



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA COURT OF APPEALS



Probable Cause Sufficient to Support Issuance of Search Warrant

State v. Teague, No. COA17-1134 (June 5, 2018).

On March 6, 2014, Raleigh Police Detective N.D. Braswell applied for and received a search warrant for the premises located at 621 Manchester Drive. In his probable cause affidavit, Detective Braswell stated that “he received information from a concerned citizen in the neighborhood who wants to remain anonymous . . . that he/she believes narcotics are being sold from 621 Manchester Drive.” Based upon the anonymous tip, Detective Braswell began an investigation and surveillance of activities occurring at the residence. According to the affidavit, Detective Braswell drove by the residence and checked the license plate number on an automobile parked in the driveway which revealed that the vehicle was registered to Laura Teague. In the affidavit, Detective Braswell stated that he was familiar with this address from previous assignments as a patrol officer and knew that Joseph Edwards Teague III is the son of Ms. Teague. Detective Braswell utilized City of Raleigh databases to confirm that Joseph lived at the address. After noting that the regular refuse day for the residence is Thursday, Detective Braswell stated that he had conducted a refuse investigation in the early morning hours of Thursday. The trash can Detective Braswell searched was located to the left of the driveway of the residence, only inches from the curb line. There is not a house or structure located to the left of the residence; the nearest structure is a church at an unspecified distance. Inside the trash can, Detective Braswell found three white trash bags containing: a red Solo cup containing a green leafy substance which field tested positive for marijuana; five cut open food saver bags; a Ziplock bag containing trace residue of what appeared to be marijuana; and a Vector butane gas container. He noted in the affidavit that butane hash oil may be made by using butane to extract the THC from marijuana. Detective Braswell also included information about prior controlled substances charges and case dispositions involving Defendant.

Pursuant to the warrant, officers searched Defendant's residence and marijuana, drug paraphernalia, and over a \$1000 in cash were seized. Defendant was indicted for various violations of the Controlled Substances Act. Defendant filed a motion to suppress the search of the residence, arguing that Detective Braswell's affidavit was insufficient to establish probable cause for the magistrate to issue the search

warrant. Defendant asserted a lack of information regarding: (1) when the anonymous tip was made to Detective Braswell; (2) the basis or source of the anonymous informant's information; (3) the date on which Detective Braswell conducted the refuse investigation; (4) the contents of the trash bag being linked to the residence or Defendant; and, (5) any indication on the trash can connecting it to the residence.

The trial court denied Defendant's motion. Defendant pled guilty reserving his right to appeal.

To determine whether probable cause existed to issue a search warrant, a reviewing court looks to the totality of the circumstances. Here, although the affidavit does not state when or over what period of time the anonymous tipster observed criminal activity at Defendant's residence, when the tipster relayed this information to police, or the exact date Detective Braswell conducted the refuse search, the affidavit was based on more than just the information supplied by the anonymous tipster and the information regarding the refuse search. Detective Braswell's affidavit included details regarding database searches indicating Defendant resided at the residence, that Detective Braswell was familiar with the residence and Defendant from his previous assignment as a patrol officer, and recounted Defendant's prior charges for violations of the Controlled Substances Act. To the extent the information from the anonymous tip may have been stale, it was later corroborated by Detective Braswell's refuse search, in which Detective Braswell found a Solo cup containing marijuana residue, plastic bags containing marijuana residue, and a butane gas container that Detective Braswell specified is consistent with the potential manufacturing of butane hash oil.

Detective Braswell also stated in his affidavit that "the regular refuse day for [the Residence] is Thursday. I conducted a refuse investigation in the early morning hours of Thursday." Although the affidavit is not explicit about which "Thursday" Detective Braswell conducted the refuse search, a common sense reading of the affidavit would indicate the "Thursday" referred to by Detective Braswell was the most recent Thursday to March 6, 2017, the date he swore out the affidavit and submitted the search warrant application.

The court further noted that a magistrate may rely on his personal experience and knowledge related to residential refuse collection to infer that the garbage bag in question came from the defendant's residence and that items found inside that bag were probably also associated with that residence.

The Court of Appeals therefore decided that, under the totality of the circumstances, the affidavit and application submitted by Detective Braswell gave the magistrate a substantial basis to conclude that probable cause existed to issue the warrant. Thus, the trial court's order, denying Defendant's motion to suppress, was affirmed.

Probable Cause Did Not Support Issuance of Search Warrant

State v. Lenoir, No. COA17-943 (June 5, 2018).

On July 29, 2013, Sgt. Murray, and several other officers from the Rutherford County Sheriff's Office, went to the home of Jesse Lenoir ("Defendant") to conduct a knock and talk. Defendant's brother, David Lenoir, answered the door and invited the officers into the residence. Sgt. Murray asked David if there was anyone else in the house, and David responded that no one else was present. Sgt. Murray noticed that a light was on in a back bedroom and asked if he could "check and make sure nobody was there" for the safety of the officers. David gave his consent, and Sgt. Murray walked to the back bedroom where he saw a woman lying on a bed and a glass smoke pipe on a dresser in the bedroom.

That same day, Sgt. Murray applied for a search warrant for the residence and submitted a supporting affidavit that stated, in its entirety, as follows:

On July 29, 2013 I went to 652 Byers Road Lot 10 Forest City, N.C. for a knock and talk. Once at the residence I spoke with the tenant at the residence David Lenoir. Lenoir stated he and his brother Jesse Lenoir both lived there. David consented to a search of the residence and stated no one was inside the residence. In a back bedroom was Dawn Bradley sleeping and I could see a smoke pipe used for methamphetamine in plain view. The bedroom she was in belonged to Jesse Lenoir. Jesse was unable to be reached. Dawn would not admit to the smoke pipe being hers but she did stated Jesse and Rebecca Simmons stayed in that bedroom as well.

Based upon this affidavit, a search warrant was issued. The officers then conducted a search of the home and discovered a shotgun. Sgt. Murray later questioned Defendant about the shotgun, and Defendant admitted that it belonged to him. Defendant was subsequently indicted for possession of a firearm by a felon. Defendant made a motion to suppress which was denied by the trial court. A jury found Defendant guilty. Defendant appealed arguing that the search warrant issued for his residence was not supported by probable cause.

The Court of Appeals noted that Sgt. Murray's affidavit simply stated that he saw "a smoke pipe used for methamphetamine" in a bedroom in Defendant's house. It made no mention at all of Sergeant Murray's training and experience; nor did it present any information explaining the basis for his belief that the pipe was being used to smoke methamphetamine as opposed to tobacco. In addition, the affidavit did not explain how Sergeant Murray was qualified to distinguish between a pipe being used for lawful — as opposed to unlawful — purposes. Indeed, the affidavit did not even purport to describe in any detail the appearance of the pipe or contain any indication as to whether it appeared to have recently been used. It further lacked any indication that information had been received by law enforcement officers connecting Defendant or his home to drugs. A pipe — standing alone — is neither contraband nor evidence of a crime. Given the absence of additional information in Sgt. Murray's affidavit to support his bare assertion that the pipe was "used for methamphetamine," the Court held that the affidavit was insufficient to establish probable for issuance of the search warrant.

Accordingly, the trial court erred in denying Defendant's motion to suppress.

Search Warrant Affidavit Established Probable Cause to Search Vehicles but Did Not Establish Sufficient Nexus Between Defendant and Residence to Justify Search of the Home

State v. Lewis, No. COA17-888 (May 1, 2018).

On September 21, 2014, a man wearing a blue mask, dark clothing, and carrying a handgun robbed a dollar store in Hoke County and then fled in a blue Nissan Titan. Five days later, another dollar store was robbed. Again, witnesses described the suspect as wearing a blue mask and dark clothing, and carrying a handgun. The man ordered two people into a bathroom before fleeing the scene. Two days later, a third dollar store was robbed. Once again, witnesses described the suspect as a man in a blue mask, carrying a handgun. And again, the man ordered people into a bathroom before fleeing.

On October 19, law enforcement in Smithfield notified the Hoke County Sheriff's Office that a man in a blue head cover, dark clothing, and carrying a handgun had robbed a business in their county. The Smithfield police saw the suspect flee in a Kia Optima. Able to identify him from a previous encounter as Robert Dwayne Lewis, Smithfield police issued an arrest warrant for him.

Acting on this information, Hoke County Deputy Kavanaugh drove to Lewis's address, 7085 Laurinburg Road, in Hoke County. He saw a blue Nissan pickup truck parked in the yard matching the description of the Nissan Titan witnesses saw during the first robbery. Later that day, when the deputy drove past the address again, he saw a Kia Optima in the yard of the house. The deputy parked nearby and watched the house until he observed a man matching Lewis's description walk out to the mailbox. The deputy approached the man and asked him for his name. When the man said "Robert Lewis," the deputy arrested him.

After arresting Lewis, Deputy Kavanaugh walked up to the front door of the residence and spoke to a man who identified himself as Waddell McCollum, Lewis's stepfather. McCollum told the deputy that Lewis lived there, that the Nissan truck belonged to him but that sometimes Lewis drives it, and that the Kia belonged to Lewis.

A detective with the Hoke County Sheriff's Office prepared a search warrant application to search the residence at 7085 Laurinburg Road, the Nissan Titan and the Kia Optima.

A magistrate issued the warrant and Hoke County officers executed it the same day seizing various items as evidence. In the Kia, officers found a bank bag containing documents connected to the Smithfield business that was robbed, a blue helmet liner that was consistent with the blue head covering worn by the suspect in the Hoke County robberies, and a handgun.

The State indicted Lewis for three counts of robbery with a dangerous weapon, one count of attempted robbery with a dangerous weapon, and five counts of second degree kidnapping. Lewis filed a motion to suppress the evidence recovered during the execution of the search warrant which the trial court denied. Lewis pleaded guilty to all of the charges and but then timely appealed.

Lewis argued that the trial court erred in denying his motion to suppress because the search warrant affidavit was insufficient to establish probable cause for a search of the house and two cars at 7085 Laurinburg Road, rendering the warrant and search invalid.

The affidavit in support of a search warrant must establish a nexus between the objects sought and the place to be searched.

Noting that the affidavit could have been more detailed, the court held that it contained enough information, together with reasonable inferences drawn from that information, to establish a substantial basis to believe that the evidence sought probably would be found in the Nissan Titan and Kia Optima. Specifically, the affidavit described the four robberies in detail including similarities in the manner of the crimes and the descriptions of the suspect. The affidavit also stated that witnesses saw the suspect in the first robbery leave the scene in a dark blue Nissan Titan with North Carolina registration. Law enforcement saw the suspect in the fourth robbery flee the scene in a Kia Optima and, based upon a previous encounter, were able to identify the suspect as Lewis. Finally, the affidavit stated that officers located and arrested Lewis at 7085 Laurinburg Road and, while making the arrest, saw a dark blue Nissan Titan at that location.

However, the court agreed with Lewis that the warrant application and affidavit failed to establish probable cause to search the home at 7085 Laurinburg Road. The court noted that the warrant application was missing a key fact known to law enforcement that, if included, would have made the case far easier. Specifically, the warrant application did not describe how the officers linked Lewis to the 7085 Laurinburg Road address. The only information in the affidavit linking Lewis to the address was the fact that officers arrested him at that location. While this statement is sufficient to establish that Lewis was *found* at that location, it does not necessarily follow that Lewis also *resided* at that location. From the information contained in the affidavit, 7085 Laurinburg Road could have been someone else's home with

no connection to Lewis at all. That Lewis visited that location, without some indication that he may have stowed incriminating evidence there, is not enough to justify a search of the home.

Because it was unclear from the record which evidence was seized from the vehicles and which evidence was seized from the home, the court vacated Lewis' convictions and sent the case back to the trial court with instructions to suppress the evidence which was seized from the residence.

Search Warrant Affidavit Sufficiently Established a Nexus Between the Evidence Sought and the Place to be Searched

State v. Worley, No. COA16-941 (July 18, 2017).

On December 25, 2014, deputies with the Transylvania County Sheriff's Office (TCSO) responded to a reported breaking and entering of a horse trailer and discovered that horse tack worth approximately \$1,135.00 was missing.

On December 27, 2014, Mrs. McCall, one of the property's owners, called the TCSO and reported that defendant was a likely suspect. She told Deputy Owen that defendant moved to Florida about one year ago, but she recently discovered he was back in town, and heard that someone had seen him on Sugar Loaf Road, the road where the breaking and entering occurred. She reported that defendant was currently renting a nearby cabin. She further stated that defendant had worked for her family on their farm about one year ago and that, during that time, several tools and equipment went missing. Mrs. McCall also stated that immediately before defendant moved to Florida, someone had broken into her daughter's car and stolen approximately \$1,050.00.

The following day, Mr. McCall reported to Deputy Owen that his son, Zach, had just observed defendant driving in a "very slow manner" down Sugar Loaf Road. Mr. McCall stated that Zach drove toward defendant in an attempt to make contact with him, but defendant sped away and then turned into an apartment complex. Zach followed and when he turned into the complex, defendant sped away again, driving in a very unsafe manner and at high speeds. Zach then discontinued his pursuit. Zach described defendant's truck as a grey GMC with an extended cab and temporary plates. Mr. McCall returned with Zach to the area that his son had last seen defendant, and they found the truck sitting "out of view" beside a nearby office building. Mr. McCall also reported that part of his fence had been knocked over when the horse trailer was broken into, and that he observed a "fresh dent" on the grey GMC truck. Mr. McCall stated further that when defendant had worked on their farm, several items went missing, and that the larcenies stopped when defendant moved to Florida.

Deputy Owen subsequently confirmed with the cabin rental company that defendant was currently renting Cabin #1 but, on December 24th, had asked for a refund for his rent so that he could return to Florida. Deputy Owen also discovered a 1999 GMC extended cab truck displaying temporary tags, registered to defendant, hidden behind a back hoe in the rear of the rental agency's office. The Deputy noticed a large and apparently recent dent on the driver's side of the truck, and bullets on the driver's seat and floorboard. Deputy Owen checked defendant's criminal history and discovered that he had previously been convicted of first-degree burglary and felony larceny.

On December 28th, Deputy Owen applied for and received warrants to search defendant's truck and rental cabin. In addition to the above facts, Deputy Owen's affidavit recited his training and experience investigating approximately 100 breaking-and-entering cases and that, based on his experience, criminals who commit breaking-and-entering and burglary crimes "will often return to an area if there is more property which can be taken or to scope out other properties to burglarize." Deputy Owen stated further

that, in his opinion, defendant running from the property owners and then hiding his vehicle from site after doing so would lead a reasonable person to believe that he was involved in the crimes.

During the execution of the first warrant at the cabin, Deputy Owen found and seized the stolen horse tack. He also observed other incriminating evidence. This evidence, along with his first affidavit, were used to apply for and obtain a second warrant to further search the cabin. Pursuant to the second search warrant, additional items were seized which were determined to have been stolen from a barn and a residence located in the same vicinity as the horse trailer.

Defendant was arrested and indicted for several property-related offenses at the horse trailer and other nearby locations. Prior to trial, Defendant moved to suppress the seized evidence. The trial court denied defendant's motion. A jury convicted defendant of multiple felonies. On appeal, defendant argued that the warrants to search his cabin lacked probable cause because the underlying affidavits failed to establish a nexus between the criminal activity and his rental cabin.

A search warrant's supporting affidavit must establish a nexus between the evidence sought and the place to be searched. Ideally, this nexus is established by direct evidence showing that criminal activity actually occurred at the location to be searched or that the fruits of a crime that occurred elsewhere are observed at a certain place. Yet, absent evidence directly linking criminal activity to a particular place, this nexus may be inferred by the accumulation of reasonable inferences drawn from information contained within an affidavit.

In the case at hand, there was no direct evidence that anyone had observed defendant break into the horse trailer, steal the horse tack, bring it to his cabin, or store the horse tack there. Nonetheless, the court found that Deputy Owen's affidavit contained sufficient allegations about defendant that permitted the magistrate to conclude there was probable cause to believe that defendant was the offender.

Having made this determination, the court then had to consider whether the affidavit supplied the magistrate with probable cause to believe that a search of defendant's cabin would yield the stolen horse tack. In the case at hand, the crime being investigated occurred only four days prior to the search. The horse trailer which had been broken into was within close proximity to defendant's cabin and registered vehicle. The affidavit established that defendant permanently resided in Florida and appeared to only have rented the cabin for a short period around the time that the crimes were committed. Further, the stolen items included two saddle pads, two saddles, and two bridles with bits. The size of such items, and the fact that defendant did not have a permanent residence, office or storage facility in North Carolina, provided a reasonable inference that defendant's cabin or truck were the only two possible storage places for the stolen goods.

Accordingly, the court held that under the totality of the circumstances, the accumulation of reasonable inferences drawn from information contained within the affidavit sufficiently linked the criminal activity to defendant's cabin and thus, provided the magistrate with a substantial basis for issuance of the warrants. Therefore, the trial court properly denied defendant's motion to suppress.