

NO. 42369-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

STANLEY CURTIS JUVE,

Appellant.

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

The Honorable James Stonier, Judge
The Honorable Stephen Warning, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
A. ASSIGNMENTS OF ERROR	1
Issue pertaining to assignments of error.....	1
B. STATEMENT OF THE CASE.....	1
1. Procedural History.....	1
2. Substantive Facts.....	2
C. ARGUMENT	6
THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE, BECAUSE THERE WAS NO NEXUS BETWEEN THE FELONY HARASSMENT BEING INVESTIGATED AND JUVE’S RESIDENCE.....	6
D. CONCLUSION	14

TABLE OF AUTHORITIES

Washington Cases

<u>State v. Barnes</u> , 158 Wn. App. 602, 243 P.3d 165 (2010)	11, 12, 13
<u>State v. Cole</u> , 128 Wn.2d 262, 906 P.2d 925 (1995).....	7
<u>State v. Dalton</u> , 73 Wn. App. 132, 868 P.2d 873 (1994)	8
<u>State v. Fry</u> , 168 Wn.2d 1, 228 P.3d 1 (2010).....	6
<u>State v. Goble</u> , 88 Wn. App. 503, 945 P.2d 263 (1997).....	6, 8, 9
<u>State v. J.M.</u> , 144 Wn.2d 472, 28 P.3d 720 (2001)	13
<u>State v. Kilburn</u> , 151 Wn.2d 36, 84 P.3d 1215 (2004).....	10, 11, 13
<u>State v. Maddox</u> , 152 Wn.2d 499, 98 P.3d 1199 (2004).....	6
<u>State v. Neth</u> , 165 Wn.2d 177, 196 P.3d 658 (2008)	7
<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999).....	6, 13
<u>State v. Vickers</u> , 148 Wn.2d 91, 59 P.3d 58 (2002).....	6

Other Cases

<u>Commonwealth v. Kline</u> , 234 Pa.Super. 12, 335 A.2d 361 (Pa.1975)	8
---	---

Statutes

RCW 9A.46.020.....	1, 7, 10
--------------------	----------

Constitutional Provisions

U.S. Const. Amend. IV	6
Wash. Const, art. I, section 7.....	6

Other Authorities

Wayne R. LaFave, Search and Seizure § 3.7(d) (3d ed.1996)	6
---	---

A. ASSIGNMENTS OF ERROR

1. The warrant to search appellant's residence was not supported by probable cause.

2. Evidence seized pursuant to the invalid warrant should have been suppressed.

Issue pertaining to assignments of error

Appellant was charged with felony harassment based on threats he allegedly made while conducting a transaction at a credit union. Two weeks after this incident, while appellant was in custody, police sought a warrant to search appellant's house for guns and ammunition. Appellant was charged with six counts of unlawful possession of a firearm based on evidence seized during the search. Where the warrant affidavit failed to establish a nexus between the felony harassment incident at the credit union and appellant's residence, must evidence seized during the search be suppressed and the charges based on that evidence dismissed?

B. STATEMENT OF THE CASE

1. Procedural History

On January 7, 2011, the Cowlitz County Prosecuting Attorney charged appellant Stanley Curtis Juve with one count of felony harassment. CP 1-2; RCW 9A.46.020. The information was amended,

adding six counts of unlawful possession of a firearm in the second degree. CP 4-7, 21-24; RCW 9.41.040(2)(a). The Honorable James Stonier denied Juve's motion to suppress evidence seized pursuant to a search warrant, and the case proceeded to jury trial before the Honorable Stephen Warning. CP 8-15. The jury returned guilty verdicts, and the court granted a first time offender waiver of the standard sentence. CP 85-91, 97. Juve filed this timely appeal. CP 104.

2. Substantive Facts

At around 11:10 a.m. on January 3, 2011, Stanley Juve entered the Red Canoe Credit Union in Longview. 2RP 58-59. He appeared upset, so the teller, Danielle Clifton, asked how she could help him. 1RP 60. Juve said he wanted to find out if a tax credit he was expecting had been deposited into his account. He explained that he had been waiting for the tax credit for months, and Clifton told him she had had a similar problem. 1RP 61. According to Clifton, Juve then said he thought it was the credit union's fault that he had not received his money, and he was going to bring a gun in and shoot everyone. 1RP 62. Juve said he had made a phone call and cocked his gun over the phone to prove he had one, and he told Clifton he actually owned a weapon and had enough bullets to kill everyone there. 1RP 63-64.

Clifton thought Juve was joking when he first mentioned a gun, because he was smiling. IRP 62-63. She did not think he was serious at first, but after he repeated four to five times that he would kill everyone, she started getting nervous. IRP 63. Clifton took his comment that he had enough bullets as a threat against her, and she was very nervous because she did not know if he was armed at the time. IRP 64. By the time Juve left, Clifton believed his threat was serious, but she was confused because customers had said weird things in the past. IRP 65, 67. Although Clifton closed her window and told her manager what happened, she did not talk to the police that day. IRP 67, 75, 126.

Meanwhile, dispatch received a call reporting that Juve had made threats about going to the credit union with a gun. IRP 86, 105. The call did not come from the credit union. IRP 126. Police investigated the call, and one officer was sent to the credit union to find out if Juve was there. The officer first checked the parking lot, and, not finding Juve, he went inside to stand guard. IRP 87-88. Although the officer was inside for 20 to 40 minutes, no employee of the credit union spoke to him about any threats. IRP 89, 91.

While police were investigating the report of threats, Juve went to a nearby AM/PM market to buy gas. The employees noticed that he seemed angry and was acting strangely. He came into the store blowing a

whistle, yelling about the IRS, and saying he was going to shoot everyone at the bank. 1RP 49-50, 80. After he left, employees called the police. 1RP 82.

Juve was detained as he was coming out of a local restaurant. 1RP 107-09. He was handcuffed, searched, and eventually released. 1RP 109. He was arrested at his home the next day, January 4, 2011. 1RP 111. Juve was charged with felony harassment on January 7, 2011.

On January 18, Officer Scott McDaniel applied for and was issued a warrant to search Juve's home for evidence of felony harassment, including firearms and ammunition. CP 12-15. The search warrant was executed on January 25, 2011, three weeks after Juve was taken into custody. 1RP 128. Police found four rifles in a gun cabinet in Juve's spare room and a rifle and a shotgun in the closet of the master bedroom. 1RP 96-97, 113-14. Juve was charged with six counts of unlawful possession of a firearm based on the evidence seized pursuant to the search warrant. CP 21-24.

Prior to trial Juve moved to suppress the evidence seized from his home. CP 8-15. He argued that the warrant was not supported by probable cause, because there was no nexus between the charged crime of felony harassment and any guns that might be found in his house three weeks after the alleged threats were made. 1RP 2-4, 11-12. Judge Stonier

denied the motion to suppress, finding that the presence of guns in Juve's house was relevant to the charge of felony harassment because it corroborated Juve's statements that he had a gun. 1RP 12-14. Juve raised the issue again at the start of trial, and Judge Warning affirmed Judge Stonier's ruling. 1RP 43-44.

At trial, Juve testified that he was a little upset with the IRS when he went to the credit union on January 3, but he had no problems with the credit union. 1RP 153, 170. He made some jokes with Clifton, but he never threatened to bring in a gun or shoot anyone. 1RP 157-58. Juve recalled mentioning his phone call with the IRS. He testified that he told Clifton he had asked if Obama had bailed out the U.S. Bank. When the IRS agent said he had, Juve said he was going there, with a gun. 1RP 160. Juve testified that this was nothing but a joke, and he never threatened Clifton or the credit union. 1RP 159, 161.

Juve also denied that the guns in evidence had been in his house when he was arrested. 1RP 163. He explained that he had been in jail since his arrest on January 4, 2011, but that other people had access to his home while he was in custody. 1RP 162-63. Juve's friend William Sidelinker confirmed that Juve opens his doors to the homeless and that he had not seen any guns in Juve's house prior to Juve's arrest. 1RP 141-44, 146, 162.

C. ARGUMENT

THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE, BECAUSE THERE WAS NO NEXUS BETWEEN THE FELONY HARASSMENT BEING INVESTIGATED AND JUVE'S RESIDENCE.

It is well-established that the warrant clauses of the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington constitution require that a search warrant issue only on a determination of probable cause. State v. Fry, 168 Wn.2d 1, 5-6, 228 P.3d 1 (2010) (citing State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002)). Probable cause is established if the warrant affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004) (citing State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999)). Thus, "probable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched." State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997) (citing Wayne R. LaFave, Search and Seizure § 3.7(d), at 372 (3d ed.1996)).

In general, a magistrate's decision to issue a warrant is given great deference. Maddox, 152 Wn.2d at 509; State v. Cole, 128 Wn.2d 262,

286, 906 P.2d 925 (1995). A trial court's conclusion that the affidavit establishes probable cause is reviewed de novo, however. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). Review is limited to "the four corners" of the affidavit. Neth, 165 Wn.2d at 182. The only information the reviewing court may consider is the information before the issuing magistrate. Id.

Juve was charged with felony harassment, and Officer McDaniel's affidavit sought a warrant to search Juve's residence for evidence of that offense. CP 1-2, 12. A person is guilty of felony harassment if he knowingly threatens to kill another person immediately or in the future and, by words or conduct, places the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020(1)(a)(i), (1)(b), 2)(b).

The warrant affidavit contained allegations that Juve threatened to kill employees of the Red Canoe Credit Union, saying he would bring in a gun and shoot everyone and that he had enough bullets to do it. CP 12-14. These allegations would support a finding of probable cause to believe that Juve committed felony harassment at the credit union when he made the statements about guns to the teller. The affidavit sought a warrant to search Juve's home for evidence of that offense, however. CP 14. Evidence that Juve committed a crime at one location does not automatically give rise to probable cause to search his residence. See

State v. Dalton, 73 Wn. App. 132, 140, 868 P.2d 873 (1994) (“Probable cause to believe a man has committed a crime on the street does not necessarily give rise to the probable cause to search his home.”) (quoting Commonwealth v. Kline, 234 Pa.Super. 12, 335 A.2d 361, 364 (Pa.1975)). Instead, there must be a nexus between the crime being investigated, the place to be searched, and the evidence being sought. Goble, 88 Wn. App. at 509.

In Goble, police were investigating claims that Goble often received illegal drugs through the mail. Goble, 88 Wn. App. at 504. There was evidence that Goble had mailed what appeared to be a bundle of currency from a post office box in Washington to California and that a box containing methamphetamine had been mailed to Goble at the Washington post office box address. Goble, 88 Wn. App. at 505. Based on this information, police requested a warrant for Goble’s home. The magistrate issued the warrant on the condition that it not be executed unless the police observed Goble retrieve the box of methamphetamine from the post office and bring it to his residence. Goble, 88 Wn. App. at 505-06. The warrant was subsequently executed, methamphetamine was found, and Goble was charged with possession of a controlled substance. The trial court denied Goble’s motion to suppress, and Goble appealed. Goble, 88 Wn. App. at 507.

This Court reversed. It noted that probable cause to issue a search warrant does not exist unless a reasonable person would believe, based on the information presented, that evidence of the criminal activity being investigated is likely to be found at the place to be searched. Goble, 88 Wn. App. at 509. The magistrate had no reason to believe evidence of drug dealing would be found in Goble's house when the warrant was issued, because he had no information Goble had previously dealt drugs out of his house, stored drugs in his house, or transported drugs from the post office box to his house. The fact that he was involved in criminal activity elsewhere did not justify the search of his residence. Goble, 88 Wn. App. at 512. Because the facts presented to the magistrate did not demonstrate the required nexus between the items to be seized and the place to be searched, the warrant was invalid. Goble, 88 Wn. App. 513.

The required nexus is lacking here as well. The warrant affidavit presented no basis for believing that evidence of the criminal activity being investigated—felony harassment—would be found in Juve's residence. The affidavit indicated that Juve had made statements in a telephone call with an IRS agent and at an AM/PM market about going to the bank to shoot people. CP 12-13. A teller at the Red Canoe Credit Union also reported that Juve said he owns a gun and planned to bring it the credit union to kill everyone, and that he had enough bullets to do it.

CP 13-14. The affidavit sought a warrant to search Juve's house for evidence of felony harassment, including firearms and ammunition. CP 14.

Although Juve's threats involved claims that he had access to a gun and ammunition, the crime he was alleged to have committed did not require proof that those claims were true, only that they caused the teller to reasonably fear Juve would carry out the threat. See RCW 9A.46.020(1)(b); State v. Kilburn, 151 Wn.2d 36, 48, 84 P.3d 1215 (2004) (To convict of felony harassment State does not have to prove speaker intended to carry out threat). Even if the affidavit presents sufficient information to infer that guns and ammunition would be found at Juve's residence, the guns being sought were not used in the commission of the crime. Such items are not evidence of the crime of felony harassment. The warrant affidavit does not establish the necessary nexus between the criminal activity being investigated, the items being sought, and the place to be searched, and thus the warrant was not supported by probable cause.

The State argued below that presence of guns in Juve's home was relevant to the felony harassment charge because the State must prove that Juve's threat was a "true threat." It argued that a true threat is one that the speaker has the actual intent and present ability to carry out. IRP 8. Contrary to the State's assertion, the Washington Supreme Court has held

that the State need not prove the speaker actually intends to carry out the threat in order for the statement to constitute a true threat. Kilburn, 151 Wn.2d at 48. “A true threat is a serious threat, not one said in jest, idle talk, or political argument.” Kilburn, 151 Wn.2d at 43. And whether a true threat has been made is determined under an objective standard, focused on the speaker. Kilburn, 151 Wn.2d at 44. Thus, a true threat is “a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” Kilburn, 151 Wn.2d at 43 (citations and internal quotations omitted).

Applying this objective standard, what is relevant in this case is the context in which the alleged threat was made, the circumstances that existed at the time and place of Juve’s statements. The presence of guns in Juve’s house three weeks later, or even at the time he was making those statements at the credit union, does not establish a true threat.

This Court applied a true threat analysis to a somewhat similar factual scenario in State v. Barnes, 158 Wn. App. 602, 243 P.3d 165 (2010). In that case, Barnes became upset while at a bank and said he felt like getting a gun and shooting everyone. Barnes, 158 Wn. App. at 605. The bank employee immediately notified the police, and two hours later

police arrested Barnes in a public parking lot about a half mile from the bank. The police saw a gun box in open view on the passenger seat of Barnes's car. A handgun was found in the box, and bullets, spray paint, and a face mask were found in the car. Barnes, 158 Wn. App. at 606.

The trial court suppressed the evidence seized from the car, concluding the search of the car was not justified as a search incident to arrest. Barnes, 158 Wn. App. at 608. The State appealed, and Barnes argued that the evidence was properly suppressed because it was not reasonable for the police to believe the car would contain evidence of the crime of arrest, felony harassment. This Court disagreed, reasoning that the gun case was in open view and was relevant to the true threat requirement of felony harassment. Barnes, 158 Wn. App. at 609. The Court noted that police arrested Barnes a half mile from the bank a short time after he had threatened to get a gun and come back and shoot everyone, and the police saw a gun case while standing outside Barnes's car. The Court concluded that the fact that Barnes had access to a gun was evidence which could lead a reasonable person to believe his threat was genuine and he had taken steps to carry it out, and the gun case was thus relevant to prove Barnes made a true threat. Barnes, 158 Wn. App. at 610.

The Barnes Court appears to have focused on how Barnes's actions after the threat would be interpreted, rather than the context in which the

threat was made. The Supreme Court has held, however, that whether a threat is a true threat depends on the context and circumstances in which it is made, and the State need not prove the speaker intended to carry out the threat. Kilburn, 151 Wn.2d at 43-44, 48; State v. J.M., 144 Wn.2d 472, 481-82, 28 P.3d 720 (2001) (whether the speaker intends to carry out the threat is irrelevant). Under Supreme Court precedent, the existence of guns and ammunition in Juve's house three weeks after the incident could not prove his alleged threat was a true threat, because those items were not part of the context and circumstances under which the alleged threat was made.

Moreover, while there is some factual similarity between the threats in Barnes and the alleged threats here, the facts on which the Court upheld the search are significantly different. In Barnes, the defendant was found to have a gun with him when he was arrested just a half mile from the bank, after saying he was going to get a gun. Barnes, 158 Wn. App. at 610. Here, Juve was unarmed when he detained on the day of the incident and when he was arrested the following day, and the police did not seek a search warrant for his home until two weeks later. IRP 128; CP 12-14.

The existence of probable cause must be evaluated on a case by case basis, applying the general rules to the specific facts of the case. Thein, 138 Wn.2d at 149. Under the facts of this case, the warrant

affidavit does not establish probable cause to search Juve's house for evidence of felony harassment. Consequently, evidence seized pursuant to the invalid warrant must be suppressed. Juve's six convictions for unlawful possession of a firearm, based on evidence seized during the unlawful search, must be reversed and the charges dismissed. See Thein, 138 Wn.2d at 151.

D. CONCLUSION

Because the warrant to search Juve's house was not supported by probable cause, the evidence seized pursuant to that warrant must be suppressed. Juve's firearms convictions based on that evidence must be reversed and the charges dismissed.

DATED this 9th day of February, 2012.

Respectfully submitted,



CATHERINE E. GLINSKI

WSBA No. 20260

Attorney for Appellant

Certification of Service

Today I forwarded a copy of the Brief of Appellant in *State v. Stanley Curtis Juve*, Cause No. 42369-3-II to:

Stanley Curtis Juve
1517 7th Ave.
Longview, WA 98632

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
February 9, 2012

NO. 42369-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

STANLEY CURTIS JUVE,

Appellant.

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

The Honorable James Stonier, Judge
The Honorable Stephen Warning, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
A. ASSIGNMENTS OF ERROR	1
Issue pertaining to assignments of error.....	1
B. STATEMENT OF THE CASE.....	1
1. Procedural History.....	1
2. Substantive Facts.....	2
C. ARGUMENT	6
THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE, BECAUSE THERE WAS NO NEXUS BETWEEN THE FELONY HARASSMENT BEING INVESTIGATED AND JUVE’S RESIDENCE.....	6
D. CONCLUSION	14

TABLE OF AUTHORITIES

Washington Cases

<u>State v. Barnes</u> , 158 Wn. App. 602, 243 P.3d 165 (2010)	11, 12, 13
<u>State v. Cole</u> , 128 Wn.2d 262, 906 P.2d 925 (1995).....	7
<u>State v. Dalton</u> , 73 Wn. App. 132, 868 P.2d 873 (1994)	8
<u>State v. Fry</u> , 168 Wn.2d 1, 228 P.3d 1 (2010).....	6
<u>State v. Goble</u> , 88 Wn. App. 503, 945 P.2d 263 (1997).....	6, 8, 9
<u>State v. J.M.</u> , 144 Wn.2d 472, 28 P.3d 720 (2001)	13
<u>State v. Kilburn</u> , 151 Wn.2d 36, 84 P.3d 1215 (2004).....	10, 11, 13
<u>State v. Maddox</u> , 152 Wn.2d 499, 98 P.3d 1199 (2004).....	6
<u>State v. Neth</u> , 165 Wn.2d 177, 196 P.3d 658 (2008)	7
<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999).....	6, 13
<u>State v. Vickers</u> , 148 Wn.2d 91, 59 P.3d 58 (2002).....	6

Other Cases

<u>Commonwealth v. Kline</u> , 234 Pa.Super. 12, 335 A.2d 361 (Pa.1975)	8
---	---

Statutes

RCW 9A.46.020.....	1, 7, 10
--------------------	----------

Constitutional Provisions

U.S. Const. Amend. IV	6
Wash. Const, art. I, section 7.....	6

Other Authorities

Wayne R. LaFave, Search and Seizure § 3.7(d) (3d ed.1996)	6
---	---

A. ASSIGNMENTS OF ERROR

1. The warrant to search appellant's residence was not supported by probable cause.

2. Evidence seized pursuant to the invalid warrant should have been suppressed.

Issue pertaining to assignments of error

Appellant was charged with felony harassment based on threats he allegedly made while conducting a transaction at a credit union. Two weeks after this incident, while appellant was in custody, police sought a warrant to search appellant's house for guns and ammunition. Appellant was charged with six counts of unlawful possession of a firearm based on evidence seized during the search. Where the warrant affidavit failed to establish a nexus between the felony harassment incident at the credit union and appellant's residence, must evidence seized during the search be suppressed and the charges based on that evidence dismissed?

B. STATEMENT OF THE CASE

1. Procedural History

On January 7, 2011, the Cowlitz County Prosecuting Attorney charged appellant Stanley Curtis Juve with one count of felony harassment. CP 1-2; RCW 9A.46.020. The information was amended,

adding six counts of unlawful possession of a firearm in the second degree. CP 4-7, 21-24; RCW 9.41.040(2)(a). The Honorable James Stonier denied Juve's motion to suppress evidence seized pursuant to a search warrant, and the case proceeded to jury trial before the Honorable Stephen Warning. CP 8-15. The jury returned guilty verdicts, and the court granted a first time offender waiver of the standard sentence. CP 85-91, 97. Juve filed this timely appeal. CP 104.

2. Substantive Facts

At around 11:10 a.m. on January 3, 2011, Stanley Juve entered the Red Canoe Credit Union in Longview. 2RP 58-59. He appeared upset, so the teller, Danielle Clifton, asked how she could help him. 1RP 60. Juve said he wanted to find out if a tax credit he was expecting had been deposited into his account. He explained that he had been waiting for the tax credit for months, and Clifton told him she had had a similar problem. 1RP 61. According to Clifton, Juve then said he thought it was the credit union's fault that he had not received his money, and he was going to bring a gun in and shoot everyone. 1RP 62. Juve said he had made a phone call and cocked his gun over the phone to prove he had one, and he told Clifton he actually owned a weapon and had enough bullets to kill everyone there. 1RP 63-64.

Clifton thought Juve was joking when he first mentioned a gun, because he was smiling. IRP 62-63. She did not think he was serious at first, but after he repeated four to five times that he would kill everyone, she started getting nervous. IRP 63. Clifton took his comment that he had enough bullets as a threat against her, and she was very nervous because she did not know if he was armed at the time. IRP 64. By the time Juve left, Clifton believed his threat was serious, but she was confused because customers had said weird things in the past. IRP 65, 67. Although Clifton closed her window and told her manager what happened, she did not talk to the police that day. IRP 67, 75, 126.

Meanwhile, dispatch received a call reporting that Juve had made threats about going to the credit union with a gun. IRP 86, 105. The call did not come from the credit union. IRP 126. Police investigated the call, and one officer was sent to the credit union to find out if Juve was there. The officer first checked the parking lot, and, not finding Juve, he went inside to stand guard. IRP 87-88. Although the officer was inside for 20 to 40 minutes, no employee of the credit union spoke to him about any threats. IRP 89, 91.

While police were investigating the report of threats, Juve went to a nearby AM/PM market to buy gas. The employees noticed that he seemed angry and was acting strangely. He came into the store blowing a

whistle, yelling about the IRS, and saying he was going to shoot everyone at the bank. 1RP 49-50, 80. After he left, employees called the police. 1RP 82.

Juve was detained as he was coming out of a local restaurant. 1RP 107-09. He was handcuffed, searched, and eventually released. 1RP 109. He was arrested at his home the next day, January 4, 2011. 1RP 111. Juve was charged with felony harassment on January 7, 2011.

On January 18, Officer Scott McDaniel applied for and was issued a warrant to search Juve's home for evidence of felony harassment, including firearms and ammunition. CP 12-15. The search warrant was executed on January 25, 2011, three weeks after Juve was taken into custody. 1RP 128. Police found four rifles in a gun cabinet in Juve's spare room and a rifle and a shotgun in the closet of the master bedroom. 1RP 96-97, 113-14. Juve was charged with six counts of unlawful possession of a firearm based on the evidence seized pursuant to the search warrant. CP 21-24.

Prior to trial Juve moved to suppress the evidence seized from his home. CP 8-15. He argued that the warrant was not supported by probable cause, because there was no nexus between the charged crime of felony harassment and any guns that might be found in his house three weeks after the alleged threats were made. 1RP 2-4, 11-12. Judge Stonier

denied the motion to suppress, finding that the presence of guns in Juve's house was relevant to the charge of felony harassment because it corroborated Juve's statements that he had a gun. 1RP 12-14. Juve raised the issue again at the start of trial, and Judge Warning affirmed Judge Stonier's ruling. 1RP 43-44.

At trial, Juve testified that he was a little upset with the IRS when he went to the credit union on January 3, but he had no problems with the credit union. 1RP 153, 170. He made some jokes with Clifton, but he never threatened to bring in a gun or shoot anyone. 1RP 157-58. Juve recalled mentioning his phone call with the IRS. He testified that he told Clifton he had asked if Obama had bailed out the U.S. Bank. When the IRS agent said he had, Juve said he was going there, with a gun. 1RP 160. Juve testified that this was nothing but a joke, and he never threatened Clifton or the credit union. 1RP 159, 161.

Juve also denied that the guns in evidence had been in his house when he was arrested. 1RP 163. He explained that he had been in jail since his arrest on January 4, 2011, but that other people had access to his home while he was in custody. 1RP 162-63. Juve's friend William Sidelinker confirmed that Juve opens his doors to the homeless and that he had not seen any guns in Juve's house prior to Juve's arrest. 1RP 141-44, 146, 162.

C. ARGUMENT

THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE, BECAUSE THERE WAS NO NEXUS BETWEEN THE FELONY HARASSMENT BEING INVESTIGATED AND JUVE'S RESIDENCE.

It is well-established that the warrant clauses of the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington constitution require that a search warrant issue only on a determination of probable cause. State v. Fry, 168 Wn.2d 1, 5-6, 228 P.3d 1 (2010) (citing State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002)). Probable cause is established if the warrant affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004) (citing State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999)). Thus, "probable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched." State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997) (citing Wayne R. LaFave, Search and Seizure § 3.7(d), at 372 (3d ed.1996)).

In general, a magistrate's decision to issue a warrant is given great deference. Maddox, 152 Wn.2d at 509; State v. Cole, 128 Wn.2d 262,

286, 906 P.2d 925 (1995). A trial court's conclusion that the affidavit establishes probable cause is reviewed de novo, however. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). Review is limited to "the four corners" of the affidavit. Neth, 165 Wn.2d at 182. The only information the reviewing court may consider is the information before the issuing magistrate. Id.

Juve was charged with felony harassment, and Officer McDaniel's affidavit sought a warrant to search Juve's residence for evidence of that offense. CP 1-2, 12. A person is guilty of felony harassment if he knowingly threatens to kill another person immediately or in the future and, by words or conduct, places the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020(1)(a)(i), (1)(b), 2)(b).

The warrant affidavit contained allegations that Juve threatened to kill employees of the Red Canoe Credit Union, saying he would bring in a gun and shoot everyone and that he had enough bullets to do it. CP 12-14. These allegations would support a finding of probable cause to believe that Juve committed felony harassment at the credit union when he made the statements about guns to the teller. The affidavit sought a warrant to search Juve's home for evidence of that offense, however. CP 14. Evidence that Juve committed a crime at one location does not automatically give rise to probable cause to search his residence. See

State v. Dalton, 73 Wn. App. 132, 140, 868 P.2d 873 (1994) (“Probable cause to believe a man has committed a crime on the street does not necessarily give rise to the probable cause to search his home.”) (quoting Commonwealth v. Kline, 234 Pa.Super. 12, 335 A.2d 361, 364 (Pa.1975)). Instead, there must be a nexus between the crime being investigated, the place to be searched, and the evidence being sought. Goble, 88 Wn. App. at 509.

In Goble, police were investigating claims that Goble often received illegal drugs through the mail. Goble, 88 Wn. App. at 504. There was evidence that Goble had mailed what appeared to be a bundle of currency from a post office box in Washington to California and that a box containing methamphetamine had been mailed to Goble at the Washington post office box address. Goble, 88 Wn. App. at 505. Based on this information, police requested a warrant for Goble’s home. The magistrate issued the warrant on the condition that it not be executed unless the police observed Goble retrieve the box of methamphetamine from the post office and bring it to his residence. Goble, 88 Wn. App. at 505-06. The warrant was subsequently executed, methamphetamine was found, and Goble was charged with possession of a controlled substance. The trial court denied Goble’s motion to suppress, and Goble appealed. Goble, 88 Wn. App. at 507.

This Court reversed. It noted that probable cause to issue a search warrant does not exist unless a reasonable person would believe, based on the information presented, that evidence of the criminal activity being investigated is likely to be found at the place to be searched. Goble, 88 Wn. App. at 509. The magistrate had no reason to believe evidence of drug dealing would be found in Goble's house when the warrant was issued, because he had no information Goble had previously dealt drugs out of his house, stored drugs in his house, or transported drugs from the post office box to his house. The fact that he was involved in criminal activity elsewhere did not justify the search of his residence. Goble, 88 Wn. App. at 512. Because the facts presented to the magistrate did not demonstrate the required nexus between the items to be seized and the place to be searched, the warrant was invalid. Goble, 88 Wn. App. 513.

The required nexus is lacking here as well. The warrant affidavit presented no basis for believing that evidence of the criminal activity being investigated—felony harassment—would be found in Juve's residence. The affidavit indicated that Juve had made statements in a telephone call with an IRS agent and at an AM/PM market about going to the bank to shoot people. CP 12-13. A teller at the Red Canoe Credit Union also reported that Juve said he owns a gun and planned to bring it the credit union to kill everyone, and that he had enough bullets to do it.

CP 13-14. The affidavit sought a warrant to search Juve's house for evidence of felony harassment, including firearms and ammunition. CP 14.

Although Juve's threats involved claims that he had access to a gun and ammunition, the crime he was alleged to have committed did not require proof that those claims were true, only that they caused the teller to reasonably fear Juve would carry out the threat. See RCW 9A.46.020(1)(b); State v. Kilburn, 151 Wn.2d 36, 48, 84 P.3d 1215 (2004) (To convict of felony harassment State does not have to prove speaker intended to carry out threat). Even if the affidavit presents sufficient information to infer that guns and ammunition would be found at Juve's residence, the guns being sought were not used in the commission of the crime. Such items are not evidence of the crime of felony harassment. The warrant affidavit does not establish the necessary nexus between the criminal activity being investigated, the items being sought, and the place to be searched, and thus the warrant was not supported by probable cause.

The State argued below that presence of guns in Juve's home was relevant to the felony harassment charge because the State must prove that Juve's threat was a "true threat." It argued that a true threat is one that the speaker has the actual intent and present ability to carry out. IRP 8. Contrary to the State's assertion, the Washington Supreme Court has held

that the State need not prove the speaker actually intends to carry out the threat in order for the statement to constitute a true threat. Kilburn, 151 Wn.2d at 48. “A true threat is a serious threat, not one said in jest, idle talk, or political argument.” Kilburn, 151 Wn.2d at 43. And whether a true threat has been made is determined under an objective standard, focused on the speaker. Kilburn, 151 Wn.2d at 44. Thus, a true threat is “a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” Kilburn, 151 Wn.2d at 43 (citations and internal quotations omitted).

Applying this objective standard, what is relevant in this case is the context in which the alleged threat was made, the circumstances that existed at the time and place of Juve’s statements. The presence of guns in Juve’s house three weeks later, or even at the time he was making those statements at the credit union, does not establish a true threat.

This Court applied a true threat analysis to a somewhat similar factual scenario in State v. Barnes, 158 Wn. App. 602, 243 P.3d 165 (2010). In that case, Barnes became upset while at a bank and said he felt like getting a gun and shooting everyone. Barnes, 158 Wn. App. at 605. The bank employee immediately notified the police, and two hours later

police arrested Barnes in a public parking lot about a half mile from the bank. The police saw a gun box in open view on the passenger seat of Barnes's car. A handgun was found in the box, and bullets, spray paint, and a face mask were found in the car. Barnes, 158 Wn. App. at 606.

The trial court suppressed the evidence seized from the car, concluding the search of the car was not justified as a search incident to arrest. Barnes, 158 Wn. App. at 608. The State appealed, and Barnes argued that the evidence was properly suppressed because it was not reasonable for the police to believe the car would contain evidence of the crime of arrest, felony harassment. This Court disagreed, reasoning that the gun case was in open view and was relevant to the true threat requirement of felony harassment. Barnes, 158 Wn. App. at 609. The Court noted that police arrested Barnes a half mile from the bank a short time after he had threatened to get a gun and come back and shoot everyone, and the police saw a gun case while standing outside Barnes's car. The Court concluded that the fact that Barnes had access to a gun was evidence which could lead a reasonable person to believe his threat was genuine and he had taken steps to carry it out, and the gun case was thus relevant to prove Barnes made a true threat. Barnes, 158 Wn. App. at 610.

The Barnes Court appears to have focused on how Barnes's actions after the threat would be interpreted, rather than the context in which the

threat was made. The Supreme Court has held, however, that whether a threat is a true threat depends on the context and circumstances in which it is made, and the State need not prove the speaker intended to carry out the threat. Kilburn, 151 Wn.2d at 43-44, 48; State v. J.M., 144 Wn.2d 472, 481-82, 28 P.3d 720 (2001) (whether the speaker intends to carry out the threat is irrelevant). Under Supreme Court precedent, the existence of guns and ammunition in Juve's house three weeks after the incident could not prove his alleged threat was a true threat, because those items were not part of the context and circumstances under which the alleged threat was made.

Moreover, while there is some factual similarity between the threats in Barnes and the alleged threats here, the facts on which the Court upheld the search are significantly different. In Barnes, the defendant was found to have a gun with him when he was arrested just a half mile from the bank, after saying he was going to get a gun. Barnes, 158 Wn. App. at 610. Here, Juve was unarmed when he detained on the day of the incident and when he was arrested the following day, and the police did not seek a search warrant for his home until two weeks later. IRP 128; CP 12-14.

The existence of probable cause must be evaluated on a case by case basis, applying the general rules to the specific facts of the case. Thein, 138 Wn.2d at 149. Under the facts of this case, the warrant

affidavit does not establish probable cause to search Juve's house for evidence of felony harassment. Consequently, evidence seized pursuant to the invalid warrant must be suppressed. Juve's six convictions for unlawful possession of a firearm, based on evidence seized during the unlawful search, must be reversed and the charges dismissed. See Thein, 138 Wn.2d at 151.

D. CONCLUSION

Because the warrant to search Juve's house was not supported by probable cause, the evidence seized pursuant to that warrant must be suppressed. Juve's firearms convictions based on that evidence must be reversed and the charges dismissed.

DATED this 9th day of February, 2012.

Respectfully submitted,



CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service

Today I forwarded a copy of the Brief of Appellant in *State v. Stanley Curtis Juve*, Cause No. 42369-3-II to:

Stanley Curtis Juve
1517 7th Ave.
Longview, WA 98632

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
February 9, 2012

GLINSKI LAW OFFICE

February 09, 2012 - 10:11 AM

Transmittal Letter

Document Uploaded: 423693-Appellant's Brief.pdf

Case Name:

Court of Appeals Case Number: 42369-3

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Catherine E Glinski - Email: cathyglinski@wavecable.com

A copy of this document has been emailed to the following addresses:

sasserm@co.cowlitz.wa.us