

NO. 40297-1-II

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

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STATE OF WASHINGTON,

Appellant,

v.

BLAKE BARKER,

Respondent.

BY  STATE OF WASHINGTON  
DEPUTY

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FILED  
COURT OF APPEALS  
DIVISION II

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

The Honorable Stephen Warning, Judge

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BRIEF OF RESPONDENT

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A. COUNTER STATEMENT OF THE ISSUE ON APPEAL

Where respondent was arrested on a DOC warrant which contained no statement of facts regarding the alleged violation of community custody conditions, did the trial court properly rule that the warrant was invalid and properly suppress evidence seized incident to respondent's arrest?

B. STATEMENT OF THE CASE

On July 30, 2009, the Cowlitz County Prosecuting Attorney charged respondent Blake Barker with one count of possession of methamphetamine. CP 3; RCW 69.50.4013(1). Barker moved to suppress the evidence seized incident to his arrest on an invalid warrant. CP 5. Following a suppression hearing, the Honorable Stephen Warning entered the following findings of fact:

1. On June 11, 2009, the defendant was on community supervision with the Washington State Department of Corrections (DOC). On that date DOC Officer Patricia Green issued a warrant for the defendant's arrest by filling in a "Wanted Person Entry Form," on her DOC computer. She then e-mailed this form to the main office of DOC in Olympia, where a clerk typed the information into the Washington Criminal Information Computer (WACIC).

2. In the "Wanted Person Entry Form," Officer Green failed to enter any information in the space provided under "CCO comments." Neither did she sign the document or make it under oath or affirmation.

3. On July 29, 2009, a Longview police officer arrested defendant based solely upon the existence of the warrant. The officer then searched his person incident to the arrest and

found controlled substances. The officer claimed no other justification for his search of the defendant other than as a search incident to arrest on the DOC warrant.

CP 39-40.

The court concluded that the DOC warrant violated the Fourth Amendment and Article 1, § 7, of the Washington constitution because it was not reviewed by a neutral and detached magistrate, and no statement of facts was given under oath or affirmation in support of the request for the warrant. CP 40-41. Since the arrest warrant was invalid, and the arrest was based solely on the warrant, the search incident to arrest was unlawful, and the court suppressed evidence obtained during that search. CP 41. Because the State had no other evidence, the court dismissed the charge against Barker. CP 42.

C. ARGUMENT

THE ARREST WARRANT DID NOT AFFORD BARKER THE MINIMAL DUE PROCESS PROTECTIONS TO WHICH HE IS ENTITLED, AND THE TRIAL COURT PROPERLY SUPPRESSED EVIDENCE SEIZED FOLLOWING BARKER'S ARREST.

The Fourteenth Amendment guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV. Although a parolee does not have the full panoply of rights guaranteed to an ordinary citizen, he or she has a conditional liberty interest in continued release and is thus entitled to minimal due process

protections. Morrissey v. Brewer, 408 U.S. 471, 480-81, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

The United States Supreme Court has determined that, in the context of parole violations, minimal due process entails: (a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation. Morrissey, 408 U.S. at 489. Community supervision in Washington is equivalent to parole; thus, these rights apply to persons under community supervision. In re McNeal, 99 Wn.App. 617, 631, 994 P.2d 890 (2000).

While most of the minimal due process rights enumerated in Morrissey come into play in a revocation hearing after the parolee has been arrested, the notice requirement relates to the procedures used to initiate the arrest. Sherman v. U.S. Parole Com'n, 502 F.3d 869, 880 (9<sup>th</sup> Cir. 2007). As the Morrissey Court held, at the first stage of the parole revocation process, the arrest and detention, the parolee is entitled to notice that a preliminary hearing will take place to determine whether there is probable cause to believe he has committed a parole violation.

The notice must also state what violations have been alleged. Morrissey, 408 U.S. at 485-87.

In Sherman, the Ninth Circuit Court of Appeals held that the oath or affirmation requirement of the Fourth Amendment does not apply to parole violation warrants. Sherman, 502 F.3d at 884. Because parolees have already been convicted, they are entitled to only minimal due process protections, rather than the full protections of the Fourth Amendment. Sherman, 502 F.3d at 883. These protections were codified by Congress in the federal statute at issue in Sherman, which specifically requires a parole violation warrant to notify the parolee of the conditions he is alleged to have violated, his rights, and any actions that may be taken. 18 U.S.C. § 4123(c). Thus, even though a parole violation warrant need not be based on an oath or affirmation, minimal due process protections require notice of the alleged parole violations and the parolee's rights. Sherman, 502 F.3d at 880.

Under Washington law, the secretary of the Department of Corrections is authorized to issue warrants for the arrest of offenders who violate conditions of community supervision. RCW 9.94A.716(1). Moreover, a community corrections officer may suspend community supervision and arrest or cause the arrest of an offender on reasonable cause to believe the offender has violated a condition of community

custody. In doing so, the community corrections officer must report to the secretary the facts, circumstances, and reasons for suspending community custody. RCW 9.94A.716(2). While the statute does not explicitly state that the facts and circumstances of the alleged violation must be included in the warrant, such notice is required to comport with the offender's due process rights. See Morrissey, 408 U.S. at 485-87; Sherman, 502 F.3d at 880.

The court below found that the Wanted Person Entry Form filled out by Barker's community corrections officer contained no statement of facts. CP 40. The warrant for Barker's arrest was issued based on this form, and the arrest was based solely on the warrant. CP 39-40. The State has not challenged these findings of fact, and they are therefore verities on appeal. See In re Interest of Mahaney, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). Regardless of whether the Fourth Amendment oath or affirmation and review requirements apply, the warrant issued in this case was invalid because it did not provide the full notice required by due process. The court's decision suppressing evidence seized during a search incident to Barker's arrest on the unlawful warrant must be affirmed.

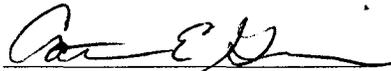
D. CONCLUSION

Because the arrest warrant failed to provide the notice required by due process, the trial court properly suppressed all evidence seized

incident to Barker's arrest. This Court should affirm the lower court's suppression ruling.

DATED this 10<sup>th</sup> day of September, 2010.

Respectfully submitted,



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Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, properly stamped and addressed envelopes containing copies of the Brief of Respondent in *State v. Blake Barker*, Cause No. 40297-1-II, directed to:

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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski  
Done in Port Orchard, WA  
September 10, 2010

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