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Court of Appeals
Division II
State of Washington
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NO. 50503-7

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CHARLES WILLIAMS JONES, JR., APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Elizabeth Martin

No. 16-1-04579-2

Amended Brief of Respondent (as to Citation Only)

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly exercise its discretion in denying the defendant's request for an in camera hearing when he failed to make the requisite showing of inconsistency?

B. STATEMENT OF THE CASE.

1. Procedure

On November 17, 2016, CHARLES WILLIAM JONES, hereinafter "defendant," was charged with four counts of unlawful possession of a firearm in the first degree, three counts of unlawful possession of a short barreled shotgun, two counts of unlawful possession of a controlled substance, and one count of violation of a no contact order. CP 1-4.

On April 12, 2017, the defendant filed a motion to suppress under CrR 3.6. CP 5-26. In his motion the defendant alleged that the search warrant issued was based solely on the sale of narcotics to a confidential informant—a sale that he denied occurred. *Id.* In its response, the State asserted that the defendant's general denial of the earlier narcotics purchase did not demonstrate that the warrant contained a reckless or intentional material omission. CP 27-68. The State further argued that the defendant's motion ignored the fact that \$979.00 in cash was found in his

motel room, along with two scales—evidence indicative of drug dealing, not personal use. *Id.*

On May 19, 2017, the trial court entered findings of fact and conclusions of law, finding in part that:

The primary issue raised by the defendant does not require the testimony of law enforcement officers because the defendant has not met his burden that would mandate that the Court order a hearing pursuant to *State v. Casal*, 103 Wn.2d 812 (1985).

CP 74-77.

The court further found that the defendant's affidavit denying having sold narcotics was insufficient to cast doubt on the veracity of the search warrant. *Id.* The trial court denied the defendant's motion to suppress.¹

On May 22, 2017, the defendant entered into a stipulated facts trial on the amended charges of four counts of unlawful possession of a firearm in the first degree, two counts of unlawful possession of a short-barreled shotgun and unlawful possession of a short-barreled rifle. CP 78-81. On May 23, 2017, the trial court found the defendant guilty of the amended charges.² The defendant filed a timely notice of appeal. CP 88-89.

¹ The defendant does not provide any verbatim reports of proceedings from the hearing below.

² The defendant does not provide any verbatim reports of proceedings for the stipulated facts trial below.

2. Facts

- a. The following facts are contained in the search warrant affidavit.³

Confidential Informant #1000 (hereinafter referred to as CI#1000) indicated to law enforcement that he/she knew of an individual who was selling black tar heroin in the Pierce County area. CI#1000 identified the heroin seller by the name "CJ." On November 14, 2016, CI#1000 arranged to purchase drugs from "CJ," who was staying in a motel room at the Calico Cat. An individual matching CJ's description was seen coming and going from the room as well as taking out the garbage. CI#1000 entered CJ's motel room and then returned to the police with an amount of heroin. CI#1000 stated that he/she had purchased the heroin from CJ. CI#1000 also reported that CJ had a pistol in his room and that he is a convicted felon. The heroin purchased from CI#1000 field tested positive.

- b. Additional Facts from Police Reports⁴

November 14, 2016, the search warrant was executed on the motel room. Inside the room was a large quantity of men's clothing, mail and documents in the defendant's name, equipment for making counterfeit credit cards, a box of ammunition, and four firearms. Three of the four

³ CP 27-68.

⁴ CP 112-113, exhibit #1.

firearms had altered barrels. Inside a backpack in the room was a hacksaw with fresh metal shavings. Also recovered were scales with heroin residue and \$979.00 in cash. Inside a bag in the room was a chunk of what appeared to be crack cocaine and a knife with black tar heroin on it. Medication in the defendant's name was also recovered.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE DEFENDANT'S REQUEST FOR AN IN CAMERA HEARING WHEN HE FAILED TO MAKE A SHOWING OF INCONSISTENCY.

Probable cause for a search warrant exists when the application for a search warrant contains facts and circumstances from which a reasonable person could infer that criminal activity is probably occurring, and that evidence of such activity will probably be found at the place to be searched when the search occurs. *State v. McGovern*, 111 Wn. App. 495, 499, 45 P.3d 624 (2002). It is only the probability of criminal activity and not a prima facie showing of it which governs the standard of cause. *State v. Patterson*, 83 Wn.2d 49, 55, 515 P.2d 496 (1973). The determination of whether there is probable cause to issue a warrant must be made by the issuing judge. *Id.* at 53. The determination of probable cause should be given great deference by reviewing courts. *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981), citing *Jones v. United States*, 362 U.S. 257,

270-271, 80 S. Ct. 725, 735-36, 4 L. Ed. 2d 697 (1960). Doubts should be resolved in favor of the validity of the warrant. *State v. Garcia*, 63 Wn. App. 868, 871, 824 P.2d 1220 (1993). Courts are to evaluate search warrants in a commonsense, practical manner, rather than in a hypertechnical sense. *State v. Perrone*, 119 Wn.2d 538, 549, 834 P.2d 611 (1992). Generally, issuance of a warrant is deemed proper if a reasonable, prudent person would understand from the facts contained in the affidavit that a crime has been committed, and evidence of the crime can be found at the place to be searched. *State v. Fisher*, 96 Wn.2d 962, 965, 639 P.2d 743, *cert. denied*, 457 U.S. 1137, 102 S. Ct 2967, 73 L. Ed. 2d 1355 (1982).

In situations where the defendant raises a reasonable doubt as to the veracity of the material representations made in the warrant, the trial court should exercise its discretion and hold an in camera hearing. *State v. Casal*, 103 Wn.2d 812, 699 P.2d 1234 (1985). In *Casal*, the police executed a search warrant of the Casal's home. *Id.* at 814. The warrant was based on a detective's affidavit stating that a confidential informant had been inside the home recently and observed marijuana growing and packaged for sale. *Id.* When officers executed the search warrant they discovered a marijuana grow operation and over 12 pounds of marijuana. *Id.*

Approximately three weeks after his arrest, an individual contacted Casal and indicated that he was the confidential informant in his case. *Id.* The informant told Casal that he had heard a rumor that Casal had a marijuana grow and reported it to the police. *Id.* Casal also alleged that the informant had told him that the police had directed the informant to trespass onto Casal's property to corroborate the suspicion, which the informant did, but he was unable to locate any marijuana. *Id.* Per Casal, the informant reported all of this information to the police. *Id.* Casal was unable to locate this informant after these disclosures were made. *Id.*

Relying on the information the informant provided him, Casal moved to suppress the seized evidence from his house. *Id.* Casal submitted his own affidavit as evidence. *Id.* at 815. Casal's affidavit specifically contradicted the officer's affidavit on a number of material points and included what the alleged informant specifically told him. *Id.* at 820. The court held that an in camera review should have been held, stating:

A more reasonable rule requires the trial court to exercise its discretion to order an in camera hearing where the defendant's affidavit casts a reasonable doubt on the veracity of material representations made by the affiant. Corroboration of the defendant's story is helpful but not necessary.

Id.

The present case is vastly distinguishable from *Casal*. In *Casal*, he alleged that the informant who had assisted the police had essentially recanted to him—evidence that directly contradicted the search warrant affidavit. An in camera review would allow the court to determine if the person who recanted to Casal was even the same confidential informant in the case. *Id.* at 821-822. In the case at bar, the defendant submitted an affidavit stating a general denial that the controlled buy ever occurred. It contains no alleged recantation of the informant, unlike the facts of *Casal*.

The court in *Casal* required that the court exercise its discretion and conduct an in camera review once the defendant had made a “minimal showing” of inconsistency. In this case, all that was alleged was a general denial, which is insufficient to meet such a showing. This case is analogous to *State v. Harris*, 44 Wn. App. 401, 722 P.2d 867 (1986). In *Harris*, a confidential informant reported to police that he/she had been inside Harris’s residence and observed Harris sell a large quantity of narcotics to a buyer. *Id.* at 402. The detective indicated that he had known the informant for 70 days and during that time the informant had given reliable information. *Id.* A search warrant was issued for Harris’s residence and evidence was recovered. *Id.* In an affidavit, Harris denied selling narcotics and questioned the existence of the informant. *Id.* at 403. Harris also presented testimony from several witnesses to support his

argument that the informant could not have observed him selling narcotics during the alleged time period. *Id.* The court held that Harris had not met his burden for an in camera hearing, holding in part:

However, the Washington Supreme Court in *State v. Casal*, 103 Wash.2d 812, 699 P.2d 1234 (1985), ordered an in camera hearing based on alleged conversations with the informant, that the affidavit supporting the search warrant contained material misrepresentations by the affiant.

Testimony of witnesses offered by Harris in support of his motion to require disclosure amounts to nothing more than a denial that any drug transaction could have taken place in Harris' residence during the time the informant is alleged to have witnessed such a transaction. This evidence attacks the informant's credibility or accuracy, but only by giving evidence to the contrary. There is nothing in the testimony that is material to the issue of the credibility of Detective Sgt. Joe Sanford, the officer who signed the affidavit.

We conclude that the testimony of the witnesses in support of Harris' motion, limited as it is to the probable cause issue, falls short of the substantial preliminary showing necessary to require an in camera hearing. . .

Id. at 405-406.

The present case is analogous to *Harris* and distinguishable from *Casal*. Like Harris, this defendant's affidavit merely attacks the informant's credibility by offering his own general denial. There is nothing in the defendant's affidavit that addresses Officer Heilman's affidavit. Because the defendant did not meet his minimal showing in this case, the trial court properly exercised its discretion in denying the request

for an in camera review. The defendant asserts in his opening brief that the trial court applied the incorrect standard when it found that the defendant's affidavit did not case doubt as to the veracity of Officer Heilman. Opening Brief, page 8. The standard the court applied, however, is the same standard discussed by the court in *Harris*—whether the defendant's allegations are material to the credibility of the officer who signed the affidavit for the search warrant. See *Harris*, 44 Wn. App. at 406. The trial court applied the correct standard and properly exercised its discretion in finding that the defendant failed to make a minimal showing that would require an in camera hearing.

D. CONCLUSION.

For the above stated reasons, the State respectfully requests that this court affirm and find that the trial court properly exercised its discretion when it found that the defendant did not make a minimal showing to warrant an in camera hearing.

DATED: January 5, 2018

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1/18 *J. Johnson*
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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