

No. 42208-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Bruce Bratton,

Appellant.

Jefferson County Superior Court Cause No. 10-1-00109-9

The Honorable Judge Craddock Verser

Appellant's Reply Brief

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT..... 1

The evidence should have been suppressed..... 1

A. The validity of the arrest warrant is reviewed *de novo*.
1

B. The arrest warrant in this case was invalid. 1

CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

State v. Chamberlin, 161 Wash.2d 30, P.3d 389 (2007)..... 1

State v. Erickson, 168 Wash. 2d 41, 225 P.3d 948 (2010)..... 1, 3

State v. Grande, 164 Wash.2d 135, 187 P.3d 248 (2008) 1, 3

State v. Neth, 165 Wash.2d 177, 196 P.3d 658 (2008) 1

State v. Parks, 136 Wash.App. 232, 148 P.3d 1098 (2006)..... 3

State v. Stone, 165 Wash. App. 796, 268 P.3d 226 (2012)..... 2

ARGUMENT

THE EVIDENCE SHOULD HAVE BEEN SUPPRESSED.

A. The validity of the arrest warrant is reviewed *de novo*.

Whether or not sufficient grounds exist for issuance of a warrant is a question of law reviewed *de novo*. See, e.g., *State v. Neth*, 165 Wash.2d 177, 182, 196 P.3d 658 (2008) (addressing probable cause to issue search warrant); *State v. Chamberlin*, 161 Wash.2d 30, 41, 162 P.3d 389 (2007). The same standard applies when review is sought on a purely legal issue. *State v. Erickson*, 168 Wash. 2d 41, 45, 225 P.3d 948 (2010).

Because this case involves the legal sufficiency of the grounds justifying issuance of the arrest warrant, and the legal validity of the warrant in light of the flaws of the Jefferson County Pay-or-Appear program, review is *de novo*. *Neth*; *Erickson*. Respondent's contrary argument is incorrect. Brief of Respondent, p. 3.

B. The arrest warrant in this case was invalid.

Police officers may not search a detainee incident to an unlawful arrest. *State v. Grande*, 164 Wash.2d 135, 139-140, 187 P.3d 248 (2008). Here, Mr. Bratton was unlawfully searched following arrest on a warrant that was invalid for three reasons.

First, the warrant was issued under Jefferson County's constitutionally infirm Pay-or-Appear program. *See State v. Stone*, 165 Wash. App. 796, 268 P.3d 226 (2012). In *Stone*, the Court of Appeals found that the program was administered in a manner that violates the right to counsel and the right to due process. *Id.*

Respondent erroneously asserts that *Stone's* holding was narrow and limited. Brief of Respondent, p. 4 ("The Jefferson County Pay or Appear program was not found to be flawed...") In fact, the *Stone* court addressed form orders identical to those used in this case and found them to be seriously flawed. *Compare CP 34 with Stone*, at 806-808. The *Stone* court also addressed Jefferson County's failure to provide counsel for people assigned to the Pay or Appear program, and held this practice unconstitutional. *Stone*, at 810-816. Mr. Bratton's circumstances entitled him to representation by counsel, just as in *Stone*. Finally, the form orders used in this case—and in *Stone*—reflect Jefferson County's willingness to incarcerate for nonpayment, even in the absence of a written finding of willfulness. *See Stone*, at 817-818; CP 34.

Second, the warrant was issued in the absence of a well-founded suspicion that Mr. Bratton had violated his terms of release. When the warrant was requested, the government failed to show that Mr. Bratton had willfully failed to make payments, or that he'd failed to call the

program administrator. Following the suppression hearing, the trial court did not make findings on these issues. CP 46-49. As the *Stone* court noted, Mr. Bratton's "liberty interest was not limited by parole, probation, or community custody requirements... [Instead], the State's jurisdiction over [him] depended on an order requiring him to make monetary payments." *Stone*, at 814.

Third, issuance of the arrest warrant in this case (instead of a summons or other process) was unreasonable under the circumstances. *See Erickson*, at 48 (issuance of an arrest warrant must be reasonable). Mr. Bratton was not given adequate notice of the hearing date, and his prior failures to pay had been excused without a hearing. CP 16-49. Without adequate notice and in light of the court's customary lenience, issuance of an arrest warrant was unreasonable. *Erickson*.

For all these reasons, the warrant was invalid, and could not justify a search incident to Mr. Bratton's arrest. *Grande*, at 139-140. Accordingly, the conviction must be reversed, the evidence suppressed, and the case dismissed with prejudice. *State v. Parks*, 136 Wash.App. 232, 240, 148 P.3d 1098 (2006).

CONCLUSION

Mr. Bratton's conviction must be reversed and the case dismissed with prejudice.

Respectfully submitted on April 5, 2012,

BACKLUND AND MISTRY

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Olympia, Washington on April 5, 2012.



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BACKLUND & MISTRY

April 05, 2012 - 9:31 AM

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