

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

UNITED STATES OF AMERICA

*

v.

* **Criminal No. AMD-01-0217**

ROBERT JUNIOR WARDRICK

*

* * * * *

MOTION TO SUPPRESS EVIDENCE #1

The defendant herein, Robert Junior Wardrick, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Michael T. CitaraManis, Assistant Federal Public Defender, hereby moves this Honorable Court to suppress for use against him at trial, any and all evidence seized from the residence owned by him at 1808 Division Street, Baltimore, Maryland 21217, on January 23, 2001, pursuant to a search warrant, and all fruits thereof. In support of this motion, undersigned counsel states the following:

I. INTRODUCTION

Robert Junior Wardrick is charged by way of indictment with three counts of possession of a firearm after conviction of a felony, in violation of 18 U.S.C. §922(g)(1).

In Count One, Wardrick is charged with possessing five specified firearms (four handguns and one shotgun). In Count Two, Wardrick is charged with possessing two firearms (two shotguns, the barrels of which have allegedly been “sawed-off” or shortened). In Count Three, Wardrick is charged with possessing a single firearm (a shotgun).

Counts One and Two were allegedly committed on January 23, 2001. Count Three was allegedly committed between September 1, 2000, and January 23, 2001.

The firearms specified in Counts One and Two were seized on January 23, 2001, pursuant to a search warrant issued by a Maryland District Court judge, from a residence owned by Wardrick located at 1808 Division Street, Baltimore, Maryland 21217. Also seized was a variety of ammunition, two gun holsters, and personal papers and photographs.

The firearm charged in Count Three was seized from a nearby residence located at 1835 Division Street, Baltimore, Maryland, occupied by Wardrick's son. Although consent was apparently given to seize this firearm, police learned of its existence and location as a result of the search at 1808 Division Street.

Undersigned counsel maintains that the firearms and all other items seized from the residence at 1808 Division Street should be suppressed for use against him on grounds that probable cause was lacking to believe that the suspected firearms or ammunition or other evidence would be found at the Division Street home.

Although there may have been probable cause to suspect Wardrick had been in possession of specified ammunition or firearms at some time previous to the request for a search warrant, probable cause was lacking to believe that the specified ammunition or firearms or evidence of same would be found *at the place to be searched*, 1808 Division Street in Baltimore, Maryland, or the suspected evidence would be found *at the time the search warrant was requested*, on January 22, 2001.

Further, even if there was sufficient cause to believe *ammunition* might be found at the Division Street residence on January 22, 2001, this would not have been a violation of any Maryland law and consequently, issuance of the search warrant was beyond the authority of the State of Maryland judge.

Finally, the firearm charged in Count Three should also be suppressed since it was discovered only as a result of the search at the 1808 Division Street residence, and thus, was a fruit of an illegal search.

II. ARGUMENT

The search warrant, a copy of which is attached as **Exhibit A**, was sought on January 22, 2001, and issued that same day by judge Alexandra N. Williams, State of Maryland District Judge for Baltimore County. The search warrant authorized Baltimore County Police Detective Robert Overfield or “other public officer” to enter the 1808 Division Street residence to search for and seize any “UMC brand .357 Magnum ammunition,” any firearms, “including but not limited to a .357 magnum handgun and a .32 caliber pistol,” along with “boxes, receipts, or manuals relating to said firearms . . .”

This warrant was issued after submission of an application and affidavit by Detective Overfield, a copy of which is attached as **Exhibit B**.

The proffered basis for the search warrant was that Wardrick and his wife are prohibited from possessing firearms or ammunition by virtue of their criminal records, that they lived at 1808 Division Street in Baltimore, and that Wardrick allegedly made the following three purchases of ammunition: (1) one box of .32 caliber pistol ammunition from Valley Gun Shop on Harford Road in Baltimore County on February 1, 1999; (2) one box of .410 gauge shotgun shells from a K-Mart store on Liberty Road in Baltimore County on April 11, 1999; and (3) one box of UMC brand .357 Magnum ammunition from a K-Mart store on North Point Boulevard in Baltimore County on November 17, 2000.

For the reasons expressed below, these allegations do not support a finding of probable cause and the issuance of the search warrant. Consequently, all evidence seized pursuant to the search warrant, along with the fruits thereof, must be suppressed.

A. The affidavit does not connect the specified firearms or ammunition to 1808 Division Street, Baltimore, Maryland.

To establish probable cause for a search warrant, "the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found *in the place to be searched.*" *United States v. Lalor*, 996 F.2d, 1578, 1582 (4th Cir. 1993) (emphasis added).

Residential searches may be upheld only where there is information linking criminal activity to the place to be searched. *Id.* citing *United States v. Williams*, 974 F.2d 480 (4th Cir. 1992); *United States v. Corral*, 970 F.2d 719 (10th Cir. 1992); *United States v. Hawkins*, 788 F.2d 200, *cert. denied*, 479 U.S. 850 (4th Cir. 1986).

In the instant case, there was no evidence whatsoever proffered in Det. Overfield's affidavit showing a connection between the UMC brand .357 Magnum ammunition purchased at the K-Mart store on November 17, 2000, any .357 Magnum handgun, any .32 caliber pistol, any other firearm, or any other evidence of firearms to the 1808 Division Street residence.

Of conspicuous absence in the affidavit is mention of any address given to K-Mart by the purchaser of ammunition on November 17, 2000. If the purchaser listed his or her address as 1808 Division Street in Baltimore, there would have been a sufficient connection between the ammunition and the 1808 Division Street residence so as to justify a finding of probable cause (as least as of the time of the purchase or soon thereafter). However, this was not the case.

The mere fact that 1808 Division Street may have been owned by Wardrick or used by him is by itself patently insufficient *by itself* to believe that the specified ammunition or firearms would probably be found there.

B. The information in the affidavit was also stale with regard to whether the specified ammunition and firearms would probably be found at 1808 Division Street, Baltimore, Maryland.

Probable cause also cannot be based on information that is too old to suggest that the items sought are likely to be found in the place to be searched. *United States v. Snow*, 919 F.2d 1458 (10th Cir. 1990).

If the information is too old, it is considered stale and probable cause can no longer be found to exist. *Sgro v. United States*, 287 U.S. 206 (1932).

As stated in *United States v. Wagner*, 989 F.2d 69, 75 (2nd Cir. 1993):

While there is no bright line rule for staleness, the facts in an affidavit supporting a search warrant must be *sufficiently close in time* to the issuance of the warrant and the subsequent search conducted so that probable cause can be said to exist as of the time of the search and not simply as of some time in the past. (Emphasis added.)

In the instant case, two of the purchases of ammunition proffered as a basis for the search warrant occurred in early 1999, almost two years before the request for the search warrant was made.

The most recent purchase was in November 2000. However, this was still over two months before the request for the search warrant, and standing alone, is patently insufficient to warrant a finding of probable cause.¹

¹

Det. Overfield also requested search warrants for two automobiles registered in Wardrick's name, a 1986 Cadillac and a 1986 Lincoln. These warrants too were issued by Judge Williams

C. Even if there was probable cause to believe ammunition would be found, the State of Maryland judge had no authority to issue the search warrant since possession of ammunition by the Wardricks would not have been a violation of any state law.

If the proffers by Det. Overfield justified a finding of probable cause, such a finding was justified only with respect to the specific ammunition purchased on November 17, 2000 -- and not with respect to any other ammunition or any firearms. Under this circumstance, the search warrant was invalid since the state judge had no authority to issue the search warrant.

The reason is that possession of ammunition by persons convicted of certain crimes, although perhaps a federal crime, is not a crime under the laws of the State of Maryland and the state judge did not have authority to issue a search warrant for evidence of a federal crime.

The fact that the possession of ammunition by convicted felons is not a crime under the laws of the State of Maryland is implicitly recognized by Det. Overfield in his affidavit (see ¶1).

Further, common sense dictates that a state court judge cannot authorize a search for evidence of what amounts to only a crime under federal law. This fact is also implicit in §551 of Article 27 of the Maryland Code which authorizes the issuance of search warrants when there is probable cause to believe any “misdemeanor or felony is being committed” at a place to be searched or any property subject to seizure “under the criminal laws of the State” is located at a particular place.

Although the Wardricks might not be able to possess ammunition under federal law, probable cause to believe they were committing this crime did not provide the state judge with legal justification to issue the search warrant and for this reason too, the search warrant was invalid.

without any showing there was reason to believe the suspected ammunition, firearms or other evidence would be found in them. According to the government, no evidence was seized from these cars.

D. The "good faith" exception under *United States v. Leon*, 468 U.S. 897 (1984) is inapplicable since the showing of probable cause is so lacking that any well-trained officer would know that the warrant was invalid despite the judge's authorization.

In *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court modified the exclusionary rule so as to not bar in certain cases the government's use of evidence obtained by law enforcement officers acting in reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause.

In *Leon*, the Court provided examples of when the "good faith" exception will not apply. One example is where the affidavit in support of a search warrant amounts to a "bare bones" affidavit.

The Court described a "bare bones" affidavit as one "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923 (quoting *Brown v. Illinois*, 422 U.S. 590, 610-11 (1975) (Powell, J., concurring in part)). The Court also described such an affidavit as one that "does not provide the magistrate with a substantial basis for determining the existence of probable cause." *Leon*, 468 U.S. at 923; also see *Wilhelm*, 80 F.3d at 121.

Whether the "good faith" exception applies is dependent on whether it was objectively reasonable for the officers to base a claim of probable cause on the allegations contained in the affidavit. *Id.* at 922, n.24.² This objective standard "requires officers to have a reasonable

2

As observed by Professor LaFare, *Search and Seizure*, 3rd Ed., §1.3(f) at 87, under *Leon*, "the focus is not at all upon the magistrate's decision but instead only upon the police decision to seek and then execute a certain warrant. Because of the Court's conclusion that the exclusionary rule

knowledge of what the law prohibits. *Id.* at 919-20, n.20. As one court observed, "[p]olice officers in effecting searches are charged with a knowledge of well-established legal principles as well as an ability to apply the facts of a particular situation to these principles." *United States v. Savoca*, 761 F.2d 292 (6th Cir. 1985).

A "bare bones" affidavit does not suffice. *Id.* Also see, *United States v. Wilhelm*, 80 F.3d 116, 121-22 (4th Cir. 1996); *United States v. Turner*, 713 F. Supp. 714, 722 (D.Vt. 1989) (*Leon* inapplicable where ". . . the officer should have known that the affiant's declaration that the informant's information 'has been reliable and substantiated by independent investigation in the past,' will not establish the informant's reliability standing alone.")

In the instant case, the various defects in the affidavit, as noted above, made it objectively unreasonable for the affiant, Det. Overfield, to claim there was probable cause to believe the specified ammunition, firearms, or other evidence would be found at the 1808 Division Street residence on or after January 22, 2001.

Further, if the search warrant was invalid as a result of the state judge not having authority to issue it, *Leon* is similarly inapplicable.

III. CONCLUSION

For the foregoing reasons, Robert Junior Wardrick respectfully requests this Court to direct that any and all evidence seized from 1808 Division Street, Baltimore, Maryland, on January 23, 2001, and all fruits thereof, including but not limited to the firearm seized at 1835 Division Street, Baltimore, Maryland, be suppressed for use herein against him.

is an inappropriate device for deterring magistrates, the magistrate's decision is not examined even for the limited purpose of determining whether it was made in good faith." (Footnote omitted.)

Respectfully submitted,
JAMES WYDA
Federal Public Defender
for the District of Maryland

MICHAEL T. CITARAMANIS (#03674)
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
Office: (301) 344-0600
Fax: (301) 344-0019

REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on the Defendant's Motion.

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on this 30th day of May 2001, a copy of the foregoing Motion to Suppress Evidence #1 was delivered to James H. Green, Assistant United States Attorney, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201-2692.

MICHAEL T. CITARAMANIS
Assistant Federal Public Defender