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Judge OKs trial in lawsuit against Federal Way police

A federal judge has let a civil-rights lawsuit against Federal Way go forward, finding evidence that detectives may have falsified information for a search warrant during a murder investigation.

By Mike Carter

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A federal judge has refused to dismiss a lawsuit accusing Federal Way police detectives of falsifying and manufacturing evidence to obtain search warrants for a person of interest in the 2008 slaying of an elderly woman found in the trunk of her car at a nursing home.

A nursing-home employee was later arrested and convicted of the murder of 75-year-old Jane Britt, but not before detectives initially focused on Randall Fontana.

Fontana filed a civil-rights lawsuit in 2011 alleging that police used questionable evidence to obtain warrants to search his house, obtain his DNA and seize his car. Fontana also says police used excessive force and chained him to a bench at the police station for several hours during the investigation, according to the lawsuit.

In a major victory for Fontana, U.S. District Judge Richard A. Jones ruled earlier this week the case can proceed to trial, denying a defense motion to dismiss the suit.

Jones on Wednesday found Fontana had “made a substantial showing” in questioning “whether detectives deliberately or recklessly made false statements or omissions” to a judge in obtaining the warrants.

Without those statements, Jones said, police could not have obtained the warrants at all.

Fontana’s allegations that police used excessive force when they confronted him also will be allowed to go to a jury.

Jones set the case for trial March 3. He dismissed several other claims, including one alleging police denied Fontana medical attention.

“We got what we wanted,” said Fontana’s attorney, Dan Fiorito III. “This is about the power of the police and the authority they have. A jury will get to look at the facts of this case and decide whether what happened is right or wrong. The police think it’s OK.”

The attorney representing Federal Way, Thomas Miller, declined to comment except to say that, at this stage of the proceedings, the court is required to look at the evidence in a light favorable to the plaintiff.

In court filings and depositions, Federal Way police have said they followed procedure and did nothing wrong during the investigation.

According to court documents, the body of Britt was found March 19, 2008, in the trunk of her Mercedes-Benz in the parking lot of the Garden Terrace Alzheimer's Center of Excellence, where her husband was a patient. She had been beaten, strangled and her neck was broken.

She had fought her assailant, according to police, who found skin beneath her fingernails.

Fontana, whose father was also a patient at Garden Terrace, quickly became a person of interest. Staff at the nursing home said he complained regularly, acted suspiciously and had once approached Britt, who had told him to leave her alone. One employee described him as "creepy," according to court documents.

On March 21, two Federal Way detectives, Brian Lauer and Douglas Laird, went to Fontana's home. On their way to the front door, they walked by his car in the driveway, where they "observed a number of items that could have been evidence in the Jane Britt homicide investigation," according to court documents.

The items included a bungee cord with a hair wrapped around it, a pair of tennis shoes, a notebook bearing the license numbers of cars in the nursing-home parking lot and the words "edies Benzs," which the detectives believed was a misspelling of "Mercedes-Benz," the type of car driven by Britt.

The detectives went to the door, but Fontana did not answer.

They spoke to several neighbors, one of whom reportedly said Fontana was unusual, that people were scared of him and that he "comes across as a violent person" according to documents filed by Federal Way. The neighbor said that another neighbor had seen Fontana once strike one of his brothers with a shovel.

The warrant also alleged that his behavior had been more "subdued" since the homicide and that Britt had been "upset" after a meeting with Fontana within two weeks of the killing.

Jones, the federal judge, said in his ruling that there is reason to believe that those statements are not true. Indeed, one allegation in the warrant — that Fontana had hit one of his brothers with a 2-by-4 — appeared to be "created out of whole cloth," the judge found.

Moreover, the lawsuit alleges detectives omitted positive information about Fontana relayed by the same neighbor.

On March 24, police obtained a second warrant — partly based on evidence presented in the first warrant for his car — to search Fontana's home, his other vehicles and to obtain a DNA sample.

By this time they knew none of the material taken from his car had been linked to the crime, but did not relay this to the judge who signed the warrant, according to the lawsuit.

The morning of March 24, when Fontana came out of his house for work, he was swarmed by detectives and officers. One, Thaddeus Hodge, had his firearm drawn and ordered Fontana to the ground.

Fontana, according to court documents, asked for some time to comply because of a bad back. In response, Hodge "shoved his foot into Fontana's back and twisted his arms, while Detective Lauer put him in an 'arm-bar'" and took him forcibly to the ground, according to Judge Jones' order and other court documents.

The only allegation Federal Way did not ask Jones to dismiss involved the allegation of excessive force.

Fontana was handcuffed and taken to Federal Way police headquarters, where he claims another officer squeezed his groin so hard that it injured one of his testicles. Fontana claims he was handcuffed to a bench for more than four hours.

While police dispute the amount of time he was there, they acknowledge he was held and handcuffed while they searched his home.

Federal Way maintains that, throughout all of this, Fontana was never a suspect and was never under arrest. Fontana points out the department's own expert witness called in to review the case — interim Seattle Police Chief Jim Pugel — said he was.

Jones, in his ruling, questioned the Federal Way detectives' training in executing warrants and allowed Fontana's claim of false arrest to go to the jury.

About two weeks after Britt's body was found, police arrested Joseph Njonge, a nursing assistant at Garden Terrace, after they learned his DNA matched skin found underneath Britt's fingernails and found Britt's husband's Costco card in his wallet.

He was convicted of second-degree murder and sentenced to more than 16 years in prison.

However, Njonge's conviction was overturned in 2011 by the state Court of Appeals, which ruled he had been denied his constitutional right to a public trial when a King County Superior Court judge closed the courtroom during a portion of jury selection because of limited space.

The prosecutor's office has appealed that ruling, and the appeal is set for arguments before the state Supreme Court next month.

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