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Court of Appeals
Division II
State of Washington
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NO. 50327-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

THEOTIS L. MOORE,

Appellant.

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

TRIAL COUNSEL'S FAILURE TO MOVE FOR SUPPRESSION OF EVIDENCE CONSTITUTED DEFICIENT PERFORMANCE BECAUSE THE SEARCH WARRANT FOR MR. MOORE'S HOME LACKED PROBABLE CAUSE.

Mr. Moore received ineffective assistance of counsel when his trial attorney failed to challenge the search warrant for his home and move for suppression of evidence. The warrant lacked probable cause and therefore was invalid. Failing to bring a motion to suppress evidence to challenge an invalid warrant cannot be explained as a legitimate tactic and constitutes deficient performance. *State v. Reichenbach*, 153 Wn.2d 126, 130-31, 101 P.3d 80 (2004).

In its briefing, the respondent argues trial counsel's performance was not deficient because there was no legal basis to challenge the search warrant in this case. "Here, as in *Wood* and *G.M.V.*, there was probable cause to search the defendant's home where the warrant was to search the place the defendant left from right before he sold drugs." Brief of Respondent, p. 11. However, this fact alone was insufficient to establish the requisite nexus between criminal activity and the apartment.

The warrant application must identify specific facts and circumstances from which the reviewing court can draw the required

inference that evidence of a crime will be found in the premises to be searched. *State v. Thein*, 138 Wn.2d 133, 147, 977 P.2d 582 (1999). Here, the affidavit contained no facts indicating where Mr. Moore went after he met with the confidential informant. There were also no facts in the affidavit suggesting Mr. Moore was seen transporting drugs to or from the apartment, no facts suggesting Mr. Moore stored drugs at the apartment and no facts suggesting Mr. Moore used the apartment to conduct drug deals or engage in illegal activity. The affidavit simply indicated Mr. Moore was seen leaving the apartment prior to driving his Cadillac Escalade to meet the confidential informant. Such facts would arguably support probable cause to justify a warrant for the search of Mr. Moore's Cadillac. However, without more, the facts were insufficient to support a finding that evidence of the crime would be found in the residence. To hold otherwise would mean law enforcement could establish probable cause to search a residence merely by directing an informant to call and arrange a drug deal so that the suspect could be seen leaving the place sought to be searched by officers. Trial counsel should have moved for suppression of evidence in this case.

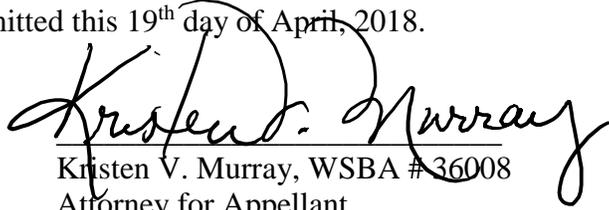
Failure to challenge an invalid search warrant is deficient performance. *State v. Reichenbach*, 153 Wn.2d 126, 130-31, 101 P.3d 80 (2004). In this case, all the evidence against Mr. Moore was obtained

because of the search of his home. Therefore, had his trial counsel challenged the warrant, the evidence would likely have been suppressed by the court. Counsel's failure to act clearly prejudiced Mr. Moore.

II. CONCLUSION

It is respectfully requested that this Court reverse Mr. Moore's convictions and remand his case back to the trial court.

Respectfully submitted this 19th day of April, 2018.


Kristen V. Murray, WSBA # 36008
Attorney for Appellant

DECLARATION OF SERVICE

I hereby declare that on April 19, 2018, I filed the Appellant's Reply Brief via Electronic Filing for the Court of Appeals for Division II and delivered via E-mail the same to:

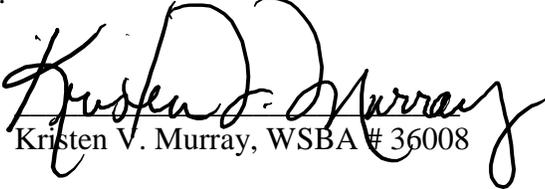
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I further declare that I delivered via United States Postal Service the same to:

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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated April 19, 2018.


Kristen V. Murray, WSBA # 36008

HART JARVIS MURRAY CHANG PLLC

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