

NO. 74633-2-I

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

STATE OF WASHINGTON,

Appellant,

v.

JEFFREY I. SCHENCK,

Respondent.

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Court of Appeals
Division I
State of Washington

REPLY BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY

A. THE RESPONDENT REPEATS THE TRIAL COURT'S ERRONEOUS AND HYPERTECHNICAL INSISTENCE THAT THE WARRANT SHOULD HAVE USED THE WORD "SEARCH" TO DIRECTLY MODIFY THE PHRASE "LOCKED CONTAINERS."

The respondent observes, repeatedly, that the search warrant in this case explicitly authorized the seizure of locked containers found within the defendant's home. Br. Resp. 10-11, 13, 14, 16, 17, 18. This fact is uncontested and uncontroversial, even though a locked container has no inherent evidentiary value on its own. The evidentiary value of a locked container derives from what may be found within it.

The seizure of locked containers was wisely included as a common sense, practical addition to the list of seizable evidence items. The search warrant's explicit authorization to seize locked containers, even before the evidentiary value of the container's contents was known, was simply a recognition that police executing a residential search warrant may encounter certain physical barriers to entry which they are incapable of breaching on site. Depending on the circumstances, officers may encounter a set of locks, bolts, walls, or other barriers which their equipment on hand is inadequate to breach, even though the warrant gives them permission to search the inaccessible area. The warrant in this case granted police

permission to seize any containers they were incapable of breaching. Purely by happenstance in this case, removal (seizure) of the defendant's gun safe was unnecessary only because police found a pair of bolt cutters in the defendant's garage which allowed them to continue their search. Br. Resp. 7.

The inappropriate logical leap, committed first by the trial court and repeated by the Respondent on appeal, is the assumption that the warrant's authorization to seize locked containers somehow prohibited a search of any locked containers that the police didn't need to seize because they had the ability to breach and search them on site. This assumption is not supported by any legal authority, and the Respondent has not offered any. The assumption also contradicts the plain language of the warrant, which the Respondent concedes allowed a search of "the entire residence" including "each and every room" therein. Br. Resp. 10.

The U.S. Supreme Court agrees that a search warrant need not contain a laundry list of potential containers found within a home in order to justify the search of those containers:

A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes

an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

United States v. Ross, 456 U.S. 798, 820–21, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); see United States v. Gomez-Soto, 723 F.2d 649, 654 (9th Cir. 1984) (referring to the same principle as “axiomatic”); United States v. Morris, 647 F.2d 568, 572-573 (5th Cir. 1981) (holding that it is neither reasonable nor required to obtain additional search warrants for areas already within the scope of an existing warrant).

The Respondent appears to argue that a search of the defendant’s locked cabinet would have only been justified if the warrant had used the word “search” immediately before the phrase “locked containers.” This is precisely the sort of hypertechnical reading which is forbidden under this Court’s standard of review. Instead, a more common sense and practical reading is required.

State v. Keodara, 191 Wn. App. 305, 313, 364 P.3d 777 (2015), review denied, 185 Wn.2d 1028 (2016). Rather than requiring officers to engage in impossible speculation about the types of containers and hiding places they might encounter inside a residence by making them provide such a list in the text of their search warrants, countless courts have held that search warrants permit inspection of any container or hiding place large enough to conceal the smallest item of evidence supported by probable cause. See 2 W. LaFave, Search and Seizure §4.10(d) at 959-62 n. 115-132 (5th ed. 2012).

In this particular case, many of the permissible evidentiary items were small (controlled substances, access devices, receipts) while the locked container at issue was quite large. Compare 1 CP 44 with ex. 2. A practical and common sense reading of the search warrant compels only one conclusion – each and every evidence item listed in the search warrant could have been found within the large locked cabinet in the defendant’s bedroom. It bears repeating that the trial court agreed that the entire house, each and every room, was subject to a search pursuant to the warrant. CP 17. Any combination of containers could have been found in any of those rooms. The permissible scope of the search did not depend on

whether those containers were jewelry boxes (locked or unlocked) within a filing cabinet (locked or unlocked), a set of Russian nesting dolls, or (as it turned out in this case) a large gun safe. Any container inside that house was subject to search as long as it was big enough to conceal controlled substances. The officers' decision to breach the locked gun cabinet did not exceed the permissible scope of the search warrant.

B. THE RESPONDENT MISTERPRETS THE STATE'S RELIANCE ON STATE V. LLAMAS-VILLA.

The State relied on State v. Llamas-Villa, 67 Wn. App. 448, 454, 836 P.2d 239 (1992), for its holding that "places which may be searched pursuant to a search warrant are not excluded due to the presence of locks or because some additional act of entry or opening may be required." Br. App. 19. Perhaps because that principle is so axiomatic, few cases in Washington have squarely adopted the principle as clearly as this Court did in Llamas-Villa.

The defendant's attempt to distinguish Llamas-Villa on its facts does nothing to erode the basic principle upon which the State relied. This Court's primary task in Llamas-Villa was determining whether the search of a detached storage closet in a hallway of an apartment complex was justified because it was sufficiently

appurtenant to the specific apartment for which police had secured a search warrant. Llamas-Villa, 67 Wn. App. at 453-454. That is not this Court's task, for the locked cabinet in this case was located wholly within the residence subject to the search warrant. Nonetheless, the Llamas-Villa case shows that the wide body of nationwide case law on this point applies with equal force in Washington.

C. THE APPLICABILITY OF MARTINES TO THIS CASE IS LIMITED, YET STILL PROVES THAT SOME SEARCHES ARE AUTHORIZED BY IMPLICATION AND COMMON SENSE EVEN WHEN NOT EXPLICITLY SPELLED OUT IN THE TEXT OF THE WARRANT.

The defendant devotes considerable attention to distinguishing State v. Martines, 184 Wn.2d 83, 355 P.3d 1111 (2015), a case the State did not rely upon in its opening brief. Br. Resp. 14-18. Much like the Llamas-Villa case, the facts in Martines are very different from the facts in this case, yet its value remains as an example of how to interpret search warrants using a common sense approach. In Martines the Supreme Court determined that a search warrant authorizing extraction of a person's blood as evidence of DUI implicitly authorized a subsequent test (search) of that blood sample to determine alcohol or drug content, even though

the search warrant did not specifically authorize the latter. Martines, 184 Wn.2d at 94.

While it is true that a privacy interest in the chemical composition of one's own blood is different than the privacy interest the defendant had in the contents of his own home, the trial court in this case could have avoided the errors it committed by using the same approach the Supreme Court used to analyze the search warrant in Martines:

The purpose of the warrant was to draw a sample of blood from Martines to obtain evidence of DUI. *It is not sensible to read the warrant in a way that stops short of obtaining that evidence.* A warrant authorizing a blood draw necessarily authorizes blood testing, consistent with and confined to the finding of probable cause. The only way for the State to obtain evidence of DUI from a blood sample is to test the blood sample for intoxicants.

Id. at 93 (emphasis added).

This passage dispenses with the notion that a search warrant needs to include repetitive references to each and every stage of evidence collection flowing from a warrant-based evidence seizure. The entire purpose of a search warrant is to search for evidence of the listed crimes. Any reading which would allow the seizure of a locked container (which has no inherent evidentiary value), but forbid

a search of that same container, thwarts the very purpose of the search warrant and makes no practical sense at all.

D. AN OFFICER'S OBSERVATIONS AND BELIEFS FORMED DURING A SEARCH WARRANT SERVICE DO NOT ALTER THE SCOPE OF A SEARCH WARRANT.

The defendant complains that it was his son, not himself, who was suspected of committing the crimes listed on the warrant. Br. Resp. 18. Yet he provides no legal authority to support his complaint that his son's suspected crimes resulted in an illegal search of the entire house in which they both communally resided. State v. Alexander, 41 Wn. App. 152, 704 P.2d 618 (1985), permits a search of the entire house when a search warrant is directed at a residential dwelling occupied as a communal living unit. Even though the court acknowledged this precedent, it refused to follow it simply because the officers "formed the belief that the contents of the room they were searching belonged to [the defendant]." CP 17.

The defendant does not attempt to defend the trial court's injection of an officer's subjective belief into the analysis, and likewise does not defend the implication that an officer's subjective belief about bedroom occupancy invalidates the judicially-authorized search of that same bedroom. As stated in the State's opening brief, a son is perfectly capable of hiding evidence in his father's safe, and

a father is perfectly capable of allowing his son to do so. Only a thorough search of the entire room, including the safe itself, could conclusively determine whether that occurred. The trial court committed clear error by disregarding the previous judicial determination that probable cause justified a search of the entire house.

II. CONCLUSION

This court should reverse the orders suppressing evidence and dismissing the case.

Respectfully submitted on August 12, 2016.

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DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 15th day of August, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

REPLY BRIEF OF APPELLANT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and John Rodabaugh, john.rodabaugh@frontier.com;

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

Dated this 15th day of August, 2016, at the Snohomish County Office.



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