

FILED
Court of Appeals
Division II
State of Washington
12/15/2017 12:18 PM

NO. 49572-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

JESSE IRWIN,

Appellant.

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

The Honorable Derek Vanderwood, Judge

REPLY BRIEF OF APPELLANT

E. RANIA RAMPERSAD
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E. Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT</u>	1
THE VEHICLE SEARCH WARRANT WAS INVALID.	1
E. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<u>State v. Dalton</u> 73 Wn. App. 132, 868 P.2d 873 (1994).....	2
<u>State v. Higgins</u> 136 Wn. App. 87, 147 P.3d 649 (2006).....	2
<u>State v. Maddox</u> 116 Wn. App. 796, 67 P.3d 1135 (2003), <u>aff'd by</u> 152 Wn.2d 499, 98 P.3d 1199 (2004).....	1, 2
<u>State v. Perrone</u> 119 Wn.2d 538, 834 P.2d 611 (1992).....	1
<u>State v. Rangitsch</u> 40 Wn. App. 771, 700 P.2d 382 (1985).....	2
 <u>FEDERAL CASES</u>	
<u>U.S. v. Fitzgerald</u> 724 F.2d 633, 637 (8th Cir.1983), <u>cert. denied</u> , 466 U.S. 950, 104 S. Ct. 2151, 80 L. Ed. 2d 538 (1984)	1-2

A. ARGUMENT

THE VEHICLE SEARCH WARRANT WAS INVALID.

Irwin and the State agree on several issues in this case. First, Irwin concedes the State's point: that the severability doctrine applies. See State v. Maddox, 116 Wn. App. 796, 806, 67 P.3d 1135 (2003), aff'd by 152 Wn.2d 499, 98 P.3d 1199 (2004). It follows that the theft- and drug-related portions of the warrant must be evaluated separately.

Second, the State appears to concede that the theft-related portion of the warrant is overbroad.¹ The result of such a concession is to render irrelevant whether officers did or did not have probable cause to believe the vehicle contained evidence of theft. This is because regardless of probable cause, where overbroad, the theft-portion of the warrant cannot provide legal authority to justify admissibility of any evidence offered at trial. "Under the severability doctrine, "infirmity of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant" but does not require suppression of anything seized pursuant to valid parts of the warrant.'" Maddox, 116 Wn. App. at 806 (quoting State v. Perrone, 119 Wn.2d 538, 556, 834 P.2d 611 (1992) (quoting U.S. v. Fitzgerald, 724 F.2d 633, 637 (8th Cir.1983), cert. denied, 466 U.S. 950, 104 S. Ct. 2151, 80 L.

¹ "The State concedes that the general reference to items associated with property crimes is likely overbroad." Br. Resp. at 19 (emphasis added).

Ed. 2d 538 (1984)). If the drug-related portion of the warrant is also unconstitutional, the theft-related portion cannot be used as a back door to support admissibility of any evidence. Id.

Third, Irwin and the State agree that drugs and related paraphernalia are inherently illicit items, and so the drug-related portion of the warrant is not overbroad for lack of particularity. Br. Resp. at 17-19; Br. App. at 25 (citing State v. Higgins, 136 Wn. App. 87, 93-94, 147 P.3d 649 (2006)). Assuming that the baggie of methamphetamine was seized by police pursuant to the drug-related portion of the warrant, the sole issue in Irwin's case becomes whether this portion of the warrant was supported by probable cause. For the reasons stated in Irwin's opening brief, it was not. Br. App. at 12-23.

As a result, the entirety of the warrant fails: the drug-related portion because it lacks probable cause, and the theft-related portion because it is overbroad. No aspect of the warrant justifies admissibility of the baggie of methamphetamine. Because this baggie was the sole piece of evidence relied upon at trial to support Irwin's conviction, this Court should reverse his conviction and dismiss the charge. State v. Dalton, 73 Wn. App. 132, 140-41, 868 P.2d 873 (1994); State v. Rangitsch, 40 Wn. App. 771, 780-81, 700 P.2d 382 (1985).

B. CONCLUSION

Where the drug-related portion of the warrant lacked probable cause, Irwin respectfully requests that this Court suppress the evidence of methamphetamines, reverse his conviction and dismiss the charge.

DATED this 15th day of December, 2017.

Respectfully submitted,

NIELSEN BROMAN & KOCH, PLLC.



E. RANIA RAMPERSAD,

WSBA NO. 47224

Office ID No. 91051

Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

December 15, 2017 - 12:18 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49572-4
Appellate Court Case Title: State of Washington, Respondent v Jesse Michael Irwin, Appellant
Superior Court Case Number: 16-1-01530-1

The following documents have been uploaded:

- 495724_Briefs_20171215121757D2610860_8692.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was RBOA 49572-4-II.pdf

A copy of the uploaded files will be sent to:

- CntyPA.GeneralDelivery@clark.wa.gov
- kelly.ryan@clark.wa.gov
- nielsene@nwattorney.net

Comments:

Copy sent to: Jesse Irwin 2801 NE 120th Ave Vancouver, WA 98682

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

Filing on Behalf of: Elizabeth Rania Rampersad - Email: rampersadr@nwattorney.net (Alternate Email:)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20171215121757D2610860