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Court of Appeals No. 53587-4-II

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

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MYRON L. WOODS, Jr.

Appellant,

and

STATE OF WASHINGTON,

Respondent.

**APPELLANT'S REPLY BRIEF**

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Appeal from Pierce County Superior Court No. 17-1-02461-1

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## I. INTRODUCTION

Myron L. Woods, Jr. was convicted by a Washington jury on April 8, 2019, of five counts of unlawful possession of a controlled substance, in violation of RCW § 69.50.401(1)(2), and two counts of unlawful possession of a firearm in the first degree, in violation of RCW § 9.41.401(1)(a). Felony Judgment & Sentence, August 9, 2019. He was sentenced as a “persistent offender” to life without the possibility of early release. *Id.*

Prior to the trial, the trial court committed numerous errors including 1) failing to grant Mr. Woods a *Franks* hearing and suppress the evidence gathered as a result of an unlawful warrant; 2) denying Mr. Woods’ *Knapstad* motion to dismiss the deadly weapon enhancement and persistent offender classification, where there was insufficient evidence to support the enhancements; and 3) denying Mr. Woods’ motion to sever. Mr. Woods timely filed a Notice of Appeal and Appellant’s Opening Brief, alleging these errors. The State of Washington filed a Response on August 3, 2020, to which Mr. Woods files this timely Reply.

## II. ARGUMENT

### **A. The Trial Court Should Have Granted the Suppression Motion and a *Franks* Hearing**

The State appears to agree that the police must establish Probable Cause before obtaining a Trap and Trace order as it begins its response by arguing that Probable Cause supported issuance of the Trap and Trace Order. Respondent's Brief p. 10. It argues that the order obtained by Detective Shaviri for the cell phone location "was the functional equivalent of a search warrant" and cites to *State v. Garcia-Salgado*, 170 Wn.2d 176, 186, 240 P.3d 153 (2010), in arguing that a court order may function as a warrant so long as it meets constitutional requirements.

However, that is not the issue at bar. Detective Shaviri obtained a warrant. The issue is whether Detective Shaviri obtained the warrant after making a false statement in the affidavit for search warrant. When a defendant makes a substantial preliminary showing that such a false statement was made, knowingly and intentionally, or with reckless disregard for the truth, and when that alleged false statement is

necessary to the finding of probable cause, a hearing into the allegation of false statement must be held. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

Therefore, the question for the trial court, and for this court, is whether the information Detective Shaviri withheld was necessary to the finding of probable cause. As discussed in Appellant's Opening Brief, the basis of the probable cause for the Trap and Trace was the suspicion that Mr. Woods was not living where he claimed to be living. However, a log of the detective's attempts to contact Mr. Woods revealed that Detective Shaviri had verified his address well over a year before the warrant was issued, that they made no further attempts to contact him for well over a year, and during the time they were attempting to contact him, he was in constant contact with the Department of Corrections. Appellant's Opening Brief p. 10. It is Mr. Woods' position that these facts, if presented in the affidavit for search warrant, would have negated the probable cause finding and, therefore, were deliberately left out. As such, the deliberate omissions create a knowing and

intentional, or with reckless disregard for the truth, false statement within the affidavit for search warrant. *See, Franks.*

The State admits that this information was omitted from the affidavit for search warrant, however it claims that these omissions were “extraneous and unnecessary to the determination of probable cause”. Respondent’s Brief p. 17. However, to establish probable cause, the affidavit must set forth sufficient facts to convince a reasonable person of the probability of criminal activity. *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012). It must set forth enough of the underlying circumstances that the magistrate can independently judge both the validity and the veracity of the affiant’s conclusions. *Id.*; *State v. Fisher*, 96 Wn.2d 962, 639 P.2d 743 (1982).

An omission or false statement may invalidate the warrant if it is material and made intentionally or with reckless disregard for the truth. *State v. Chenoweth*, 127 Wn. App. 444, 111 P.3d 1217 (2005), *aff’d*, 160 Wn.2d 454, 456, 158 P.3d 595 (2007). When, as here, a defendant makes a substantial preliminary showing of such an omission or false statement, the

trial court must hold a hearing. *Id.* If the defendant establishes his allegations by a preponderance of the evidence at that hearing, the material misrepresentations will be stricken and the material omissions will be added. *Id.* If, once those changes are made, the affidavit no longer supports a finding of probable cause, the warrant is void and the evidence obtained will be excluded. *Id.*; see also *State v. Clark*, 143 Wn.2d 731, 751, 24 P.3d 1006 (2001).

Contrary to the State's argument, Mr. Woods did not need to prove that the omission was knowing and intentional, or with a reckless disregard for the truth, by a preponderance of the evidence. See, *State v. Thetford*, 109 Wn.2d 392, 745 P.2d 496 (1987). He simply needed to make allegations, with specificity, of material deliberate falsehood or omissions. *Id.* Once that challenge was made, he was entitled to a *Franks* hearing. *Id.*

**B. The Trial Court should have suppressed all evidence of controlled substances and firearms as they were “fruits of the poisonous tree”.**

The State argues that Detective Shaviri had probable cause to arrest Mr. Woods “based on the investigation consisting of 15 unsuccessful attempts to verify [sic] at his residence even before the trap and trace order was obtained.” Respondent’s Brief p. 23. This, however, ignores the fact that Detective Shaviri *had confirmed Mr. Woods’ address more than a year before the trap and trace order*. Therefore, commonsense dictates that the alleged probable cause for Mr. Woods’ arrest could not be based upon that investigation, but based upon the results of the trap and trace, which, if the trap and trace order is invalid would make the arrest invalid and all evidence found on Mr. Woods’ lap would be “fruit of the poisonous tree”.

Notably, the State only discusses in its brief the alleged controlled substances found on Mr. Woods’ lap at the time of his arrest. Respondent’s Brief p. 21-23. The State claims that Mr. Woods did not have an expectation of privacy because the substances were seen on his lap “in open view” when the police approached his vehicle. Respondent’s Brief p. 23. It, however,

affirmatively fails to address the substances and firearms that were found *inside the residence located at 13604 Waller Rd. E.* Thus, even if the State were correct that Mr. Woods did not have an expectation of privacy regarding the substances seen in his lap while he was sitting in his vehicle, that same lack of expectation of privacy does not extend to substances found in a kitchen or bedroom, or tucked in the cushions of a couch and chair. See Appellant's Opening Brief p. 11.

**C. The Trial Court should have granted the *Knapstad* motion, as there was insufficient evidence of possession of a firearm in connection with possession of controlled substances.**

As discussed above, the firearms and controlled substances were not found on Mr. Woods person, but were found pursuant to a search of a property allegedly rented by Mr. Woods at 13604 Waller Road. Because the police had evidence that Mr. Woods had leased the property, it was *assumed* that it was his residence and *assumed* that placed the substances and firearms where they were placed, however there was no evidence showing that to be true, therefore there was no evidence that he was

armed with those firearms at the time that he possessed the controlled substances. RCW § 9.94A.602. *See, e.g., State v. Valdobinos*, 122 Wn.2d 270, 858 P.2d 199 (1993) (rifle found pursuant to search warrant after individual arrested, court found there was no indication that individual had been near the location where the rifle was found while engaged in a criminal act, nor was there any evidence to show that he was “armed” in the sense of having the rifle accessible and readily available for offensive or defensive purposes).

There was no evidence to support the *assumption* that the location was Mr. Woods’ residence. Mr. Woods was not seen at the residence on a regular basis, rather there was testimony that his *car* was spotted at the address on Waller Road on or about June 21, 2017. RP 345. The car was then seen leaving the residence on June 27, 2017 and was followed by surveillance units. RP 376; 511-12. Surveillance officers were not able to see who was driving the car when it left the house. RP 376; 448; 567. After approximately 15 minutes where all of the surveillance units lost visuals of the car, Mr. Woods was seen inside the driver’s seat. RP 376-83; 447. However, because there

was a period of time of approximately 15 minutes where the police lost sight of the vehicle, there is no evidence to support the assumption that Mr. Woods was the person who left the residence and got into the car. Additionally, there were no fingerprints taken linking Mr. Woods to the house. RP 457; 530. Nor was any DNA evidence presented.

Further, while Dan Smith testified that he rented the house to Mr. Woods, RP 722, there were no documents found in the residence that suggested Mr. Woods rented the outbuilding at Waller Road. RP 460. Further, Mr. Smith testified that there was no written lease. RP 723. Additionally, Mr. Smith testified that he paid the electrical bills for the house and there were no other utilities a tenant would be responsible for. RP 728-29. Thus, aside from Mr. Smith's testimony, there is no independent proof that he rented the house to Mr. Woods.

Additionally, there was testimony that the detectives found both men's and women's clothing in the residence, as well as both men's and women's shoes. RP 479-80. This implies that there were at least two individuals living in the residence at the time of the search. The clothing was not seized as evidence, nor

were the sizes noted. RP 526. As a result, it is unknown if the clothing found would even fit Mr. Woods and the State failed to present evidence to support the *assumption* that the clothing belonged to Mr. Woods.

Further, the address in question is not visible from the street but was an outbuilding from a main house: “like an A-frame, almost looks like a barn. And it was a barn converted into a residence, and it has a detached carport next to it.” RP 361. Police testified that they saw Mr. Woods’ car at the house and saw a man they believed to be him driving it away from the location. Mr. Smith, his purported landlord, was unable to definitively testify as to how often he saw Mr. Woods on the property:

Kind of a hard question to answer. I don’t know. I mean, back then, I worked. I worked swing shift. Sometimes I’d see him. Sometimes I’d go days without seeing him. Doesn’t mean he wasn’t ot [sic] there. And whenever someone is renting from me, I leave them alone. I’m not looking out the window and counting how many times they come and go. RP 724.

Additionally, Mr. Smith testified that he allowed a friend of Mr. Woods named Tony to live in the house for a few weeks. RP 725. He testified that this individual named Tony “had an arrangement” with Mr. Woods, but he was not aware of the details of that arrangement. RP 728. Other than Tony, he was not aware of anyone else living there, including any women. *Id.* He also testified that while he gave Mr. Woods a key to the house, he also maintained a key, and he was not sure if Tony was given a key. RP 731.

There is very little evidence to support a nexus between Mr. Woods and the home in question. He has no lease, no utilities, and there were no documents found in the home indicating he received mail there. Additionally, there were *at least* 3 other people with access to the home at the time he was allegedly residing there (Mr. Smith, Tony, and the women whose clothes were in the closet). Instead of addressing the facts of this case and the lack of nexus between Mr. Woods and the firearms and substances found in the apartment, the State focuses on the procedural rule, arguing that the sentencing enhancements are

not subject to dismissal under Wash. CrR 8.3(c) unless the underlying charge is also dismissed.

## V. CONCLUSION

For the foregoing reasons, Mr. Woods respectfully asks the Court to vacate his convictions and remand the case to the trial court.

Respectfully submitted this 28th day of August, 2020.

THE APPELLATE LAW FIRM



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**CERTIFICATE OF SERVICE**

I, Erin Lindsay Calkins, certify under penalty of perjury under the laws of the United States and of the State of Washington that on August 28, 2020, I caused to be served the document to which this is attached to the parties listed below via email.

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APPELLANT'S REPLY BRIEF

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