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Court of Appeals

Division III

State of Washington

Supreme Court No. _____
Court of Appeals No. 32306-4-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/ Respondent,

vs.

SERVANDO ALONSO FLORES,
Appellant /Petitioner.

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON CRF

APPEAL FROM THE GRANT COUNTY SUPERIOR COURT
Honorable John D. Knodell, Suppression Motion Judge
Honorable Evan E. Sperline, Trial Judge

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner, Servando Alonso Flores, is the appellant below and asks this Court to review the decision referred to in Section II.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals, Division III, unpublished opinion filed August 6, 2015, affirming his convictions and sentence. A copy of the opinion is attached as Appendix A.¹

III. ISSUES PRESENTED FOR REVIEW

1. Was there lack of probable cause to issue the search warrant for the trailer at 16528 NW Road 1, Quincy, WA, because the supporting affidavit failed to establish the informant's reliability and requisite nexus between the items to be seized and the location to be searched?

2. In the absence of any evidence the defendant participated in its production, is evidence that someone was growing marijuana in a chicken coop outside the trailer insufficient to support the conviction for manufacturing marijuana?

IV. STATEMENT OF THE CASE

Mr. Flores respectfully refers this Court to his opening brief for a statement of the facts. Brief of Appellant at 2–8.

Regarding Issue One, the Court of Appeals concluded the search warrant was supported by probable cause because immediately after two separate controlled buys the sellers went to the trailer, which the informant had described as a base of operations for a criminal organization supplying methamphetamine. *Slip Op.* at 12. These additional facts are relevant.

The affidavit for search warrant of the trailer is eleven pages long and is summarized as follows.² CP 32–42. The informant, after his March 26, 2013 arrest and in exchange for consideration regarding pending charges, told Jeff Dilks, a Chelan County Sheriff’s Office Detective and member of the Columbia River Drug Task Force (task force), he believed his sources over the past 1-1/2 years of buying methamphetamine for re-sale were part of “the same organization based in the Quincy, George and Wenatchee area.” CP 32; 33 ¶ 4. He described the highest ranking

¹ The online version is found at *State v. Flores*, No. 32306-4-III, 2015 WL 4656664 (Wash. Ct. App. Aug. 6, 2015).

² The search warrant was issued on June 12, 2013, by Chelan County Judge Lesley A. Allan. Copies of the affidavit for search warrant, search warrant and search warrant inventory and return are attached as Exhibit A to defense counsel’s memorandum in support of suppression motion at CP 29–49.

member as “Wedo” and said Wedo uses a “mobile home in George” as a base for his drug trafficking and that he made daily trips to “Wedo’s trailer in George” during the late winter and early spring of 2013 to pick up methamphetamine or drop off money. CP 33 ¶ 4; 34 ¶¶ 2, 3. The informant thought Wedo just used the “trailer” for drug sales and lived somewhere in Quincy. CP 34 ¶ 2.

The informant believed “Jose” led the Wenatchee area methamphetamine sales, and that a female who delivered methamphetamine to him the last five or six transactions was acting as a subordinate to Wedo and Jose. CP 33 ¶¶ 6, 7; 35 ¶ 2. The informant described “Gordo” as next in line and “right hand man” to Wedo, and believed Gordo lived in the Quincy George area. CP 33 ¶ 5. The informant said up until the spring of 2013, his primary contacts were Wedo and “Alonso”, who “used to be Wedo’s right hand man until he got arrested in 2011.” CP 34 ¶ 6.

On June 7, police conducted a controlled buy. It took place at a Shell gas station located ¼ mile from the trailer. Gordo, the passenger in a gray pickup, delivered methamphetamine. Afterwards police saw the pickup parked in front of the trailer. CP 38–39.

On June 13, police conducted a second controlled buy. It again took place at the Shell gas station. The driver, sole occupant of the gray

pickup, delivered the drugs. Afterwards police saw the driver about to enter the trailer. CP 39–41.

Police corroborated public information provided by the informant, such as physical description, property location, phone number, etc., and determined: “Wedo” was Vianey Villa Ambriz – with a WA Department of Licensing address of 16528 NW Road 1, Quincy WA; “Jose” was Arturo Valdovinos Sanchez; “Alonso” was the petitioner Servando Alonso Flores; the female in Wenatchee was Eva Gordillo; and the driver of the gray pickup was Angel Gonzalez Pena of Othello. CP 34 ¶1, ¶2–3; 35 ¶1, ¶3; 36 ¶3; 39 ¶¶1, 6. “Gordo” was not further identified.

With an affidavit containing the facts summarized above, Detective Dilks obtained a search warrant authorizing the search of Wedo’s trailer at 16528 NW Road 1, Quincy WA. CP 30–31.

V. ARGUMENT IN SUPPORT OF REVIEW

1. There was no probable cause to issue the search warrant for the trailer at 16528 NW Road 1, Quincy, Washington, property because the supporting affidavit failed to establish the informant's reliability and requisite nexus between the items to be seized and the location to be searched.

The Court of Appeals determined the requisite nexus establishing probable cause could be based on an unreliable informant's bare allegations the trailer was a base of drug dealing operations used by a criminal organization, which were not corroborated by independent police investigation. The decision conflicts with the prior decisions of this Court in *State v. Jackson*, 102 Wn. 2d 432, 688 P.2d 136 (1984) and *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999). The decision also conflicts with its earlier decision in *State v. G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006), *rev. denied* 160 Wn.2d 1024, 163 P.3d 794 (2007). The search warrant was issued without sufficient probable cause in violation of Const. Art. 1, § 7. Review should be granted under RAP 13(4)(b)(1), (2) and (3).

Mr. Flores respectfully refers this Court to his opening and reply briefs for argument on this issue. Brief of Appellant at 8–16; Reply Brief of Appellant at 1–4. In addition, he argues as follows.

A search warrant may issue only upon a determination of probable cause. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Probable cause requires not only a nexus between criminal activity and the item to be seized but also a nexus between the item to be seized and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Const. art. 1, § 7 requires that, in evaluating the existence of probable cause in relation to informants' tips, the affidavit in support of the warrant must establish the basis of information and credibility of the informant. *State v. Jackson*, 102 Wn. 2d 432, 433, 688 P.2d 136 (1984), citing *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). If the informant's tip fails under either or both of the two prongs of *Aguilar-Spinelli*, probable cause may yet be established by independent police investigatory work that corroborates the tip to such an extent that it supports the missing elements of the *Aguilar-Spinelli* test. *Jackson*, 102 Wn. 2d at 438. The independent police investigations should point to suspicious activity, “*probative indications of criminal activity* along the

lines suggested by the informant.” *Id.* (emphasis original, internal citations omitted). The legal conclusion whether the qualifying information as a whole amounts to probable cause is reviewed de novo. *State v. Emery*, 161 Wn. App. 172, 202, 253 P.3d 413 (2011), citing *In re Det. Of Peterson*, 145 Wn.2d 789, 800, 42 P.3d 952 (2002).

The informant’s “tip” was that a criminal organization used Wedo’s trailer at 16528 NW Road 1, Quincy WA as a base of operations. A magistrate requires an affidavit which informs him of the underlying circumstances which lead the officer to conclude that the informant was credible and obtained the information in a reliable way. *Jackson*, 102 Wn.2d at 437.

The most common way to satisfy the “veracity” prong is to evaluate the informant’s “track record”, *i.e.*, has he provided accurate information to the police a number of times in the past? *Jackson*, 102 Wn.2d at 437 (citations omitted). A showing that the accusation was a declaration against the informant’s penal interest may possibly cure an inadequate track record. *Id.* While the affiant states the informant “has been very honest about his continued involvement in methamphetamine trafficking” (CP 37), the affidavit does not contain facts suggesting the informant had any

involvement in the structure or workings of the alleged criminal organization in Quincy, George or Wenatchee or at the 16528 NW Road 1 location, and establishes that the informant had no prior history of cooperation with law enforcement. The credibility prong of *Aguilar-Spinelli* is unmet.

To satisfy the “basis of knowledge” prong, the informant must declare that he personally has seen the facts asserted and is passing on first-hand information. If the informant’s information is hearsay, the basis of knowledge prong can be satisfied if there is sufficient information so that the hearsay establishes a basis of knowledge. *Jackson*, 102 Wn.2d at 437–38. The informant claims no first-hand observation of the trailer being used as a base of operations throughout Grant and Chelan counties or events supporting his beliefs of a particular hierarchal structure, and the affidavit does not disclose his sources or any other underlying basis for his bare allegations. The task force’s contemporaneous series of eight controlled buys with a number of people in the two counties contradicts the allegations – none were made with either Wedo or Flores or at the trailer location. See CP 35–37. The affidavit fails to establish the basis of knowledge prong.

Even though the informant's tip fails under either or both of the two prongs of *Aguilar-Spinelli*, probable cause may yet be established by independent police investigatory work that corroborates the tip to such an extent that it supports the missing elements of the *Aguilar-Spinelli* test. *Jackson*, 102 Wn.2d at 438. The affiant verified the real names of persons the informant knew only by nickname. The affiant also discovered Wedo used the trailer address on his WA driver's license. However, corroboration of public or innocuous facts only shows that the informer has some familiarity with the suspect's affairs. "Such corroboration only justifies an inference that the informer has some knowledge of the suspect and his activities, not that criminal activity is occurring." *Jackson*, 102 Wn.2d at 438. And, for example, while the informant claimed that drug sales/transactions involving the trailer occurred in the past, law enforcement set forth no recent facts corroborating that such events ever occurred. It also seems unlikely that all aspects of an alleged drug trafficking operation based at the trailer and serving at least two counties would be unnoticed by anybody but the informant. The affidavit fails to provide other investigative information sufficient to supplant the missing elements of the *Aguilar-Spinelli* test.

Probable cause requires not only a nexus between criminal activity and the item to be seized but also a nexus between the item to be seized and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). The Court of Appeals agreed the informant was not proven reliable. *Slip Op.* at 11. It agreed task officers lacked evidence the two sellers (Gordo and Pena) lived at the trailer or came from the trailer before the sale. *Slip Op.* at 12.

Nevertheless, the court concluded, “[o]bservance of the suppliers returning to the [trailer] after both controlled buys provided the requisite nexus between the items to be seized and the location to be searched.” The court reasoned police observations that the sellers went immediately to the trailer “corroborate [the informant’s] earlier disclosures that the criminal organization used the [trailer] as a base of operations.” *Slip Op.* at 12.

The court’s reasoning that a “base of operations” is established merely by sellers going to a particular location after a drug delivery is without merit. The fact that two people visit a trailer in June is innocuous under *Jackson* where the affidavit does not establish any relationship between Pena and the trailer or Wedo, the informant did not mention seeing Gordo or Pena at the trailer when he was most recently there in the

third week of May 2013³, the informant had not been at the trailer for several months prior to that time⁴, and the informant last saw Gordo at the trailer in early 2013⁵. Further, the affidavit established police did not know where the two men came from before the sales and Gordo lived in the Quincy George area and Pena lived in Othello. The men could have acquired the drugs they sold to the informant from their homes or any number of locations other than the trailer. See *State v. G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006), *rev. denied* 160 Wn.2d 1024, 163 P.3d 794 (2007) (On at least one occasion, the suspect was seen going directly from the residence to a controlled buy and back again. Thus, there was no other place from which he could have obtained the drugs sold other than the house. This evidence in addition to the fact the suspect regularly stayed at the house was sufficient to infer that additional drugs would likely be found inside.).

The criminal activity—selling drugs to the informant—occurred near a Shell gasoline station and not at the trailer. The controlled buy did not involve Flores or Wedo or anyone who had recently been at the trailer. Uncorroborated information from an unreliable informant fails to satisfy the

³ CP 37 at ¶ 4-6.

⁴ CP 37 at ¶ 4-6.

⁵ CP 34 at ¶ 5.

Aguilar-Spinelli test. The affidavit for search warrant failed to establish a nexus between the criminal activity and the trailer. Absent a specific factual basis to believe that evidence of criminal activity could be found in the trailer, the application is insufficient to support probable cause as a matter of law. *Thein* at 147.

2. In the absence of evidence Mr. Flores participated in its production, the discovery of a marijuana grow in a chicken coop outside the trailer was insufficient to support a conviction for manufacturing marijuana.

Review should be granted under RAP 13.4(b)(3) because the conviction for manufacturing violated Mr. Flores' right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment.

In all criminal prosecutions, due process requires that the state prove every fact necessary to constitute the charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970); *State v. Crediford*, 130 Wn.2d 747, 749, 927 P.2d 1129 (1996). Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum

requirements of due process. *State v. Moore*, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* “Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)). While circumstantial evidence is no less reliable than direct evidence, *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 491, 670 P.2d 646 (1983).

A reviewing court should reverse a conviction for insufficient evidence where no rational trier of fact, when viewing the evidence in a light most favorable to the state, could have found the elements of the crime charged beyond a reasonable doubt. *State v. Hundley*, 126 Wn.2d 418, 421–22, 894 P.2d 403 (1995).

To convict Flores of the crime of manufacture of a controlled substance, the State had to prove he manufactured marijuana. RCW 69.50.401(2)(c); CP 105; 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC

50.11 (3d Ed). “Manufacture” is defined as “the production, preparation, propagation, compounding, conversion, or processing of a controlled substance ... and includes any packaging or repackaging of the substance or labeling or relabeling of its container.” RCW 69.50.101(s).

“Production” includes the “manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.” RCW 69.50.101(gg).

In *State v. Olson*, a marijuana grow was discovered in a brick building on property on which Olson owned a mobile home. Agents conducting surveillance observed him visiting the property two times. On one occasion, Olson went to the brick building, procured a key from underneath a container and used the key to open a padlock on the door to the brick building. He entered the building and remained inside for 30 minutes. Olsen’s fingerprints were found on several items connected to the grow operation inside the building. The court found this evidence sufficient to establish Olson knowingly participated in the grow operation in the brick building. 73 Wn. App. 348, 358-59, 869 P.2d 110 (1994).

Here, the State’s evidence shows police officers found 49 marijuana plants in one of several chicken coops located outside a trailer. Inside the trailer police found a few strands of twine draped from a ceiling, some plastic starter plant trays and liquid fertilizer. The evidence shows Flores

rented a room in the trailer⁶, the room contained two scales with unidentified white powder on them, and Flores arrived in a car with two plants similar in appearance to marijuana plants at his feet while police were executing a search warrant of the trailer. The State did not present evidence Flores had previously been seen inside the trailer or on the real property or that he possessed a key to the trailer. The State did not present evidence Flores' fingerprints were found in the coop or on the twine, planting trays or container of fertilizer, or that he knew what was in the chicken coop.

No rational trier of fact could find Flores was engaged in the manufacture of marijuana based on his unobserved presence in a trailer outside of which someone was growing marijuana in a chicken coop. Unlike in *Olson*, there was no evidence Flores ever went near the chicken coop, no evidence he ever touched anything related to the growing of marijuana, and no evidence he watered, planted, harvested or did anything else to "propagate" the marijuana. The Court of Appeals noted as incriminating evidence the officer's observing marijuana plants of the same age as those in the chicken coop at Flores' feet in the truck in which he arrived at the Quincy trailer. *Slip Op.* at 14. This is a reasonable assertion

⁶ RP 446.

only if Flores had been seen *leaving* the real property with marijuana plants on the floorboard. Although the facts potentially support other crimes, Flores was not charged with possession of marijuana or possession of marijuana with intent to deliver. In the absence of any evidence he participated in the manufacture of marijuana, Flores' conviction violated due process.

VI. CONCLUSION

For the reasons stated herein and in appellant's opening and reply briefs, Defendant/Petitioner respectfully asks this Court to grant the petition for review and reverse the decision of the Court of Appeals.

Respectfully submitted on September 7, 2015.

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PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on September 7, 2015, I mailed to the following, by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of appellant's petition for review and appendix A:

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s/Susan Marie Gasch, WSBA #16485

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CASE # 323064
State of Washington v. Servando Alonso Flores
GRANT COUNTY SUPERIOR COURT No. 131003638

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:sh
Enclosure

c: **E-mail** Honorable Evan E. Sperline
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 32306-4-III
Respondent,)	
)	
v.)	
)	
SERVANDO ALONSO FLORES,)	UNPUBLISHED OPINION
)	
Appellant.)	

FEARING, J. — Servando Alonso Flores challenges a search warrant for a mobile home in which drug task force officers found controlled substances. He also challenges the sufficiency of evidence to convict him of manufacturing marijuana. We reject both contentions and affirm his convictions.

FACTS

On March 26, 2013, the Columbia River Drug Task Force (task force) arrested a gentleman in Wenatchee for possessing methamphetamine with intent to deliver and for driving with a suspended license. The gentleman had a lengthy criminal history in Washington, Oregon, New York, and South Dakota, which history included convictions

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for narcotics, theft, forgery, bail jumping, and insurance fraud. In exchange for amelioration of charges arising from his conduct in Wenatchee, the gentleman agreed to cooperate as a confidential informant for the task force. The task force named him "Informant 599."

Informant 599 sang like a canary and revealed to the task force details about his methamphetamine suppliers, the criminal organization to which the suppliers belonged, and the location of the organization's base of operations. The base was a mobile home located at 16258 NW Road 1, Quincy. The task force researched and discovered that Vianey Villa Ambriz' driver's license listed 16258 NW Road 1 as his address. Informant 599 also physically described "Wedo," the leader of the organization, who the task force believed was Ambriz.

Informant 599 identified "Alonso" as a primary contact in the criminal organization, but stated that Alonso fled to Mexico after law enforcement seized a large amount of his cash during an arrest in 2011. The task force researched and identified "Alonso" as defendant Servando Alonso Flores.

On March 27, 2013, Informant 599 began conducting controlled buys for the task force. Between March 27 and May 30, 2013, the task force completed eight controlled purchases of methamphetamine from the organization Informant 599 identified.

In May 2013, Alonso resurfaced in Wenatchee and offered to sell Informant 599 methamphetamine. Informant 599, without notifying the task force, accompanied

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another Wenatchee area methamphetamine dealer to the organization's mobile home in Quincy in order to purchase methamphetamine from Alonso. Informant 599 later reported to the task force that Alonso possessed no methamphetamine, but another unidentified Hispanic man sold Informant 599 heroin.

On June 7 and June 11, 2013, Informant 599 assisted the drug task force in two controlled buys from members of Servando Alonso Flores' and Vianey Ambriz' organization. Informant 599, on both days, purchased methamphetamine from suppliers at a Shell station near the Quincy mobile home. In an affidavit in support of a search warrant, Jeff Dilks, a Chelan County Sheriff's Office Detective and member of the task force, declared he observed the following on June 7:

At 1608 hours, a gray Ford pickup, WA license B27875U, entered the parking lot. *It came from behind me, so I do not know where it came from.* It was occupied by two Hispanic males. The pickup parked next to the informant's vehicle so that its passenger side was next to the informant's driver's side. The Hispanic male passenger got out of the pickup and walked to the informant's driver's door. I saw a brief hand to hand exchange before the suspect returned to the pickup. Because I was trying to relay my observations to [Detectives] Orrell & Giacomazzi while watching the transaction, I did not get a great view of the suspect, even though I was watching through binoculars. He was about 5'10", 240 pounds, appeared to be in his late 20's to mid 30's, and wore a white tank top.

The suspect returned to the pickup and they remained parked next to each other for about a minute. The pickup then pulled out of the parking lot and traveled west on NW Road 1 toward the trailer. I had asked Detective Giacomazzi to follow the pickup after the transaction. The trailer at 16258 NW Road 1 is less than one-quarter of a mile from the gas station. The pickup was parked unoccupied in the driveway directly in front of the trailer by the time Giacomazzi drove by. Giacomazzi was only 30 to 45

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seconds behind the pickup, so the two occupants would have had to enter the trailer after getting out of the pickup.

CP at 39 (emphasis added).

In the same affidavit, Detective Dilks averred that he observed the following on

June 11:

We waited at the gas station for the next 45 minutes, but the Ford pickup did not arrive. Gordo would not answer his phone. I told the informant to call Gordo's boss, "Wedo", & complain. Wedo did not answer. The informant offered to go directly to the trailer to see who might be there.

At 2032 hours, the informant drove the short distance to the trailer. All 5 CRDTF [task force] members drove by the trailer at intervals. I saw the informant leaning on his vehicle talking to a Hispanic male in the front yard. The Hispanic male had a cell phone to his ear. The informant later told me that this was Wedo. During subsequent passes, we could not see the informant or the Hispanic male in the front yard, so we assumed that he had either gone inside the trailer or was sitting in his vehicle.

A short time later, both the informant and the Hispanic male were sitting on the front porch of the trailer. The informant left the trailer and returned to the gas station at about 2045 hours. He called me to tell me that Wedo had suggested that he could go to Bridgeport to buy methamphetamine from Wedo's cousin.

As the informant was telling me this, the gray Ford pickup, WA license B27875U, arrived at the gas station. The Hispanic male driver was the sole occupant. The pickup drove to the dirt parking lot on the west side and the informant followed. The informant parked on the passenger side of the pickup, got out of his vehicle, and into the passenger side of the pickup at about 2049 hours. He was inside the pickup for about a minute before he returned to his vehicle.

The pickup left the gas station parking lot and drove directly to the trailer at 16258 NW Road 1. The driver got out of the pickup and walked to the front door of the trailer. He was last seen by Sgt. Foreman with his hand on the door knob as if he were about to enter the trailer.

I contacted the informant while still at the gas station. He gave me a plastic bag that contained approximately 28 grams of methamphetamine

(field test positive). I followed the informant back to Wenatchee and searched him at approximately 2146 hours. I also searched his vehicle.

The informant told me that he was surprised when Wedo greeted him at the trailer. The informant complained that he had arranged to meet Gordo at the gas station and that Gordo had failed to appear. Wedo tried to call Gordo but received no answer. Wedo told the informant that Alonso was inside the trailer and might be able to help him. The informant went inside the trailer and found Alonso in a back bedroom. Alonso was smoking methamphetamine in a glass pipe. He offered some to the informant, but the informant claims that he declined. Alonso showed the informant a bag that contained approximately 1/8 ounce of methamphetamine and told the informant, "This is what you'd get" if the informant bought an ounce from him. The informant declined because of his previous experience with Alonso at the trailer, where Alonso could not produce any methamphetamine and delivered heroin instead.

CP at 40-41.

In concluding his affidavit, Detective Jeff Dilks stated:

Suspects in two separate controlled purchases of methamphetamine on June 7 & June 11, 2013 have gone directly to the trailer at 16258 NW Road 1 immediately after the transactions. Based on my training & experience I believe that the suspects took the CRDTF recorded buy money back to someone at the trailer, and that this money, as well as the proceeds from other drug sales, are kept in the trailer. The informant has provided information that Vianey Villa Ambriz, AKA "Wedo", has used this trailer as base for drug trafficking for over one year. On June 11, the informant saw Servando Alonso Flores, AKA "Alonso", smoking methamphetamine in the trailer. Flores had an estimated 1/8 ounce of methamphetamine in his possession.

Based on the above information I have probable cause to believe that the trailer at 16258 is used to facilitate drug trafficking and that methamphetamine and/or the proceeds of methamphetamine sales are kept inside the trailer.

CP at 41-42.

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Based on Jeff Dilks' affidavit, the task force sought a search warrant in Chelan County Superior Court to search: (1) the mobile home located at 16258 NW Road 1, Quincy, (2) the pickup truck in which Informant 599's suppliers arrived during the controlled buys, (3) the person of Vianey Villa Ambriz, and (4) the person of Servando Alonso Flores. The superior court granted the search warrant. Jeff Dilks did not sign the affidavit before the superior court signed the warrant.

On June 12, 2013, the task force executed the search warrant at the Quincy mobile home. Task force members knocked and, when no one answered, opened the door with a battering ram. The officers found no one inside the home. In a locked bedroom, officers found a paystub belonging to Servando Alonso Flores, a red digital scale with a white powdery residue thereon, a plastic bag, a safe containing a transactions ledger, and a plastic toy duck containing twenty two grams of methamphetamine.

In the search of the remainder of the mobile home, the task force found money transfer receipts, a bag of root starter material for plants, a wooden table and a grow light, plastic starter plant trays, strands of twine draped across the living room ceiling, and a bag of chicken feed. In the kitchen, the task force found a title for a 1990 Chevy K1 pickup registered to Vianey Villa Ambriz. They found coffee filters but no coffee pot. The task force also found a container of methylsulfonylmethane, a container of inositol powder, a jug of acetone, and fertilizer. The task force found, adjacent to the mobile home, animal pens and chicken coops containing forty nine marijuana starter plants

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approximately six to twelve inches tall.

During the task force search, Vianey Villa Ambriz and Servando Alonso Flores fortuitously drove into the driveway in a 1990 Chevy K1 pickup. As two task force members approached the car, the officers saw two marijuana plants near Flores' feet similar in size and appearance to the marijuana plants discovered in the chicken coop. The task force arrested Villa and Flores.

PROCEDURE

The State of Washington charged Servando Alonso Flores with one count of manufacturing marijuana and one count of possession of methamphetamine. The State later amended the charges to add one count of possession of methamphetamine with intent to deliver in a protected zone.

Servando Alonso Flores filed a CrR 3.6 motion to suppress all evidence obtained during the search of the mobile home and his body. He argued that the search warrant was not based on probable cause.

The trial court granted Servando Alonso Flores' motion to suppress because Detective Jeff Dilks failed to sign the probable cause affidavit. In so ruling, however, the trial court noted that Detective Dilks' observations of Informant 599's suppliers returning directly to the Quincy mobile home after the June 7 and June 11 controlled buys established probable cause, citing an Eighth Circuit Court of Appeals case, *United States v. El-Alamin*, 574 F.3d 915 (8th Cir. 2009). In addition, the trial court observed that

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Informant 599's statements to the task force, about observing Flores smoking methamphetamine, did not establish probable cause to search Flores' person due to the informant's lack of proven reliability.

The State filed a copy of the affidavit signed by Jeff Dilks and moved the trial court to reconsider its decision to grant Servando Flores' motion to suppress. The trial court modified its earlier ruling by allowing evidence obtained through the search of the mobile home. The trial court confirmed its ruling suppressing evidence obtained through the search of Flores' person. The State does not appeal the latter ruling.

A jury found Servando Alonso Flores guilty of all charges, and found by special verdict that Flores possessed a controlled substance with intent to deliver within one thousand feet of a school bus route stop. The trial court sentenced Flores to sixty four months of confinement on the conviction for possession with intent to deliver methamphetamine within one thousand feet of a school bus route stop. The trial court dismissed Flores' other conviction for possession of methamphetamine as merging with this count. Flores received a twelve month sentence for the charge of manufacturing marijuana.

LAW AND ANALYSIS

On appeal, Servando Alonso Flores argues: (1) probable cause did not support the search warrant issued by the trial court for the Quincy mobile home, and (2) insufficient

evidence supports the jury's verdict declaring him guilty of manufacturing marijuana. He asks this court to reverse his convictions. We reject both arguments.

Probable Cause

Servando Flores argues that task force observations of two of Informant 599's methamphetamine suppliers returning to the mobile home after the June 7 and June 11 sales do not establish probable cause to search the home. Flores emphasizes that none of the controlled buys arranged by the task force involved Flores or occurred at the trailer location and that the confidential informant lacked a history of reliability to support his allegations. The State responds that trailing the methamphetamine suppliers to the Quincy mobile home after the controlled buys justified issuance of a warrant.

The Fourth Amendment and article I, section 7 of our state constitution require that a search warrant issue only upon a determination of probable cause by a neutral magistrate. *State v. Myers*, 117 Wn.2d 332, 337, 815 P.2d 761 (1991). Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference 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, 505, 98 P.3d 1199 (2004). Probable cause requires (1) a nexus between criminal activity and the item to be seized, and (2) a nexus between the item to be seized and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). The affidavit of probable cause must show criminal activity is at least probable. *State v. Ellis*,

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178 Wn. App. 801, 805-06, 327 P.3d 1247 (2014). Evidence obtained from a warrant issued without sufficient probable cause should be suppressed under the fruit of the poisonous tree doctrine. *State v. Eisfeldt*, 163 Wn.2d 628, 640, 185 P.3d 580 (2008). The trial court's assessment of probable cause is a legal conclusion we review de novo. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008).

Servando Alonso Flores argues that the trial court's reliance on *United States v. El-Alamin*, 574 F.3d 915 (8th Cir. 2009) was misplaced. He urges this court to instead look to *State v. G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006), which he maintains requires that officers observe an individual both leaving from and returning to a residence before a nexus can be established between the criminal activity and the place to be searched.

In *United States v. El-Alamin*, the Eighth Circuit held that an affidavit established probable cause to search Malik El-Alamin's residence. An officer witnessed El-Alamin participate in a controlled narcotics buy with a confidential informant and then return directly to his home after the transaction. Before the controlled buy, the confidential informant identified El-Alamin, disclosed that El-Alamin belonged to the Gangster Disciples street gang, and stated he made drug purchases in the past from El-Alamin at his residence. The appeals court held that such information was sufficient to lead a prudent person to believe that there is a fair probability that contraband or evidence of a crime would be found in El-Alamin's residence.

The facts in *El-Alamin*, while similar, differ from the case on appeal because none of the controlled buys organized by the drug task force involved Servando Alonso Flores or Vianey Villa Ambriz. Nor did the task force have evidence that the suppliers at the June 7 and June 11 controlled buys originated from the Quincy mobile home before seeing them return to the home after the sales. *El-Alamin* was based on more than officers' observations of El-Alamin returning to his house after a controlled buy. Officers relied on their informant's statements that he purchased cocaine from El-Alamin at his residence in the past and the officers confirmed the confidential informant's disclosure that El-Alamin was a member of the Gangster Disciples street gang. In the case on appeal, Informant 599 had not yet proven reliable.

State v. G.M.V., 135 Wn. App. 366 (2006) helps Alonso Flores' case, but not enough to justify reversal of the trial court's decision to deny his motion to suppress evidence obtained in the search of the Quincy mobile home. In *G.M.V.*, we determined that probable cause supported issuance of a search warrant for G.M.V.'s parents' home based on her boyfriend Ivan Longoria's participation in controlled buys with police in Moses Lake. Longoria, who lived with G.M.V. at her parents' home, sold marijuana to a confidential police informant. Law enforcement officers twice observed Longoria leave the home, drive directly to the sale location, and return directly to the home after the sale. Nevertheless, we did not hold that observations of leaving and returning to the home were a requirement for probable cause.

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In the case on appeal, task force officers lacked evidence that the two suppliers lived at the mobile home or came from the home before the sale. Nevertheless, observations that the suppliers returned to the Quincy home corroborate Informant 599's earlier disclosures that the criminal organization utilized the mobile home as a base of operations. Observance of the suppliers returning to the mobile home after both controlled buys provided the requisite nexus between the items to be seized and the location to be searched. A reasonable person would conclude that the mobile home likely contains evidence of a crime.

Sufficiency of Evidence

Servando Alonso Flores next contends that insufficient evidence supports his conviction for manufacture of marijuana. We disagree.

Evidence is sufficient if, after viewing it in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A defendant challenging sufficiency of the evidence at trial admits the truth of the State's evidence and all reasonable inferences therefrom. *Witherspoon*, 180 Wn.2d at 883. A verdict may be supported by either circumstantial or direct evidence, as both may be equally reliable. *State v. Brooks*, 45 Wn. App. 824, 826, 727 P.2d 988 (1986).

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A jury may draw inferences from evidence so long as those inferences are rationally related to the proven facts. *State v. Jackson*, 112 Wn.2d 867, 875, 774 P.2d 1211 (1989). A rational connection must exist between the initial fact proven and the further fact presumed. *Jackson*, 112 Wn.2d at 875. An inference should not arise when other reasonable conclusions follow from the circumstances. *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999). The jury may infer from one fact the existence of another essential to guilt, if reason and experience support the inference. *Tot v. United States*, 319 U.S. 463, 467, 63 S. Ct. 1241, 87 L. Ed. 1519 (1943).

A conviction for manufacture of a controlled substance requires the State to prove beyond a reasonable doubt that the accused manufactured marijuana and knew the substance manufactured was marijuana. RCW 69.50.401(2)(c). "Manufacture" means "the production, preparation, propagation, compounding, conversion, or processing of a controlled substance . . . and includes any packaging or repackaging of the substance or labeling or relabeling of its container." RCW 69.50.101(s). "Production" includes the "manufacturing, planting, cultivating, growing, or harvesting of a controlled substance." RCW 69.50.101(gg).

Servando Alonso Flores argues that *State v. Olson*, 73 Wn. App. 348, 869 P.2d 110 (1994), supports dismissal of his conviction for manufacturing marijuana. In *Olson*, this court held that sufficient evidence supported David Olson's conviction for manufacturing marijuana. The State provided evidence that officers observed Olson visit

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the location of a marijuana grow operation on two occasions; that Olson retrieved a hidden key in order to access the location; and that items connected to the grow operation carried Olson's fingerprints. Based on this evidence, the court determined that evidence was sufficient to establish that Olson knowingly participated in the grow operation.

In the case on appeal, the evidence sufficed for a jury to find the elements of marijuana manufacturing beyond a reasonable doubt. In its search of the mobile home, task force officers found forty nine baby marijuana plants in a chicken coop outside the mobile home, marijuana grow supplies inside the mobile home, and evidence that Flores inhabited one of the bedrooms in the mobile home. The State presented even more incriminating evidence with the officers' observing marijuana plants of the same age as those in the chicken coop at Flores' feet in the truck in which he arrived at the Quincy mobile home. Although some evidence was circumstantial, the jury could reasonably infer Flores' knowing participation in the manufacture of marijuana.

CONCLUSION

We affirm the trial court's denial of Servando Flores' motion to suppress and his conviction for manufacturing marijuana.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Fearing, J.

Fearing, J.

WE CONCUR:

Siddoway, C.J.

Siddoway, C.J.

Lawrence-Berrey, J.

Lawrence-Berrey, J.

FILED

Sep 08, 2015

Court of Appeals

Division III

State of Washington

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Case Name: State v. Servando Alonso Flores

Court of Appeals Case Number: 32306-4

Party Represented: petitioner

Is This a Personal Restraint Petition? Yes No

Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Response/Reply to Motion: ____
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic 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: Petition for Review

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to kburns@grantcountywa.gov.

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Case Name: State v. Servando Alonso Flores

Court of Appeals Case Number: 32306-4

Party Respresented: petitioner

Is This a Personal Restraint Petition? Yes No

Trial Court County: ____ - Superior Court # ____

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- Designation of Clerk's Papers
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Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: Appendix A to Petition for Review

Comments:

No Comments were entered.

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