IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2015-CF-006056-BXXX-MB

DIVISION: V

STATE OF FLORIDA

vs.

CARLOS OSORIO, et al.

Defendant.
_____/

DISPOSITIVE MOTION TO SUPPRESS

Unlawfully arrested and charged as the result of five unlawful, warrantless searches that were then followed by two more unlawful searches based on invalid warrants, defendant Carlos Osorio, moves this Court to suppress all the evidence against him.[1] The officers' seven consecutive illegal searches, both separately and collectively, violated the Fourth Amendment to the United States Constitution, Article I, section 12 of the Florida Constitution, and corresponding Florida statutory law. S*ee* § 933.04, Fla.Stat. (2014).

SUMMARY OF CASE

1 Pursuant to the requirements of Fl.R.Cr.P. Rule 3.190(g)(2), Mr. Osorio, through counsel, herein identifies the evidence that he moves this Court to suppress: (1) Mr. Osorio's identity; (2) all actual and alleged observations of all law enforcement officers; (3) the identities of all persons actually or allegedly obtained by agents while on Mr. Osorio's property; (4) any actual or alleged statements attributed to Mr. Osorio at the time of the incident or in custody thereafter; (5) any actual or alleged statements attributed to Jonathan Osario, and any other residents and visitors to Mr. Osorio's home; (6) the marijuana, equipment, and paraphernalia seized from Mr. Osorio's property; (7) all cash seized by law enforcement officers from Mr. Osorio's property, from the main house, the converted barn, and Mr. Osorio's safety deposit box; (8) all documents, records, computer equipment, and other business and personal affects seized by law enforcement at the main house, the converted barn, and Mr. Osorio's safety deposit box; (9) all firearms seized by law enforcement.

All evidence obtained by law-enforcement officers in this case was acquired in violation of the national and Florida constitutions. In fact, the State's evidence demonstrates that Palm Beach Sheriff's Office agents undertook no less than seven unlawful searches, five of which were warrantless, and two of which were based upon invalid warrants.

The warrantless searches occurred when, without invitation, authorization, or license:

(1) agents appeared at side-door of the main house, which is part of the curtilage of Mr. Unlawfully arrested and charged as the result of five unlawful, warrantless searches that were then followed by two more unlawful searches based on invalid warrants, defendant Carlos Osorio, moves this Court to suppress all the evidence against him.

(2) agents entered onto the land in front of the converted barn that is curtilage to Mr. Osorio's home, (and curtilage to the residence of Mr. Osorio's son, Jonathan, in its own right);

(3) agents entered the converted barn, the residence and home of Mr. Osorio's son;

(4) agents entered the main house to perform an unlawful protective sweep; and

(5) agents entered onto land at the side of the converted barn, which, as part of the converted barn, is curtilage of the main house, (and also curtilage to the converted barn itself, the residence of Mr. Osorio's son Jonathan).

Based on alleged contraband, and other evidence allegedly seen by agents from their illegal, warrantless searches, the PBSO agents proceeded to apply for, and obtained, two judicial search warrants:

(6) one warrant authorized, albeit invalidly, entry and search of Mr. Osorio's property, and

(7) the other warrant, also invalidly, authorized a search of a bank safety deposit box belonging to Mr. Osorio.

The warrants were invalid, and unlawful, because they were based, in their entirety, on evidence unlawfully obtained in the prior five warrantless searches.

In addition to their illegal searches, agents illegally stopped Mr. Osorio as he stepped out of his vehicle on his own property, handcuffing and detaining him in violation of Florida law, without reasonable suspicion. Agents also illegally stopped Mr. Osorio's son, Jonathan and his girlfriend, as they lay in bed of Jonathan's bedroom, without lawful reasonable suspicion.

In addition, confronting Jonathan Osorio with the evidence unlawfully obtained, agents elicited thrice repeated statements of confession from Jonathan that must be suppressed.

Finally, agents, on three separate occasions, impermissibly used the existence of objects that are equally consistent with non-criminal conduct (e.g., agricultural supplies, firearms, and ammunition) as evidence supporting reasonable suspicion, and probable cause of criminal activity.

The State Bears The Burden

"The initial burden on a motion to suppress an illegal search is on the defendant to make an initial showing that the search was invalid." Lewis v. State 979 So.2d 1197, 1200 (Fla.4th DCA 2008) (citing Miles v. State, 953 So.2d 778, 779 (Fla. 4th DCA 2007). However "[a] warrantless search constitutes a prima facie showing [of invalidity] which shifts to the state the burden of showing the search's legality.' Lewis v. State 979 So.2d 1197, 1200 (Fla.4th DCA 2008) (citing Andress v. State, 351 So.2d 350, 350 (Fla. 4th DCA 1977).[2] In the case at bar, the court is presented with five warrantless searches. Hence, the State must shoulder the burden of justifying the legality of each of these searches.[3]

---

2 Warrantless entries are presumed unreasonable, and the State bears the burden of rebutting the presumption. Byrd v. State 16 So.3d 1026, 1027 -1028 (Fla. 2d DCA 2009) (citing Welsh v. Wisconsin, 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984); Riggs, 918 So.2d at 278.

3 "Except in exigent circumstances, law enforcement cannot reasonably cross the threshold of a home without a warrant." Byrd v. State, 16 So.3d 1026, 1027 -1028 (Fla. 2d 2009). (citing

The Information

According to an Information dated June 25, 2015, the State has charged Carlos Osorio, as a co-defendant, with two counts:

(I) "actual or constructive possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, or part thereof, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance" in violation of s.893.135, or sale of a controlled substance in violation of s.893.14, or manufacture of a controlled substance intended for sale or distribution in violation of s.893.1351(2), a second degree felony. Ex.I (Information).

(II) possession of butane honey oil extractors and/or marijuana grow equipment in violation of s.893.147(1)(b), a first degree misdemeanor. Ex. I.

The same Information names Carlos's sons, twenty-four year old Jonathan and twenty-three year old Fernando, as co-defendants for these two counts, and Jonathan is further named alone, in the same Information, as a defendant in two additional counts. Ex. I.

The Education and Experience of Lead Agent, Veteran Deputy Sheriff John Bango

---

Payton, 445 U.S. at 590, Riggs, 918 So.2d at 278.) 644, 646-647 (Fla. 4th DCA 2008) ("The law is well-settled that without consent, a warrant, or exigent circumstances, law enforcement may not cross the threshold to effect an arrest.") "[E]xigent circumstances exist where the occupants of a house are *aware* of the presence of someone outside, *and are engaged in activities* that justify the officers in the belief that the occupants *are actually trying to escape or destroy evidence.*" Lee v. State, 856 So.2d 1133, 1138 (Fla. 1st DCA 2003) (citation omitted) (emphasis in original). But "a key ingredient of the exigency requirement is that the police lack time to secure a search warrant." Rolling v. State, 695 So.2d 278, 293 (Fla.1997). In the criminal context, the term "exigent circumstances" has been defined as "a situation where the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action." United States v. Burgos, 720 F.2d 1520, 1526 (11th Cir.1983). Circumstances that typically have been considered exigent include danger of harm to police officers or the public and the potential destruction of evidence. *See id.* at 1525-26; see also Vale v. Louisiana, 399 U.S. 30, 34-35, 90 S.Ct. 1969, 26 L.Ed.2d 409 (1970). Florida Dept. of Agriculture and Consumer Services v. Haire 836 So.2d 1040, 1057 (Fla. 4th DCA 2003).

By two separate sworn affidavits, both dated June 16, 2015, veteran Deputy Sheriff John Bango of the Palm Beach County Sheriff's Office, who acted as lead agent in this case, attested to the following facts describing his education and experience in law enforcement:

Agent Bango was graduated from the Law Enforcement Reserve Academy and the Law Enforcement Police Academy at Indian River College. Ex. 4: 3.

Agent Bango was, at the time he executed the affidavit, a "duly appointed [ ] Deputy Sheriff in and for Palm Beach County, Florida for fifteen years, and was previously a deputy sheriff for the Martin County Sheriff's Office for an additional two or three years." Ex. 4: 2-3.

As a Martin County deputy sheriff, Agent Bango worked as a road patrol officer and with undercover agents purchasing drugs in Martin County. Ex. 4: 3.

As a Palm Beach County deputy sheriff, Agent Bango worked with the Palm Beach County Organized Crime Bureau man times purchasing illegal drugs in Palm Beach County. Ex. 4:3. Agent Bango was, at the time he executed the affidavit on June 16, 2015, "familiar with patrolling and investigating street crimes, in high crime areas and is also familiar with street terminology, used in narcotic activity, and is familiar with how controlled substances are packaged and sold, in violation of Florida laws." Ex.4: 3.

Agent Bango was assigned to the PBSO District III Problem Solving Team, and is charged with "responsibilities involving the investigation of various crimes such as illegal drugs, robberies, among others." Ex. 4: 3

At the time of executing the affidavit, Agent Bango had, for more than ten years, been assigned to the PBSO Narcotics Division. Ex. 4: 3. Agent Bango completed a forty hour narcotics identification class, an eighty hour D.E.A. narcotics course, and a twenty hour street level narcotics class. Ex. 4: 3

PHYSICAL ENTRY INTO A HOME: THE CHIEF EVIL AGAINST WHICH THE FOURTH AMENDMENT IS DIRECTED

The Fourth Amendment to the United States Constitution guarantees the right of the people to be protected from unreasonable searches and seizures by the government, and mandates that no search warrant shall issue "but upon probable cause, supported by oath or affirmation...." U.S. Const. amend. IV. Florida's Constitution similarly protects against unreasonable searches and seizures by the government: "No warrant shall be issued except upon probable cause, supported by affidavit...." Art. I, § 12, Fla. Const.. Florida Statutes codifies the same prohibition. See § 933.04, Fla.Stat. (2014).

"The United States Supreme Court has long held that physical entry into a home is the chief evil to which the Fourth Amendment is directed." Byrd v. State**,** 16 So.3d 1026, 1027 -1028 (Fla. 2d 2009) (citing Payton v. New York, 445 U.S. 573, 585 (1980), United States v. U.S. Dist. Court, E. Dist. of Michigan, 407 U.S. 297, 313, (1972). and Riggs v. State, 918 So.2d 274, 278–79 (Fla.2005). " '[T]he Fourth Amendment has drawn a firm line at the entrance to the house.' " Mestral v. State, 16 So.3d 1015, 1016 -1017 (Fla. 3d DCA 2009) (quoting Payton v. New York, 445 U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).

Any Area of the Curtilage of the Home Deserves The Same Protection As The Home Itself

According to the Fourth District Court of Appeal, "*any area within the curtilage of the home* deserves the same protection as the home itself . . .[and] [c]urtilage can include the backyard of a residence." Bryan v. State, 62 So.3d 1244, 1246 (Fla. 4th DCA 2011) (emphasis added);.[4]

4 See also State v. Cunningham, 891 So.2d 1199 (Fla. 4th DCA 2005) ("backyard was clearly within the curtilage of defendant's home") "[T]he zone of protection under the Fourth Amendment extends to the curtilage of a home, including the backyard. P.B.P. v. State 955 So.2d 618, 627 n.3 (Fla. 2d DA 2007) (Kelly, J. concurring): State v. Rickard, 420 So.2d 303, 306 (Fla.1982) (noting that courts will not allow a warrantless search or seizure in a constitutionally

PBSO Agents Arrival Onto Carlos Osorio's Property

According to veteran Deputy Sheriff, Agent John Bango of the Palm Beach County Sheriff's Office, on June 16, 2015, he and Agent Kabis "were doing some follow up to a previous investigation." Ex.2-.1; Ex.3 1; Ex.4:2. A subject that the agent had previously arrested had moved to 481 56th Terrance South, West Palm Beach, Florida. Ex. 2:1; Ex.3:1; Ex,4:2.Deputy Bango went there because, he alleged, "the subject there is known to be a marijuana grower." Ex.13: p.12, lines 18-19.

According to Agent Bango,"[t]his house is located at the end of the 56th Terrace South and we had previously made contact with the neighbors of this property at 5626 Gun Club Road, West Palm Beach, Florida. Ex. 2:1; Ex.3:1; Ex,4:2. As reported by the agent, "[w]e had been on the property in order to conduct surveillance at 481 56th Terrace South." Ex. 2:1; Ex.3:1; Ex,4:2.

However, Agent Bango did not know that the house had been sold, and that the Osorio family had moved into the house. Ex.13, pages 40-41, lines 21-2; Ex.13, p.14:lines2-5. In fact, by his own admission, Agent Bango had not visited the house in about eighteen (18) months. Ex.13, p.41, lines 6-8. Jonathan Osorio testified in deposition that he had been living in the house for about two and a half years. Ex.13:p.55, lines 13-14. Hence, Agent Bango had not visited the house in more than two years.

Shortly after arriving on the property, a phone call by Agent Kabis suggested that the people who lived on the property two and a half years ago had moved, and the property was now

protected area such as one's backyard); Glass v. State, 736 So.2d 788 (Fla. 2d DCA 1999) (stating that officers were not justified in entering a backyard of a residence without consent, a warrant, or exigent circumstances); State v. Sarantopoulos, 604 So.2d 551 (Fla. 2d DCA 1992).

occupied by a different family. Ex.15:p 10, lines 4-21. "And I started talking to the person, and it became *very apparent* it was not the same person." Ex.15:p 10, lines 17-18. (emphasis added).

Carlos Osorio's Property

As described by Agent Bango:

> 5626 Gun Club Road, West Palm Beach, Florida 33406. The property is occupied by two structures, a house which is made of brick and has a gray asphalt shingled roof and a barn, which is red in color and sits south of the main house.

Ex.4: 1. According to Agent Bango, "[t]he barn has been converted into two bedrooms." Ex.4: 1. Agent Bango **"**knew the [prior] resident's son lived in the barn." Ex.2:1; Ex.3:1; Ex.4:**4**. Agent Bango testified that he knew the barn was actually a residence. Ex.14. p.19, lines 11-14.,

Agent Bango's First Unlawful, Warrantless Entry onto Carlos Osorio's Property

(entry onto property where the side-door is located, the curtilage, of the main house)

In his reports, Agent Bango stated that, on June 16, 2015, at 5:28 p.m., he and another agent "drove down to 5626 Gun Club Road and drove onto the property through an unlocked gate." Ex.2-1; Ex.3-1; Ex.4-2. There was a lock on the gate. Ex.13:p13:lines8-9. But the gate was ajar. Ex.13:p13:lines8-9.

The property to which Agent Bango refers is located in a rural area. The property is surrounded by dense bushes and shrubbery; indeed, Agent Bango testified that some of the trees surrounding the property are more than twenty or thirty feet high. Ex.14:p.7, lines 2-23. Agent Kabis confirmed the latter fact, Ex.15:p.38, lines 2-15, and that the property is surrounded by high trees and shrubbery. Ex. 15:p.5, lines 15-21. "It's very overgrown." Ex.15:p.38, lines 2-15. Indeed, according to Agent Kabis, one can't even see the property unless one is positioned right at the entrance. Ex.15:p.38, lines 2-5.

The only entry to the main house and barn is an unpaved dirt driveway at the front of the property, a narrow dirt road, Ex.13, p.32-33, lines 25-1, "a very, very narrow dirt road," Ex.14, p.5, that includes a steel gate located about 171 feet (that is to say, almost sixty yards) from the front doorway of the main house. Ex. 11; Ex.14, p.30, lines 19-24.

In addition, a pitbull-type dog monitors the property for trespassers. The mailbox is located at the perimeter of the property, and is not located on or near the house. On June 16, 2015, neither Agent Bango nor anyone else from the Palm Beach County Sheriff's was invited, authorized, or licensed to be present on Mr. Osorio's property, or at the side door of his main house in particular.

Agent Bango and Agent Kabis "parked by the main house and *walked up to the side door as we have used the side door in the past* to speak with the resident." Ex.2:1; Ex.3-1; Ex.4-2; Ex. 13: line 17. (emphasis added). As noted above, it had been more than two years since Agent Bango had visited the property. The side door cannot be seen from outside of the front of the property.

According to Agent Bango, "I knocked on the door and while standing there I was able to detect the odor of raw marijuana." Ex 2:1; Ex.3:1; Ex.4:2. The deputy "detected a light odor of marijuana while standing there." Ex.13: p.13: lines 20-21; "It was a light odor." Ex 14:p.67, line 22.

As described by the agent, he "then heard a dog growling and turned and saw a large Pitt [sic] bull behind me. Ex.2-1; Ex.3:1. Ex.4:2-3; Ex.13:p.13, lines 24-25. The dog was protecting it's territory, keeping away trespassers, "doing what dogs do." Ex.15: p.14, lines 18-23. The agents "backed away and [returned] to [Agent Bango's] vehicle." Ex.2-1; Ex.3:1; Ex.4-3. Agent

Bango "moved my car closer to the barn in case the dog decided to attack us we could stay in the vehicle or get into the bed of the truck." Ex.13:p.14, lines 5-7.

Agent Bango thought he knew the occupants of the house, but "we didn't know the occupants had moved and new people were living there." Ex.13, p.14:lines2-5.

The agents' entry onto the property at the side door of the main house was an unlawful one, violating the Fourth Amendment (and, arguably, was a trespass in violation of section 810.09, Florida Statutes.)[5]

Residents Have A Constitutionally-Protected Privacy Interest

in the Side Areas of Their Homes

> [W]hen it comes to the Fourth Amendment, the home is first among equals. At the Amendment's very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. This right would be of little practical value if the State's agents could stand in a home's porch *or side garden* and trawl for evidence with impunity.

Florida v. Jardines, 133 S.Ct.1409, 1414 (2013) (emphasis added) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961) (internal quotation marks omitted)

"The constitutional protection and expectation of privacy *in the side* and backyard area of the home does not depend on whether someone might be home, or if visitors may sometimes be received at a location other than at the front door." Lollie v. State, 14 So.3d 1078, 1079 (1st DCA 2009) (emphasis added). "Indeed the Florida Supreme Court's decision in [State v.] Morsman [394 So.2d 408 (Fla. 1981)], and the case law such as Maggard [v. State,] 736 So.2d 763 (Fla. 2d DCA 1999)] which accords with that ruling, clearly *establishes that residents have a constitutionally protected privacy interest in the side* and backyard area of their home." Lollie v. State, 14 So.3d 1078, 1079-80 (1st DCA 2009) (citations omitted) (emphasis added). "The

5 See Niemanski, supra, (noting officers' intentional but unauthorized, unlicensed, and uninvited entry onto the land).

constitutional protection which Morsman confirms in the side and backyard are of a home is consistent with the pronouncements of the United States Supreme Court." Lollie v. State, 14 So.3d 1078, 1080 (1st DCA 2009). "[A]ny contrary decisions of the lower federal courts, in the variety of circumstances involved in those cases, do not diminish that protection in Florida." Id. Thus, the "area immediately surrounding and associated with the home" [is] "part of the home itself for Fourth Amendment purposes." Jardines as 1414 (quoting Oliver v. United States, 466 U.S.170, 180 (1984) (internal quotation marks omitted).

In the case at bar, when law enforcement officers arrived at the property and home of Carlos Osorio, the officers "parked by the main house and *walked up to the side . . .*" Ex2:1; Ex.3:1; Ex.4-2. (emphasis added). So, without invitation, authorization, or license, the officers had entered upon the curtilage of Mr. Osorio's home, an area that is a part of his home, and deserving the same protection of the Fourth Amendment as the home itself. See Bryan et al, supra.

The Officers Unlawfully Infringed Upon Carlos's Expectation of Privacy

A governmental "search," as a matter of law, violates the Fourth Amendment when the state action infringes on an individual's justifiable or reasonable expectation of privacy. See Katz v. United States, 389 U.S. 347 (1967). "Whether a defendant has a reasonable expectation of privacy is a threshold inquiry." Niemanski v. State, 60 So.3d 521 (Fla. 2d DCA 2011) (citing Rakas v. Illinois, 439 U.S. 128 (1978). State action infringes on a person's Fourth Amendment rights if (1) the person who is accused of criminal wrongdoing demonstrates that he or she had an actual, subjective expectation of privacy in the property searched, and (2) the same person shows that society would recognize that subjective expectation as objectively reasonable. See

Brown 152 So.3d at 623-624. (citation omitted); Minnesota v. Olson, 495 U.S. 91, 95 (1990); Smith v. Maryland, 442 U.S. 735, 740-41 (1979).

In this case, Carlos Osorio established his actual, subjective expectation of privacy in the curtilage of his rural home by taking the affirmative steps of maintaining, dense bushes, shrubbery, and trees *more than twenty or thirty feet high,* along the perimeter of the property thus excluding the public and other persons from seeing into, using, or gaining physical access to, the area. See Brown v. State, 152 So.3d 619, 624 (Fla. 3d DCA 2014), rehearing denied, (citing Fernandez v. State, 63 So.3d 881, 883 (Fla. 3d DCA 2011)). As in the case of Brown, as noted above, the side door of the Carlos Osorio's home cannot be seen from outside the front of the property, see id. at 624, or from any public place or entry way outside the property. According to Agent Kabis, one can't even see the property unless one is positioned right at the entrance. Ex.15:p.38, lines 2-5.

The density of the shrubbery, and the height of the trees at twenty feet or more, Ex.14:p.7, lines 2-23., Ex.15:p.38, lines 2-15, Ex. 15:p.5, lines 15-21,along the perimeter of the property demonstrate that the purpose of the shrubbery was to insure Mr. Osorio's privacy, and so, to keep people off of the property, not to keep animals within it. See Niemanski v. State, 60 So.3d 521, 525 (Fla. 2d DCA 2011).

While it is true that, on June 16, 2015, the single entrance to the property, a steel front gate, was "ajar" at the time agents initially entered, Ex.13:p13:lines8-9, there is no constitutional obligation on citizens wishing to maintain their privacy to keep front gates closed at all times. A property's residents do not diminish their manifest interest in the privacy of their home if, as a simple matter of convenience, they leave a front gate open, thus allowing uninterrupted routine entry and exit of their vehicles. And this is especially on a capacious rural property, as here,

when the walk from the front of the home back to the gate is about one-hundred seventy-one feet, the equivalent of almost sixty (60) yards. Ex. 11.

Moreover, when agents were at the side door of Carlos Osorio's home, Agent Bango "heard a dog growling and turned and saw a large Pitt [sic] bull behind me." Ex.2:1; Ex.3:1; Ex.4:2-3, and the agents were so concerned, they felt it was necessary to "back[ ] away" to return to their vehicle. Ex.2:1; Ex.3:1. Ex.4:3. Hence, Carlos Osorio kept an unfriendly pitbull-type dog[6] on the premises to monitor, warn, and otherwise deter trespassers. See e.g., Nieminski v. State, 60 So.3d 521 (Fla. 2d DCA 2011) (presence of three "friendly" dogs contributed to showing defendant did *not* have an expectation of privacy).

Nor can the State reasonably argue that the agents were conducting a lawful, consensual "knock-and-talk" investigation, see e.g., Nieminski v. State, 60 So.3d 521, 527 (Fla. 2d DCA 2011) , because (1) the house is located in a rural area; (2) the perimeter of the property is surrounded by dense bushes, shrubbery, and trees twenty or thirty feet high, (3) the only entry to the main house is an unpaved, dirt road; (4) the side door cannot be seen from the front of the house or anywhere outside the property where the public has the right of access; (5) the mailbox is located roadside (indicating a lack of expectation of postal carriers approaching the home, see Brown 152 So.3d at 624) (6) the front of the property is gated.

Hence, Carlos Osorio demonstrated an actual, subjective expectation of privacy in the curtilage of his home that, under the circumstances of this case, society would recognize as

6 The notion that there is such a breed as a "pitbull" is a common myth. Neither the American Kennel Association, nor any authoritative canine organization in this country, recognize the existence of such a breed. The name, "pit bull" rather, is a descriptor applied to a diverse group of dogs that includes various pure breeds, mixes of those breeds, and dogs presumed to be mixes of those breeds. Authority upon request.

objectively reasonable. Consequently, the odor of marijuana allegedly smelled by Agent Bango at the side door of Carlos Osorio's home, where agents had not been invited, authorized, or licensed to be present, constituted an warrantless, and so illegal search and seizure in violation of the Fourth Amendment and must be suppressed.

A Search Without A Warrant Is Per Se Unreasonable

According to the Florida Supreme Court, it is well-settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued under probable cause is per se unreasonable. Delhall v. State, 95 So.3d 134, 151 (Fla. 2012).[7] (quoting Schneckloth v. Bustamente, 412 US. 218, 219 (1973)) (internal quotation marks and citations omitted)

Agents' Second Unlawful, Warrantless Entry onto Carlos Osorio's Property

(entry onto the property surrounding the converted barn that is both curtilage to the main house and the residence of Mr. Osorio's son)

As noted above, Agent Bango described Mr. Osorio's property as, "occupied by two structures, a house which is made of brick and has a gray asphalt shingled roof and a barn, which is red in color and sits south of the main house." Ex.4:1. However, while the building appears to be a barn, Agent Bango explained under oath that, "[t]he barn has been converted into two bedrooms." Ex.4: 1. Agent Bango **"**knew the resident's son lived in the barn." Ex.2:1: Ex.3:1; Ex.4:4. Hence, by Agent Bango's own sworn admission, the former barn was converted into a separate residence.

After unlawfully entering on to the property where the side-door of the main house is located, Agent Bango, alleges, he smelled the odor of marijuana. Confronted by an unfriendly pitbull-type dog, the agent withdrew, and moved his vehicle "closer to the barn as I knew the

7 There are a few specifically established and well-delineated exceptions to the rule. Id. For example, the police have the right "to enter and investigate an emergency, *without an accompanying intent either to seize or arrest.*" Id. at 151.(emphasis added).

[prior] resident's son lived in the barn and believed to be the owner of the dog." Ex.2:1; Ex.3:1; Ex.4:4.

Agent Bango stated in his reports that he "drove closer to the barn and saw the barn door was wide open." Ex.2:1; Ex.3:1. Ex.4:4. The agent also claims that he "walked to the door and was overwhelmed by the odor of raw *growing* marijuana coming from inside the barn." Ex.2:1; Ex.3:1.Ex.4-4 (emphasis added).[8] According to Agent Bango, he "saw into the barn, saw a bedroom to the right hand side and saw that the door was also partially open." Ex.2:1; Ex.3:1.Ex.4-4.

As noted above, "the area immediately surrounding and associated with the home" [is] "part of the home itself for Fourth Amendment purposes." Jardines as 1414 (quoting Oliver v. United States, 466 U.S.170, 180 (1984) (internal quotation marks omitted). Hence, in this rural area, the converted barn is curtilage of Carlos Osorio's home, thus rendering the agents excursion, both by car and on foot, to the door of the barn, and their visual search of the bedroom, an unlawful warrantless search.

As explained above Carlos Osorio had a constitutionally-protected interest in the converted barn as curtilage to his main house. As similarly explained, Carlos Osorio had an actual, subjective expectation of privacy that society would recognize as objective. For these reasons, by entering, both by car and by foot, onto the land at the front door of the converted barn, and then looking into it, the agents unlawfully infringed upon Carlos Osorio's expectation of privacy. Having undertaken the search at the front of the converted barn in violation of the Fourth Amendment, "the odor of raw, growing marijuana" allegedly smelled by Agent Bango must be suppressed.

8 In fact, since none of the agents' searches of the barn yielded living marijuana plants, Ex.13, p.34, lines 3-4. hence, Agent Bango could not have smelled, as he claimed to do, "raw, *growing* marijuana coming from inside the barn."

Agents' Third Unlawful, Warrantless Entry onto Carlos Osorio's Property

(Entry into the converted barn, the residence and home of Mr. Osorio's sons)

"While standing at the entranceway [of the converted barn]," Agent Bango alleges he "saw cases of ammunition for a 7.62 MM rifle, grow supplies including pipes, liquid fertilizer and extra AC units." Ex.2:1; Ex.3:1.Ex.4-4.

Agent Bango "yelled out, then moved closer to the door and pushed it the rest of the way open. Ex.2:1; Ex.3:1.Ex.4-4.

> I yelled in again. I could see that the interior door on the right hand side was open. I then decided to make entry to see if anyone was home; maybe they just couldn't hear me.

Ex.13:p.15:lines 4-7.

Apparently Agent Bango did not consider the possibility that the occupants of the converted barn might not want to receive uninvited visitors. And prior to opening the door, Agent Bango had not seen anything illegal. Ex.13, p.46, lines 7-9.

According to his reports, Agent Bango "saw bags of processed marijuana lying all over the floor and saw a male and female lying in a bed. Ex.2:1; Ex.3:1.Ex.4-4. They were "sleeping in bed." Ex.13:p.15, lines 13-14. The bedroom was dark. Ex.14, p.20, lines 20-21; p.70 line 16. Agent Bango had to use a flashlight to see into the room. Id.

> I think as soon as I opened the door I started yelling again and that's when they came to. Like I said, there was an air-conditioner, a window shaker, right next to where they were sleeping. I don't think they could hear me at first until I really yelled to them.

Ex.13:p.51, lines 9-13.

The agent **"**ordered the two to get out of bed and secured them in handcuffs." Ex.2:1; Ex.3:2.Ex.4-4. Agent Bango "told the male I saw marijuana lying everywhere and he said, 'yea it not the bud it's just left over.' "[sic] Ex.2:1; Ex.3:2.Ex.4-4. However, according to Agent

Bango's account of events, "the marijuana was all packaged for sale and there was easily over 25 pounds lying out in bags in the room." Ex.2:1; Ex.3:1.Ex.4-4. The agent also alleges that he "saw a 7 foot tall pressure cooker which is used to make Honey Oil aka liquid marijuana." Ex.2:1; Ex.3:1.Ex.4-4.[9] The agents then "backed out [of the converted barn] and [Agent Bango] reentered to simply clear a second room on the other side of the barn." Ex.2:1; Ex.3:2.[10] Having "found no other people inside this room, Agent Bango "backed out" of the converted barn again. Ex.2:1; Ex.3:2.Ex.4-4. The agent "identified [the male] as Jonathan Osorio [who] stated he lives here with his father and he would not consent to the house or the barn to be searched by authorities." Ex.2:1; Ex.3:2.Ex.4-4.

Agent Bango **"**knew the [prior] resident's son lived in the barn." Ex.2:1; Ex.3:1.Ex.4-4. Hence, by Agent Bango's own sworn admission of prior knowledge, the former barn was converted into a separate residence. for Mr. Osorio's twenty-four year old son. But there is no separate mailbox, independent pathway leading to the converted barn, nor any street number on or near the converted barn, indicating visitors, postal carriers, or people conducting business were expected or invited to approach the son's residence.

By entering the converted barn, which the State's own evidence acknowledges is the residence of Mr. Osorio's son, Jonathan, without a warrant, and without consent or exigency, Agent Bango violated Carlos Osorio's Fourth Amendment right that prohibits searches and seizures without a warrant supported by probable cause. Considering the natural solicitousness

---

9 Agent Bango stated that "the correct name of the device is a Butane Honey Oil Extractor, Ex.2:1; Ex.3:2.Ex.4-4, and that "[t]he device has been used but is not currently under pressure or in use". Ex.2:1; Ex.3:2.Ex.4-4.

10 According to Agent Bango, Mr. Osorio's other son, Fernando, "occupies the bedroom opposite of Jonathan's room in the barn. Ex.2:1; Ex.3:3.

of parents for the interests and welfare of their children, Mr. Osorio's expectation of privacy on his property for his son would be recognized by society as objectively reasonable. Indeed, as the facts indicate, at the time of the warrantless entry by Agent Bango into Jonathan's bedroom, Jonathan was in bed with his girlfriend.

Although the residence was that of his son, Mr. Osorio, as owner of the property, is charged by Information with "possession of any place . . . with the knowledge that the place . . . will be used for the purpose of trafficking, [sale, or manufacture of] a controlled substance." Ex.I (Information). Therefore subject to prosecution for events alleged to have occurred on his property, Mr. Osorio has a reasonable expectation of privacy in the premises searched, Jones v. State, 648 So.2d 669, 675 (Fla. 1994), *rehearing denied,*[11] and so, he has standing to challenge the constitutionality of the agents' entry into the converted barn, whether the edifice is understood as curtilage to the main house, or a separate residence for Mr. Osorio's son in its own right.

It should also be noted that Agent Bango's alleged view, in this rural area, of the rifle and agricultural supplies did not provide probable cause of criminal wrongdoing; probable cause does not exist, as here, when objects deemed unlawful are "equally consistent with noncriminal activity as with criminal activity." Angaran v. State, 681 So.2d 745 (Fla. 2d DCA 1996) (finding that the use of "rolling papers" gave rise to competing inferences, one criminal and one not).[12]

---

11 citing State v. Suco, 521 So.2d 100, 1102 (Fla. 1988) and Rawlings v. Kentucky, 448 U.S. 98, 104-05 (1980).

12 See also Goudy v. State, 749 So.2d 508 (Fla. 2d DCA 1999) (possession of syringe equally consistent with noncriminal conduct); Rand v. State, 727 So.2d 1113 (Fla. 2d DCA 1999) (erroneous statements by witness not necessarily intended to obstruct, and equally consistent with noncriminal conduct);E.B. v. State, 866 So.2d 866 So.2d 200, 204 (Fla. 2d DCA 2004) (seizing and opening small, cylindrical, Chapstick lip-balm container pursuant to weapons search violated the 4th amendment).

Nor does the Plain View doctrine help the State under these circumstances. "Under the plain view exception, it is critical that the officer be in the constitutionally protected area lawfully before recovering items thought to be instrumentalities of a crime." Brown v. State, 152 So.3d 619, 625 (Fla. 3d DCA 2014) (citing State v. Rickard, 420 So.2d 303 (Fla. 1982). Here, Agent Bango did not have a warrant to be on the curtilage of the main house, the curtilage or the converted barn, or to enter the converted barn itself. Because he was not lawfully in a constitutionally protected area, the State cannot invoke the plain view doctrine to excuse the agent's unlawful conduct.

PBSO Agents Unlawfully Stop Carlos Osorio

According to Agent Bango, after having entered the converted barn, he "started to write a search warrant for the property and while typing a white van pulled up (I729UE) and was being driven by a male." Ex.2:1; Ex.3:2.Ex.4-4. The agents "approached and saw the male removing *grow supplies* from inside the van." Ex.2:1; Ex.3:2.Ex.4-4. (emphasis added) As alleged by Agent Bango, the man "was removing a propane tank and I could see PVC piping and fertilizer inside the van. Ex.2:1; Ex.3:2.Ex.4-4. Agent Bango stated in his report that "[t]he male *was detained* and identified as Carlos Osorio." Ex.2:1; Ex.3:2.Ex.4-4.[13] (emphasis added). Agent Bango put him in handcuffs. Ex.14:p.26, lines 10-11.

1Florida law is well settled that "a police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime." Popple v. State, 626 So.2d 185 (Fla. 1993) (citing to § 901.151 Fla. Stat. (1991)); Ray v. State, 40 So.3d 95, 97 (Fla. 4th DCA 2010). "In order not to violate a

13 Carlos stated his daughter [w]as inside the main part of the house and then Jonathan stated there was a shotgun and a Desert Eagle pistol in the house. Ex.2:1; Ex.3:2.Ex.4-4.Carlos stated that he lives in the main house along with his daughter. Ex.2:1; Ex.3:2.Ex.4-4. We called and got the daughter to exit the house and she was secured. Ex.2:1; Ex.3:2.Ex.4-4..

citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop." Id.

In determining whether suspicion is reasonable, a reviewing court must look at the "totality of the circumstances" to determine whether the detaining officer has a "particular and objective basis" for his suspicions. Miranda v. State, 816 So.2d 132 (Fla. 4th DCA 2002) (citing United States v. Arvizu, 534 U.S. 266 (2002)); Campuzano v. State, 771 So.2d 1238 (Fla. 4th DCA 2000) (same). Such a suspicion cannot be based upon a mere hunch or guess . Brown v. State, 687 So.2d 13 (Fla. 5th DCA 1997).

In the case at bar, Agent Bango, by his own admission, handcuffed and "detained" Mr. Osorio after allegedly seeing him pull up in a white van containing a propane tank, PVC piping, and fertilizer. Ex.2:1; Ex.3:2.Ex.4-4.. However, these backyard and agricultural items are as equally consistent with non-criminal conduct as criminal behavior, and so, they cannot provide lawful reasonable suspicion justifying an officer from stopping someone.[14]

The State may want to argue that this court should consider, as part of the totality of the circumstances, that Agent Bango's alleged olfactory detection of marijuana at the side of the main house, and at the barn, and Agent Bango's alleged observation of marijuana and paraphernalia when he entered the barn. But because the acquisition of this alleged evidence was,

---

14 See Brown v. State 687 So.2d 13, 15 (Fla. 5th DCA 1996); citing Nealy v. State, 652 So.2d 1175 (Fla. 2d DCA 1995) (defendant's acts of standing next to an open Corvette with another black male looking inside a shirt, after which something dropped from defendant's hand onto floor of car and defendant tossed shirt into back of car and closed and locked vehicle consistent with noncriminal activity) and Huntley v. State, 575 So.2d 285 (Fla. 5th DCA 1991) (even with benefit of special training, officer's observation of defendant, in a known drug area, standing close to young, black male who was holding out his right palm in a cupped position, picking something up out of male's hand, exchanging a piece of paper and running when approached, at least equally consistent with noncriminal activity). See also Carter v. State, 454 So.2d 739, 742 (Fla. 2d DCA 1984) (finding officers seized defendant, or significantly interfered with his liberty, after making only brief observations of conduct which was at least equally consistent with noncriminal activity.)

as explained at length above, obtained in violation of the Fourth Amendment's prohibition of law-enforcement from entering, without a warrant, a person's home, and the curtilage of the person's home, such evidence cannot be lawfully considered as a part of any determination of reasonable suspicion by Agent Bango at the time he detained Carlos Osorio.

Because Agent Bango unlawfully stopped Mr. Osorio, all statements and other evidence obtained by law-enforcement, including Mr. Osorio's identity,[15] after the illegal seizure of Mr. Osorio's person must be suppressed as "tainted fruit of the poisonous tree.". *See* Wong Sun v. United States, 371 U.S. 471 (1963); *See also* State v. Jones, 483 So.2d 433 (Fla. 1986),.

Agents Fourth Unlawful, Warrantless Entry onto Carlos Osorio's Property

(Agents' entry into the main house, Carlos Osorio's home)

After detaining Mr. Osorio, the agents "cleared the house for other occupants and during the walk through [Agent Bango] saw a shotgun in a backroom leaning against the wall. Ex.2:1; Ex.3:2.Ex.4-4. Agent Bango "also [saw] a desk with papers and mail on top of the desk" Ex.2:1; Ex.3:2.Ex.4-4, "and also a safe/lockbox in the master bedroom closet." Ex.2:1; Ex.3:2.Ex.4-4. As described by Agent Bango, agents then "exited and secured the house for the search warrant. Ex.2:1; Ex.3:2.Ex.4-4.

As noted by the Fourth District Court of Appeal,

> the Fourth Amendment permits a protective sweep incident to an arrest if the officer possesses a reasonable belief based on specific and articulable facts which warrant the officer in believing that the area harbors an individual posing a danger

15 While the State may wish to argue that the identities of the defendants are not suppressible, the Florida Supreme Court, approving the opinion of the Fourth District Court of Appeal, has upheld the suppression of identity after unlawful stops. See State v. Perkins, 760 So.2d 85 (Fla. 2000) (approving Perkins v. State, 734 So.2d 480 (Fla. 4th DCA 1999) (upholding suppression of identity obtained after unlawful stop of driver); (See also State v. Hebert, 8 So.3d 393 (Fla. 4th DCA 2009), and Fowler v. State, 801 So.2d 288 (Fla. 4th DCA 2001).

> to the officer or others. Maryland v. Buie, 494 U.S. 325, 327, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). The Supreme Court has defined a protective sweep as "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." Id.

Rowell v. State, 83 So.3d 990, 994 (Fla. 4th DCA 2012).

The agents' entry into the main house in order to "clear" the residence for other occupants was an unlawful protective sweep because the agents did not have any specific or articulable facts which justified a belief that the interior of Mr. Osorio's home harbored anyone posing a danger to the officer or others. For this reason, the agents entry into the house for the purpose of "clearing" it was an unconstitutional, warrantless search, and so any evidence obtained by law-enforcement as a result of the unlawful action must be suppressed.

Agent Bango's Fifth Unlawful, Warrantless Entry onto Carlos Osorio's Property

(Agent Bango's Entry Onto the Side Curtilage of the Barn)

After "clearing" the main house, Ex.2:1; Ex.3:2.Ex.4-4,Agent Bango "walked back to [his] car and walked by the side of the barn." Ex.2:1; Ex.3:2.Ex.4-4. Agent Bango alleges that, in this rural area, he "saw cloning trays, fans, PVC pipe, and buckets", Ex.2:1; Ex.3:2.Ex.4-44, and concluded, not only that "[t]hese items are all used in conjunction with growing marijuana," Ex.2:1; Ex.3:2.Ex.4-4, but also that "[t]here was enough grow supplies to set up multiple grow houses." Ex.2:1; Ex.3:2.Ex.4-4. Agent Bango used his observation of these items to conclude: "I believe there is more illegal drugs and drug proceeds and weapons inside the main house as well as marijuana in the barn." Ex.2:1; Ex.3:2.Ex.4-4

As demonstrated above, the converted barn, as curtilage to the main house, and as the residence of Jonathan in its own right, are part of Mr. Osorio's home, and so, they are protected by the Fourth Amendment of the United States Constitution, and Article 1, section 12 of the

Florida Constitution. Hence, the alleged evidence obtained by law-enforcement as result of the unlawful search at the side of the barn must be suppressed.

Similarly, cloning trays, fans, PVC pipes, and buckets are unremarkable equipment and supplies used for agricultural work, and so, especially in this rural area, are equally consistent with non-criminal conduct. Therefore, they cannot form the basis for reasonable suspicion, see n. 14 supra, or probable cause, see n.12 supra.

Agent Bango Obtains An Unlawful, Unconstitutional Search Warrant

(the sixth unlawful search)

According to Agent Bango, a search warrant was prepared and signed, Ex.2:1; Ex.3:2; Ex. 4, (and the execut[ing] agents found a Honey Oil producing lab and pounds of marijuana in the barn. Ex.2-1; Ex.3-2 . The agents also allegedly "found cash in both rooms in the barn and ammunition." Ex.2:1; Ex.3:-2. According to Agent Bango, "[a] search of the residence also revealed cash in the master bedroom closet", Ex.2-1; Ex3-2, and "paperwork and documents showing Carlos Osorio resides in this bedroom." Ex.2-1; Ex.3-2.[16]

The search was unlawful because the warrant obtained by Agent was based on the agent's sworn affidavit and application that contained no probable cause except allegations based upon five (5) precedent unlawful warrantless searches as described above.[17] In addition, the

16 As described by the agent, "[i]n the kitchen and living room areas were clear and found.[sic]" Ex.2:1; Ex.3:2. "In the back left hand side bedroom it was also clear and was occupied by the 17 year old daughter, Jennifer Osorio." Ex.2:1; Ex.3:2-3. "The bedroom next to hers was also occupied by Jonathan Osorio." Ex.2:1; Ex.3:3. "In this room, agents found a shotgun and Desert Eagle pistol in the dresser." Ex.2:1; Ex.3:3. " Next to this gun was a marijuana grinder and a bag of marijuana." Ex.2:1; Ex.3:3. "Jonathan had already stated the two guns were his and this was his bedroom. Ex.2:1; Ex.3:3. "During the search Fernando Osorio returned home and he was detained by agents." Ex.2:1; Ex.3:3. "He occupies the bedroom opposite of Jonathan's room in the barn." Ex.2:1; Ex.3:3.

17 (1) the agents' entry onto the curtilage side-door of the main house; (2) the agents entry onto the land in front of the converted barn that is both curtilage to the main house, is the residence of Mr. Osorio's sons in its own right; (3) the agents' entry into the converted barn, the residence and

Agent's affidavit and application were based two (2) unlawful stops,[18] three (3) identification of items as criminal that are equally consistent with non-criminal conduct,[19] and illegally-obtained statements of confession.[20]

THE GOOD FAITH EXCEPTION TO THE WARRANT REQUIREMENT DOES NOT APPLY

2The good faith exception to the exclusionary rule allows "the use of evidence gathered in violation of the Fourth Amendment, so long as the police officer in question acted under an objectively reasonable, good faith belief in the authority to seize the evidence. See United States

---

home of Mr. Osorio's sons; (4) the agents' entry into the main house, without cause, to do a protective sweep; (5) the agents' entry onto the side of the converted barn, which, as part of the converted barn, is curtilage of the main house, and also curtilage to the residence of Mr. Osorio's two sons;

18 (1) unlawful stop of Jonathan and his girlfriend as they lay in bed in Jonathan's bedroom; (2) unlawful stop of Mr. Osorio as he exited his vehicle

19 (1) **"**While standing at the entranceway [of the converted barn]," Agent Bango alleges he "saw cases of ammunition for a 7.62 MM rifle, grow supplies including pipes, liquid fertilizer and extra AC units." Ex.2:1; Ex.3:1; Ex.4:4; (2) While entering onto the side curtilage of the barn] he "saw cloning trays, fans, PVC pipe, and buckets", Ex.2:1; Ex.3:2; Ex.4:4; (3) The agents "approached and saw the male removing grow supplies from inside the van." Ex.2:1; Ex.3:2; Ex.4:4 (emphasis added) As alleged by Agent Bango, the man "was removing a propane tank and I could see PVC piping and fertilizer inside the van. Ex.2:1; Ex.3:2; Ex.4.

20 (1) Agent Bango alleges that "Jonathan claimed ownership of all the drugs and the drug operation and to be the one making the Honey Oil." Ex.2:2; Ex.3:3; (2)Agent Bango also alleged that "Jonathan again spoke and took full responsibility for the lab and all the drugs found." Ex.2-2. (3) "As we waited for transport, Jonathan spoke to Agent Trimino and I in private." Ex.3:3. According to the agent, "[Jonathan Osario] again stated this whole weed and oil lab operation was all his and not his brother's or father's doing." Ex.3:3. As described by Agent Bango, "[Jonathan Osario] stated if we opted not to arrest his dad and brother at this time, he would show and tell us about his various sources of supply for bulk marijuana." Ex.3:3. According to Agent Bango, "Jonathan did state that his family knows what he is doing on the property but says they are not an active part of the operation." Ex.3:3.

v. Leon, 468 U.S. 897 (1984) (exclusionary rule should be modified in case of objectively reasonable, good-faith reliance on search warrant)

3When, as here, a supporting affidavit fails to establish probable cause to justify a search, however, the good faith exception does not apply. See e.g., Dyess v. State, 988 So.2d 146 (Fla. 1st DCA 2008). As reflected in (1) the express language of the Fourth Amendment to the United States Constitution, (2) the express language Article I, Section 12 of the Florida Constitution, and (3) the express language of Florida Statutes section 933.04, the law requires the existence of probable-cause before a warrant is issued. And 4Florida Courts have held that the exception does not apply to situations in which law enforcement officers have acted contrary to statutory requirements. See e.g. Stone v. State, 856 So.2d 1109 (Fla. 4th DCA 2003) (ruling that the good-faith exception to the exclusionary rule does not apply to officer's ignorance of traffic statute); D.F. v. State, 682 So.2d 149 (Fla. 4th DCA 1996) (finding that the good-faith exception to the exclusionary rule does not apply to officer's ignorance of strip-search statute); State v. Garcia, 547 So.2d 628 (Fla. 1989) (holding that the good-faith exception to the exclusionary rule does not apply to exclusionary provisions of Florida wiretap law).

Good faith reliance upon the validity of a warrant concerns *judicial* error, and cannot save a search undertaken as the result of police misconduct. See State v. White, 660 So.2d 664 (Fla. 1995)5. "[W]here, as here, the officers' reliance upon a warrant based upon an affidavit so deficient in indicia of probable cause fails to manifest the objective good faith standard required by [United State v. Leon, 468 U.S. 897(1984)]", the Fourth D.C.A. will not accept the argument that the good faith exception applies. Gesell v. State, 751 So. 2d 104, 106 (Fla. 4th DCA 1999)."[W]here the supporting affidavit fails to establish probable cause justifying a search, Florida courts refuse to apply the good faith exception**."** Getreu v. State, 578 So.2d 412 (Fla. 2d

DCA 1991); Bonilla v. State, 579 So.2d 802 (Fla. 5th DCA 1991). See also 6U.S. v. Leon, 468 U.S. 897(1984)

Here, in quest of a search warrant, veteran Agent Bango, a law enforcement officer with fifteen (15) years of experience, prepared and executed a supporting affidavit that alleged probable cause based five (5) unlawful, warrantless searches unconstitutional actions by law-enforcement officers. Hence, the sworn allegations by which the veteran agent applied to Judge Cunningham for a search warrant failed to contain the requisite probable cause because the agent's allegations of wrongdoing were, in their entirety, based on illegal warrantless searches.

Agents Unlawfully Obtain Statements From Carlos Osorio and Jonathan Osorio

Agent Bango alleges in his reports that, after the warrant was executed, "[a]ll subjects were advised of their constitutional rights. Ex.2-2; Ex.3:3. Agent Bango states that "he advised Fernando[,] and [ ] Jonathan and Carlos were advised of their rights by Agents Trimino and Kabis. Ex.2-2; Ex.3-3. As described by Agent Bango, "Fernando refused to make any statements and asked for a lawyer," but that "Carlos spoke but denied any knowledge of the illegal operation and stated he never goes near the barn." Ex.2:2; Ex.3:3.

Agent Bango further alleges that "Jonathan claimed ownership of all the drugs and the drug operation and to be the one making the Honey Oil." Ex.2:2; Ex.3:3.[21]

21 However, Agent Bango expressed his disbelief in Jonathan's implicit exoneration of his brother and father because, according to Agent Bango, "Fernando's bedroom is less than ten feet away from the room with the illegal manufacturing lab in it"[,] "[t]he smell of marijuana was intense throughout the entire barn, " and "[t]he grow and lab equipment was in the front room of the barn in open access of both Fernando and Jonathan bedrooms. [sic.] Ex.2-2; Ex.3-3. In apparent further attempt to implicate Fernando, Agent Bango also stated in his reports that "[t]he lab equipment was also in the common area of the second floor of the barn"' and "Fernando and Jonathan both have access to both common areas were the marijuana equipment was being kept." Ex.2-2; Ex.3-3.Agent Bango stated in his reports that, "[t]he lab which was in Jonathan's bedroom was fully functional and fresh Honey Oil was found in his room as well." Ex.2-2; Ex.3-3. The agent further alleged that, "[t]he rest of the grow was in open access to everyone around the outside of the barn, including wiring, buckets, fans, soil, grow trays, and AC units. Ex.2:2; Ex.3:3. According to the agent, there "was also a large amount of ammunition found in the front

Agents were able to weigh the marijuana on scene and, according to Agent Bango, it was "approximately 21 pounds of marijuana." Ex.2:2; Ex.3:3-4. Agent Bango reported that "[t]he substance also field tested positive for the presence of THC showing it to be marijuana." Ex.2:2; Ex.3-4. Agent Bango also alleged that "Jonathan again spoke and took full responsibility for the lab and all the drugs found." Ex.2-2. "As we waited for transport, Jonathan spoke to Agent Trimino and I in private." Ex.3:3. According to the agent, "[Jonathan Osario] again stated this whole weed and oil lab operation was all his and not his brother's or father's doing." Ex.3:3. As described by Agent Bango, "[Jonathan Osario] stated if we opted not to arrest his dad and brother at this time, he would show and tell us about his various sources of supply for bulk marijuana." Ex.3:3. According to Agent Bango, "Jonathan did state that his family knows what he is doing on the property but says they are not an active part of the operation." Ex.3:3.

---

common area of the barn." Ex.2:2; Ex.3:3. Agents also claimed they "found bank type money bands in Jonathan's bedroom." Ex.2:2; Ex.3:3. "These same bands were found wrapped around stacks of cash in Fernando's bedroom and the master bedroom of the house (Carlos bedroom) and a large stack of cash in the master bedroom closet (Approximately 6,0000)." Ex.2:2; The State also states that "there was a case of these bands in Jonathan's bedroom." Ex.3:3. Agents allege they "found ledgers in the master bedroom (Carlos bedroom) and a large stack of cash in the master bedroom closet (Approximately $6,000)." Ex.3-3. However in a separate affidavit, Deputy Bango testified that "Agents also found ledgers in the master bedroom (Carlos's bedroom) and a large stack of cash in the master bedroom closet, approximately $14,037.00 USC." Ex.12:p.5, par.9 As described by Agent Bango, "[Mr. Osorio] stated that cash was his and he was paid in cash for some rental properties he owns." Ex.2:2; Ex.3:3. "However," according to the agent, Mr. Osorio "could not remember which units or the locations that had paid him in cash." Ex.2:2; Ex.3:3. Agent Bango "found bank paperwork showing Carlos had almost a hundred thousand dollars in one account and almost $50,000 dollars in a second bank account, besides the cash in his closet." Ex.2:2; Ex.3:3. "There was approximately a thousand dollars under Fernando's bed in his room which was taken as well as approximately 800 dollars in Jonathan's bedroom found on top of the work bench." Ex.2:2; Ex.3:3.

"In general, a confession obtained during custodial interrogation after an illegal arrest is inadmissible at trial . . . There are numerous factors which a court must analyze to determine whether a suspect confession is free of the taint of an illegal arrest. The most important factors are: "the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and particularly, the purpose and flagrancy of the official misconduct. [citation omitted] The taint of an illegal confession can not be purged solely by the act of reading a defendant his *Miranda* rights." Adams v. State, 830So.2d 911, 914 (Fla. 3d DCA 2002). When there is no break in the causal chain from the time of a defendant's seizure to the time of his or her confession, a motion to suppress the confession is properly granted. State v. Taylor, 879 So.2d 677 (Fla. 4th DCA 2004).[22]

In the case at bar, there was no break in the causal chain from the time that agents executed the invalid warrant through the time Agent Bango elicited thrice repeated statements of confession from Jonathan. See n.20 supra. The events were in immediate proximity to one another, with Agent Bango confronting Jonathan with the facts of the marijuana, its odor, the processing equipment, and allegations incriminating Jonathan's father and brother.

Hence, the confessing statements attributed to Jonathan by the agents, following as they did the unlawful warrantless searches, and the searches undertaken pursuant to the invalid warrant, constitute "tainted fruit of the poisonous tree." Therefore, having been obtained in violation of Mr. Osorio's right, in his home, to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment of the Constitution, and Article I section 12 of the Florida Constitution. *See* Wong Sun v. United States, 371 U.S. 471 (1963); *See also* State v. Jones, 483 So.2d 433 (Fla. 1986), the confessions of Jonathan must be suppressed.

22 The exclusionary rule provides that "when an individual is unreasonably seized, any evidence obtained as a result of the seizure must be suppressed." Murphy v. State, 793 SO.2d 112 (Fla. 2d DCA 2001).

Agent Bango Obtains A Second Unlawful Search Warrant

(the seventh unlawful search)

According to Agent Bango, "[d]uring the search at 5626 gun Club Road, West Palm Beach, Florida, I located two, safety deposit box keys for a box at PNC, Box Number 226. Bango Offense Report II ("BOR2")." Agents "also located paperwork showing the box was at 3989 Forest Hill Blvd, West Palm Beach, Florida (PNC Bank)." BOR2.

Based upon the same affidavit he used to apply for the prior warrant (describing five unlawful, warrantless searches of Mr. Osorio's property), and based upon alleged evidence obtained from the search proceeding from the latter invalid warrant, Agent Bango obtained a second warrant. Thus, Agent Bango "drafted a search warrant and it was approved and signed by the Honorable Judge S. Cunningham, on 6-16-15." Ex.9; See. Ex. 4 and Ex. 5.

On 6-17-15 at 0900 hours, Sergeant Chase, Agent Kabis, Agent Hunter and [Agent Bango] responded to 3989 Forest Hill, West Palm Beach Florida (PNC Bank). Ex.9. "After a brief discussion with the vice president branch manager, Liliana Ebersold, [agents] executed the warrant." Ex.9. Agents "found four thousand dollars in a bank envelope *hidden* inside the safety deposit box." Ex.9 (emphasis added).

Agent Bango's second search warrant affidavit and application, and the warrant issued, suffer from the same legal and constitutional infirmities as the initial search warrant and search. For these reasons, the alleged evidence seized from the safety deposit box were unlawfully obtained, and must be suppressed.

Conclusion

WHEREFORE, the evidence obtained in this case constitutes "tainted fruit of the poisonous tree," having been obtained in violation of Mr. Osorio's right to be free from

unreasonable searches and seizures as guaranteed by the Fourth Amendment of the Constitution, and Article I section 12 of the Florida Constitution. See Wong Sun v. United States, 371 U.S. 471 (1963); See also State v. Jones, 483 So.2d 433 (Fla. 1986).

Mr. Osorio, through counsel, thus moves this Court to suppress (1) Mr. Osorio's his identity; (2) all alleged observations of the agents; (3) the identities of all persons actually or allegedly obtained by agents while on the property of Mr. Osorio's home; (4) any actual or alleged statements attributed to Carlos Osorio at the time of the incident or in custody thereafter; (5) any actual or alleged statements attributed to Jonathan, and any other residents and visitors to Mr. Osorio's Osorio's home; (6) the marijuana, equipment, and paraphernalia actually or allegedly seized from Carlos Osorio's property; (7) all cash seized by law enforcement officers from Mr. Osorio's property, from the main house, the converted barn, and the safety deposit box; (8) all documents, records, computer equipment, and other business and personal affects seized by law enforcement at the house, the converted barn, and the safety deposit box; (9) all firearms seized by law enforcement, because the said evidence was acquired as a result of an unlawful search and seizure.

CERTIFICATE OF SERVICE

I CERTIFY THAT a copy was provided to: State Attorney's Office, 401 N. Dixie Highway, West Palm Beach, FL 33401 at FELDIVV@SA15.ORG, this 8th day of June, 2016.

Respectfully submitted,

By: */s/ W. Grey Tesh*
W. Grey Tesh, Esq.
Florida Bar No.: 506176
515 North Flagler Drive, Suite P-300
West Palm Beach, FL 33401
Telephone: (561) 686-6886
Fax: (561) 600-4166
Email: info@greytesh.com (for service)