

NO. 46084-0-II

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

STATE OF WASHINGTON,

Appellant,

v.

DAVID E. BLISS,

Respondent.

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

The Honorable Brian Altman, Judge

RESPONDENT'S BRIEF

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A. ISSUE

Whether it was within the authority of a Skamania County district court judge to approve the interception and recording of a one-party consent telephone call made from Skamania County to Clark County, Washington?

B. STATEMENT OF THE CASE

The State charged David Bliss with five counts of felony offense Rape of a Child in the First Degree.¹ CP 1-4. Thereafter, Bliss moved to suppress all evidence attendant to a recorded phone call placed by law enforcement from the Skamania County Sheriff's Office to Bliss on his hardline phone at his home in Amboy, Clark County, Washington. CP 5-28. During the call, Bliss spoke to C.B., his alleged victim. Bliss was not aware law enforcement was listening to or recording the phone call.

The authorization to record the call came from Skamania County District Court Judge Ronald Reynier pursuant to RCW 9.73.090(2). See Appendix for full text of statute. In his authorization request, Sergeant Monty Buettner told the court there was probable cause to believe Bliss had committed the crime of Rape of a Child in the First Degree and that C.B. consented to the recording of the call. CP 26-27.

¹ RCW 9A.44.073

After hearing argument, the trial court granted Bliss's motion and suppressed the recorded call and "all of its attended details."² RP 2/13/14 at 1-39; RP 2/27/14 at 2-11. The trial court held Judge Reynier, acting in his capacity as a district court judge, had no authority to grant an intercept order and the one-party consent recording of a private phone call placed to and received in a county outside of the court's limited jurisdiction. RP 2/27/14 at 4-11. The court later entered written findings of fact and conclusions of law.³ CP 85-87.

The State moved for reconsideration. CP 69-78. The trial court denied the request. RP 4/17/14 at 2-25.

With charges still pending trial, the State filed a Motion for Discretionary Review to this court. The court granted the motion.

C. ARGUMENT

THE INTERCEPTION AND RECORDING OF THE PHONE CALL WAS INVALID BECAUSE JUDGE REYNIER, A SKAMANIA COUNTY DISTRICT COURT JUDGE, HAD NO AUTHORITY TO ISSUE AN INTERCEPT ORDER FOR A FELONY OFFENSE OR FOR A CALL RECEIVED OUTSIDE SKAMANIA COUNTY.

Under Washington Constitution, Article 4, Sections 1, 10, and 12, the legislature has the authority to create inferior courts in this state and to

² quote found at RP 2/27/14 at 8

³ The State did not object to any of the findings of fact in its Brief of Petitioner. Consequently, all the findings of fact are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

determine the powers, duties, and jurisdiction of those inferior courts that the legislature creates. *Young v. Konz*, 91 Wn.2d 532, 541, 588 P.2d 1360 (1979). These three constitutional provisions state as follows:

The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

The legislature shall ... prescribe by law the powers, duties and jurisdiction of the justices of the peace....

The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance to this Constitution.

Washington Constitution, Article 4, Section 1, 10 (in part), and 12.

In *State v. Davidson*, 26 Wn. App. 623, 613 P.2d 564 (1980), *rev. dismissed*, 94 Wn.2d 1020 (1981), the court of appeals had the opportunity to review these constitutional provisions when it was called upon to decide whether or not a district court judge from one county had the authority to issue a warrant to search a location in another county. A King County district court judge issued a warrant to search a home in Snohomish County. Upon execution of the warrant, the police found evidence to support a charge of possession of a controlled substance with intent to deliver. However, the defendants successfully brought a motion to suppress all of the evidence upon an argument that a district court judge from one county has no authority to issue a warrant to search a home in

another county. The state then appealed, arguing that (1) under RCW 69.50.509 the legislature had given district court judges from one county the authority to issue warrants to search locations in another county, and (2) under the Justice Court Criminal Rules, the Washington Supreme Court had given district court judges from one county the authority to issue a warrant to search locations in another county.

In addressing the argument, the court first noted that under RCW 3.66.060 and RCW 3.66.100, the Legislature had limited the territorial jurisdiction of district court judges to matters that occur in the county in which they are elected. The court notes as follows:

The boundaries of the county ordinarily define a district court's territorial jurisdiction in criminal matters. RCW 3.66.060. For the issuance of criminal process, the legislature has expanded this jurisdiction to the entire state if the district court has the authority to hear the case. RCW 3.66.100. It is undisputed that the crimes alleged in this case occurred entirely outside King County and can not be prosecuted there. RCW 3.66.060. Without the authority to hear the matter, the Seattle District Court had no jurisdiction under RCW 3.66.100 to issue a warrant to search premises in Snohomish County.

Davidson, 26 Wn. App. at 625.

The court then went on to reject the argument that RCW 69.50.509 constituted a legislative grant of authority for district court judges to issue search warrants outside the county in which they are elected. The court noted,

The only other relevant statute brought to our attention is applicable to alleged violations of the Uniform Controlled Substances Act, RCW 69.50.509. It provides in part:

If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, justice of the peace, district court judge or municipal judge that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him to search the premises designated and described in such complaint and warrant, . . .

The jurisdiction of courts of limited jurisdiction must clearly appear in a statute. *See McCall v. Carr*, 125 Wash. 629, 216 P. 871 (1923). Statewide territorial jurisdiction does not clearly appear in RCW 69.50.509. It is silent on that question. It merely authorizes courts to command “any law enforcement officer of the state” to search, and it does not address the question of the territorial limits on the court’s authority to order a search.

Davidson, 26 Wn. App. at 625- 626.

Finally, the court held that under Washington Constitution, Article 4, Sections 1, 10, and 12, the legislature has the sole authority to determine powers, duties, and jurisdiction of the inferior courts that it creates. Thus, the Court of Appeals found that even if the Justice Court Criminal Rules did give the district court judges the authority to issue extra-territorial search warrants, such a grant of authority would be invalid

under Washington Constitution, Article 4, Sections 1, 10, and 12. The court noted:

The State contends that the Justice Court Criminal Rules authorize statewide execution of a search warrant issued by a justice court. JCrR 2.10 and JCrR 3.13. This reading is logical because JCrR 3.13 authorizes the issuance of “criminal process to any person anywhere in the state” and JCrR 2.10 authorizes the issuance of search warrants. A search warrant is a form of process. *State v. Noah*, 150 Wash.187, 272 P. 729 (1928). We, however, reject this contention because it attempts to enlarge the statutorily created territorial jurisdiction of the justice courts in violation of the state constitution. Under Const. Art. 4, §§ 1, 10 (amendment 65) and 12, the legislature has the sole authority to determine the powers, duties and jurisdiction of justices of the peace and such other inferior courts as the legislature may establish. *Young v. Konz*, 91 Wn.2d 532, 588 P.2d 1360 (1979).

Davidson, 26 Wn. App. at 626 (footnote admitted).

The ruling in *Davidson* controls the decision in Bliss’s case.

In addition, the trial court properly suppressed the recorded call and all circumstances attendant to the call because a district court judge lacks broad authority to issue an order permitting law enforcement to intercept and record calls based only on one-party consent when the call would be placed to a county other than the county where the authorizing district court judge sits. On an initial review, RCW 9.73.030(2) seems to provide broad authority for a district court judge to issue an intercept order.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record,

or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, *That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate,⁴ who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony:* PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

(emphasis in italics) However, RCW 3.66.100(1) puts limits on a district court judge's ability to authorize criminal process to any place in the state:

Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

That limitation left Skamania County District Court Judge Reynier with no authority to authorize an intercept order of a call made to a person outside of Skamania County. The legislature has not given district court judges the authority to "hear" the particular crime alleged in this case because it is a felony offense. RCW 3.66.060, provides, "The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective

⁴ A "magistrate" is a district court judge. RCW 2.20.020

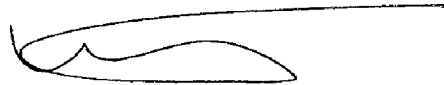
counties and of all violations of city ordinances.” No statute similarly gives a district court judge authority to hear felony crimes. The Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) does give district courts limited authority to conduct preliminary hearing on felonies. But as argued above, such rules are not legislative grants and do not provide any constitutional authority for district court to act.

The trial court properly suppressed the intercepted call and all attendant circumstances. *State v. Fjermedstad*, 114 Wn. 828, 791 P.2d 897 (1990).

D. CONCLUSION

The trial court’s suppression of all evidence seized as a result of the unlawfully intercepted and recorded phone call should be affirmed.

Respectfully submitted this 13th day of February 2015.



LISA E. TABBUT/WSBA #21344
Attorney for Respondent David E. Bliss

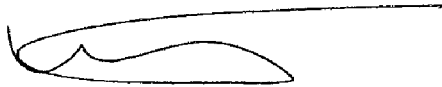
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled Appellant's Brief to: (1) Adam Kick, Skamania County Prosecutor's Office, at kick@co.skamania.wa.us; (2) the Court of Appeals, Division II; and (3) I emailed it to David Bliss.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed February 13, 2014, in Longview, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for David E. Bliss

COWLITZ COUNTY ASSIGNED COUNSEL

February 13, 2015 - 3:10 PM

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