

IATA

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 36950-8-II
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

State of Washington, Respondent,
v.
Lerissa F. Iata, Appellant.

Pierce County Superior Court
Cause No. 06-1-04270-2
The Honorable Judge Kathryn Nelson
STATEMENT OF ADDITIONAL GROUNDS

Lerissa F. Iata #312369
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Gig Harbor, Washington 98332

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R. Bouchey
K. Proctor
8-8-08
Backlund Ministry
KSC

TABLE OF AUTHORITIES

Table of Cases

State v. Becker, 80 Wn.App. 364, 908 P.2d 903
State v. Call, 75 Wn.App. 866, 880 P.2d 571
State v. Coria, 120 Wn.2d 156, 839 P.2d 890
Frank v. Delaware, 438 U.S. 154, 57 L.Ed.2d 667, 98 S.Ct. 2674
State v. Schelin, 147 Wn.2d 562, 563-64 P.3d 632 (2002)
State v. Taylor, 74 Wn.App. 111, 872 P.2d 53 (1994)
State v. Willis, 153 Wn.2d 366, 103 P.3d 1213 (2005)

Statutes

RCW 9.94A.125
RCW 9.94A.310(3)

Federal Regulations and Rules

Search and Seizure § 27 – warrant affidavit – probable cause – informant

State Regulations and Rules

Washington State Superior Court Criminal Rule 4.7 – Discovery (a) Prosecutor's obligations

SUMMARY OF THE CASE

Lerissa Fale Iata on the afternoon of November 1, 2007 was found guilty by the Jury during trial. On September 8, 2006 a search warrant was issued for 2540 62nd Avenue East Apartment C in Fife, Washington. When the police entered the residence, they found four adults and three children and one teenager. Once they evacuated everyone from the residence the officers then began their search for any evidence. That day Ms. Iata was booked in Pierce County Jail for Unlawful Manufacturing of a controlled substance, Unlawful Possession of a firearm and Unlawful Possession of a controlled substance. She was found guilty in trial for all three charges along with enhanced time for being within 1,000 feet of a school bus route stop for a special need student.

ARGUMENT

I. GUN ENHANCEMENTS:

On September 8, ~~2007~~²⁰⁰⁶ a search warrant was issued on 2540 62nd Avenue East Apt. C. At the residence, the police discovered three firearms. One of the firearms were said to be in a zipped up pocket in a purse found in a closed closet in one of the two rooms. The second firearm was found in the same closet but six feet above on a shelf under several articles of clothing. The last firearm was found in the other room. In the corner of the room is where it stood but it was not loaded. On page 150 of the trial transcripts, in lines 4 through 13, one of the witnesses, Deputy Darby, testified to seeing Ms. Iata on the living room couch. On pages 210 of the trial transcripts, in lines 1 through 6, Deputy Darby again confirms to have found Ms. Iata asleep on the couch. Now the questions at hand are: 1) Was Ms. Iata "armed" at the time of the search? 2) Were the firearms easily accessible to her?

Under the definition of Constructive Possession of a deadly weapon it reads that a deadly weapon by itself ~~is~~^{is} not sufficient to establish that a defendant was "armed" with the weapon for the purpose of RCW 9.94A.125 and RCW 9.94A.310(3) which provide for the enhancement of a sentence for a defendant who was armed with a deadly weapon at the time of committing a crime. *State v. Call*, 75 Wn.App. 866, 880 P.2d 571. "The mere presence of a deadly weapon at a crime scene is insufficient to show that the defendant is armed." *State v. Schelin*, 147 Wn.2d 562, 563-64, 55 P.3d 632, *State v. Willis*, 153 Wn.2d 366, 103 P.3d 1213 (2005). During trial Mr. Steven Mell, a forensic investigator for the Pierce

County Sheriff's Department, who was considered to be an expert, testifies on pages 208 of the trial transcripts, in lines 20 through 23 that he was not able to lift any prints off of any of the three firearms. Again we find doubt that Ms. Iata was armed or that the firearms were easily accessible to her. In the end we ask, is an individual armed during the commission of a crime where there is no proof that the weapon was easily accessible during the commission of the crime?

II. SCHOOL BUS ENHANCEMENT:

On October 25, 2007 a witness ^{by}~~by~~ the name of Mr. Bob Woolery who is the Director of Transportation for the Fife School District, took the stand. He testifies that the residence was not within 1,000 feet of a school zone, but that it was within 1,000 feet of a school bus stop for a special needs student. He testified that when he measured the distance he cut corners and came up with 266 feet. Mr. Woolery did not have any evidence that showed he~~g~~ actually went out to the residence and conducted any kind of work. In *State v. Coria*, 120 Wn.2d 156, 839 P.2d 890, where the defendant has also received an enhanced sentence for committing a crime within 1,000 feet of a school bus route stop, the director of transportation for the school district had actually prepared a master map showing the different stops along the routes. Although that case is arguing the liability of the master map, the director still made an effort to bring forth some type of evidence to show he measured the distances. Mr. Woolery did no such thing. Why is the enhancement based solely on the statement of Mr. Woolery? ^{Next}~~Not~~ we argue under the Due Process clause that the application of the sentence enhancement violates due process. There were not any signs indicating that there was a school

zone or bus route in the area. The right to due process under the Fourteenth Amendment requires that statutes give citizens fair warning of what conduct is prohibited. *State v. Becker*, 80 Wn.App. 364, 908 P.2d 903. The last argument is that Mr. Woolery testified to measuring Parks Place Apartments. The apartment that was searched was Pointe East apartments. Mr. Woolery once again had no proof of his findings and he also testified to measuring the wrong apartments. In that, we ask that the enhancement be reversed due to the state not being able to convict without a reasonable doubt.

III. SUFFICIENCY OF THE WARRANT:

On September 8th 2006, a search warrant was issued for 2540 62nd Avenue East Apt. C in Fife, Washington. The warrant was based on the words of a confidential informant, who was pulled over and was found with a controlled substance. The informant decided to work with the Police Department in order to get his/her unlawful possession of a controlled substance with intent to deliver dropped. There were two Controlled Buys that took place, the first one occurred in a parking lot where what appeared to be an African American woman who made the transaction. The second one occurred at the residence where the confidential informant had purchased crack cocaine from someone named K.C. in the residence. Those were the two transactions that occurred before requesting the warrant. The questions that are still left unanswered are: 1) Where is the video, audio, photos, or any evidence that could prove the informant did not make anything up? 2) When the search of the residence occurred did any of the Recorded Buy money appear? 3) In the first Controlled Buy, he/she purchased

drugs from an African American female. In the search of the residence, there were four adults (three detained): Ms. Miller, Ms. Iata who is a Pacific Islander, Mr. O. Blakeney, and Mr. F. Blakeney. The only other adult in the residence was an African American female; why was the African American female not detained as well?

Lastly, the search warrant stated that they were searching for an individual named K.C. Nobody in the residence, or anyone who was detained is named, nor goes by the name K.C. nor has the initials K.C. So was the search warrant solely based on the words of an informant who was in trouble? Ms. Iata would like to challenge the sufficiency of the search warrant, arguing that the warrant affidavit both contained material misrepresentation and omitted relevant facts necessary to make a determination of probable cause. *State v. Taylor*, 74 Wn.App. 111, 872 P.2d 53 (1994), *Frank v. Delaware* 438 U.S. 154, 57 L.Ed.2d 667, 98 S.Ct. 2674 under Search and Seizure § 27 – warrant affidavit – probable cause – informant, numbers 7 and 8 it reads:

7. A search warrant affidavit must set forth particular fact and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the source of information, the affidavit must recite some of the underlying circumstances from which the informant concluded that relevant evidence might be discovered, and some of the underlying circumstances from which the officer who seeks the warrant concluded that the informant, whose identity need not be disclosed, was credible or his information reliable.

Search and Seizure § 27 – probable cause – magistrates determination.

8. A magistrate must determine independently whether there is probable cause for a search warrant.

In that, did the state present sufficient evidence to convict a person of a crime where all evidence presented was discovered pursuant to a warrant that was issued without probable cause?

IV. NEW DISCOVERY IN THE MIDDLE OF TRIAL:

In Washington State Superior Court Criminal Rule 4.7 (a) Discovery – Prosecutor’s Obligations it reads:

(a) Prosecutor Obligations

- (1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant, the prosecuting attorney’s possession or control no later than the omnibus hearing.
- (i) the names and addresses of persons whom the prosecuting attorneys intend to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses.
- (iv) any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific test experiments of comparisons.

In that, we argue that because Ms. Iata’s trial began on October 17, 2007 and on October 29, 2007, the prosecutor not once but twice presented new evidence in the middle of trial, for two different witnesses. Ms. Lawrence had a report that was eight pages in length and Mr. Broshears had a report that was over 100 pages in length. Omnibus orders were filed at the beginning of trial and was signed by the court that required that any written or recorded statements of substance, oral statements of any witnesses including experts reports or test results to be submitted. In that, neither Mr. Broshears’ or Ms. Lawrence’s reports were ever submitted. We argue that due to the volume of discovery that had been offered at the last minute both Ms. Iata and her co-defendants were unable to cross examine

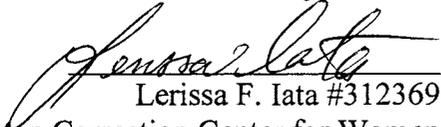
the witness which results in a violation of due process on Ms. Iata's part because
the of the prosecutor's failure to preserve exculpatory evidence.

CONCLUSION

With these arguments, we are asking that Ms. Iata's convictions be reversed. Thank you for your time and patience, and we hope to hear from you soon.

Respectfully Submitted

Date: July 16, 2008



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