



STATE OF TEXAS

v.

MALARIE MURPHY

CAUSE # 911104

Brief in Support of Motion to Suppress
Physical Evidence
(Search with a Warrant under 2004-W-0423)

Primary Cases



- *Elardo v. State*, 2005 Tex. App. LEXIS 1982 (Tex. App. –Texarkana 2005).
- *Serrano v. State*, 123 S.W. 3d 53 (Tex. App. –Austin 2003, pet. ref'd).
- *Davila v. State*, 2005 Tex.App. LEXIS 5502 (Tex. App. –Austin 2005).
- *Davis v. State*, 2005 Tex.App. LEXIS 2229, 14 (Tex. App. –Ft. Worth 2005).



Rights Invoked

- Fourth and Fourteenth Amendments to the United States Constitution,
- Art. I, Section 9, of the Texas Constitution,
- Art. 38.23 C.C.P.;
 - *Elardo v. State*, 2005 Tex. App. LEXIS 1982 (Tex. App. –Texarkana 2005).



Overview

- On 06 August 2004 at 10:39 AM, Detective Anita Seamans, of the City of Live Oak Police Department, filed an Affidavit of Fact, under cause number 2004-W-0423, with the 379th Judicial District Court.
- The Court then issued a Search Warrant, on 06 August 2004 at 10:40 AM.



Why Murphy Should Prevail

- Under the **totality of the circumstances**, as reflected in the affidavit, even after giving the issuing court great deference to its determination, the affidavit makes:
 - **conclusory statements** of material fact with no supporting evidence;
 - **fails to identify** any **witness** nor state any **facts** which would support the **credibility** of those witnesses and
 - indicates **no time frame** when the alleged stolen property was observed on the Defendant's person or in her home.



The Law - “4 Corners Rule”

- The determination of the legal adequacy of an affidavit in support of a search warrant is to be made only within the four corners of the document involved.
 - *Mayfield v. State*, 800 S.W.2d 932, 934 (Tex. App.--San Antonio 1990, no pet.);
 - *Elardo v. State*, 2005 Tex. App. LEXIS 1982 (Tex. App. –Texarkana 2005).



Requirements of a Search Warrant Affidavit

- An affidavit for a search warrant is sufficient to establish probable cause if, from the **totality of the circumstances** reflected in the affidavit, the magistrate was provided with a **substantial basis** for concluding that probable cause existed.
 - *Heitman v. State*, 815 S.W.2d 681 (Tex. Crim. App. 1991).
- A mere **conclusory** statement will not do.
 - *Illinois v. Gates*, 462 U.S. 213, 239, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983)
- The affidavit is to be interpreted in a **commonsense, realistic manner**.
 - *Serrano v. State*, 123 S.W. 3d 53 (Tex. App. –Austin 2003, pet. ref'd).




Murphy Search Warrant Affidavit of Fact

- A mere **conclusory statement** gives the magistrate virtually **no basis** at all for making a judgment regarding probable cause.
- "His actions **cannot** be a mere ratification of the bare conclusions of others."
 - *Illinois v. Gates*, 462 U.S. 213, 239, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983); *Serrano v. State*, 123 S.W. 3d 53 (Tex. App. –Austin 2003, pet. ref'd).

AFFIDAVIT OF FACT
2004 - W - 0423

STATE OF TEXAS
COUNTY OF BEXAR



BEFORE ME, the undersigned authority, a magistrate in the county of Bexar, state of Texas, on this day, personally appeared: Anita Seamans

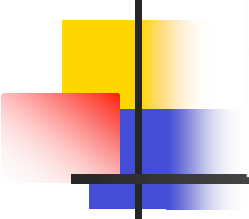
WHO, being fully sworn upon her oath, deposes and says:

That she has good reason to believe and does believe that a certain place in Bexar County, Texas, described as:

a one story, single family dwelling , with a tan and white natural rock face exterior, brown trim, white front door, tan shingle roof, attached one car garage, 6 foot wooden and chain link privacy fence, known and numbered as 7716 Marigold Trace, Live Oak, Bexar County, Texas.

Said suspected place is in charge of and controlled by each of the following named parties, whether one or more to wit: Malarie Murphy, W/F 02-24-87 and Tauyna Murphy W/F 02-03-60
Other parties unknown to me:

- Who Owns/Rents/Possesses 7716 Marigold Trace?
- How established that Malarie is “in charge of & control”
- Conclusory Statements
- No Independent Investigation
- Statements Not Supported in Remainder of Affidavit



7716 Marigold Trace is a place where evidence, in violation of the Texas Penal Code, Burglary of a Habitation, to Wit: Jewlery: Ladies Fossil Watch silver and gold with blue dial, 14ct gold with diamond Claddagh Earrings, 1ct diamond wedding ring, 1/3ct diamond stud earrings, garnet with 2 diamonds birthstone ring, James Avery Charm Bracelet with 20 charms, mans Fossil watch, silver with blue dial, pawn receipts, documentation or other evidence of the possession of items taken during the course of the burglary of a residence, located at 7726 Marigold Trace

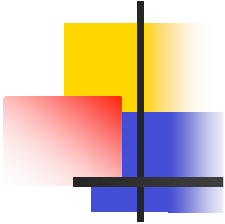
Is unlawfully possessed in violation of Texas law, and to take possession of the same.

- Source of Jewelry list not identified.
 - Basis of knowledge
 - Reliability
 - Credibility
 - Timeliness
- An affidavit that fails to state when the affiant received the information from the informer, when the informer obtained the information, or when the described conduct took place is insufficient to support issuance of a search warrant.
 - *Serrano*, 123 S.W.3d at 61



State Argument

- Substantial basis for P.C. will exist if **witness** a private citizen whose only contact with police was to witness a crime.
- **HOWEVER**, witnesses not identified in affidavit - **witness status UNKNOWN**.
- Person under investigation by police not presumed reliable.
 - *State v. Wester*, 109 S.W.3d 824, 826-27 (Tex. App.--Dallas 2003, no pet.)



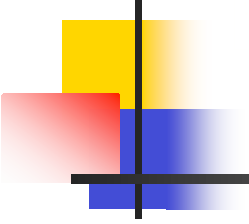
On May 30, 2004, the residents of 7726 Marigold Trace reported a burglary of their home. Forced entry was made through a back sliding glass door. Several items including computer equipment, DVD's and CD's had been placed next to the back door. It appeared that the actor(s) had been interrupted in the process of removing the items from the home. The victim reported several items of jewelry had been taken from the home. At the time, the victims opined that they felt that a neighbor, Malarie Murphy, may have been involved in the crime. This opinion was based on several facts. Murphy has been in their home and knows the location of the valuables. She knows that dogs in the home will not bite. They also told me that Murphy has been involved in other suspicious activities, and that a vehicle was seen leaving from the front of her home minutes before the discovery of the burglary. Additionally, a separate witness to the offense told officers that he saw a tall, thin black male walk out the front door of the home minutes before the burglary was discovered. Murphy associates with a thin black male.

- **Identity** of Witnesses ?
- **Basis of Knowledge** for “allegations” and “opinionement ?”
- **Personal Observation** of anonymous informant.
 - Several federal courts have found warrants **insufficient** when the basis of knowledge was the **personal observation of the anonymous informant**. *United States v. Wilhelm*, 80 F.3d 116, 120 (4th Cir. 1996); *Elardo v. State*, 2005 Tex. App. LEXIS 1982 (Tex. App. –Texarkana 2005).




No Probable Cause

- "Probable cause does not arise by virtue of the fact that several people, whose **identity**, **reliability**, **credibility**, or **basis of knowledge** is **unestablished**, gave officers information concerning criminal activity,"
 - *Lowery v. State*, 843 S.W.2d 136 (Tex. App.--Dallas 1992, pet. ref'd)



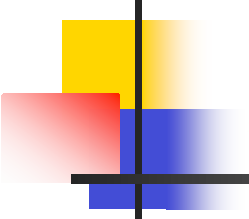
home minutes before the discovery of the burglary. Additionally, a separate witness to the offense told officers that he saw a tall, thin black male walk out the front door of the home minutes before the burglary was discovered. Murphy associates with a thin black male.

- Who is the “separate witness ?”
- How did Det. Seamans establish that Murphy associates with a “thin black male ?”
- Which “Murphy” is Det. Seamans referring to?
- Identity, Basis, Reliability & Creditability !!




On July 26, 2004, your Affiant interviewed Murphy in reference to another criminal matter. When I asked her about her possible involvement in the burglary, Murphy denied involvement or knowledge of the incident. During the course of the investigation into a separate criminal matter, I found a witness who has provided a statement, and evidence, that Murphy, and her associate, Jamont McClain were indeed involved in this burglary.

- Boot Strapping - “Criminal Matter”
- Unidentified Witness Statement ??
- Evidence ??
- Murphy, & Associate Jamont McClain ??
- Identity, Basis, Reliability & Creditability !!



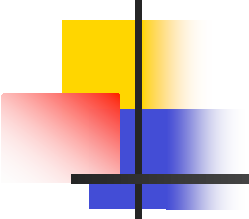
According to the witness, both Murphy and McClain planned the burglary in her presence, and then showed her the jewelry taken from the home after the fact. Further, the witness told me that Murphy gave her two rings and a bracelet from the burglary. The witness then turned the items over to me. The witness also told me about 2 bracelets and one ring, that she has seen Murphy wearing in the weeks following the burglary. The witness correctly described the modus operandi of this crime, knowledge of which was not public information. The bracelet given to me by the witness has been identified by the victim of the burglary as belonging to her.

- Identity, Reliability, Credibility, & Basis of Knowledge, for the above-unidentified witness **critical !! & NOT ESTABLISHED**
- Within the four corners of this Affidavit of Fact, it is more likely that the unnamed witness stole the two rings and bracelet, giving them and a story to Det. Seamans, in an attempt to deflect culpability.



On August 2, 2004, latent fingerprints taken from the crime scene were compared to the known fingerprints of Malarie Murphy. Sgt. Robert Frame, a documented expert, positively identified one of the latent fingerprints taken from the entry point of this burglary, as belonging to Malarie Murphy.

- No **Facts** support “**Document Expert**”
- “**Expertise is not Presumed.**”
 - *Davis v. State*, 2005 Tex.App. LEXIS 2229, 17 (Tex. App. –Ft. Worth 2005).



Your Affiant was in the room of Malarie Murphy two weeks ago concerning another criminal matter, and I saw several items of jewelry throughout the room. At the time, I had no probable cause to believe the items may have been the fruits of a crime. Murphy has been reported to be in possession of items of jewelry taken from the burglary. I have found no pawn records for her, or her associate McClain, that would indicate that she is no longer in possession of some of the stolen jewelry.

- Where is Malarie Murphy's room located?
- Jewelry in a 17yo Female's room is a Common Sight.
- "Jewelry" not described by Det. Seamans.
- In *Serrano v. State*, 123 S.W. 3d 53, 62 (Tex. App.—Austin [3rd Dist.] 2003), the Court talks about items that are a common sight, of common knowledge and that without more are hardly significant in determining probable cause.
- An observation two weeks prior to the issuance of a search warrant that observes no stolen property does not provide a basis for establishing P.C. for a warrant.



Why Suppression Should be **GRANTED...**

- Conclusory Statements with no supporting facts.
- Failure to Identify any witness
- Issuing Court inability to judge:
 - Basis of Knowledge
 - Reliability
 - Credibility
 - Timeliness
- The Affidavit of Fact does not establish a substantial basis for concluding that probable cause existed to believe stolen property would be found on the subject premises at any given time.