

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

FILED
Dec 30, 2015
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Respondent,

v.

BRENT DOUGLAS REEDY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR YAKIMA COUNTY

The Honorable Judges Michael McCarthy and Blaine Gibson

APPELLANT'S REPLY BRIEF

JILL S. REUTER, Of Counsel
KRISTINA M. NICHOLS
Nichols Law Firm, PLLC
Attorneys for Appellant
P.O. Box 19203
Spokane, WA 99219
(509) 731-3279
Wa.Appeals@gmail.com

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A. INTRODUCTION

Appellant Brent Douglas Reedy accepts this opportunity to reply to the State's brief. Mr. Reedy requests that the Court refer to his opening brief for issues not addressed in this reply.

B. ARGUMENT IN REPLY

1. The trial court should have suppressed the evidence seized from Mr. Reedy's shop pursuant to the search warrant, because the affidavit does not provide probable cause to issue the search warrant for the home and the shop.

This argument pertains to Issue 2 raised in Mr. Reedy's opening brief. Mr. Reedy argues this Court should find the trial court should have suppressed the evidence seized from Mr. Reedy's shop pursuant to the search warrant, for want of probable cause. *See* Appellant's Opening Brief pgs. 19-24.

In its response brief, the State argues the proper standard of review is abuse of discretion. *See* State's Brief pgs. 7, 11-12. However, the proper standard of review is *de novo*. The issue here is whether the information set forth in the affidavit establishes probable cause for the issuance of the search warrant for Mr. Reedy's home and shop. The existence of probable cause is a legal question which the reviewing court considers *de novo*. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007); *see also State v. Davis*, 182 Wn. App. 625, 630-31, 331 P.3d 115 (2014); *State v. Ellis*, 178 Wn. App. 801, 327 P.3d 1247, 1249, *review denied*, 180 Wn. 2d 1020, 353 P.3d 641 (2014).

In *Davis*, this Court explained the proper standard of review for a challenge to a probable cause determination in the context of a search warrant:

Review of a probable cause determination has a historical fact component and a legal component. On matters of historical fact finding, we apply an abuse of discretion standard when reviewing a magistrate's decision on whether information provided in the warrant is reliable and credible. Then, for the legal component, we apply *de novo* review to determine whether the qualifying information as a whole amounts to probable cause. We consider only the information that was available to the issuing magistrate.

Davis, 182 Wn. App. at 630-31 (citations omitted).

Accordingly, Mr. Reedy requests this Court review the trial court's probable cause determination *de novo*. See *Chamberlin*, 161 Wn.2d at 40; *Davis*, 182 Wn. App. at 630-31; *Ellis*, 178 Wn. App. 801, 327 P.3d at 1249.

In order for an affidavit to establish probable cause, it "must set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched." *State v. Lyons*, 174 Wn.2d 354, 360, 275 P.3d 314 (2012) (citing *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004)). "[P]robable cause requires 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.'" *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)).

The State argues there is the requisite nexus between the item to be seized (narcotics) and the place to be searched (Mr. Reedy's home and shop)

based upon the following facts set forth in the search warrant affidavit: (1) “Mr. White was found to be in company [sic] of [Mr.] Reedy an individual who lives *near the location* of where [Mr.] Templeman stated Mr. White was going to purchase drugs . . .” and (2) Mr. Reedy’s history of arrests for drug offenses. State’s Brief pgs. 10-11 (emphasis added). The State further argues “Mr. White was not found on the street in his truck buying those drugs which would allow the inference that the purchase was from *a home*[.]” State’s Brief pg. 11 (emphasis added).

Contrary to the State’s arguments, the search warrant affidavit does not provide sufficient facts to infer Mr. Reedy has narcotics evidence in his home or shop, because there is no evidence of a connection between drug sales and Mr. Reedy’s home. (CP 28-32).

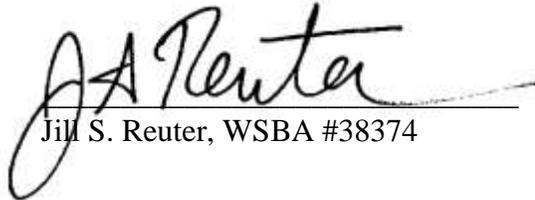
The fact that Mr. Reedy “lives *near the location* of where [Mr.] Templeman stated Mr. White was going to purchase drugs . . .” does not support an inference that evidence of criminal activity will be found in Mr. Reedy’s home. State’s Brief pgs. 10-11 (emphasis added); *see also State v. G.M.V.*, 135 Wn. App. 366, 369, 372, 144 P.3d 358 (2006); *State v. Maddox*, 116 Wn. App. 796, 804, 67 P.2d 1135 (2003); *State v. McGovern*, 111 Wn. App. 495, 499-500, 45 P.3d 624 (2002) (*quoting* Wayne R. LaFave, *Search and Seizure*, § 3.7(d), at 378-79 (3d. ed. 1996)). Furthermore, Mr. Reedy’s history of arrests for drug offenses also not support an inference that evidence of criminal activity will be found in Mr. Reedy’s home. *See McGovern*, 111 Wn. App. at 499 (citing *Thein*, 138 Wn.2d at 151).

Finally, the State appears to argue that Mr. Templeman acted as an informant and provided information to the police, and that his tips meet the requirements of the *Aguilar-Spinelli* test for whether informants' tips set forth in an affidavit establish probable cause for the issuance of the search warrant. State's Brief pgs. 12-14; *see also State v. Jackson*, 102 Wn.2d 432, 435, 688 P.2d 136 (1984) (stating the *Aguilar-Spinelli* test). However, even assuming, without conceding, that the *Aguilar-Spinelli* test is met here, the information Mr. Templeman provided to Officer Bensen still does not establish probable cause to issue a search warrant for Mr. Reedy's home and shop. (CP 28-32). Mr. Templeman told Officer Bensen "he did not know exactly which house [Mr. White] was going to. . ." and "[Mr. White] went around the corner to purchase methamphetamine. . . ." (CP 28-29, 31). This information does not identify Mr. Reedy's home or shop as involved in illegal drug activity. (CP 28-29, 31). Therefore, it does not establish a nexus between the item to be seized (narcotics) and the place to be search (Mr. Reedy's home and shop), as required for a determination of probable cause. *See Thein*, 138 Wn.2d at 140 (quoting *Goble*, 88 Wn. App. at 509).

C. CONCLUSION

Based upon the arguments set forth above and those set forth in Mr. Reedy's opening brief, his convictions should be reversed and the charges dismissed with prejudice.

Respectfully submitted this 30th day of December, 2015.


Jill S. Reuter, WSBA #38374

/s/ Kristina M. Nichols
Kristina M. Nichols, WSBA #35918
Attorneys for Appellant Mother

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 33033-8-III
vs.)
BRENT DOUGLAS REEDY) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Jill S. Reuter, of counsel for Nichols Law Firm, PLLC and Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on December 30, 2015, I mailed by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the attached Appellant's Reply Brief to:

Brent Douglas Reedy
2017 S. 4th Avenue
Union Gap, WA 98903

Having obtained prior permission from the Yakima County Prosecutor's Office, I also served the Respondent State of Washington at appeals@co.yakima.wa.us using Division III's e-service feature.

Dated this 30th day of December, 2015.


Jill S. Reuter, Of Counsel, WSBA 38374
Nichols Law Firm, PLLC
PO Box 19203
Spokane, WA 99219
Phone: (509) 731-3279
Wa.Appeals@gmail.com