498904 Cobb
Treat as SAG

Statement of factual Allegations

On feburary 9th, 2016, Judge Murphy issued a Search warrant (the "first warrant") for: 1) A 2016 Chevy Impala black in color bearing washington license AXD-731 registered to Ean Holdings LLC 119 SW 7th ST, Renton WA 98057. 2) Christopher Lee Cobb, black male, 6'01, 245 lbs. 09-04-86 based on an affidavit of Deputy Kory Sheffer which stated that he believed that within the last 72 hours in pierce county felonies to wit have been committed RCW. 69.50.401 Unlawful Possession of a controlled Substance. W/intent to Deliver and that the above evidence is concealed in or about a particular person and vehicle to-wit: 1) A 2016, Chevy Impala black in color, bearing washington license AXD-431 registered to EAN Holdings LLC. 119 SW 7th, ST, Renton WA 98057. 2) Christopher Lee Cobb, black male, 6'01, 245 lbs, 09-04-86. See Page 4, Ex. A to Decl of Donna Gibson. And that "a confidential reliable informant agreed to work with the Pierce county Sheriff's department." Id. "Reliable buys were made in the Impala". The warrant was for mr. cobb and a vehicle yet some of the evidence intended for seizure in that warrant included, "7) indicia of occupancy residency and/or ownership of the premises described in the search warrant, including but not limited to utility bills, telephone bills cancelled envelopes

registration certificates, and or keys. Id at pag 3
The warrant was not executed and then on
february 13, 2016, a new search warrant was
issued by Judge Arend for, 1) A 2014 Dodge
Charger Silver in color, bearing Washington license
ARD-1650 registered to EAN Holdings LLC 507
Summa ST, Centrallia, WA 98531. 2) Christopher Lee
Cobb black male, 601, 245 lbs, 09-04-86. See page
4, EX B to Decl. of Donna Gibson. This february
13 warrant was also based on the affidavit of
Kory Shaffer who believed he has probable
cause to believe and in fact does believe
that within the last 72 hours in pierce county
washington felonies to wit: RCW. 69.50.401
unlawful possesion of a controlled substance
w/intent to Deliver/RCW. 9A.36.031
Assault in the third degree Id page 3.
The same fact's appear in the feb, 13th, warrant
as in the feb, 6th, warrant. Refer to pages 2-3
of the first warrant with pages 2-5 of the
second warrant. The only difference is the
additions of the allegations regarding the
assault charge. Both warrants recite multiple
bug's but not dates or times. The first warrant
State's "during the initial debriefing", "within the
last 72 hours" See page of EX A and again page
4-6 of EX. B.

So was the "past 72 hours prior to February 6th when the first warrant was issued or did the same exact actions occur within 72 hours of the February 13th warrant?
mr. cobb was arrested on February 16, 2016 while driving the charger. However at the time of the execution of the feb, 13th warrant the impala from the first warrant was also seized and searched.

On February 17th 2016 information was filed chargeing mr. cobb with: Two counts of unlawful possession of controlled substances w/intent to deliver [RCW. 69.50.401(1997)(a)(i) and RCW 69.50.401(1)(2)(b)] and on count of unlawful possession of a firearm. (RCW 9.41.040(1)(e

Issues Presented

Was the warrant obtained on february 13th, based on Stale probable Cause? If so should the evidence in it's execution be Suppressed?

Authority / Argument

A judge may issue a Search warrant only if the affidavit establishes probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). In order to establish probable cause, the Supporting affidavit must set 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 can be found at the place to be Searched." Thein, 138 Wn.2d at 140. The affidavit must establish "a nexus between criminal activity and the item to be Seized, and also a nexus between the item to be seized and the place to be Searched." Thein, 138 Wn.2d at 140 (quoting State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997). The basis for the controlled Substance Violation (the controlled buys) do not appear to have changed from the first warrant to the second warrant

Nor is there anything in mr. cobb's using the Charger in the commission of a crime, to-wit no controlled buy is described. See page 4 of 7 of the Second Search warrant, Ex. B to Decl. of Donna Gibson.

"within the past seventy two hours the C/I while under constant surveillance of the Pierce County Sheriff's Department Special Investigations unit, has made a controlled buy of methamphetamine from christopher. Prior to the buy, the C/I was searched. NO money or narcotics were located. The C/I called Christopher on his cellular phone and they agreed to meet in a public parking lot in pierce county... I observed a black chevy Impala"... Page 4 of Ex. B to Decl of Donna Gibson.

This activity was while mr. cobb was alledgedly driving the Impala, although this affidavit is for mr. cobb and the charger. Testimony from Kory Shaffer stated that there were no buy's conducted by the C/I with mr. cobb in the charger. (See testimony from Pierce county Sheriff's Special Investigation unit Leader Kory Shaffer).

A warrant must comply with two prerequisites of probability to satisfy the fourth Amendment's requirement of probable cause; it must be true not only that if the retriggering condition occurs "there is a fair probability that contraband or evidence of a crime will be found in that particular place", but also that there is probable cause to believe the triggering condition will occure. The supporting affidavit must provide sufficient information to evaluate both aspect's of the probable cause determination. US v. Grubbs, 547 US 90, 96-97, 126 S. Ct. 1494 (2006).

Was there Probable cause to believe that contraband would be found in the Dodge Charger when the warrant was Issued?

Probable cause requires a nexus between the Items to be Seized and the place to be Searched. That nexus must exist at the time the warrant issues. Probable cause is established if, when the warrant is issued, the declarant has information that would cause a reasonably prudent person to believe that the items to be Seized will probably be found in the place to be Searched at the time the Search is

Conducted. Thus, the question here is; was there probable cause to believe that contraband would be found in the Dodge Charger when the warrant was Issued? State v. Goble, 88 Wn. App. 503, 511 (1997). If at the time of the issuance of the warrant there is reason to believe that evidence of criminal activity would be found at the place to be Searched at the time of the Search then there is probable cause for the Search.

To be Sufficient, an affidavit in Support of a Search warrant must "recite specific data as to time, place and magnatude of previous criminal activity." State v. Higby, 26 Wn. App. 157, 163 (1980). Here, there are no specific data as to time and place of the C/I's Controlled buy's in either warrant. Both warrant's recite multiple buy's but not dates or times. The first warrant States "during the initial debriefing", "throughout the investigation", "within the past 72 hours" See page 3 of Ex. A and again page 3-4 of Ex. B. So was the Past 72 hours prior to february 6th when the first warrant was issued or did the same exact actions occur within 72 hours of the february 13th warrant?

Mr. Cobb was arrested on febrauary 16, 2016 while driving the Dodge Charger. The test for Staleness of information in a Search warrant affidavit is common sense. State v. Worland, 20 Wash. App. 559, 582 P.2d 539 (1978). Comon Sense and comparing the two search warrants would lead to a conclusion that no further controlled buy's occured between feb. 6th and feb. 13th, therefore not only is the information in the Second Warrant Stale, it isn't even accurate. A Search warrant affidavit need not establish a prima facie case that criminal acts are occuring, only the probability of such activity. State v. Patterson, 83 Wash. 2d 49, 515 P.2d 496 (1973). It is not enough, however to set forth that criminal activity occured at some prior time. The facts or circumstances must support the reasonable probability that the criminal activity was occuring at or about the time the warrant was issued. Sgro v. United States, 287 US. 206, 53 S. Ct. 138, 77 L. Ed. 260 (1932). Therefore the warrant is not valid and the Search and seizure of evidence from Mr. Cobb and the Dodge Charger is illegal.

Should the Evidence obtained from the Search and Seizure Persuant to the Second warrant be Suppressed?

There was Stale probable cause as to drug activity of mr. cobb at the time of the issuance of the Second warrant. The only change as to his drug activity was the car he was driving and for an alleged assault with a vehicle which mr. cobb has not been charged. The evidence Should be suppressed because the warrant was based on Stale probable cause which makes the warrant. A court must suppress "all subsequently uncovered evidence [because Shuch evidence] becomes fruits of the poisonous tree." State v. Kinzy, 141, Wn.2d 373, 393, 5 P.3d 668 (2000). (quoting State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). In determining whether Specific evidence is or is not fruit of a tree poisoned by police misconduct, the question is not whether all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality,

the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means distinguishable to be purged of the primary taint". Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) (emphasis added) (quoting JOHN MacaRthur MAGUIRE, Evidence of Guilt 1 (1959), quoted in State v. Hicks, 76 Wash.2d 80, 81, 455 P.2d 943 (1969). All evidence discovered by the police as a result of an unconstitutional seizure is "fruit of the poisonous tree" and therefore constitutionally barred from admission. Kinzy, at 393.

Conclusion

There was stale probable cause as to drug activity of mr. Cobb at the time the second warrant was issued. The evidence obtained through that warrant as to mr. Cobbs drug charges should be suppressed.

Chet Cobb