warrant did not establish probable cause to investigate, run police checks, or in any way obtain information about Rodney Cecil, Dawn Jeantet, or Timothy Hyde, and it was only after officer Harris expanded his original investigation were these warrants discovered. I believe this exceeded the scope of his duties I also believe it was an intentional misrepresentation.

1. Officer Harris in his affidavit was advised I quote: **“in this official capacity, your affiant was made aware of a wanted subject living at the residence of 1216 w 19th st by the name of Vicky M Cartstensen dob 10-4-65. Vicki was said to be living at this residence with a male named Tim”.**

Officer Harris does not list the informant, and the informant does not state that Tim is wanted only that a wanted individual is living with Tim.
My attorney asked the following: Pg 17 Motion to suppress

Q: so someone, an informant told you?

A. correct.

Q: so you did not list the name of the informant?

A. I did not.

Q. or any basis of reliability for the informant.

A. um

Q. you don't name the informant in the affidavit you just stated you

Made aware

A. I was made aware, by an informant.

Continued questioning on this point the prosecutor: Pg 26 motion to suppress

Q. now you indicate Mr. Sowder asking you about Vicki. You were indicating you saw her earlier could you explain?

A. I had collect a confidential reliable informant had provided me information that the person Vicki Cartensen was living at the residence.....

COURT: Ok well I have allowed some examination about this although it's really not relevant to the issue because I have to decide probable cause based on the 4 corners of the warrant so if he had additional information on the informant I cant consider it now....

. Officer Harris stated he used a confidential informant as as such I should have been able to challenge that claim. Especially since without that statement the entire warrant lacks any probable cause.

In the affidavit for a search warrant officer a Harris states:

On 4-11-05 myself and other officer attempted to contact the residence. While approaching a white female stepped out the front door matching Carstensen's description. However because of the distance I was unable to determine if it was carstensen or not. The female saw us and quickly walked back into the residence.

This clearly establishes that officer Harris did not make an Id of Vicki at that time. So at this time officer Harris runs the police epr which does not list Vicki as associated with the residence, However it does show Myself and Dawn Jeantet as being associated. At this time officer Harris Ran check and discover a warrant on dawn. **These checks have nothing to do with the investigation into Vicki and he had no reason to run checks.**

Officer Harris later Further stated: Pg 21 motion to suppress

Q: Now don't you think 7 days it would be less likely those individuals may Not be there given their transitory nature?

A. Timothy Hyde was said to be living in the basement by the homeowner. Vicki cartensen there's transitory issues you never know when she's goanna be there.

When Officer Harris contacts the landlord he was told that Rodney Cecil lived there and Dawn Lived there and Tim was the renter of the basements. Once again confirming that Vicki was not associated with my residence.

Officer Harris testimony: pg 23 motion to suppress:

**Q: and the owner did he indicate to you that the two people you were
Looking for lived at the residence?**

A. yes

The two people in question were Dawn Jeantet and Tim Hyde and this is misleading because it gives the impression to the courts that he was looking for these felons before he had talked to the landlord when in fact officer Harris had no knowledge of Timothy Hyde until after he talked with the landlord and did not have the last name of Dawn so he could not be confirmed whether or not it was the same Dawn he was looking for. Also the question was for two people when the search warrant was for 3 people and the person omitted from the question was Vicki Cartisen.

CONCLUSION:

I understand and it seems reasonable that if Officer Harris had information from a reliable informant, even though I challenge this assumption that a wanted subject lived at my residence by the name of Vicki Cartensen that for him to make contact with my residence was appropriate.

Acting on his tip when Officer Harris stated he saw a female who may have been Vicki even though he was unsure because of the distance, it seems appropriate that he would come to the door. Which he did.

Acting on his tip it would seem appropriate that he run an epr check to see if Vicki was associated with the residence. Officer Harris did this and she was not associated with the residence.

Acting on his tip it would also seem appropriate that he contact the landlord and see if in fact Vicki was living there, or was associated with the residence. He did this and again confirmed that Vicki was not a renter or associated with the residence.

Acting on his tip all of the above seems reasonable, and it would seem that upon the conclusion of his information he would come to the conclusion that in fact Vicki Cartisen was not a resident of my home and thus end the investigation.

So by acting on his tip, which was his only legal authority, and I challenge this, to investigate how can he then run Dawn Jeantet, Myself, or Timothy Hyde for warrants, or associations. There was no independent information given to Officer Harris to lead him to believe that myself, Dawn or Tim were subject to any investigation, or wanted by the law, or that there were issues with the residence that required further investigation.

I believe that officer Harris was on a witch-hunt to come up with any method he could to obtain a warrant to enter my residence and when he was aware that Vicki was not

associated he expanded his investigation to gather information on other tenants of the location, without probable cause, and then wrote and presented his search warrant in a manner that would lead one to believe that he was actually investigating and looking for 3 felons. .

I also believe that Officer Harris deceived the magistrate because he knew by his investigation that Vicki was not associated with the residence, prior to the judge signing it. Vicki should not have been on the affidavit to begin with and I believe that the only reason she was left on the affidavit was because without the information from the so called informant the affidavit would have been flawed.

I believe an officer should have probable cause to investigate and here the only probable cause was to look for Vicki, and when Officer Harris expanded his investigation and run checks on others this exceeded the scope of his original investigation and as such should not be allowed. The police are required to follow similar procedures when they use pat down searches, vehicle stops, terry stops, all those issues must be based on probable or reasonable cause.

The Judge decided in his ruling that if he found that at least one of the things the cops were looking for were in the warrant then he could uphold the entire warrant and as such stated that there was no Probable cause for Vicki and dawn but because the owner stated Tim lived in the basement that made the warrant valid and thus the police could search all areas of the home. My attorney believed the court had the authority to dissect the issue.

In addition to what my attorney filed I believe my above argument clearly shows how the cops do a blanket investigation to get as much as they can so that at least one part of the warrant will be ok so the full warrant can be enforced. And the very thing the judge ruled on that there was no Probable cause for Vicki should have killed the validity of the warrant at that time because without that the police had no probable cause at all.

I believe if the basis for the investigation is deemed invalid then all that follows should be deemed invalid.

So I believed the motion to suppress should have been granted, in addition to what my attorney filed, for lack of probable cause in affidavit in regards to Vicki Cartisen, and secondary that it failed to establish probable cause to investigate myself, dawn Jeantet, or timothy Hyde.

A search warrant may be issued only up a determination of probable cause.

State v. Gore, 143 Wn.2d 288, 296, 21 P.3d 262 (2001)

Probable cause exists where the affidavit in support of the warrant sets forth Facts and circumstances sufficient to establish a reasonable inference that the Defendant is probably involved in criminal activity and that evidence of the Crime may be found at a certain location.

State v. Jackson, 150 Wn.2d 251, 264, 76 P 3.d 217 (2003)

photographs. He did however, identify Mr. Hyde as having lived there in December, 2004, but does not indicate when he last saw Mr. Hyde at the residence.

Relevant Case Law

In State v. Broadnax, 98 Wn.2d 289 (1982), it was held that a warrant to search a residence does not authorize the search of all persons present.

In State v. Klinger, 96 Wn. App. 619 (1999), the police, while serving an arrest warrant, observed the defendant smoking a hand rolled cigarette in the house. The police smelled marijuana and obtained a search warrant for the house and the outbuildings and seized drugs in the shed behind the house. The Court held where there is probable cause to believe a defendant possesses drugs with no evidence of trafficking, then a warrant to search the premises where drugs were seen, does not extend to other buildings on the premises.

In State v. Thein, 138 Wn. 2d 133 (1999), the affidavit establishes the defendant is a drug trafficker and the magistrate issues a warrant to search the defendant's home based on the officer's experience and training that drug traffickers store drugs in their residence. The Court held an officer's general conclusions and conclusionary predictions and inferences do not establish the necessary specific underlying circumstances to establish evidence of illegal activity to authorize the search of a home. The Court noted probable cause to believe a man has committed a crime does not necessarily give rise to probable cause to search his home.

In State v. Goble, 88 Wn. App. 503 (1997), the Court held a telephonic declaration claiming that following a valid search that drugs are in a package at the defendant's post office box the magistrate issues a search of the defendant's home if he picks up a package and takes it to his residence. The police observed the defendant take a package to his property and go into his house. The police then serve the warrant and seize the drugs. The Court held that probable

MOTION TO SUPPRESS - 5

James J. Sowder - Attorney at Law
1600 Daniels Street - P.O. Box 27
Vancouver, Washington 98666-0027
Phone: (360) 695-4792 - Fax: 695-0227

8

1 cause requires a nexus between the items to be seized and the place to be searched at the time
2 the warrant issues, not based upon some future act. Here the magistrate had no reason to believe
3 drugs were in the house when they warrant was issued, thus the evidence was suppressed.

4 In State v. Jackson, 102 Wn.2d 432 (1984), the Court rejected Illinois v. Gates, 462 US
5 213 (1983) and returned to the Aguilar-Spinelli test which requires of proof of the veracity and
6 basis of an informant's knowledge.

7 ~~A~~ In State v. Franklin, 49 Wn. App. 106 (1987), the affidavit for the search warrant states
8 the police received information from a confidential citizen informant who asked to remain
9 anonymous and who was an upstanding citizen with no criminal record. The Court held that did
10 not meet the reliability prong as the credibility of the informant was based entirely upon the
11 officer's conclusions without corroboration.

12 Defendant would testify when the police came to the residence they quickly apprehended
13 the people they had arrest warrants for and then proceeded to search the residence further. Any
14 such search would far exceed the scope of the Search Warrant.

15 The second search is based on the illegal first search and cannot be otherwise cured by
16 deleting the illegal search. The only reason the officers wanted to search the computer is because
17 they illegally seized it. They had no authority to seize it in the first search because they were only
18 there to seize the persons who had arrest warrants. Any other evidence that they claimed they
19 had seen was not in plain view and also would not lead to the inference the computer or any
20 other items in the house should be seized.

21 In State v. Hopkins, 113 Wn.App. 954 (2002), the police with an arrest warrant for the
22 defendant and a search warrant to search for the defendant including outbuildings and
23 documents, arrest the defendant. The police then go on to do a security check and a protective
24 sweep of a shed and find a methamphetamine lab. The Court held because the search warrant
25 was issued only on the basis of the arrest warrant, its scope is no greater than the arrest warrant.
26 To justify a protective sweep, the State has a burden of proving the sweep was reasonable for
27 security purposes, limited to a cursory visual inspection of places where persons may be hiding.

1 Here, there are no articulable facts warranting a reasonably prudent officer believing the area
2 to be swept harbored an individual posing a danger, thus the drugs were suppressed.

3 In State v. Anderson, 105 Wn. App 223, (2003), the police observe a man watering
4 plants outside to see the defendant's home. The police determine his name was wanted on a
5 misdemeanor skateboard warrant. The police obtain a search warrant to search the defendant's
6 home and the police find drugs. The Court held the existence of a misdemeanor arrest warrant
7 and a belief the subject may be a guest in the third party's home is an insufficient legal authority
8 to enter a third party's home.

9 In State v. Nortlund, 113 Wn. App. 171 (2000), the Court held in analyzing a warrant
10 for seizure of a computer, the court must closely scrutinize the particularity and probable cause
11 requirements because of First Amendment concerns, noting State v. Berrone, 119 Wn.2d 538
12 (1992).

13 In Personal Restraint of Maxfield, 133 Wn.2d 332, a PUD employee volunteers to the
14 police that the defendant's power usage is high and after further investigation the police obtain
15 a warrant and seize drugs. The Court held there is a privacy interest in public power records. The
16 PUD employees lack statutory authority to disclose records to the police, thus the evidence was
17 suppressed. RCW 42.17.314 authorizes the police authority to demand power records only after
18 setting forth in writing a reasonable suspicion.

19 In State v. Rivera, 76 Wn. App. 519 (1995), the Court held a warrant that authorized the
20 search of any vehicle on the property violates the particularity requirement and is over broad.

21 In State v. Kelly, 52 Wn. App. 581 (1988), the Court held a warrant authorizing the
22 search of a house and a carport is insufficient to support the search of outbuildings. The Court
23 also held that where the affidavit supports probable cause to search outbuildings, it does not then
24 follow that probable cause exists to search the house.

25 In State v. Neidergang, 43 Wn. App. 656, a warrant authorized the search of a residence
26 and curtilage. The police seized drugs from a car parked in front of the residence. The Court held
27 the curtilage is the area in which extends the intimate activity associated with the sanctity of the

1 home and depends upon the circumstances including proximity to the home, use and expectations
2 of privacy. Here the parked car was not within the curtilage as it was set off from the residence
3 by the curb and anybody could have parked it there, thus the evidence was suppressed.

4 In State v. Higby, 26 Wn. App 457 (1980), an affidavit established one sale two weeks
5 prior to the application for warrant. The Court held the affidavit was stale and there is no
6 probable cause.

7 In State v. Larson, 29 Wn. App. 669 (1981), it was held that the affidavit failed to
8 establish reliability of an informant when it states no dates when "recent purchases" of drugs
9 were made, when it alleges that a named person was arrested for marijuana in his possession after
10 leaving defendant's residence within nothing indicating he did not have marijuana on his person
11 when he entered. The warrant was found to be fatally defective.

12 In State v. Rangitsch, 40 Wn. App. 771 (1985), the affidavit asserted that five days
13 previously the defendant appeared to be under the influence of drugs and a witness saw the
14 defendant shoot up. It also contained language that it was the officer's opinion that drug users
15 commonly have drugs in the homes and cars. This was held insufficient to establish probable
16 cause.

17 In State v. Crawley, 61 Wn.App. 29 (1991), the Court held that the good faith exception
18 to the probable cause requirement (adopted by the U. S. Supreme Court in United States v.
19 Leon, 82 L.Ed.2d 677 (1984)) has not been adopted in Washington. In accord is State v. Riley,
20 121 Wn.2d 22 (1993).

21 In State v. Dalton, 73 Wn. App. 132 (1994), the police had unconfirmed statements from
22 unidentified informants the defendant was trafficking drugs. The police also had a package of
23 marijuana addressed to the defendant's post office box with a return address from another
24 person. The Court found this is insufficient to support probable cause for a warrant. The Court
25 noted while there may have been sufficient evidence as the Court concluded the defendant was
26
27

1 about to possess marijuana from his post office box, probable cause to believe the defendant
2 committed a crime on the street does not necessarily rise to probable cause to search his home.

3 In State v. Ibarra, 61 Wn. App. 695 (1991), the affidavit states a citizen informer, known
4 to the police, but who's identity is not revealed to the magistrate, reports it is his or her civic duty
5 that he or she observed cocaine in the defendant's home. The informant had never used but
6 knows what cocaine looks like. The Court held that in reference to the credibility prong, the
7 State's burden of demonstrating an unidentified citizen informant's credibility is heightened due
8 to the danger than the informant is an anonymous trouble maker. Here, nothing established
9 credibility or explanation why the informant was at the crime scene. As to the basis of knowledge
10 prong, the affidavit failed to show who the informer gained knowledge, nor a description, nor
11 how the informer came by the information and the end result was insufficient.

12 In State v. Woodall, 100 Wn.2d 74 (1983), the Court held that a "reliable informant who
13 has proven to be reliable in the past is a mere conclusion" which fails to meet veracity
14 requirements of Aguilar-Spinelli.

15 In State v. Worth, 37 Wn. App. 889 (1984), a warrant authorized search of the premises
16 and the person of the owner of the premises. The police served the warrant and arrested the
17 owner and searched the purse belonging to a non-owner occupant in which the police find a
18 bundle of cocaine. The Court held that the search of the purse exceeded the scope of the warrant.
19 The police may detain occupants not listed in the warrant and may, if justified, search for
20 weapons but may not be more intrusive.

21 In State v. Duncan, 81 Wn. App. 70, the search warrant affidavit states that the suspects
22 girlfriend, after a domestic dispute, observes the suspect take marijuana from a storage unit. The
23 Court held that the girlfriend's veracity was not established in that the police did not check her
24 identity, address, employment, residence, family history and the police investigation collaborated
25 only innocuous facts rather than criminal activity.

ISSUE 2

Issue 2: The Franks Motion. Franks hearing and the motion to suppress hearing.

In addition to what I argued above, Judge Lewis decided that there was not merit in the Franks motion because Officer Harris **may not** have been able to locate the epr records which would have shown that Officer Acee was at my location 24 hrs prior to the search warrant affidavit being signed by the judge, and the persons in question were not at the residence. And that this report was filed in the epr records at 7 pm the day prior to the warrant being signed. The judge also stated that even though Officer Chylack had testified that prior to the search warrant being served he advised Officer Harris that he had been at the target residence 2 weeks prior to do a compliance check and was unaware of other persons living at the residence, a fact that Officer Harris doesn't remember. The judge stated that Officer Harris does not have to update his investigation prior to the warrant being signed or served.

Per State Response to the Motion to suppress:

" Prior to the search warrant being served, Officer Harris informed Vancouver Police Sergeant Michael Chylack of the warrant that was to be served at the residence of Rodney Cecil"

Officer Harris stated in his own words at the suppression hearing that he would have checked the EPR records prior to the warrant being served. That is the standard procedure for the police prior to service a search warrant because information can go stale. I'm assuming that is the reason the warrant has to be served within 7 days of being signed.

If Officer Harris had checked the EPR prior to the serving of the warrant, as he stated he did, then he would have been aware that Officer Acee had been to the location 24 hrs prior to the service of the warrant and the persons in question were not there, and would also have been aware that there was in fact **no warrant on file for Dawn Jeantet**, and add to the fact that Officer Chylack had advised Officer Harris that he had done a compliance check some two weeks prior.

**Q: so officer Harris, you had your electronic public police records
On line back then?**

A: Yes

**Q: and did you review what other officers have had contact with that
Residence recently before the execution of the search warrant?**

**A: I would have looked through that for various associates and things
Of that nature.**

CONCLUSION:

I believed the franks motion should have been granted because I believe that a search warrant is issued because the police have an immediate need to obtain evidence that may be destroyed if not quickly obtained and the longer time goes on the less likely the evidence will be there. In this case the police got the search warrant on 4-12-05, and served it on 4-19-05, the report for officer Acee was filed on 4-11-05, and officer chylrac advised the court that he made officer Harris aware of his check on the day the warrant was served. All of this information was available to Officer Harris prior to the signing of the warrant and the service of the warrant and as such Officer Harris should have re-evaluated his probable cause. It would seem reasonable that if a police officer has information or as a product of normal police policy should have the information then he is responsible to bring it to the attention to the magistrate. It is department policy that an EPR be run prior to serving warrants.

There is no way to guess what is in the mind or what the intentions are of anyone and the only way to get some idea of this is by a persons actions, in this case Officer Harris, who is a police officer who is responsible for protecting the rights of others manipulated his information in such a way as to get a search warrant. He ignored information that would of came up in his investigation.

ISSUE 3

Issue 3: failure to join. Joinder Motion Pg 396

The judge denied my failure to join motion on the grounds that it wasn't based on the same conduct. I understand this reasoning but my general argument is that the court advised me to wait on my sentencing in the 04 cause number, because they were going to file other charges, that is the charges I am now convicted of, because that would mean concurrent sentences. I agreed and waited about 2 months. The judge then stated after that point that he would wait no longer and proceeded to sentence me on the 04 matter. Prior to sentencing I again requested that the matter be ran together and it was denied.

COURT: This is the 04 case

**SOWDER: his consternation was he wanted to have everything taken
Care of at once before he went to prison on the 04 case. They
Wouldn't keep him here for that purpose.**

At the sentencing Hearing:

**Pierce: in the motion there is also another reason listed that was not
Checked. Probable Cause had been found that the defendant
Had committed a new crime while participating in the drug
Court program.**

**Secondly, even if the defendant did have a right to consolidation
There is nothing in the record to indicate that defendant filed a
Motion either written or oral requesting the offenses be
Consolidated. Since defendant failed to do so, per the rule, he
Waived his right to consolidation.**

The prosecutor and Judge both advised me in open court to wait on my sentencing so that the prosecutor could file the charges and proceed from there. The prosecutor stated he was intending to file the charges and that was the reason for the continuance. So there was judicial record.

The case was ready to be filed 3 days before I was sentenced on the 04 matter. They chose not to file, and no other investigation was done on the case. They waited until august of 06 to file the charges, some 13-16 months after the fact.

I can understand if the prosecutor was unaware that new charges were pending and I was sentenced and it came up later. But in this case the prosecutor was aware of the pending legal matter, formally requested that I not be sentenced on the 04 matter until this was filed, which the judge advised me that that would be in my best interest. I sat in Clark county jail for 45-60 days waiting for the new charges to be filed. The investigation the

prosecutor was waiting on was completed and ready to be filed, and then the prosecutor then requested that I be sentenced on the 04 matter, which I was and was given 18 months. When I was released from prison in June 0f 06, they filed charges in Aug of 06 which is now before the court of appeals.

I believe I should have the right to have known matter heard as soon as possible.

Division 11 On this issue:

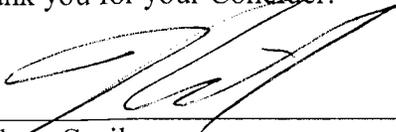
CrR 4.3(a) permits joinder of offenses that are “of the same or similar character” or that are “based on the same conduct or on a series of acts connected together.”² CrR 4.3(a)(1), (2).

We construe the joinder rules broadly to promote the public policy of conserving judicial and prosecution resources. *State v. Hentz*, 32 Wn. App. 186, 189, 647 P.2d 39 (1982), *rev'd in part on other grounds*, 99 Wn.2d 538 (1983).

Nevertheless, “[j]oinder of counts should never be used in such a way as to unduly embarrass or prejudice a defendant or deny him or her a substantial right.” *State v. Russell*, 125 Wn.2d 24, 62, 882 P.2d 747 (1994), *cert. denied*, 514 U.S. 1129 (1995).

These crimes were separated by a two month period and my argument is that the two causes should have been joined.

Thank you for your Consider:



Rodney Cecil