IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER JEROME GREEN, Appellant.	No. 40607-1-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury entered a verdict finding Christopher J. Green guilty of three counts of unlawful possession of a controlled substance with the intent to deliver (count I - methylphenidate; count II - clonazepam; count III - marijuana) and one count of unlawful possession of a controlled substance (heroin) (count V). RCW 69.50.401(2)(c), .4013(1). Green appeals his convictions, asserting that the trial court committed reversible error by denying his motion to suppress evidence seized pursuant to a defective search warrant.

Because the information in the warrant affidavit was insufficient as a matter of law to establish a nexus among the criminal activity, the items to be seized, and the places authorized by the warrant to be searched, we hold that the trial court erred in denying Green's motion to suppress the evidence seized pursuant to the invalid, overbroad search warrant. Accordingly, we reverse Green's convictions and remand to the trial court for further proceedings consistent with this opinion.[1]

[1] Because we remand Green's case based on the deficient search warrant, we do not address Green's other assignments of error.

FACTS

Background Facts

On December 5, 2008, Tacoma Police Department Officer Aaron Quinn[2] submitted a complaint for search warrant to the Pierce County Superior Court. In the search warrant affidavit, Quinn asserted that

> he has probable cause to believe and in fact does believe that, in violation of laws of the State of Washington RCW 69.50.401, controlled substances, as defined by law are being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept, in, about and upon certain premises within Pierce County, Washington.

Clerk's Papers (CP) at 32. The warrant affidavit went on to request authorization to search the "residence located at 901 E. 61st St in Tacoma." CP at 32. In addition, it provided that "[a]ll persons found on or associated with said property are to be detained and searched. The search is to include any outbuildings, vehicles and storage areas on said property." CP at 32. The complaint specifically named a "black male identified as Christopher Jerome Green, date of birth 07-07-70," and stated that Officer Quinn would be searching for evidence of "narcotics usage and/or trafficking in violation of RCW 69.50." CP at 32.

Officer Quinn noted that the following facts and circumstances supported his belief that the superior court should issue a search warrant:

> Your affiant was in contact with a *confidential and reliable informant who said that within the past 72 hours he/she was inside 901 E. 61st St in Tacoma. The informant observed an amount of crack cocaine inside the residence and in the possession of a black male only known to him/her as "Chris"*. Your affiant was able to identify the black male as Christopher Jerome Green, date of birth 07-07-70. Your affiant, through a background investigation, learned that this subject has been arrested numerous times in the past, including an arrest on 11-03-08, for

[2] Judge Quinn-Brintnall is in no way related to or associated with Officer Quinn.

> Unlawful Possession of a controlled Substance with Intent to Distribute. In another arrest report this subject gave his address as 901 E. 61st St in Tacoma. Your affiant also learned through the background investigation that he lists this as his address through the Department of Corrections.

CP at 32 (emphasis added). That same day (December 5), the superior court granted the search warrant.

Four days later, on December 9, Officer Quinn led a team of nine officers and a K-9 officer to serve the search warrant. Officers found Green and a female in bed in the master bedroom and at least one unidentified juvenile in the house. Officers did not find any narcotics on Green's person or in his clothing.

Officers did find narcotics in the driver-side door of a vehicle located on the property as well as in the closet of the home's master bedroom. Officer Quinn never investigated the plates on the vehicle to confirm its ownership or discovered any documentation in the vehicle linking the car to Green. The only documents collected by officers tying Green to the home were a child support letter dated September 15, 2007, more than a year earlier, and an undated Safeway club card application addressed to Green. Officers did not collect any paperwork specifically related to the home such as mortgage/rental paperwork or utility bills.

Washington State Patrol Crime Laboratory Forensic Scientist Jane Boysen later confirmed that the seized evidence contained marijuana, heroin, cocaine, methylphenidate,[3] and clonazepam.

Procedural History

On December 10, 2008, the State charged Green by information with three counts of unlawful possession of a controlled substance with the intent to deliver (count I -

[3] Boysen also indicated that the common name for methylphenidate is "Ritalin."

methylphenidate; count II - clonazepam; count III - marijuana) and two counts of unlawful possession of a controlled substance (count IV - cocaine; count V - heroin). RCW 69.50.401(2)(c), .4013(1).[4]

Before trial, Green submitted a motion to suppress all evidence obtained from the search warrant and moved to dismiss the case. More specifically, the motion contended that

> [t]he search warrant fails to indicate with any particularity whether Mr. Green was conducting any illegal transactions from his residence and with any particularity what the unnumbered Confidential Informant actually observed. In addition, the search warrant affidavit does not establish a nexus between any alleged criminal activity and any of the vehicles or other buildings on the property.

CP at 10. The motion further stressed that "[t]he affiant, Officer Quinn, confirmed that a Christopher Green resided at the address in question, however *the officer did not have the informant confirm that the Chris that he observed, with possession of* ***'an amount'*** *of crack cocaine was in fact Christopher Greene* [sic]." CP at 11.

On January 19, 2010, the trial court heard argument on Green's motion. Green argued that the warrant was both stale and overbroad and that the confidential informant (CI) gave no indication that the "Chris" he saw in the house owned any vehicles though the warrant ultimately allowed for searching all vehicles on the premise. Green also contended that the superior court judge who signed the warrant abused her discretion in finding probable cause because Officer Quinn failed to have the CI corroborate that the person he identified as "Chris" was, in fact, Green. The defense stressed this issue because another "Christopher Green" (the defendant's teenage son) was also living in the house at the time the warrant issued. Last, Green pointed out

[4] A corrected information was filed on January 25, 2010, to address a scrivener's error as the original information listed the date of the alleged offenses as December 3, 2008, instead of December 9, 2008.

that, in the warrant, Quinn referred to a November 3, 2008 arrest for unlawful possession with intent to distribute as part of his probable cause foundation. Green noted that the State did not actually file charges in relation to that incident and, further, that the incident report from November 3 listed Green as homeless.

The trial court denied Green's motion to suppress the evidence recovered and made the following oral findings: (1) courts must give some deference to search warrants; (2) based on the address given by the CI, it was not unreasonable for Officer Quinn to tie the Christopher Green from a previous arrest and prison records to the "Chris" mentioned by the CI; (3) the CI "would have said a teen-ager or someone appeared to have been a teen-ager" if the Chris they were talking about was the younger of the two Christopher Greens (1 Report of Proceedings (RP) at 48); and (4) crack cocaine is always illegal to possess so it was reasonable for the judge issuing the warrant to rely on the CI's statement that he observed "an amount" of crack cocaine at the residence. 1 RP at 49. The trial court later reduced these findings, as required by CrR 3.6, to writing.

Following the presentation of the State's case at trial, Green moved to dismiss for insufficiency of evidence. Green contended that "no nexus or no testimony" tied him to the vehicle where officers found cocaine and marijuana and that "no evidence whatsoever" suggested that Green intended to deliver the methylphenidate or clonazepam. 4 RP at 342. The trial court denied the motion.

The jury returned a verdict on January 25, finding Green guilty of counts I through III (possession of controlled substances – methylphenidate, clonazepam, and marijuana – with intent to deliver) and count V (unlawful possession of heroin). The jury found Green not guilty of count

IV (unlawful possession of cocaine).

Sentencing occurred on March 26, 2010. The trial court sentenced Green to the low end of the standard range: 20 months confinement and 18 months of community custody. Green timely appeals.

DISCUSSION

Search Warrant

Green accepts the trial court's findings of fact related to the search warrant but challenges its conclusions of law as to whether a magistrate should have issued the warrant. Because insufficient information established a nexus among the alleged criminal activity and the people and places to be searched, we agree with Green.

Appellate courts generally review the issuance of a search warrant for an abuse of discretion. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Great deference is given to the probable cause determination of the issuing judge or magistrate. *State v. Young*, 123 Wn.2d 173, 195, 867 P.2d 593 (1994). However, as our Supreme Court explained in *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008),

> [A]t the suppression hearing the trial court acts in an appellate-like capacity; its review, like ours, is limited to the four corners of the affidavit supporting probable cause. *State v. Murray*, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988); *Wong Sun v. United States*, 371 U.S. 471, 481-82, 83 S. Ct. 407, 414, 9 L. Ed. 2d 441 (1963); *State v. Amerman*, 84 Md. App. 461, 581 A.2d 19 (1990). Although we defer to the magistrate's determination, the trial court's assessment of probable cause is a legal conclusion we review de novo. *State v. Chamberlin*, 161 Wn.2d 30, 40-41, 162 P.3d 389 (2007).

Thus, we review a trial court's denial of a suppression motion to determine whether substantial evidence supports the challenged findings of fact and whether these findings support the trial

court's conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).

Before a magistrate issues a search warrant, there must be an adequate showing of "'circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched.'" *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981) (quoting *State v. Patterson*, 83 Wn.2d 49, 58, 515 P.2d 496 (1973)). Probable cause for a search "requires a nexus between criminal activity and the item to be seized and between that item and the place to be searched." *Neth*, 165 Wn.2d at 183. And "[g]eneral, exploratory searches are unreasonable, unauthorized, and invalid. . . . [G]eneralizations do not substitute for facts and investigation." *State v. Thein*, 138 Wn.2d 133, 149, 977 P.2d 582 (1999).

The trial court recorded the following findings of fact:

> 1. On December 5, 2008, a Pierce County Superior Court Judge signed a search warrant for defendant's residence, vehicles and outbuildings at 901 East 61st Street, Tacoma, WA.
> 2. The search warrant was executed on December 9, 2008.
> 3. The complaint for the search warrant stated that the affiant was in contact with a confidential and reliable informant who said that within the past 72 hours he/she was inside defendant's residence and observed an amount of crack cocaine.
> 4. The affiant stated that through a background investigation, he had learned that defendant has been arrested numerous times in the past, including an arrest on 11-03-08, for Unlawful Possession of a Controlled Substance with Intent to Distribute.
> 5. The CI provided information relating only to probable cause rather than the defendant's guilt or innocence.

CP at 140. Green does not challenge these factual findings and, accordingly, we treat them as

verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

However, Green does challenge the trial court's following conclusions of law:

> 3. The complaint for search warrant contained sufficient information for the magistrate to find probable cause.
> 4. The issuing judge did not abuse her discretion when she authorized the search warrant, because the affidavit established probable cause that a crime was being committed and established a nexus between the crime and the places to be searched.

CP at 140. We agree with Green that, in the present circumstances, a finding of probable cause for a full-blown dealer/manufacturer warrant of the residence, outbuildings, vehicles, and all persons present was unjustified.

Here, a CI told Officer Quinn that he saw "an amount" of cocaine in the possession of a black male named "Chris." CP at 32. The CI did not specify whether the amount indicated the possibility of a large-scale drug operation in the house nor did the CI indicate that he or she saw, or had ever seen, drugs being used, purchased, or sold in the house. Quinn's research confirmed that police had previously arrested a Christopher Green—who may have resided at the house—for intent to distribute; but based solely on the affidavit, Quinn made no effort to have the CI describe or verify that the "Chris" the CI saw in the home was the "Christopher Green" that Quinn discovered through his own records investigation. From this limited data, a magistrate authorized a search warrant that allowed a search of the 901 East 61st Street home, all persons therein, all outbuildings on the property, and all vehicles located on the property.

As a matter of law, such limited data is insufficient to establish probable cause for so broad a search warrant. In concluding as we do, we emphasize that the existence of probable cause is to be evaluated on a case-by-case basis. *State v. Helmka*, 86 Wn.2d 91, 93, 542 P.2d 115

(1975). In *Neth*, for instance, our Supreme Court recently determined that plastic baggies associated with drug distribution, a sum of money between $2,500 and $3,500, and a defendant's past criminal history were insufficient to support issuing a warrant to search the defendant's vehicle. 165 Wn.2d at 183-84. When the search of a person's home is involved, as it was here, the probable cause determination must include a nexus between the criminal activity alleged in the warrant affidavit and the items to be seized and places to be searched provided by the warrant. *See, e.g.*, 2 Wayne R. LaFave, Search and Seizure § 3.7(d), at 412 (4th ed. 2004). In the words of Justice Rutledge,

> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. *But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability*. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. *To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.*

Brinegar v. United States, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949) (emphasis added).

Here, law enforcement had reason to believe that between December 2 and 5, a black male named "Chris" was at 901 East 61st Street in Tacoma and had some drugs in his possession. This proposition is undisputed. Had Officer Quinn pursued his investigation of the CI's claims further—for example, through having the CI describe or confirm the identification of "Chris" as Christopher Jerome Green, date of birth 07-07-70, through evidence of excessive traffic at the home indicative of drug sales, or through a controlled drug purchase—this information might

have given rise to probable cause to believe that drugs were likely being sold from the residence and its associated vehicles and outbuildings, one week after a CI observed drugs at the home. But the warrant affidavit here contains no supporting evidence of sale or distribution necessary to support probable cause for a full-blown manufacture/delivery warrant on suspicion of Green's manufacturing and/or dealing drugs. This warrant issued solely on a CI's report that three days earlier he/she saw a black male named "Chris" with an unspecified amount of crack cocaine at the address.

The affidavit in Green's case simply does not support a finding of probable cause to search the residence, outbuilding, vehicles, and all persons found at the residence at the time of the search for evidence of manufacture and delivery of drugs. Accordingly, we hold that the trial court erred in denying Green's motion to suppress the evidence seized pursuant to the overbroad warrant. We reverse Green's convictions and remand to the trial court for further proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, P.J.

HUNT, J.