CR13580090-A 83638693

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CRIMINAL DIVISION

2014 MAR 28 A 10:00

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CASE NO. CR 580090
(JUDGE TIMOTHY McCORMICK)

STATE OF OHIO	:	
Plaintiff,	:	**MOTION TO SUPPRESS EVIDENCE**
vs.	:	
JEFFREY BROWN	:	
Defendant.	:	

* * *

Now comes defendant, Jeffrey Brown, and moves that the court suppress any and all evidence resulting from the activities of law enforcement officers, especially from the City of East Cleveland in connection with this case.

Defendant states that law enforcement officials from the City of East Cleveland conducted activities in the City of Cleveland beyond their territory of jurisdiction.

Defendant states that he was seized on a street in the City of Cleveland by officials and law enforcement officers from the City of East Cleveland on or about November 5, 2013. Defendant states that he was taken from his vehicle and brought into a location on East 131st Street and Brackland Avenue. Defendant states that this was done by law enforcement officials from the City of East Cleveland and defendant was not in the City of East Cleveland but in the City of Cleveland.

Defendant states that this activity and seizure resulting in the arrest of defendant was contrary to §2935.03 of the Ohio Revised Code. As stated in §2935.03(E)(1) of the

Ohio Revised Code, **"A ..., municipal police officer, ..., shall arrest and detain, until a warrant can be obtained, a person found violating within the limits of the political subdivision, ..., a law of this state, an ordinance of a municipal corporation, ..."** Defendant states he was not violating any law when he was seized by the officers and the officers activity in taking him from his vehicle and ordering him into the location violated his constitutional rights.

Requiring defendant to return to the house, for the execution of a search warrant and then be brought into the house was self-incriminating. This would be no different than requiring defendant to produce documents or other personal possessions. The very act of production necessarily conveys information as to the existence, authenticity and possession of the evidence as well as defendant's connection with the home where the drugs and weapons were found.

Baltimore City Dept. Of Social Services v. Bouknight, 493 U.S. 549, 558-62 (1990)(holding that while a mother given custody of a child may not resist, on Fifth Amendment grounds, producing the child, the state may not make evidentiary use of the testimonial aspects of producing the child such as admitting possession of the child.) See ***United States v. Doe***, 465 U.S. 605, 612 (1984); ***Fisher v. United States***, 425 U.S. 391, 409 (1976); ***United States v. Grable***, 98 F.3d 251, 256 (6th Cir.1996).

In ***State v. Doane***, Case No. Z-040523 (June 3, 2005), the Court of Appeals for Hamilton County ruled that Cincinnati police officers who detained defendant, whose house they had a search warrant for, some four blocks away and returned him to the house violated his constitutional rights.

This issue was recently considered by the United States Supreme Court in ***Bailey v. United States***, 133 S.Ct.1031 (2013). In ***Bailey*** the police had a search warrant for a certain premises and the police approached with a search warrant Bailey left the area of the apartment, got into a car and drove away. The car was followed, a short time afterwards the car was stopped and the occupants were searched and questioned. The Supreme Court ruled that this was unconstitutional ruling:

> The risk, furthermore, that someone could return home during the execution of a search warrant is not limited occupants who depart shortly before the start of the search. The risk that a resident might return home, either for reasons unrelated to the search or after being alerted by someone at the scene, exists whether he left five minutes or five hours earlier. Unexpected arrivals by occupants or other persons accustomed to visiting the premises might occur in may instances. Were police to have the authority to detain those persons away from the premises, the authority to detain incident to the execution of a search warrant would reach beyond the rationale of ensuring the integrity of the search by detaining those who are in fact on the scene.
>
> The Court of Appeals relied on an additional safety consideration. It concluded that limiting the application of the authority to detain to the immediate vicinity would put law enforcement officers in a dilemma. The would have to choose between detaining an individual immediately (and risk alerting occupants still inside) or allowing the individual to leave (and risk not be being able to arrest him later if incriminating evidence were discovered). 652 F.3d at 205-06. Although the danger of alerting occupants who remain inside may be of real concern in some instances, as in the case when a no-knock warrant has been issued, this safety rationale rests on the false premise that a detention must take place. If the officers find that it would be dangerous to detain a departing individual in front of a residence, they are not required to stop him. And, where there are grounds to believe the departing occupant is dangerous, or involved in criminal activity, police will generally not need *Summers* to detain him at least for brief questioning, as they can rely instead on *Terry*.
>
> The risk that a departing occupant might notice the police surveillance and alert others still inside the residence is also an insufficient rationale to justify expanding the existing categorical authority to detain so that it extends

> beyond the immediate vicinity of the premises to be searched. If extended in this way the rationale would justify detaining anyone in the neighborhood who could alert occupants that the police are outside, all without individualized suspicion of criminal activity or connection to the residence to be searched. This possibly demonstrate why it is necessary to confine the *Summers* rule to those who are present when and where the search is being conducted. (133 S.Ct. At 1039-40.).

In addition the Supreme Court held those circumstances this would not in any way inserter with the efficient completion of a search. Further, the court ruled that none of the reasons authorizing the seizure of a person at the premises justify the seizure of the criminal defendant away from the premises:

> In sum, of the three law enforcement interests identified to justify the detention in *Summers*, none applies with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises to be searched. Any of the individual interests is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search. This would give officers too much discretion. The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched.
> * * *
> Detentions incident to the execution of a search warrant are reasonable under the Fourth Amendment because the limited intrusion on personal liberty is outweighed by the special law enforcement interests at stake. Once an individual has left the immediate vicinity of a premises to be searched, however, detentions must be justified by some other rationale. In this respect is must be noted that the District Court, as an alternative ruling, held that stopping petitioner was lawful under *Terry*. This opinion expresses no view on that issue. It will be open, on remand, for the Court of Appeals to address the matter and to determined whether, assuming the *Terry* stop was valid, it yielded information that justified the detention of the officers then imposed. (133 S.Ct. at 1041-43).

Defendant further states that various search warrants were issued and executed on November 5, 2013. None of the search warrant inventory of the search conducted that day list the time that the search was conducted. Although the date is stated there are no

times of entry or conclusion of the search warrant listed on the inventory.

SEARCH WARRANT FOR 13012 BRACKLAND AVENUE APT 3, CLEVELAND, OHIO

On November 5, 2013 a search warrant was issued for the search of apartment 3 at 13012 Brackland Avenue. Defendant states that the search warrant failed to establish probable cause and in violation of the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

That search warrant alleges that on November 5, 2013 two search warrants were issued for the premises at 720 East 131st Street, Cleveland, Ohio and another location. The basis for the search warrant is:

> 3. Affiant avers that on November 5, 2013, he, Det. Malone and members of the East Cleveland Police Department executed the search warrant attached hereto as Exhibit B. During execution of the warrant, the juvenile daughter of the suspect Jeffrey Brown stated that she needed to get her belongings from the apartment. For purposed of officer safety, Detective Malone followed the juvenile while she walked upstairs and entered apartment 3. Affiant avers that Det. Malone detected the odor of marijuana emanating from the inside apartment.
>
> 4. Affiant avers that Det. Malone observed the juvenile exit the apartment with some items, and returned to her father, Jeffrey Brown, on the first floor.
>
> 5. Affiant avers that as more fully described in Exhibit B, during the first controlled buy of marijuana, CRI (blacked out) and Jeffrey Brown exited the store together and talked after the first buy, which was made from inside the store. Affiant avers that CRI (blacked out) informed Det. Malone that during the conversation, Brown discussed (blacked out).
>
> 6. Affiant avers that as more fully described in Exhibit B, Brown was linked to an apartment on the second floor as that address, but not a specific apartment number, was provided in connection with Brown for an arrest by Cleveland Police.

This certainly is insufficient evidence to connect and authorize a search of that

apartment. As noted, defendant was seized outside the premises, brought into the premises against his will and this would a fruit of the poisonous tree.

SEARCH WARRANT FOR 720 EAST 131ST STREET

Defendant states that a search warrant was issued for 720 E. 131st Street, Cleveland, Ohio. This was on the basis of representations made by an officers of the City of East Cleveland who are outside of their territorial jurisdiction. This search warrant was based on an unsupported allegation from **"a Confidential Reliable Informant"** . There is nothing in the affidavit as to why this was a confidential reliable informant. In addition, it was also based on **"a different CRI"**. The affidavit alleges that certain activities were conducted in a parking lot on Noble Road in or about a barbershop; that defendant allegedly drove a vehicle from that location to 4407 Lucille Avenue, South Euclid, Ohio and the vehicle was alleged to belong to Leila Malone whom the affiant believes to be the girlfriend of defendant. As further stated in the affidavit:

> 10. Affiant avers that within the past 24 hours, he conducted surveillance at 4407 Lucille Avenue, South Euclid, and observed the tan Hummer parked in front of the residence. Affiant conducted surveillance until CRI (blank) and other members of the Narcotic Unit had arranged another controlled buy with Brown. Affiant observed Brown exit the residence, and followed Brown to the above described business premises. Brown entered the store, after which CRI (blank) entered, remained inside for a short time, and exited.
>
> 11. Affiant avers that within the past 24 hours and for this third controlled buy, CRI (blank) was searched for money, drugs and contraband with negative results, and provided a quantity of buy money, the serial numbers of which had been prerecorded. CRI (blank) vehicle was also searched, with negative results,. CRI (blank) was followed by members of the narcotics unit to the store.

12. Affiant avers that he followed CRI (blank) to an agreed upon meeting location, where CRI (blank) provided affiant with, what in affiant's training and experience, was marijuana, based on its odor and appearance as a green leafy substance. Affiant avers that CRI (blank) and CRI (blank) vehicle were searched for contraband with negative results.

SEARCH OF 4407 LUCILLE AVENUE, SOUTH EUCLID, OHIO

A third search warrant was issued for 4407 Lucille Avenue, South Euclid, Ohio. The affidavit, after repeating allegations contained in prior applications for search warrants merely makes an allegation concerning an unnamed **"Confidential Reliable Informant"**. Although it claimed defendant entered the Lucille Avenue residence there was nothing to indicate that there was probable cause to search 4407 Lucille Avenue, South Euclid, Ohio.

In a similar case, where officers observed the defendant at different locations other than the place to be searched, the Court of Appeals for Cuyahoga County in ***State v. Williams***, Case No. 98100, 2013-Ohio-368, ruled that there was insufficient evidence to search a particular home. In this case, there was identification on any property of record that **"Blue"** resided at 3202 Bradwell. Moreover, the vehicle that Blue was driving was listed to another individual who lived on the east side of Cleveland on Alhambra Road.

In ***State v. Gales***, 143 Ohio App.3d 55, 757 N.E.2d 390 (2001), the affidavit for a search warrant stated that there was surveillance of premises and that the affiant observed the defendant going in and out of the premises to be searched. Further, the affidavit alleged that in the past 72 hours the informant contacted the defendant and stated that she would go to a location at Euclid and Superior Avenue and make a transaction. The alleged transaction occurred the Common Pleas Court overruled the motion to suppress. On appeal the Court of Appeals ruled that the search warrant was invalid. The Court of Appeals ruled that the

affidavit to support the search warrant was constitutionally defective because it did not contain timely information. Moreover, the court, in commenting the fact that police officers saw the defendant go in and out of location to be searched within 72 hours:

> nothing connects this with ongoing criminal activity. Thus, according great deference to the judge authorizing the search warrant, the incidents described in the affidavit do not provide a substantial basis on which to conclude that probable caused existed to issue the warrant. 143 Ohio App.3d at 62, 757 N.E.2d at 395-96.

Further, in ***State v. Reniff***, 146 Ohio App.3d 749, 768 N.E.2d 667 (2001), the Common Pleas Court granted a motion to suppress. The suppression order was upheld on appeal by the Court of Appeals for Cuyahoga County. In Reniff a search warrant was issued based upon a statement by an officer that illegal drugs sales were occurring out of an apartment and another apartment in the same apartment building. The affidavit related the name of who was selling drugs out of the apartment. The affidavit further related that in the past week surveillance was conducted and persons were observed either to enter the apartment building and stay for a period of less than five minutes then leave or pull up in a vehicle and be met by a white male fitting the description of the person claimed to be conducting the activities. The affidavit also related that a Confidential Informant executed a controlled buy of heroin from the apartment to be searched. The court ruled that the affidavit to support the search warrant was constitutionally inadequate.

However, recently in ***State v. Williams***, Case Nos L-06-1195 and L-06-1197 the court upheld the granting of motion to suppress a search warrant. The court ruled that a similar affidavit for a search warrant was constitutionally insufficient.

Therefore, the state court warrant was improperly issued as there was nothing to indicate that any drugs would be presently found on the premises. The Fourth Amendment requires that there must be probable cause to believe that evidence of a crime is **presently** at the location to be searched. ***Sgro v. United States***, 287 U.S. 206 (1932).

More recently in ***State v. Davis***, 166 Ohio App.3d 468, 851 N.E.2d 515 (2006), the court considered an affidavit for a search warrant which was based upon information from **"a reliable Confidential Informant"** who allegedly had purchased cocaine from an individual on four (4) occasions. The affidavit went on to describe controlled purchases, two of which were within the last seventy-two hours. The seller of the cocaine received the money and then went to a certain residence and returned with the drugs to complete the sale. Based on these allegations a search warrant was issued.

The Court of Appeals ruled that the search warrant was insufficient as there was no information from which the reliability of the Confidential Informant could be determined. Thus the search warrant was invalid.

It is imperative that there must be allegations that evidence of a crime is **presently** at the premises. In ***United States v. Savoca***, 739 F.2d 220 (6th Cir.1984), ***vacated on rehearing***, 761 F.2d 292 (6th Cir.1985), the court invalidated a search warrant and suppressed all evidence seized when the hotel room of a suspected bank robber was searched. The court noted that the affidavit failed to state when the robberies occurred. Therefore the issuing magistrate had no basis to conclude that evidence of the robberies was presently located in the hotel room.

As observed by one court:

> To establish probable cause to search a residence, two factual showings are necessary - first, that a crime was committed, and, second, that there is probable cause to believe that evidence of such crime is located at the residence. ***United States v. Travisano***, 724 F.2d 341, 345 (2d Cir. 1983)

This pronouncement was based upon a United States Supreme Court decision where the facts alleged in the affidavit " **... implicated that property had furnished probable cause to search."** ***United States v. Harris***, 403 U.S. 573, 584 (1971).

Consequently,

> The critical element in a reasonable search is not that the owner of the property is suspected of a crime but that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought. *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978).

Based on this principle it is well settled that **"probable cause to arrest an individual does not, in and of itself, provide probable cause to search that person's home or car."** ***United States v. Santarsiero***, 566 F. Supp. 536, 538 (S.D.N.Y. 1983).

"An officer's statement that '[a]ffiants have received reliable information from a credible person and do believe' that heroin is stored in a home, is likewise inadequate. ... As in *Nathanson*, this is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause. ..." ***Gates v. Illinois***, 462 U.S. 213, 239 (1983) quoting ***Aquilar v. Texas***, 378 U.S. 108, 109 (1964) See ***Nathanson v. United States***, 290 U.S. 41, 47 (1933) **("Mere affirmance of belief or suspicion is not enough.")**.

An affidavit supporting a search warrant must set forth detailed facts to support the warrant. ***United States v. Weaver***, 99 F.3d 1372, 1378 (6th Cir.1996).

In ***United States v. Washington***, 266 F.Supp.2d 781 (S.D. Ohio 2003), the court ruled that a search warrant was invalid which authorized a search of a residence where the police only saw a suspect once at the house and saw him drive a car twice which car was registered to a person at the address to be searched. Like this case, the court ruled that there was insufficient information to establish probable cause. The court noted that **"probable cause to search a residence does not automatically follow from probable cause to arrest an occupant of that residence. ..."** 266 F.Supp.2d at 785.

The statements in the affidavit are nothing but conclusory and unsubstantiated allegations. These have been held to be insufficient by other court. ***United States v. Weaver***, 99 F.3d 1372 (6th Cir.1996).

In ***Weaver*** the court ruled that a search warrant based on an informant's statement was unconstitutional. The officer told the magistrate that the informant was truthful, reliable and credible because:

> "(1) the said informer appears to have intelligence and unimpaired physical senses; (2) the said informer appears to affiant to have sufficient personal knowledge or familiarity or experience with the contraband substance herein mentioned to be able to identify the same by sight, smell and other senses, insofar as such identification can usually be made by the human physical senses unaided by laboratory analysis; (3) there has been a previous occasion, or occasions, on which the same informer has given information of violation of law of the state, which information thereafter was found to have been accurate and reliable; (4) that within the last 72 hours said informant was upon the above described premises and while thereon personally observed (Gary Weaver) having person possession and control over a quantity of (marijuana) being held expressly for the purpose of unlawful distribution. Affiant knows of no reasons why said informer would falsify or fabricate any of the information given. Consequently, Affiant believes that all or some portion of the said (marijuana) still remains upon the above described premises. 99 F.3d at 1375-76.

The information presented in this case for the warrant is less than what was presented in ***United States v. Leake***, 998 F.2d 1359 (6th Cir. 1993). In ***Leake***, a search warrant had been issued and a search conducted on defendant's home during which 300 pounds of marijuana was seized. As a predicate for the search warrant, Det. Thomas Murphy of the Louisville Police Department alleged that he had received a telephone call from a citizen who told Murphy that he had observed a large stash of marijuana in the basement of the home where he had been engaged to work as a tradesman. The caller would not give his name but gave the location of the premises. The caller stated that he smelled the distinctive odor of marijuana and saw what appeared to be bales of marijuana in the basement. He stated that he recognized the smell of marijuana because he had smoked marijuana when was younger, and from his observations the persons at the residence, they appeared to be dealing marijuana rather than possessing the drug for private use.

The detective decided that this complaint would have to be corroborated and undertook surveillance of that address. The house matched the description given by the caller and had a basement as the caller had stated. The detective recorded the license plate numbers of the cars in driveway and later determined that the home belonged to the defendant and another female. Det. Murphy then presented the affidavit for a search warrant to a justice in County Circuit Court. In the affidavit he related the information concerning what the caller had told him together with his surveillance. The District Court found that the affidavit did not contain enough allegations to support a finding of probable cause and therefore ordered the evidence suppressed. Upon appeal the order of

suppression was affirmed.

Moreover, the command of the search warrant authorized an unconstitutional general search. The command of the search warrant was too broad and amounted to a general search:

> Heroin, **"Molly,"** AKA 3,4-methylenedioxymethamphetamine, and/or controlled substances, instruments, and paraphernalia used in the taking of drugs and/or preparation of illegal drugs for sale, use, possession, or shipment, records of illegal transactions, articles of personal property, papers and documents tending to establish the identity of persons in control of the premises, any and all evidence of communications used in the furtherance of drug trafficking activity, including, but not limited to, computers and their contents, computer disks and their contents, computer accessories and their contents, pagers and their contents, cellular telephones and their contents, answering machines and their contents, and answering machine tapes and their contents, any and all other contraband, including, but not limited to, money, firearms, and other weapons being illegally possessed therein, and any and all evidence pertaining to the violation of the drug laws of the State of Ohio, to wit: Ohio Revised Code Chapter 2925.

This broadly worded command in the search warrant authorized nothing more than an unconstitutional general search. There was no particularity specified as mandated by the Fourth Amendment.

The purpose of a particularized warrant is to " **'assure[] the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.**' " ***Gro. v. Ramirez***, 540 U.S. 551, 561 (2004) (quoting ***United States v. Chadwick***, 433 U.S. 1, 9 (1977)). Thus, **"[a]s to what is to be seized nothing is left to the discretion of the officer executing the warrant."** ***Marron v. United States***, 275 U.S. 192, 196 (1927).

Broadly worded warrants are nothing more than general warrants which are unconstitutional under the Fourth Amendment. See ***Center Art Galleries-Hawaii, Inc. v. United States***, 875 F.2d 747, 750 (9th Cir. 1989). In ***United States v. Stubbs***, 873 F.2d 210, 211 (9th Cir. 1989), a warrant was found to be invalid **"because of the complete lack of any standard by which an executing officer could determine what to seize."**

This warrant authorized a look for any type of evidence that may be present. However, these broad based generic classifications are improper. One court noted that **"generic classifications in a warrant are acceptable only when a more precise description is not possible."** ***United States v. Bright***, 630 F.2d 804, 812 (5th Cir. 1980). This made the warrant at issue invalid. ***United States v. Caldwell***, 680 F.2d 75, 77 (9th Cir. 1982).

The evidence will also show that a police officer of the City of Cleveland after seizing defendant outside on the street brought him into the premises. The police immediately not only searched the premises but went upstairs and searched the various apartments. Thereafter the police allegedly obtained a search warrant for the upstairs apartments after entering the apartment and searching the apartment. This was the fruit of an unlawful search. See ***Brown v. Texas***, 443 U.S. 47, 50 (1979) (holding that when defendant was detained for purpose of identification the officers **"performed a seizure of his person subject to the requirements of the Fourth Amendment."**)); ***United States v. Stittiams***, 417 Fed. Apx. 530, 532 (6th Cir.2011)(holding that a seizure took place when the police chased the defendant and demanded that he stop. **"Evidence obtained as a result of an illegal arrest is inadmissible at trial."** ... ***State v. Tibbits***, 92 Ohio St.3d 146, 153, 749

N.E.2d 226, 242 (2001). See **Wong Sun v. United States**, 371 U.S. 471 (1963). In ***Silverthorne Lumber Co. v. United States***, 251 U.S. 385, 392 (1920), the court ruled that knowledge gathered from copies of illegally seized documents could not be used to frame an indictment or secure a subpoena for the production of those documents. The same rule applies to the issuance of a search warrant. If it is illegally obtained in violation of the law or the constitution it cannot be used to later obtain a search warrant in order to justify a previous illegality. In ***Nardone v. United States***, 308 U.S. 338, 340 (1939); ***State v. Warren***, 129 Ohio App.3d 598, 606-07, 718 N.E.2d 936, 939 (1998).

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SERVICE

A copy of the foregoing ***Motion to Suppress Evidence*** has been sent to Timothy J. McGinty, Attorney for Plaintiff, on this 28th day of March, **2014.**

PAUL MANCINO, JR. (0015576)
Attorney for Defendant

JeffreyBrown.Suppress580090