

STATE OF WISCONSIN,

Plaintiff,

vs.

PETER G. LAIN,

Defendant.

COPY

Case No. 09 CF 321

FILED
IN THE CIRCUIT COURT

APR 06 2010

DODGE COUNTY, WIS
LYNN M. HRON
CLERK OF COURTS**ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE**

The above entitled matter having come on for hearing on the 9th day of March, 2010 and the State having appeared by Assistant District Attorney Kurt Klomberg, and the defendant having appeared in person and by counsel Attorney Stephen J. Meyer; and the court having considered all of the arguments by counsel, the filings made herein both in support and against defendant's motion to suppress and having examined the complaint for search warrant in detail, the Court hereby makes the following findings:

1. On August 26, 2009, the Hon. Maryann Sumi, Circuit Court Judge for Dane County, signed a search warrant authorizing the search of a premise located at [REDACTED] Street in [REDACTED] Dodge County Wisconsin.
2. As a result of the search warrant, law enforcement officials did execute a search at [REDACTED] Street, the premises belonging to the defendant Peter Lain, on August 26 and 27, 2010. A wide variety of materials including firearms, computers, marijuana, drug paraphernalia, and cash were recovered by law enforcement.
3. The evidence that was recovered provided the evidentiary basis for the issuance of criminal charges in Dodge County against the defendant Peter Lain. (See complaint signed and

filed September 9, 2009, Dodge County Case No. 09CF321).

4. On January 7, 2010, the defendant Peter Lain by his attorney filed a motion to suppress the evidence seized as a result of the afore-described search. An affidavit in support of the motion was filed as well as other subsequent documents. The motion asserted that within the four corners of the complaint for the search warrant signed by Detective Kevin Hughes of the Dane County Sheriff's Department, there was insufficient information to establish probable cause and further, that there had been material misrepresentations or omissions made with reckless disregard for the truth, violating the standards set forth in *Franks v. Delaware*, 438 U.S. 154 (1978) and *State v. Mann*, 123 Wis.2d 375 (1985).

4. On March 9, 2010, the State asserted that the defendant had failed to make a substantial preliminary showing for a *Franks/Mann* hearing. The court finds to the contrary. Defendant's submissions included a second affidavit which contained an excerpt of a transcript of testimony by Detective Owen Dockter of the Dane County Sheriff's Department. Det. Dockter had testified that he had recovered three grams of marijuana from a backpack belonging to David Osman which was located in the trunk of the Lain vehicle. Detective Dockter further testified that the amount of marijuana recovered from the Lain vehicle was consistent with personal use. This information was not set forth in the complaint for search warrant.

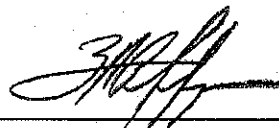
5. A complaint must set forth sufficient facts to establish a fair probability that contraband or evidence of a crime will be found *in a particular place*. *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (emphasis added). "The critical element in a reasonable search is not that the owner of the property is suspected of a crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry to

sought.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978).

6. There is a complete lack of any information in the complaint for search warrant that establishes a nexus between the information provided by the confidential informant and the residence located at [REDACTED] Street, [REDACTED], Wisconsin. Due to that lack of nexus, the complaint for search warrant presented to Judge Sumi on August 26, 2010 was clearly insufficient to establish probable cause to justify the issuance of a search warrant for the premises belonging to the defendant. Judge Sumi did not have a substantial basis to find that the complaint for search warrant established probable cause.

ACCORDINGLY, IT IS HEREBY ORDERED that the defendant’s motion to suppress evidence is granted and that none of the physical evidence seized (or any derivative evidence) from Mr. Lain’s residence pursuant to the execution of the search warrant issued by Judge Sumi is allowed to be admitted at trial.

Dated this 6 day of ^{April}~~March~~, 2010.



Hon. Brian A. Pfitzinger
Circuit Court Judge
Dodge County, Wisconsin