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STATE OF WASHINGTON

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW BY _____
DEPUTY

STATE OF WASHINGTON)

Respondent,)

v.)

MIKE WOOD)

(your name))

Appellant)

No. 49593-7-11

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Mike Wood, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Nexus, in addition please read 3.6
hearing, Judge Kitty Ann van Doorninck

Additional Ground 2

Pertaining to the Nexus it should be
noted that I was never observed by law
enforcement leaving my residence or to any
alleged transactions of any kind.

If there are additional grounds, a brief summary is attached to this statement.

Date: 5-17-17

Signature: Michael W. Wood

Trust Ground

5-17-17

1)

Insufficient nexus between the evidence and the defendant's residence to support a search warrant.

Following the "Statement of the Case" provided in the appellate brief, 2-7, the defendant does move to correct any notion of activities observed by police during their surveillance efforts were in anyway stipulated to as "other transactions". As a matter of fact, neither the record nor the affidavit by police in support of the search warrant proves any subsequent drug sales transactions above and beyond mere speculation. The appellate brief could lead one to conclude otherwise, because of typographical errors or mis-statements by appellate counsel, the defendant does not stipulate to the assumptions of "Other Transactions" that were not proven.

This case hinges on the sufficiency of a nexus between criminal activity and the item to be seized and between that item and the place to be searched. At the 3.6 hearing the state successfully argued that a circumstantial nexus existed without citing or demonstrating essential facts element required that actually connected illegal activity to the residence of the defendant.

Judge Kitty Ann van Doorninck during the 3.6 hearing summarized her understanding of the issues as it applied to any conceivable nexus that was based on identifiable facts. Judge van Doorninck correctly reasoned that observing the defendant returning home after the single controlled buy orchestrated with a confidential informant, was not enough to establish a nexus between any criminal activity and Wood's home.
(RP 4 6-30-16)

Judge van Doorninck continues with her analysis of sufficiency to include other behavior where detectives observed Wood "holding U.S. currency in his hand" while in a parking lot. Even up to this point the judge concedes her doubts as to sufficiency to establish a nexus (RP 4).

Wood argues that there was no nexus to the residence supported by facts that would connect him to the criminal activity in the first place. Wood believes that based upon his reading of a large number of cases regarding nexus, there is an essential consideration that the facts must first point to the probability of criminal behavior linked to the residence which does not adequately exist here. In this case the alleged criminal behavior was based on observations of activities

that were equally consistent with lawful behavior beyond the controlled buy.

Despite surveillance that spanned for whatever period of time it was conducted, police were unable to acquire evidence of criminal activity taking place at Wood's residence. Nor did police factually identify that Wood's residence was used in furtherance or support any criminal activity. In fact, police did not articulate any criminal activity taking place at Wood's home and the confidential informant had never told police that Wood had dealt drugs from his residence.

The State argues that because of the detectives training and experience combined with a previous conviction of "possession of a controlled substance", that sufficiency was established to support the issuance of a warrant when evaluated with the single controlled buy.

It is for the prior criminal history and the detectives generalized perceptions of what they believed to be further criminal behavior that the defendant believes no nexus was established as they claim.

To a hammer everything is a nail and to police all behavior is potentially suspicious behavior. When one filters what they observe through the lens of preconceived

ideas as to what is consistent with "individuals selling narcotics" they inadvertently exclude how that some behavior is equally consistent with legal behavior.

As Judge van Doremick stated in the 3.6 hearing, the activities in the parking lot of Fred Meyer was unknown. The defendant believes this leaves it to speculative interpretation. Viewing the State's position charitably, these circumstances only suggest a suspicion, not even a probability of criminal behavior in the parking lot.

To permit a search warrant based upon the self-avowed expertise of a law enforcement agent, absent any other factual nexus to the suspect's residence, would be an open invitation to vague warrants authorizing virtually automatic searches of any property used by a criminal suspect. See *United States v. Rosario*, 918 F. Supp. 524, 531 (D. R. I. 1996)

The connection between the residence and the evidence of criminal activity must be specific and concrete, not "vague" or "generalized".

Probable cause to believe that a man committed a crime on the street, does not necessarily give rise to probable cause to search his home. *STATE v. Dalton* 73 Wn. App. 132, 868 P.2d 873 (1994)

It should be noted that in the police

affidavit the underlying crime in Woods criminal was "prior convictions for unlawful possession of a controlled substance". Although a history of the same or similar maybe helpful in determining probable cause, but without other evidence it also falls short of probable cause to search. STATE V. Clark, 143 Wn. 2d 731, 749, 24 P.3d 1006 (2001) otherwise anyone convicted of a crime would constantly be subject to ~~harass~~ harassing and embarrassing police searches. STATE V. Hubert, 94 Wn. 2d 437, 446-47, 617 P.2d 429 (1980).

A finding of probable cause must be grounded in fact. This requirement is constitutionally prescribed because information that is not sufficiently grounded in fact is inherently unreliable and frustrates the detached and independent evaluation function of the court.

Conclusion

For the forementioned reasons the defendant respectfully requests that the court reverse his convictions and find that the search warrant was not factually supported by a reasonable nexus and should be suppressed.

1 Warrant, and I understand the issue.

2 And then, Ms. Hauger, I'm going to ask you some
3 questions.

4 MS. HAUGER: Okay.

5 THE COURT: So the issue is nexus. It's clear that
6 generalized statements -- you know, the officer's knowledge
7 of drug dealings -- are not good enough. And it's clear
8 that just observing the defendant returning to the home
9 after a controlled buy is not enough.

10 And then in this case, the only other distinction I
11 see is the deputy's statement about his hours of
12 surveillance and watching them go to the Fred Meyer's
13 parking lot and observing an individual get into the
14 passenger seat of the vehicle. "And then, while watching
15 the vehicle, I was able to see Michael holding U.S.
16 currency in his hand. Within a few minutes, the individual
17 got out and Michael left the parking lot." So that's where
18 he's left his residence and he's gone to Fred Meyer, but we
19 don't know what happened in the car. Then that's the only
20 other specific fact, I think, that would help for the
21 nexus, so I'm trying to figure out if that's enough.

22 MS. HAUGER: I do believe that it's enough, Your
23 Honor, because what the officer is describing -- and keep
24 in mind that the court, in issuing the Warrant, could take
25 into consideration the officer's training and experience.

1 I think under both State vs. GMV and U.S. vs.
2 El-Alamin, the courts were pretty clear, both federal court
3 and state court, that especially when you have a follow
4 from an individual engaged in drug transactions, both from
5 their residence to a controlled purchase and from the
6 controlled purchase back to their residence, that is enough
7 to establish probable cause to issue that Search Warrant.

8 THE COURT: In GMV they watched him leave, meet the
9 CI, go back. So that's clear. That's the way we normally
10 see it. That's nice and clean. That's what we don't have
11 here.

12 And then in El-Alamin, they watched him go back to
13 his house, but the CI said that he purchased controlled
14 substance within the house. We don't have that here,
15 either.

16 MS. HAUGER: We do not. But what we have is, again,
17 the observations of the exact same type of behavior that
18 was engaged in.

19 So in this particular case, I think the facts were
20 actually somewhat stronger to support probable cause
21 because not only do we have him being followed from the
22 controlled purchase with the CI back to his residence, but
23 before he gets back to the residence, he's engaging in the
24 same behavior in several different other public parking
25 lots, the same type of short stay, getting into the

1 activity directly related to the residence.

2 THE COURT: Mr. Ryan?

3 MR. RYAN: I will submit that there's a lack of
4 nexus here. I don't think that the cases the State cited
5 stand for the proposition that you can watch a vehicle go
6 back to a home and that establishes nexus. Particularly in
7 this case where Deputy Shaffer says that he went back and
8 booked these things into evidence and then sometime later
9 followed back.

10 This language that's in the Affidavit that recounts
11 some event in a parking lot, two things: It's not a
12 controlled buy, there's no allegation that it is a
13 controlled buy; No. 2, we don't know when that event took
14 place. And that event could have taken place a year ago,
15 five years ago, ten minutes ago. So I would submit that
16 there's a high probability that that is stale information
17 and it really isn't a drug transaction. It's somebody in a
18 parking lot with some money.

19 I would submit that everybody goes to a parking lot,
20 parks their car and has money if they are going to go
21 shopping.

22 So I don't think that that proves that this was a
23 drug transaction. There certainly were no controlled
24 substances that were recovered on that occasion. I would
25 ask the Court to suppress the evidence.

1 because it does give context to exactly what Deputy Shaffer
2 observed when he saw the defendant leave his residence,
3 driving the Toyota Tercel, go to the Fred Meyer parking
4 lot, pull into the parking lot, watching as an individual
5 gets in, stays for only a few minutes, sees the defendant
6 holding currency in his hand. It gives context to that.
7 Maddox says, yes, that is a factor. It's not the sole
8 factor. It's not what you hang your hat on, but it is a
9 factor.

10 Not everybody goes to a parking lot and has somebody
11 get into their car, stay for a few minutes, you have cash
12 in your hand, the individual gets out and then he leaves.
13 He doesn't go into the store. He leaves the parking lot.
14 He's not there to shop.

15 It's not a singular event because Deputy Shaffer,
16 even after the controlled buy, participates in following
17 the defendant and watches as he meets several individuals
18 in public parking lots. It is a not a singular event.

19 THE COURT: The paragraph in the Search Warrant that
20 talks about the surveillance, when he's watching them leave
21 the residence and go to Fred Meyer, it doesn't say when
22 that happened.

23 MS. HAUGER: It does not, but the Court puts into
24 context that paragraph given the fact that at the very
25 beginning of the Affidavit, Deputy Shaffer says, "In the

1 that. There's no problem with that. We don't have any
2 question about the identity. That's all clear.

3 It's the nexus between the house and the narcotics.
4 And based on the paragraph of the observation in the Fred
5 Meyer's, I think that just tips it over to the edge to give
6 it enough nexus, at least at this stage of the proceedings.
7 The Court of Appeals may think I'm wrong, but I think
8 there's just enough there to connect.

9 If I were reading this Warrant, I would have signed
10 it too, because it seems like that's the connection. And
11 in reading the case law, it's clear what's not enough, and
12 then it's never quite clear what's just enough. And I
13 think this is a case where there is just enough, given
14 Mr. Wood's criminal history, given the observation and
15 activity at the Fred Meyer and him leaving the home, going
16 to do something that clearly looked like behavior that was
17 a narcotics sale.

18 So I'll deny the Motion to Suppress and we need
19 really specific Findings of Fact.

20 MR. RYAN: Whenever the Court is available. I think
21 we should probably take some time to do these.

22 THE COURT: I do, too. And you don't have a trial
23 date until August 15th so you have plenty of time. Do you
24 want to set a date for --

25 MS. HAUGER: Two weeks? We can have them done in