

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

NO. 35379-2-II

STATE OF WASHINGTON

Respondent,

vs.

ADRIAN PEREZ, Sr.,

Appellant.

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
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BY [Signature]

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 06-1-00104-0

BRIEF OF RESPONDENT

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ORIGINAL

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ISSUES

1. Did the trial court err by denying Mr. Perez's motion to suppress evidence discovered following a search of the locked trunk of his car?
2. Did the trial court err by concluding that controlled substances discovered in the passenger compartment of the car provided probable cause to search the locked trunk?
3. Did the search warrant affidavit fail to establish probable cause to search the locked trunk of Mr. Perez's car?
4. Did the search warrant affidavit fail to establish that the evidence sought would fit within the locked trunk of Mr. Perez's car?
5. Did the search violate Article I, Section 7 of the Washington State Constitution?
6. Did the state fail to establish that the officers would have sought a search warrant even if they hadn't already searched the trunk and discovered contraband?
7. Did the state fail to establish that the "independent source" doctrine applied?

STATEMENT OF THE CASE

Procedural History

Adrian Perez, Sr. was charged with one count of unlawfully and feloniously manufacturing a controlled substance (methamphetamine) under RCW 69.50.401(1). After an evidentiary hearing, the court denied Mr. Perez's CR 3.6 motion to suppress on Aug. 17, 2006. At a bench trial on Sept. 29, 2006, Mr. Perez was found guilty. Mr. Perez filed his notice of appeal on Sept. 29, 2006.

Statement of Facts

Around 8:00 PM on May 30th, 2006, Jefferson County Sheriff's Deputy Pernsteiner was patrolling the Irondale area when he noticed the defendant driving a Chevrolet Cavalier with registration tabs showing 3/04 and with a temporary tag in the rear window that appeared to have expired on May 9, 2006. As he got behind the car it immediately turned into a driveway on East Moore Street. Deputy Pernsteiner then conducted a traffic stop and advised the defendant why he had been stopped. The defendant replied that he had borrowed the car and was unable to produce any information. The defendant was sweating, appeared very nervous, and made furtive movements inside the car. The defendant told Deputy Pernsteiner his name, gave a date of birth, and opined that he thought his license was suspended. Dispatch then advised that defendant was driving

while license suspended/revoked and that he had an outstanding felony and misdemeanor warrant. The defendant was then placed under arrest. Supp. CP, Affidavit for Search Warrant, 2nd page. While searching the defendant pursuant to arrest Deputy Pernsteiner found a small baggie of white powder in his trouser watch pocket. Deputy Pernsteiner then advised defendant of his Miranda rights and received affirmation that he understood them and was willing to speak with him. The defendant admitted that the white powder was methamphetamine.

Jefferson County Deputy McCarty then assisted Deputy Pernsteiner in searching the car incident to the arrest. A small digital scale was found on the passenger side floor. A baggie containing several used hypodermic needles was found in the glove compartment. This baggie also contained several filters which appeared to McCarty as having been used to manufacture methamphetamine. There was a strong chemical odor about the bag. One of the filters in the bag contained several white crystals that field tested positive for methamphetamine. In the back seat area the Deputies found a quantity of coffee filters and a new, unused, coiled length of plastic hose. Supp. CP, Affidavit for Search Warrant, 2nd page. During the search of the car the defendant appeared to be very nervous.

After completing the search of the vehicle incident to arrest, Deputy McCarty initiated an inventory search of the trunk for the impound. As he opened the trunk both he and Pernsteiner observed a cardboard box containing several plastic two liter bottles with different liquids inside. One had an orange liquid and one other had a clear liquid with crystals floating on top. McCarty also noticed a metal can of toluene, a section of hose with a pressure gauge attached, and a black metal cooking device. Supp. CP, Affidavit for Search Warrant, 2nd page. Based on Deputy McCarty's training and experience the items in the trunk appeared to be an active methamphetamine lab. He then closed the trunk and secured the car in the Jefferson County Sheriff's Office outside impound lot to await the obtaining of a search warrant to further search the trunk. Supp. CP, Affidavit for Search Warrant, 2nd page.

The following day Deputy McCarty executed the warrant affidavit before Judge Huth.

Deputy McCarty's affidavit states he had been trained as a police officer and had previous experience on controlled substance investigations and arrests. Supp. CP, Affidavit for Search Warrant, 1st page. The affidavit describes the presence of methamphetamine, both in a finished state and as residue on a coffee filter, and plastic tubing in the appellants car. Supp. CP, Affidavit for Search Warrant, 2nd page. Judge Huth

determined these facts showed probable cause existed to believe additional evidence of illegal methamphetamine manufacture was likely to be found in the trunk of appellant's car and the search warrant was granted.

The search was conducted on June 2, 2006, with the assistance of Washington State Patrol officers. The items that the deputies had noticed were found and processed as evidence.

ARGUMENT

A. DID THE TRIAL COURT CORRECTLY DENY THE APPELLANT'S MOTION TO SUPPRESS EVIDENCE OF METHAMPHETAMINE MANUFACTURE BECAUSE PROBABLE CAUSE WAS FOUND?

The trial court did correctly deny the appellant's CrR 3.6 Motion to Suppress evidence found in the trunk of appellant's car because probable cause sufficient for a search warrant was shown. The standard of review for this issue is abuse of discretion because this is an evidentiary issue. Whether excluding or admitting evidence at trial, this court reviews such decisions under the same standard of review: abuse of discretion. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990); *Reese v. Stroh*, 128 Wn.2d 300, 310, 907 P.2d 282 (1995). Thus, the trial court's decision will be reversed only if no reasonable person would have decided the matter as the trial court did. *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

1. Did the search violate Article I, Section 7 of the Washington State Constitution?

Article I, Section 7 of the Washington State Constitution provides that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. Article I, Section 7. Under this provision, search warrants must be based on probable cause. *State v. Young*, 123 Wn.2d 173 at 195, 867 P.2d 593 (1994). The affidavit

supporting the warrant application must provide facts establishing a reasonable inference that the defendant is involved in criminal activity and evidence of the crime will be found at the place to be searched. *Young*, at 195. All doubts are resolved in favor of the warrant's validity. *Young*, at 195. The warrant affidavit must set forth "the underlying facts and circumstances on which it is based in order to facilitate a detached and independent evaluation of the evidence by the issuing magistrate." *State v. Thein*, 138 Wn.2d 133 at 140, 977 P.2d 582 (1999). Furthermore, the constitution requires a nexus between criminal activity and the item to be seized and the place to be searched. *Thein*, at 140. Here, Deputy McCarty's affidavit in support of the search warrant contained sufficient facts of criminal activity by the appellant to search the appellant's car.

A search warrant must describe with particularity the things to be seized. *State v. Riley*, 121 Wn.2d 22 (1993), *State v. Peron*, 119 Wn.2d 538 (1992). However, a warrant designating a crime and a search for the "contraband, fruits of the crime or thing otherwise criminally possessed" is circumscribed by the reference to the crime being investigated. *State v. Dodson*, 110 Wn App. 112, 120, 39 P.3d 324 (Div. III, 2002). Here, the affidavit specified "Evidence of the crimes of Possession with Intent to Manufacture RCW 69.50.440; Possession of Drug Paraphernalia RCW 69.50.102; and Possession of Methamphetamine RCW 69.50.401H."

Supp. CP, Affidavit for Search Warrant, 2nd page. Defense counsel's argument that the affidavit lacked specificity fails because the affidavit did state the crimes for which evidence was sought.

The court held that where there is probable cause to believe that a drug is present in one part of a residence, there is a "legitimate inference" that that drug may be present throughout the residence." *State v. Olson*, 32 Wn. App. 555, 538, 648 P.2d 476 (1982). Here, by analogy, finding evidence of methamphetamine manufacture in the passenger compartment of a car creates a legitimate inference that similar evidence may be present in the trunk of the car.

Probable cause does not require "proof of criminal activity," but merely belief that criminal activity may have occurred. *State v. Hansen*, 42 Wn. App. 755, 760, 714 P.2d 309 (1986), *aff'd*, 107 Wn.2d 331, 728 P.2d 593 (1986). The support for issuance of a search warrant is sufficient if, on reading the affidavit, an ordinary person would understand that a violation existed and was continuing at the time of the application. *State v. Clay*, 7 Wn. App. 631, 637, 501 P.2d 603, 607 (1972). Great deference is given to the judge's determination of probable cause, and all doubts are resolved in favor of the validity of the warrant. *State v. Kennedy*, 72 Wn. App. 244, 248, 864 P.2d 410 (1993). Here, the court determined that the affidavit contained sufficient facts of criminal activity by the appellant and in his

car to show probable cause to believe additional evidence of criminal activity would be found in the trunk and correctly issued a search warrant.

In the instant case, the warrant authorizing a search of the trunk was not in violation of Article I, Section 7, because the items found in the passenger compartment of appellant's car and on his person formed a nexus between the appellant, the crime of methamphetamine manufacture and the car. The affidavit specified the crimes suspected and recited the facts supporting that suspicion. Therefore, the court found the search warrant was correctly issued because the affidavit showed probable cause existed.

2. Did the trial court err by concluding that controlled substances discovered in the passenger compartment of the car provided probable cause to search the locked trunk?

The appellant argues that none of the items found on appellant or in the passenger compartment suggested that additional evidence of any kind would be found in the trunk. Where there is probable cause to believe that a drug is present in one part of a residence, there is a "legitimate inference" that that drug may be present throughout the residence." *State v. Olson*, 32 Wn. App. 555, 538, 648 P.2d 476 (1982). Here, by analogy, finding evidence of methamphetamine manufacture in the passenger compartment of a car creates a legitimate inference that

similar evidence may be present in the trunk of the car. Appellant's argument fails because the officer's discovery of evidence of methamphetamine manufacture (digital scale, used coffee filter with methamphetamine crystals on it, plastic tubing) in the passenger compartment raises a legitimate inference that additional evidence may be present throughout the car.

3. Did the search warrant affidavit fail to establish probable cause to search the locked trunk of Mr. Perez's car?

Appellant argues that Deputy McCarty's affidavit was insufficient because it did not provide information about the drug dealers or manufacturers that suggest they commonly hide their instrumentalities and materials in their car trunks. This kind of general information is insufficient to show probable cause, *State v. Thein*, 138 Wn.2d 133 at 140, 977 P.2d 582 (1999). As discussed in issues 1 and 2, supra., the physical evidence discovered by the officers is sufficient to establish probable cause.

4. Did the trial court err by denying Mr. Perez's motion to suppress evidence discovered following a search of the locked trunk of his car?

Appellant argues that even if the physical evidence implied the existence of a lab somewhere, nothing suggested it would be found in the trunk of a car. As discussed in issues 1 and 2, the physical evidence

(digital scale, used coffee filter with methamphetamine crystals on it, plastic tubing) cited in the affidavit is sufficient to show probable cause for a search warrant.

5. Did the search warrant affidavit fail to establish that the evidence sought would fit within the locked trunk of Mr. Perez's car?

A warrant for physical objects is viewed with less scrutiny than a warrant for documents or items arguably protected by the First Amendment. *State v. Chambers*, 88 Wn. App 640, 644, 945 P.2d 1172 (Div. II, 1997). In this case only physical objects are sought. Affidavits for search warrants must be tested in a commonsense, nonhyperetechnical manner. *State v. Fisher*, 96 Wn.2d 962, 965, 639 P.2d 743, 745 (1982). Appellant's argument for additional specificity fails because the affidavit is a common sense, nonhypertechnical description of the evidence sought.

Therefore, under our state constitution, a police officer must be able to point to specific facts to establish probable cause to believe evidence will be found in the place to be searched before a warrant will issue. Here, Deputy McCarty's affidavit described the items being sought with sufficient particularity through reference to the criminal activity undertaken and supported by the evidence seized from the passenger compartment of the appellant's car. There was a reasonable inference that further evidence of the criminal activity would be found in the trunk of the

car. The affidavit was a common sense, nonhypertechnical explanation of probable cause. The trial court's denial of appellant's CrR 3.6 Motion to Suppress was correct and should be affirmed.

B. WAS THE EVIDENCE SEIZED FROM THE TRUNK ADMISSIBLE UNDER THE "INDEPENDENT SOURCE" EXCEPTION TO THE EXCLUSIONARY RULE?

The trial court held a CrR 3.6 hearing on August 17, 2006. The trial court excised Deputy McCarty's description of the contents of the trunk from the affidavit and evaluated the remainder of the affidavit. The trial court found the remaining portion of the affidavit showed probable cause to issue the search warrant.

6. Did the state fail to establish that the officers would have sought a search warrant even if they hadn't already searched the trunk and discovered contraband?

Here, before looking in the trunk, the police had already established a nexus between methamphetamine manufacture and the car through the digital scale, used coffee filters with methamphetamine on one, and the plastic hose. There was a reasonable inference that additional evidence of methamphetamine manufacture would be found in the trunk. *State v. Dodson*, 110 Wn App. 112, 120, 39 P.3d 324 (Div. III, 2002). The police actions showed an interest in the contents of the trunk and the trial court determined they had shown probable cause for a search

warrant. It is incontrovertible that the police would seek a search warrant.

7. Did the state fail to establish that the “independent source” doctrine applied?

The trial court determined that, even without the trunk content description, the affidavit contained sufficient facts to show probable cause to believe that the trunk contained evidence of criminal activity. “Evidence tainted by unlawful governmental action is not subject to suppression [if it] is obtained pursuant to a valid warrant or other lawful means independent of the unlawful action.” *State v. Gaines*, 154 Wn.2d 711, 718, 116 P.3d 993 (2005). To establish the exception, the state must show the warrant is truly independent; this includes proof that the officers would have obtained the warrant even absent the unlawful intrusion. *Gaines*, at 721, citing *Murray v. United States*, 487 U.S. 533, 108 S. Ct. 2529, 101 L. Ed 2d 472 (1988). A search warrant will not be rendered totally invalid if the affidavit contains sufficient facts to establish probable cause independent of the illegally obtained information. *State v. Coates*, 107 Wn.2d 882, 887, 735 P.2d 64, 67 (1987)

The trial court's decision will be reversed only if no reasonable person would have decided the matter as the trial court did. *State v.*

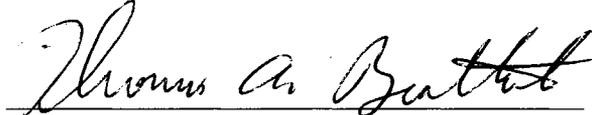
Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997). The trial court examined Deputy McCarty's affidavit minus the description of the trunk contents and determined that its description of the physical evidence found in the car and its specificity as to evidence sought was sufficient to show probable cause that evidence of criminal activity would be found in the trunk.

IV. CONCLUSION

For the reasons set out above, the State respectfully requests that the court affirm the trial court's judgment and that Appellant be ordered to pay costs, including attorney fees, pursuant to RAP 14.3,18.1 and RCW 10.73.

Respectfully submitted this 11th day of June, 2007.

JUELANNE DALZELL, Jefferson County
Prosecuting Attorney



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2 DIVISION II

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STATE OF WASHINGTON
BY _____

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6 vs.

7 ADRIAN PEREZ, Sr.,

8 Appellant.

) Case No.: 35379-2-II

) Superior Court No.: 06-1-00104-0

) DECLARATION OF MAILING

9
10 Janice N. Chadbourne declares:

11 That at all times mentioned herein I was over 18 years of age and a citizen of the United
12 States; that on the 11th day of June, 2007, I mailed a copy of the State's Brief of Respondent, to
13 the following:

14 David C. Ponzoha, Clerk
15 Court of Appeals, Division II
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Chehalis, WA 98532

17 Adrian Perez, Sr.
18 Appellant
19 111 Price Street
Port Hadlock, WA 98339

20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing declaration is true and correct.

22 Dated this 11th day of June, 2007 at Port Townsend, Washington.

23
24 

25 Janice N. Chadbourne
26 Legal Assistant

27 DECLARATION OF MAILING
28 Page 1

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