IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, Appellant, v. YOLANDA SHYRA LEWIS and COURTNEY RENEE CLAYBORNE, Appellees.	)	NOT FOR PUBLICATION Case No. S-2015-845

OPINION

HUDSON, JUDGE:

Appellant, the State of Oklahoma, charged the Appellees Yolanda Shyra Lewis and Courtney Renee Clayborne in Seminole County District Court, Case Nos. CF-2013-248 and 249, with conjointly[1] committing the following offenses: Conspiracy to Commit a Felony, in violation of 21 O.S.2011, § 421 (Count 1); Possession of Controlled Dangerous Substance with Intent to Distribute, in violation of 63 O.S.2011, § 2-401(A)(1) (Count 2); and Attempted Cultivation of Controlled Substance, in violation of 63 O.S.2011, § 2-509 (Count 3). A preliminary hearing was held on August 22, 2013, and Appellees were bound over for trial on the charged offenses.

On December 26, 2013, prior to formal arraignment, Appellees jointly filed a *Motion to Quash* pursuant to 21 O.S.2011, § 504.1 in which they alleged

[1]Although the State charged the Appellees individually by filing separate Informations against each Appellee, the State alleged the Appellees were "acting conjointly" (O.R. 1-2). Lewis was formally charged in Case No. CF-2013-248; Clayborne was formally charged in Case No. CF-2013-249.

the State presented insufficient evidence at the preliminary hearing.[2] A hearing on the motion was held on February 7, 2014. The trial court noted that it had reviewed the transcript of the preliminary hearing and the briefs of the parties. The trial court then heard argument from both sides on the motion. At the conclusion of the hearing, the trial court reserved its ruling and requested the parties brief pertinent issues relating to the legality of two searches carried out in relation to the case. Thereafter, on March 7, 2014, Appellees jointly filed a *Motion to Quash Search Warrant* in which they specifically challenged the search warrant obtained to search their residence.[3] A hearing on Appellees' second motion was held on April 9, 2014, at the conclusion of which the trial court took the matter under advisement. On September 9, 2015—seventeen (17) months later—the Honorable George W. Butner, District Judge, sustained both of the Appellees' motions.[4] Appellant, the State of Oklahoma, now appeals the district court's rulings under 22 O.S.2011, § 1053(4) & (5).

BACKGROUND

In early June 2014, Albert Chapa, a Federal Agent for the United States Postal Inspection Service became aware of a suspicious parcel ("the package") through a "referral" process (PH Tr. 4, 9-10). The package was intercepted and shipped directly to Agent Chapa on June 6, 2013, for further investigation (PH

[2] The State filed a response brief on January 29, 2014 (O.R. 55-58).
[3] The State filed a response brief on March 25, 2014 (O.R. 59-62).
[4] Judge Butner's September 9th ruling was announced in open court and was followed by a written order filed on September 11, 2015 (O.R. 63-71).

Tr. 9-10). The package had been originally shipped from El Segundo, California (O.R. 3—Affidavit for Search Warrant). Agent Chapa noted that the state of California is the number one "source state" in the country from which drug packages originate (PH Tr. 6-7). A bogus Los Angeles, California address was listed on the package for the sender's address (PH Tr. 18-19; O.R. 4—Affidavit for Search Warrant). The parcel was addressed to "Ms. Clayborne" at "800 North Second, Seminole, Oklahoma" (PH Tr. 18). Agent Chapa explained that the formal use of "Ms." is an indicator that the sender is "trying to be a little bit deceptive" and is commonly seen on drug packages (PH Tr. 18).

As part of his investigation, Agent Chapa also contacted the Tulsa Police Department Special Investigative Unit and arranged for a canine detection dog handler, Officer Wamsley, to perform an inspection (PH Tr. 10-11). Officer Wamsley's dog signaled on the package, indicating the possible presence of a controlled substance (O.R. 4). Agent Chapa subsequently contacted Officer Branon Bowen at the Seminole Police Department regarding the package (PH Tr. 16-17, 20).

The next day, June 7, 2013, Agent Chapa met with Officer Bowen and other local law enforcement personnel at the Seminole Police Department (PH Tr. 22). The decision was made at that time to deliver the package (PH Tr. 22, 57). Thereafter, Agent Chapa, dressed in postal service uniform, delivered the parcel to the purported address of "Ms. Clayborne" as Officer Bowen and another officer hid in the back half of the postal jeep (PH Tr. 21-23, 57-58). From Officer Bowen's position within the jeep, he was able to "view [Agent

Chapa] exit the vehicle with [the] package and make contact at the residence" (PH Tr. 58). The package was "[s]till sealed and in it's (sic) original form" at the time of delivery (PH Tr. 22). Once at the front door of the residence, Agent Chapa knocked and got a response (PH Tr. 23). When a woman came to the door, Chapa stated "Delivery for Clayborne" and the woman responded by saying "Yes." (PH Tr. 23-24, 58-59). Agent Chapa then placed the package on the front porch and began to return to the postal jeep (PH Tr. 23-24, 59). As Agent Chapa walked away, Officer Bowen exited the jeep to intervene in the matter (PH Tr. 23, 58-59). The woman had just retrieved the package off the porch and was proceeding back inside the residence when Officer Bowen instructed her to stop and place the package back down onto the porch (PH Tr. 59). The woman in question was later identified as Yolanda Lewis (PH Tr. 38, 60).

Shortly after securing the scene, Courtney Clayborne arrived at the premises driving a black Mercedes (PH Tr. 60). Both Lewis and Clayborne were detained outside the residence, while search warrants were obtained and subsequently executed (PH Tr. 60-64). Officer Bowen first obtained a search warrant to open and inspect the contents of the package (PH Tr. 60-61; O.R. 3-7). Upon opening the package, officers found seven (7) vacuum sealed plastic bags containing marijuana, a pill bottle with a medical marijuana label containing marijuana, and insulation and towels that had been placed inside the package in an attempt to conceal the contents from inspection (PH Tr. 61-62). The package also contained "fabric softeners to try to deceive a dog"—a

method of packaging that is consistent with "normal packaging for drug traffic concealment" (PH Tr. 27). Having determined the package contained marijuana, Officer Bowen left the scene to obtain a second search warrant to search the residence (PH Tr. 29, 63; O.R. 8-14).

Officer Bowen led the execution of the second search warrant for the residence, while Officer Chris Crow photographed and helped inventory evidence (PH Tr. 63-64). Evidence indicating the residence was occupied by both Lewis and Clayborne was found inside the residence (PH Tr. 64). In addition, two large metal equipment cabinets were found in the house (PH Tr. 66). Both cabinets had been altered and equipped with ventilation systems consistent with creating an "indoor grow[ing]" environment (PH Tr. 31, 66). A black safe was the only item found in the first cabinet (PH Tr. 66). The safe contained a small bag of marijuana, a digital scale and medical marijuana identification cards for both Appellees (PH Tr. 65). The second cabinet was "about half full of things like trays, filters, sifters, potting and planting material, as well as . . . air vacuums that would be connected to a fan to help ventilate." (PH Tr. 66). Lighting had also been added to the cabinet (PH Tr. 67). Printed instructions on how to cultivate marijuana were additionally found in the second cabinet (PH Tr. 66).

A torn up American Airlines flight itinerary for Courtney Clayborne was also discovered by Agent Chapa in a trash can located outside the residence (PH Tr. 32-33; O.R. 15). The itinerary referenced a plane ticket that had been issued a few days earlier showing Clayborne had traveled roundtrip from

Oklahoma City to Los Angeles and back (PH Tr. 35). Officers also found a second digital scale and three pipes (PH Tr. 64-66; O.R. 15). In total the officers obtained seven (7) pounds and six (6) ounces of marijuana from the package and residence (PH Tr. 68).

Additional information relating to these proceedings will be presented as they become relevant to our discussion of the issues below.

DISCUSSION

The State contends in their first two propositions of error that the trial court erred in sustaining the Appellees' Motion to Quash for insufficient evidence and Motion to Quash Search Warrant. As the trial court's rulings on these motions are inextricably related, the State's claims are reviewed and resolved contemporaneously.

The State appeals the trial court's rulings pursuant to 22 O.S.2011, § 1053(4) and (5).[5] In appeals brought to this Court pursuant to 22 O.S.2011, § 1053, this Court reviews the trial court's decision for an abuse of discretion. *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. "An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue." *Id.* "An abuse of discretion has also been described as 'a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts

[5] Section 1053(4) establishes an appeal by the State "[u]pon a judgment for the defendant on a motion to quash for insufficient evidence in a felony matter." Subsection (5) establishes an appeal by the State "[u]pon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice".

presented.'" *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170 (quoting *Stouffer v. State*, 2006 OK CR 46, ¶ 60, 147 P.3d 245, 263).

To properly address the issues presented herein, we must first understand the basis of the trial court's rulings. Judge Butner announced his rulings in open court on September 9, 2015 (9/9/2015 Tr.). He filed a formal written order detailing his findings on September 11, 2015 (O.R. 63-71). Both his oral and written findings must be examined together to fully realize the essence of Judge Butner's rulings. Judge Butner found the controlling issue in this case to be whether Yolanda Lewis knew the package contained marijuana (9/9/2015 Tr. 2; O.R 64). Judge Butner specifically determined the "State produced no evidence that Defendant Yolanda Shyra Lewis had any knowledge of what was contained in the unopened package" when it was delivered to the residence (9/9/2015 Tr. 4; O.R. 65). This determination was dispositive of Judge Butner's rulings on both motions.

Without a showing of knowledge, Judge Butner found the State failed to demonstrate Lewis had possession of the marijuana. Without a showing that Lewis (or Clayborne) possessed the marijuana, he concluded a crime could not have been committed (O.R. 68). Hence, Judge Butner found law enforcement lacked grounds in which to obtain either of the search warrants. Moreover, having determined the marijuana found within the package was wrongfully obtained and thus inadmissible (9/9/2015 Tr. 5-6; O.R. 65), Judge Butner concluded the affidavit for the second search warrant for the residence lacked

"any lawful allegations made or lawfully obtained evidence presented showing probable cause to search the residence." (O.R. 65).

Weaved in his findings that both search warrants should be quashed was also a determination that law enforcement secured the search warrants based upon "deliberate falsehood[s] or reckless disregard for the truth" (O.R. 68). *See Franks v. Delaware,* 438 U.S. 154, 171, 98 S. Ct. 2674, 2684, 57 L.Ed.2d 667 (1978). Again, central to this determination was Judge Butner's finding of no evidence demonstrating the Appellees had knowledge of the package's contents. Both search warrant affidavits stated the female that answered the door "took possession of the package" (O.R. 4, 10). Referencing *Staples v. State,* 1974 OK CR 208, 528 P.2d 1131 (O.R. 66), Judge Butner reasoned that without a showing of knowledge regarding the package's contents, Lewis could not be found to have possessed the package and thus this statement of possession was made in reckless disregard for the truth (O.R. 68). Judge Butner accordingly held the search warrants would not have been issued had the issuing judge been properly apprised of the facts (O.R. 69).

From all this, Judge Butner sustained Appellees' Motion to Quash Search Warrant, finding the State "failed to show the defendants had any knowledge of the contents of the sealed, unopened package (O.R. 69). Notably, Judge Butner incorrectly associated this motion with the first search warrant, i.e., the search warrant for the package (O.R. 69). However, the Appellees' challenge was strictly limited to the *second* search warrant—the search

warrant for the house.[6] Judge Butner then sustained Appellees' Motion to Quash for insufficient evidence

> for the reason that the second search warrant was issued with allegations by the State in reckless disregard for the truth or deliberate falsehoods and without proper lawful allegations showing probable cause to believe contraband was present in the residence resulting in the evidence obtained being in admissible.

(O.R. 69). Inherent in Judge Butner's ruling is the ripple effect caused by his initial finding that the first search warrant was erroneously issued which resulted in the exclusion of vital evidence—the marijuana—needed to obtain the second search warrant (9/9/2015 Tr. 5; O.R. 65, 68-69). Thus, without the use of the evidence obtained from within the package and the residence, the State lacked sufficient evidence to prove its case against the Appellees.

In reviewing these rulings, we find Judge Butner abused his discretion. To make a determination of whether there is probable cause to grant a search warrant, the magistrate presented with the affidavit in support of such search warrant is called upon to evaluate the affidavit in light of the "totality of the circumstances". *Andrews v. State*, 2007 OK CR 30, ¶ 8, 166 P.3d 495, 497. As set forth in *Langham v. State*,

> Under the totality-of-the-circumstances approach, the task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair

[6] Appellees acknowledge in their brief that they did not and "do not intend to argue that the search warrant for the package . . . was deficient". Appellees' Br. 18. Appellees argue that the trial court's statement that he was "quashing" both search warrants was simply a misstatement, but rather "it would appear that he was actually granting the relief requested by Appellee in both of his motions." Appellees' Br. 18 n. 10. The record contradicts Appellees' assertions.

probability that contraband or evidence of a crime will be found in a particular place.

Langham, 1990 OK CR 9, ¶ 7, 787 P.2d 1279, 1281 (citing *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332-33, 76 L.Ed.2d 527, 548 (1983)). "The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." *Id.*, 1990 OK CR 9, ¶ 7, 787 P.2d 1279, 1281).

With regard to the first search warrant, the issue was whether probable cause existed that *contraband* would be found within the suspect package. The affidavit provided the following relevant evidence supporting the magistrate's probable cause determination: the package was intercepted by the U.S. Postal Service due to numerous indicators "depicting the illegal mailing of narcotics"; the package was mailed from a U.S. Postal Service location outside of the return address area; the package was addressed to "Mrs. (sic) Clayborne"; the return address provided on the package was a "non-existent address"; the sender paid $119.20 to have the package mailed overnight; during his investigation, U.S. Postal Inspector Albert Chapa learned there had been several postal deliveries of this type made to the recipient residence; local postal carriers had advised the residence often appeared vacant; California, the state in which the package originated, is a known source state for the distribution of marijuana, methamphetamine, cocaine and heroin; on June 6, 2013, Chapa received assistance from Officer David Wamsley, a K-9 handler with the Tulsa Police Department's Narcotics Division; Wamsley's twenty-five (25) years of law enforcement experience included twelve (12) years with the

Narcotics Division; Wamsley's K-9, Buster, "indicated on the package" signifying that marijuana, methamphetamine, cocaine or heroin was present; Buster was C.L.E.E.T. certified in June of 2012 and had over 100 positive narcotic indications; on June 7, 2013, Chapa delivered the package to 800 N. Second St. in Seminole, Oklahoma; Chapa was met by a female, who indicated she was Clayborne; and finally, this female "took possession of the package" (O.R. 4-5).

Given all the circumstances set forth within Bowen's affidavit, the issuing magistrate unquestionably had a substantial basis for concluding probable cause existed. It is clear from Judge Butner's rulings that he erroneously required the State to prove possession of the marijuana in order to demonstrate probable cause to obtain the first search warrant for the package. In doing so, the court in effect required the State to reach home plate before taking first base. The State was not required to show knowledge and possession of the marijuana in order to secure a warrant for the package. Whether Lewis (or Clayborne) had knowledge of the package's contents at that time was simply unnecessary to obtain a search warrant for the package itself. Moreover, the fact Appellees purposefully have never disputed the issuance of the *first* search warrant speaks volumes to the district court's abuse of discretion.

Additionally, the record clearly demonstrates that Officer Bowen did not intentionally try to mislead the magistrate by stating in his affidavit that Lewis "took possession of the package". As noted by Judge Butner in his written

order (O.R. 68), "an affidavit supporting a factually sufficient search warrant may be attacked upon allegations that the affidavit contained deliberate falsehoods or reckless disregard for the truth." *Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674, 2684, 57 L.Ed.2d 667 (1978). Bowen's use of the term "possession" was specifically in reference to Lewis's retrieval of the package off the porch. His use of the term cannot be read as a statement that Lewis had knowledge of the package's contents, i.e., constructive possession of the marijuana. Moreover, the State's failure to specifically advise the issuing magistrate that they had no direct evidence that Lewis had any knowledge of the contents of the package would not have materially affected the judge's decision to issue the first warrant. *See Matthews v. State*, 2002 OK CR 16, ¶ 25, 45 P.3d 907, 917, *as corrected* (Apr. 23, 2002).

With regard to the second search warrant for the residence, the magistrate had the benefit of all the information provided in the first search warrant (as outlined above) as well as the following evidence: the female that retrieved the package off the porch had identified herself as Yolanda Lewis; the first search warrant had been executed earlier that day at 12:35 p.m.; approximately 7 pounds, 6 ounces of marijuana had been found in the package[7]; and a surveillance camera located on the northwest corner of the

[7] The affidavit also provided details regarding how the marijuana was packaged in vacuum sealed bags as well as information regarding other packing material found in the box (O.R. 10). Notably, a discrepancy exists between the information provided in the affidavit and the testimony at preliminary hearing regarding the number of vacuum sealed bags found in the package. The Appellees do not make reference to or challenge this discrepancy anywhere in the record evidence.

covered porch, which was pointing in the direction of the driveway and property entrance, had been discovered (O.R. 9-10).

In the Appellees' motion to quash the second search warrant, Appellees specifically challenged the validity of this search warrant asserting the supporting affidavit contained deliberate falsehoods or statements that were made with reckless disregard for the truth (O.R. 47). Appellees primarily challenged the following two statements: (1) the package of marijuana was "at the residence of 800 North 2nd Street in Seminole"; and (2) Lewis "took possession of the package" (O.R. 47). Appellees contended the first statement implied the package was located inside the residence rather than on the porch. The second statement is the statement Judge Butner determined was made in reckless disregard for the truth, i.e., the statement incorrectly implied Lewis had actual knowledge of the package's contents. Appellees maintained the magistrate should have been specifically advised that the package "never left the porch" and remained unopened (O.R. 45, 47).

As similarly determined above in relation to the first search warrant, we find the magistrate's decision to issue the second warrant would not have been materially affected if the State had specifically advised the issuing magistrate that the package remained unopened on the porch and thus the State had no direct evidence that Lewis had knowledge of the contents of the package. *See Matthews*, 2002 OK CR 16, ¶ 25, 45 P.3d at 917. The magistrate's finding was sufficiently supported by the following: the significant evidence provided in both affidavits (and detailed above in relation to the first search warrant)

indicating the package contained drugs; evidence that Appellee Lewis identified herself as Ms. Clayborne[8] when the package was delivered; the contents of the package; and the surveillance camera located on the northwest corner of the covered porch. Thus, irrespective of the challenged statements, given all the other circumstances set forth in Bowen's affidavit for the second search warrant, the issuing magistrate had a substantial basis to conclude there was a fair probability that contraband or evidence of a crime would be found inside the residence. Thus, the trial court abused its discretion when it found the second search warrant was erroneously obtained and the evidence obtained within the residence should be suppressed. Moreover, we find the trial court abused its discretion when it granted the Appellees' motion to quash for insufficient evidence based these determinations.

As to the sufficiency of the evidence presented at the preliminary hearing,

> At preliminary hearing the State is required to present sufficient evidence to establish (1) probable cause that a crime was committed, and (2) probable cause to believe that the defendant committed the crime. We have recognized that while the State "is not required to prove the defendant's guilt with certainty[,] ... the State must establish that it is *reasonable* to believe that the defendant was involved in the commission of the offense." And the State is entitled to the presumption that it will strengthen its evidence at trial. Nevertheless, "the evidence at preliminary

[8] Appellees also argued in their motion that Bowen's statement that Lewis had identified herself as Ms. Clayborne was false "according to the preliminary hearing testimony" (O.R. 47). Judge Butner's order does not address this contention. Moreover, contrary to Appellees' contention the testimony at the preliminary hearing was consistent with Bowen's statement (PH Tr. 23-24, 58-59).

hearing must coincide with [the defendant's] guilt and be inconsistent with innocence."

State v. Heath, 2011 OK CR 5, ¶ 7, 246 P.3d 723, 725 (internal citations omitted). Included within Judge Butner's ruling relating to the claim of insufficient evidence, Judge Butner held "[t]here must be some link or circumstance in addition to the presence of the marijuana which indicates [the defendants'] knowledge of its presence and its control. And absent this additional independent factor, the evidence is insufficient to support a conviction." (9/9/2015 Tr. 5; O.R. 67). Upon review, we find the evidence found within the residence (and erroneously suppressed) provided that missing "link". Moreover, having reviewed the preliminary hearing evidence in the light most favorable to the State, we find sufficient evidence to prove that the alleged crimes had been committed and sufficient cause to believe that the Appellees committed these crimes. *See State v. Matthews*, 1991 OK CR 32, ¶ 5, 808 P.2d 691, 693 (evidence viewed in the light most favorable to the State).

The State asserts in its third and final proposition of error that the trial court erred in applying the exclusionary rule. This proposition of error is rendered moot by this Court's findings of abuse of discretion when it granted the Appellees' motions.

DECISION

The September 9, 2015, ruling of the trial court sustaining Appellees' motions to quash and suppressing the evidence in this case is **REVERSED** and this case is **REMANDED** to the trial court for further proceedings consistent

with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY
THE HONORABLE GEORGE W. BUTNER, DISTRICT JUDGE

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LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR