

22-7264

COREY SHAMON MCKINNEY,

Appellant - Defendant,

v

Supreme Court, U.S.
FILED

APR 05 2023

UNITED STATES OF AMERICA,

OFFICE OF THE CLERK

Appellee - Plaintiff,

Writ of Certiorari from the United States
Court of Appeals for the Tenth
Circuit

Corey Shamon McKinney 01561-509

F.C.I El Reno

P.O. Box 1500

El Reno, OK 73036-1500

RECEIVED

APR 12 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION FOR REVIEW

Question 1: Did a illegal search and seizure take place?

JUDGMENTS TO BE REVIEWED

In the United States District Court for the Northern District of Oklahoma, the honorable judge Claire V. Eagan's judgment is to be reviewed for case 4:20-cr-00019-CVE. In the United States Court of Appeals for the Tenth Circuit the honorable judges Moritz, Seymour, and Ebel's judgment is to be reviewed construed with case 21-5074.

No corporate disclosure statement is needed in this case.

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v

OPINIONS OF LOWER COURTS.

The opinion of the United States District Court for the Northern District of Oklahoma can be found in the Appendix at D and is unpublished.

The opinion of the United States Court of Appeals for the Tenth Circuit can be found in the Appendix at E.

STATEMENT OF JURISDICTION

The district court had jurisdiction over this case under 18 U.S.C. 3231, and it entered judgment against McKinney on October 4, 2021. McKinney timely noticed appeal on October 5, 2021. The Tenth Circuit had appellate jurisdiction under 18 U.S.C. 3742(a) and 28 U.S.C. 1291. This court has jurisdiction under 28 U.S.C. 1254(1) to hear this writ of certiorari.

PROVISION TO BE RELIED UPON

Fourth Amendment U. S. Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

STATEMENT OF CASE

On October of 2019, Tulsa Police Department (TPD) officer Mike Cawiezell was contacted by an informant in affidavit for search warrant known as "RCI" who allegedly advised Cawiezell that a person named "Corey" also known as "Crazy" was in possession of methamphetamine and firearms. The RCI further discloses that Corey is selling methamphetamine and is staying at 4331 North Elgin. It is also disclosed that on another date that RCI stated that heroin was in Corey's possession as well. Cawiezell states that he utilized the Tulsa Regional Area Criminal Information System (TRACIS) to search for the place described by the RCI and came up with a possible subject of Corey McKinney, which he provided to RCI for positive identification.

On November 14, 2019 a affidavit for search warrant was presented to a magistrate. The warrant was executed on November 20, 2019. TPD officers found methamphetamine, marijuana, heroin, two firearms, ammunition, and body armor at the residence.

In January 2020, Cawiezell again sought a search warrant for 4331 North Elgin Ave. The affidavit for the search warrant recited many of the same facts relied upon to obtain the first search warrant. Cawiezell collected trash from the residence and had a canine sniff

discovered was possible. This time a silencer was found as well as small traces of marijuana.

On February 6, 2020, a grand jury returned an indictment charging McKinney with being a felon in possession of a firearm (count one), possession of heroin, methamphetamine, and marijuana with intent to distribute (counts two, three, and four), maintaining a drug-involved premises (counts five and six), and possession of a firearm in furtherance of a drug trafficking crime (count seven). A superseding indictment was later returned charging McKinney with possession of an unregistered silencer (count eight).

Prior to trial, defense counsel filed a suppression motion challenging the reliability of the informant. The suppression motion moved to suppress on grounds that affidavits for both searches lacked probable cause to believe that evidence related to drugs or firearms who alleged RCI disclosed were in residence disclosed no facts to establish such. Further the second search warrant was tainted by the first warrant and the good faith exception to the warrant did not apply. Such was denied by the district court without a hearing that probable cause existed as well as the good faith exception.

However at trial contradictory testimony was given

of the past. Yet still McKinney was found guilty on all counts of the indictment. At sentencing McKinney was sentenced to 137 months in the B.O.P., \$800.00 Special Monetary Assessment, and 3 years Supervised Release.

McKinney making a timely appeal to the Tenth Circuit Court was denied January 5, 2023.

SUMMARY OF ARGUMENT

This question to this honorable justice court takes into account the contents of the affidavit for search warrant and discloses how such was not a sufficient showing of reasonableness. Further the good faith exception can no longer be applied when perjury, dishonesty and a reckless disregard for the truth are present. However in this circumstance the search as well as seizure was not lawful while presenting such to trial by way of evidence against the accused.

This case should be set aside in accordance with the facts presented herein.

ARGUMENT

Question 1: Did a illegal search and seizure take place?

Where a defendant in a criminal proceeding, subsequent to the ex parte issuance of a search warrant, makes a substantial preliminary showing that a false statement (knowingly and intentionally, or with reckless disregard for the truth, was included by an affiant in his affidavit for the search warrant, and if the allegedly false statement is necessary to the finding of probable cause for issuance of the warrant, the Fourth Amendment requires that a hearing be held at the defendant's request so that he may challenge the truthfulness of factual statements made in the affidavit. See *Franks v. Delaware*, 438 U.S. 154 (1978)

In the affidavit for search warrant it is stated by affiant that on October or about sometime within such month of 2019 affiant was contacted by a reliable confidential informant who disclosed that a large amount of methamphetamine was being sold in the Tulsa County area and the individual was in possession of firearms. The RCI further states that the individual whose name is "Corey" also known as "Crazy" lives in north Tulsa. See Appendix A1 and A2. Affiant further claims that he utilized the Tulsa Regional Area Criminal Information System (TRACIS) to search for the parameters that the RCI provided. Affiant claims that the search came up with Corey McKinney, a 42 year old black male with the nickname "Crazy".

However affiant first commits perjury in that the I.D. in the Department of Motor Vehicles for the State of Oklahoma does not confirm Corey McKinney to live in Tulsa, Oklahoma but in fact discloses that he lives in Owasso, Oklahoma. See 4:20-cr-00019-CVE Doc. 98 p. 128 to 129;

Q. (BY Mr. LYNN) Is that a photograph of the driver's license that Mr. McKinney had on his person that day?

A. Correct.

Q. And it does not indicate that that house which was searched where you arrested him was his residence, does it?

A. It does not.

Q. It indicates an address in Owasso, doesn't it?

A. It does.

The DMV in the State of Oklahoma represents the public record for where any person in fact lives. With the public record of the State of Oklahoma disclosing that Corey McKinney lived in Owasso, Oklahoma which was of paramount importance to be searched. The record reflects that Mike Cwierzell otherwise known in the affidavit as affiant committed perjury with reckless disregard for the truth. See Art. 4 Sec. 1 U.S. Const.; Wisconsin v. Pelican Ins. Co 127 U.S. 265 (1888) (provision of Federal Constitution for full faith and credit establishes rule of evidence rather than

(If a defendant in a criminal proceeding is entitled to a hearing to challenge, subsequent to ex parte issuance of a search warrant, the truthfulness of factual statements made in the warrant affidavit - under the rule requiring such a hearing at the defendant's request when he makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit by the affiant, and when the alleged false statement is necessary to the finding of probable cause - the search warrant must be voided and the fruits of the search excluded, to the same extent as if probable cause was lacking on the face of the affidavit, where, at the hearing, the defendant establishes, by preponderance of the evidence, allegations of perjury or reckless disregard, and where, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause.)

Further the affiant discloses nothing more than hearsay, and language of the crime charged instead of actual facts of a drug sale to the affiant's knowledge of Corey McKinney selling Methamphetamine, Heroin or Marijuana. See *Giordenello v. United States*, 357 U.S. 480 (1958) (The waiver of preliminary examination by one brought before a United States Commissioner following his arrest on charges of federal crime does not result in a surrender of his right subsequently to contest in court the

the complaint on which the warrant was issued was inadequate because the complaining officer relied exclusively upon hearsay information rather than personal knowledge in executing the complaint, and, second, that the complaint was defective in that it recited no more than the elements of the crime charged; such claims respecting the validity of arrest warrant may involve legal issues of subtlety and complexity when it would be unfair to require a defendant to present so soon after arrest, and, in many instances, before his final selection of counsel.)

However, Franks does disclose that a search warrant may be founded upon hearsay or information received by informants. See *Franks v. Delaware*, 438 U.S. 154 (1978) (probable cause for the issuance of a search warrant may be founded upon hearsay and upon information received from informants, as well as upon information within an affiant's own knowledge that sometimes must be garnered hastily.) Yet even the hearsay and the informants disclosure are another instance of perjury which resulted by affiant disclosing the following in both affidavits:

In October of 2019 your affiant was contacted by a Reliable Confidential Informant, hereafter referred to as "RCI" reference a subject selling a large amount of methamphetamine and possessing firearms in the Tulsa

Yet the testimony of affiant contradicts the very affidavit in regards to seeing any firearms. See 4:20-cr-00019-CVE Doc. 9 p. 113 line 4 to 13:

Q. You never saw him with that rifle, did you?

A. Correct.

Q. No one ever told you they saw him with that rifle; correct?

A. Correct.

Q. You have never seen a photograph of Mr. McKinney with that rifle, have you?

A. I have not.

Q. You don't know, in fact, that he ever saw that rifle, do you?

A. Correct.

Yet the same contradiction happens when questioned about the handgun. See 4:20-cr-00019-CVE Doc. 98 p. 114 line 18 to 25:

Q. You never saw him with the pistol, did you?

A. I did not.

Q. No one has ever told you they saw him with the pistol either have they?

A. They have not.

Q. And you've never seen any photographs of him with that pistol, have you?

A. I have not.

There is also a complete contradiction of the investigation

by RCI in affidavit. See 4:20-cr-00019-CVE Doc. 98 p. 119 line 18 to p. 120:

Q. You have not documented an sale of methamphetamine by Mr. McKinney that took place in that house, have you?

A. No, I have not.

Q. And you've not documented the receipt by Mr. McKinney of any money derived from the sale of methamphetamine at that house either, have you?

A. No.

Q. And you have never seen Mr. McKinney sell methamphetamine, have you?

A. I have not.

Q. You have never seen Mr. McKinney buy methamphetamine, have you?

A. I have not.

There are no particular facts and circumstances to confirm that the informant was correct and further affidavit contradicted the very probable cause description given by the affidavit. However it is well settled the affidavit must recite some of the underlying circumstances from which the informant concluded relevant evidence might be discovered.

See *Franks v. Delaware*, 438 U.S. 154 (1978). A search warrant must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter.

(3)

the affidavit must recite some of the underlying circumstances from which the informant concluded that relevant evidence might be discovered, and some of the underlying circumstance from which the officer who seeks the warrant concluded that the informant, whose identity need not be discovered, was credible or his information reliable.)

The government and the Circuit Court raise the good faith exception to justify the search. See United States v. Leon, 468 U.S. 897 (1984). (When the exclusionary rule is involved because of an allegedly illegal search and seizure, reviewing courts may exercise an informed discretion in determining whether to decide first the validity of the search under the Fourth Amendment or the good faith of the officers in making the search.)

However we see not only were no firearms ever in fact seen by a witness and that McKinney in fact did not live at the address but we also see the record reflects that affiant lied about heroin being seen by a "RCI" as disclosed in the affidavit on November 6, 2019.

On November 6, 2019 your affiant spoke with the RC involved in this investigation. The RCI informed your affiant that Corey McKinney was in possession of methamphetamine, heroin, and a firearm at 4331 N.

Yet affiant commits perjury by his testimony; See
4:20-cr-00019-CVE Doc. 98 P. 122 line 7 to 123 line 5;

Q. You don't know that he ever touched the baggie with
the heroin, do you?

A. I do not.

Q. And he didn't tell you he had the heroin, did he?

A. He did not.

Q. And you never saw him with the heroin, did you?

A. Correct.

Q. And no one ever told you that they ever saw him
with any heroin, have they?

A. No.

Q. And you've never seen any photographs of him with
heroin, have you.

A. I have not.

Q. He didn't have any heroin on his person when you
arrested him, did he?

A. He did not.

Q. You don't know that he ever laid eyes on the heroin
do you?

A. I don't.

Q. You've never seen him sell it yourself, have you?

A. I have not.

Q. And you have no documented instances of him
selling heroin, do you?

A. I do not.

The good faith exception cannot apply when the officer has been not only dishonest here but in multiple other instances. See *United States v. Leon*, 468 U.S. 897 (1984). (In the absence of an allegation that the warrant-issuing magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.)

It is also important to note that the word "investigation" is used in almost every paragraph of this affidavit for search warrant as well as the second in probable cause section. See Appendix A1 and A2. However the totality of the circumstances reflects that literally no real investigation was conducted to determine the existence of probable cause which is reflected in the record. See Appendix at B 9:20-cr-00019-CVF Doc. 98 109 line 13 to P. 112 line 2. As the record reflects (1) no camera was put in place to watch the residence, (2) only 45 minutes worth of in person investigation took place through this whole investigation, (3) it cannot be determined how often McKinney is at the house, (4) it is unknown how many people occupied the residence, (5) it is unknown what cars came and went from the house, and (6) it is unknown what people came and went from the house for

affidavit that had nothing to be relied upon that was of substantial basis for determining the existence of probable cause. More importantly with so many instances of perjury taking place through the affidavit which is proven by the trial record a hearing is the very least that should be taking place. See *Franks v. Delaware*, 438 U.S. 154 (1978) (For purposes of the rule that a defendant in a criminal proceeding seeking to challenge, subsequent to the ex parte issuance of a search warrant, the truthfulness of factual statements made in the warrant affidavit must, in order to obtain an evidentiary hearing to assert his challenge, make a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, the defendant's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine; it is required that there be allegations, which must be accompanied by an offer of proof, of deliberate falsehood or of reckless disregard for the truth, and allegations of negligence or innocent mistake are insufficient; the required allegations, which should be accompanied by a statement of supporting reasons, should point out specifically the portion of the warrant affidavit that is claimed to be false, and the defendant should furnish or should satisfactorily explain the absence of, affidavits or sworn

The Fourth Amendment specifically reads, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." It is well settled law that a warrant with no name is not a valid warrant which is the case in the first warrant to seize McKinney who shall be the defendant. (See Appendix C 4:20-cr-00019-CUE Doc. 37 P. 5; See also Maryland v. Garrison, 480 U.S. 79 (1987) (The manifest purpose of the Fourth Amendment's requirement that a search warrant particularly describe the place to be searched and the persons or things to be seized is to prevent general searches; this particular requirement insures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.) Thus the specific arrest was to be of Corey McKinney which under Fourth Amendment description was to be on the warrant. See Giordenello v. United States, 357 U.S. 480 (1958) (The language of the Fourth Amendment, that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing, the persons or things to be seized," applies to arrest as well as search warrants.)

Thus in spite of the many instances of perjury this

defective complaint emanating from a unconstitutional warrant, See Giordenello v. United States, 357 U.S. 486 (1958) (A conviction of federal narcotics offenses will be reversed where, at the trial, narcotics taken from the defendant at the time of his arrest were admitted in evidence against him and it appears that the seizure of the narcotics was illegal because the arrest warrant, pursuant to which the arrest was made, was issued on a defective complaint.)

CONCLUSION

This case should be set aside due to the fact and law presented herein.

Date: 4/3/23

Respectfully

~~C7~~ ~~Corey McKinney~~ 01561-50

F.C.I El Reno

P. O. Box 1500

El Reno, OK 73036-1500

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AFFIDAVIT

I Corey McKinney, being over 18 years of age
do swear all facts and statements are true and correct
not meaning to mislead any under the penalty of perjury.

Date: 21/3/23


COREY MCKINNEY

I

APPENDIX

A1- Affidavit for Search Warrant, Doc. 37 p. 3 to 4

A2- Affidavit for Search Warrant, Doc. 45-2 p. 1 to 3

B- Transcripts of Trial, Doc. 98 p. 109 line 13 to p. 112 line 2

C- Search Warrant, Doc. 37 p. 5

D- Opinion of District Court, Doc. 87 p. 1

E- Opinion of Tenth Circuit, Doc. 010110793326 p. 1 to 11

AFFIDAVIT FOR SEARCH WARRANT - Uniform Controlled Dangerous Substance Act ORIGINAL

STATE OF OKLAHOMA, }
COUNTY OF TULSA, }
ss.

IN THE DISTRICT COURT

AFFIDAVIT FOR SEARCH WARRANT

The undersigned affiant, being duly sworn, upon oath says: that in Tulsa County, Oklahoma, at and upon or within a certain vehicle, house, building, or premises, the curtilage thereof and the appurtenance thereto belonging, described as follows:

THE RESIDENCE TO BE SEARCHED IS A SINGLE FAMILY RESIDENCE LOCATED IN THE 4300 BLOCK OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS THE EIGHT RESIDENCE NORTH OF EAST 43RD STREET NORTH LOCATED ON THE EAST SIDE OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS CONSTRUCTED OF BRICK AND COMPOSITE SIDING, AND HAS A LIGHT COLORED COMPOSITE ROOF. THE FRONT DOOR OF THE RESIDENCE FACES WEST, AND THE RESIDENCE HAS THE NUMBERS "4331" AFFIXED TO THE FRONT OF THE HOUSE. THE RESIDENCE TO BE SEARCHED IS MORE COMMONLY KNOWN AS 4331 NORTH ELGIN AVENUE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA.

The named defendant, or other persons in whose possession he has placed the following described property for concealment, does now unlawfully, illegally, knowingly and willfully keep, and does unlawfully have in his possession and under his control certain dangerous substances, to wit:

METHAMPHETAMINE AND OTHER CONTROLLED DANGEROUS SUBSTANCES

listed in the schedules of the Uniform Controlled Dangerous Substance Act of the State of Oklahoma, with the unlawful intent to possess, use and distribute said substances in violation of the laws of the State of Oklahoma.

Further, your affiant prays that the Court will grant law enforcement officers conducting the service of this search warrant permission to seize other items commonly used to facilitate the use and distribution of controlled substances, to wit:

MONIES OR UNEXPLAINED WEALTH, RECORDS AND FINANCIAL RECORDS IN PHYSICAL, DIGITAL, OR ELECTRONIC FORM, PROOF OF RESIDENCY, CELLULAR PHONES, KEYS, SAFES, SURVEILLANCE EQUIPMENT, FIREARMS

Affiant further states that said dangerous substances by reason of their physical structure are easily destroyed and that there is likelihood that the person in possession of the same will attempt to destroy them, and that there is further likelihood that theforesaid, controlled dangerous substance, equipment, and paraphernalia will be moved unless a search warrant may be executed in the day.

YOUR AFFIANT FURTHER STATES: He is an officer for the city of Tulsa Police Department, has been so employed for six years, and he is currently assigned to Special Investigations Division. While being assigned to the Special Investigations Division your affiant currently works in the Crime Gun Unit. Your affiant has previously held assignments in the Organized Gang Unit and the Riverside Division where he held assignments in patrol, and as part of a divisional task force focusing on proactive enforcement and has also worked on various Departmental Task Force (Operation Avalanche, Operation Blue Thunder I, Operation Blue Thunder II) that focused on violent crime and proactive enforcement. Your affiant states that he is a 2006 graduate from the University of Tulsa with a Bachelor's Degree in Sociology. Your affiant has attended numerous trainings, including Maximizing Results in Proactive Policing, the DEA Basic Narcotics Investigator School, The Reid Interview and Interrogation School and the Los Angeles County Gang Investigators course. Your affiant states that he has attended the CLEET Basic Investigator Course, the Oklahoma Gang Investigator's Association Gangs 101 training, Tulsa Area Regional Gang Enforcement Team (TARGET) Meetings, and has also received Oklahoma Gang Investigators Association training in investigating Social Media. Your affiant further states that he has been trained in the recognition of controlled dangerous substances by the Tulsa Police Academy. Your affiant further states that he has participated in investigations and arrests involving firearms and controlled dangerous substances, which have resulted in the issuance of search warrants and subsequent arrests.

PROBABLE CAUSE

In October of 2019 your affiant was contacted by a Reliable Confidential Informant, hereafter referred to as "RCI" reference a subject selling a large amount of methamphetamine and possessing firearms in the Tulsa County area. The RCI involved in this investigation stated that this subject's first name was "Corey" street name was "Crazy" and that he is a black male that lives in north Tulsa.

Your affiant utilized the Tulsa Regional Area Criminal Information System (TRACIS) to search for the parameters that the RCI provided. This search came up with a possible subject of Corey McKinney, a 42 year old black male with the nickname "Crazy" and a listed address in north Tulsa.

(Exhibit A)

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On October 25, 2019 your affiant contacted the RCI involved in this investigation and provided a booking photo to the RCI of Corey McKinney from an arrest in March of 2016. The RCI positively identified the subject to be the "Corey" or "Crazy" that they had previously informed your affiant about.

On October 28, 2019 your affiant was contacted by the RCI involved in this investigation that Corey McKinney is currently living at 4331 N. Elgin Avenue.

Utilizing TRACIS, your affiant was able to confirm that McKinney lists 4331 N. Elgin Avenue as his residence, and has done so as recently as August 22, 2019, when he filed a burglary report at this location with Tulsa Police Officers, where he stated that this was his residence.

On November 6, 2019 your affiant spoke with the RCI involved in this investigation. The RCI informed your affiant that Corey McKinney was in possession of methamphetamine, heroin, and a firearm at 4331 N. Elgin Avenue.

Within the past 72 hours, your affiant spoke with the RCI involved in this investigation again. The RCI informed your affiant that Corey McKinney had recently within the past 72 hours acquired a large amount of methamphetamine, and that it was currently being stored at his residence at 4331 N. Elgin Avenue.

The RCI involved in this investigation has provided information in excess of three times to Tulsa Police Officers that has found to be reliable. These investigations have led to the arrests of drug related offenses and seizures of multiple firearms. The RCI has admitted to selling narcotics on a consistent basis in the recent past. The RCI further advised that they know what methamphetamine looks like and how it is packaged for sale. Your affiant has deemed the information provided by RCI to be reliable.

Utilizing a police database, your affiant was able to conduct a criminal history records check of Corey McKinney. Corey McKinney is a convicted felon with previous felony convictions for Robbery (CF-96-2437) Possession of Firearm-AFCF (CF-2004-4261) Using Offensive Weapon in a Felony (CF-2014-456, CF-2014-3636) and Distribution of CD (CF-2014-3636, CF-2014-456). McKinney is on active probation through Tulsa County for weapon and drug offenses through 11/7/2019.

Based on your affiant's prior training and experience in controlled dangerous substance investigations, individuals who use or sell controlled dangerous substances often keep weapons and firearms to use for protection, paraphernalia, instrumentalities used in the sale of illegal drugs, monies or unexplained wealth, records and financial records in reference to their drug transactions in physical, digital, or electronic form, list buyers and sellers names, computer and electronic devices, associated hardware, software, diskettes, compact disks, and other electronic storage media to record their transactions.

Viewing and retrieving the contents and data of the computers and electronic devices, associated hardware, software, diskettes, compact disks, and other electronic storage media would be useful to show that controlled dangerous substances were unlawfully kept with the intent to use, possess, sale and or distribute.

Based on your affiant's prior training and experience in controlled dangerous substance investigations, individuals who commonly use and or sell quantities of controlled dangerous substances have visitors, friends and customers who visit their residence. Your affiant states that these types of individuals commonly place quantities of currency with which to purchase the controlled dangerous substances on their person. Your affiant states that these types of individuals also commonly purchase quantities of controlled dangerous substances and conceal the purchased quantities and associated drug paraphernalia on their person, in their clothing and personal effects as well as their vehicles.

Your affiant states that the above information is true and correct to the best of your affiant's belief and knowledge.

Your affiant requests the issuance of a search warrant for 4331 N. Elgin Avenue.

FURTHER YOUR AFFIANT SAYETH NOT.

WHEREFORE, Affiant asks that a search warrant be issued according to law, directed to any sheriff, policeman or law enforcement officer in Tulsa County, Oklahoma, commanding that he search said persons, premises and/or vehicle, the curtilage thereof and the appurtenances thereunto, and any vehicles directly on the property or in the street in front of or nearby or adjacent to the above identified location, provided that prior to searching said vehicle or vehicles, the vehicles can be specifically connected to the suspect, belonging for the described property, and take possession of all the controlled dangerous substances, equipment and paraphernalia hereinbefore described, and vehicle in which said dangerous substance is unlawfully kept, deposited or concealed.

Affiant

Subscribed and sworn to before me this 14 day of

November, 2019.

Judge of the District Court

State of Oklahoma,)
County of Tulsa,) ss.

In The District Court

AFFIDAVIT FOR SEARCH WARRANT

The undersigned affiant, being first duly sworn, upon oath deposes and says that the following described property:

- Marijuana
- Methamphetamine
- Heroin

that constitutes evidence that an offense was committed and that the person in possession thereof participated in the commission of said offense, to-wit: Possession of Controlled Dangerous Substance With Intent To Distribute

The undersigned affiant, being duly sworn, upon oath says: that in Tulsa County, Oklahoma, at and upon or within a certain vehicle, house, building, or premises, the curtilage thereof and the appurtenance thereto belonging, described as follows:

THE RESIDENCE TO BE SEARCHED IS A SINGLE FAMILY RESIDENCE LOCATED IN THE 4300 BLOCK OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS THE EIGHT RESIDENCE NORTH OF EAST 43RD STREET NORTH LOCATED ON THE EAST SIDE OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS CONSTRUCTED OF BRICK AND COMPOSITE SIDING, AND HAS A LIGHT COLORED COMPOSITE ROOF. THE FRONT DOOR OF THE RESIDENCE FACES WEST, AND THE RESIDENCE HAS THE NUMBERS "4331" AFFIXED TO THE FRONT OF THE HOUSE. THE RESIDENCE TO BE SEARCHED IS MORE COMMONLY KNOWN AS 4331 NORTH ELGIN AVENUE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA.

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In October of 2019 your affiant was contacted by a Reliable Confidential Informant, hereafter referred to as "RCI" reference a subject selling a large amount of methamphetamine and possessing firearms in the Tulsa County area. The RCI involved in this investigation stated that this subject's first name was "Corey" street name was "Crazy" and that he is a black male that lives in north Tulsa.

Your affiant utilized the Tulsa Regional Area Criminal Information System (TRACIS) to search for the parameters that the RCI provided. This search came up with a possible subject of Corey Mckinney, a 42 year old black male with the nickname "Crazy" and a listed address in north Tulsa.

On October 25, 2019 your affiant contacted the RCI involved in this investigation and provided a booking photo to the RCI of Corey Mckinney from an arrest in March of 2016. The RCI positively identified the subject to be the "Corey" or "Crazy" that they had previously informed your affiant about.

On October 28, 2019 your affiant was contacted by the RCI involved in this investigation that Corey Mckinney is currently living at 4331 N. Elgin Avenue.

ALERT-DOCUMENT CONTAINS PERSONAL IDENTIFIERS-DO NOT SCAN OR MAKE AVAILABLE ON THE INTERNET

Utilizing TRACIS, your affiant was able to confirm that McKinney lists 4331 N. Elgin Avenue as his residence, and has done so as recently as August 22, 2019, when he filed a burglary report at this location with Tulsa Police Officers, where he stated that this was his residence.

On November 6, 2019 your affiant spoke with the RCI involved in this investigation. The RCI informed your affiant that Corey McKinney was in possession of methamphetamine, heroin, and a firearm at 4331 N. Elgin Avenue.

On November 20, 2019 Tulsa Police Officers with the Special Investigations Division served a signed Tulsa County search warrant at 4331 North Elgin Avenue. During the service of the search warrant, officers contacted Corey McKinney in the front yard of his residence. During this contact McKinney was in possession of \$5814 in United States currency in his pants pocket. During a search of the residence, officers located 16.47 grams of suspected methamphetamine, 26.33 grams of marijuana, and 22.47 grams of suspected heroin, in addition to the narcotics, officers located two firearms, ammunition, and body armor. The amount of heroin located is in excess of the state statutory minimum for the offense of trafficking heroin.

Corey McKinney was arrested at this time and booked into the Tulsa County jail on a bond in excess of \$100,000.

On December 10, 2019 a bond of \$75,000 was posted for Corey McKinney, and McKinney was released from the Tulsa County Jail.

Within the past 72 hours, beginning on 1/2/2020 your affiant went to 4331 North Elgin Avenue in an attempt to collect abandoned trash at the location. Your affiant observed a plastic trash container sitting at the curb in front of the residence to be searched. No other trash containers were nearby. At no point did officers enter the property to retrieve the abandoned trash. Your affiant collected the trash and transported it to a secondary location where it was examined.

Your affiant located a small plastic wrapper, that contained trace amounts of green leafy substance, which your affiant knows through his training and experience to be marijuana. Also located in the abandoned trash was a torn plastic baggie wrapped in black duct tape. I know through my training and experience that this type of packaging is consistent with packaging narcotics.

Your affiant contacted Officer David Wamsley along with K9 partner Loki to conduct search/sniff of the suspected narcotics packaging. Officer Wamsley is a trained K9 handler assigned to the Tulsa Police Department Special Investigations Division, and his K9 partner Loki is a drug-certified K9. The suspected narcotics were collected and placed into Tulsa Police Department evidence bags. These bags were then placed in a discreet location at the Tulsa Police Department Special Investigations Division. K9 Loki gave a positive alert to the presence of narcotics.

Utilizing a police database, your affiant was able to conduct a criminal history records check of Corey McKinney. Corey McKinney is a convicted felon with previous felony convictions for Robbery (CF-96-2437) Possession of Firearm-AFCF (CF-2004-4261) Using Offensive Weapon in a Felony (CF-2014-456, CF-2014-3636) and Distribution of CD (CF-2014-3636, CF-2014-456). McKinney is on active probation through Tulsa County for weapon and drug offenses through 11/7/2019.

Based on my prior training and experience on controlled dangerous substance investigations, I know that individuals who use and/or distribute controlled dangerous substances often house additional quantities of illegal substances at their residences to avoid detection by law enforcement. These individuals will also often use surveillance equipment to assist them in their effort to avoid detection by Law Enforcement. These individuals often keep weapons and firearms to use for protection, instrumentalities used in the distribution of controlled dangerous substances, such as scales and/or plastic bags, property derived from the sale of controlled dangerous substances, such as United States currency, televisions, vehicles, and financial records in reference to their drug transactions in physical, digital, or electronic form. These individuals also keep lists of buyers and sellers names, computers and electronic devices, associated hardware, software, diskettes, compact disks, and other electronic storage media to record their transactions. These individuals will often keep these items concealed inside a safe.

Viewing and retrieving the contents and data of the computers and electronic devices, associated hardware, software, diskettes, compact disks, and other electronic storage media would be useful to show

ALERT-DOCUMENT CONTAINS PERSONAL IDENTIFIERS-DO NOT SCAN OR MAKE AVAILABLE ON THE INTERNET

Your affiant requests a search warrant be issued for 4331 North Elgin Avenue, City of Tulsa, County of Tulsa, State of Oklahoma.

FURTHER YOUR AFFIANT SAYETH NOT.

WHEREFORE, Affiant asks that a search warrant issue according to law, directed to any sheriff, policeman or law enforcement officer in Tulsa County, Oklahoma, commanding that he search said persons, premises and/or vehicle, and take possession of all evidence that may help to further the aforementioned investigation.

Mike Cawiezel
Affiant - Office Mike Cawiezel

Subscribed and sworn to before me this 2 day of January, 2020

My Commission Expires 11/03/2021

Nancy Nienholt
Notary Public



USA v Corey Shamon McKinney (06-21-2021 Jury Trial - Volume I)
MIKE CAWIEZELL - CROSS

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it?

A. Yes, sir.

Q. And sometimes after burglaries people install security cameras, don't they?

A. They do.

Q. And you couldn't see the rifle with your naked eye as it was in the closet in the case when you went in the southwest bedroom; is that correct?

A. That is correct.

Q. And all marijuana use or possession or sale is against federal law; is that correct?

A. Correct.

Q. Okay. If you didn't conduct a search of that residence at any time prior to November 20th, 2019, did you?

A. No.

Q. And you have never documented any volume of vehicular traffic over any particular time period, and from that residence, have you?

A. No.

Q. Has anyone at CPI ever told you "knowledge"?

A. No, I don't know what knowledge is.

Q. And so you would never have written down the number of vehicles present at that residence over any given time period, correct?

A. Correct.

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1	Q. And you can't tell the jury just how much vehicular traffic
2	there was to and from that house, can you?
3	A. That's correct.
4	Q. You don't know; correct?
5	A. Yes, sir.
6	Q. So you could not have determined who owned any of those
7	vehicles either; correct?
8	A. Correct.
9	Q. You've never documented any particular amount of foot
10	traffic to and from that residence over any period of time
11	either, have you?
12	A. No, I have not.
13	Q. And no one with TPD or ATF has either; correct?
14	A. Not to my knowledge.
15	Q. No one has ever written down how many people were present
16	at that house at any given time; correct?
17	A. Correct.
18	Q. You can't tell the jury how much foot traffic there was; is
19	that correct?
20	A. That is correct.
21	Q. You don't incidentally, any one in particular going to or from
22	that house during any particular time either; did you?
23	A. No, I did not.
24	Q. You don't know how many people had access to that house
25	over any period of time; do you?

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24 A: [REDACTED] MOTION

25 Q: And you don't know how many people entered or exited the
house prior to November 20th, 2019, do you?

26 A: I did not.

27 Q: You didn't use a police camera, correct?

28 A: I did not.

29 Q: Nor in person surveillance either, correct?

30 A: No person surveillance prior to serving the search warrant.

31 Q: Yet, there was a little bit of in person surveillance

32 portion to execution of the warrant, correct?

33 A: Correct.

34 Q: Thirty to forty minutes, correct?

35 A: Correct.

36 Q: But that's still incomplete.

37 A: Correct.

38 Q: So you don't know through first-hand observation how many

39 people you've seen in the house, do you?

40 A: That is correct.

41 Q: And you don't know through first-hand knowledge of anyone

42 at all, in fact actually used there full-time, correct?

43 A: That is correct.

44 Q: You do not know through first-hand observation how many

45 people you've seen in the house, either, do you?

46 A: Correct.

47 Q: You do not know how often Mr. McKinney came to or from the

1 residence, do you? //

2 ANYTHING MORE?

3 Q. You don't have any idea of how many people came to or from
4 the residence when Mr. McKinney was there, do you?

5 A. I do not.

6 Q. And you don't know how many people came to or from the
7 residence when Mr. McKinney was not there either, do you?

8 A. That is correct.

9 Q. You don't know whether the rifle in the closet was in the
10 residence before Mr. McKinney ever set foot in the place, do
11 you?

12 A. Are you asking me prior to him being there?

13 Q. Correct.

14 A. Yes, correct.

15 Q. And you don't know if his fingerprints are on that rifle,
16 do you?

17 A. That is correct.

18 Q. You don't know if they're on the ammunition for the rifle
19 either; correct?

20 A. Correct.

21 Q. And you don't know if his DNA is on that rifle or the
22 ammunition for it either, do you?

23 A. I do not. --

24 Q. You don't know that Mr. McKinney ever touched that rifle,
25 do you?

SEARCH WARRANT - Uniform Controlled Dangerous Substance Act - ORIGINAL

STATE OF OKLAHOMA,
COUNTY OF TULSA

IN THE DISTRICT COURT

SEARCH WARRANT

IN THE NAME OF THE STATE OF OKLAHOMA:

To any Sheriff, Policeman, or Law Enforcement Officer in the County of Tulsa, Oklahoma: Probable cause having been shown on this date before me by Officer M. Cawiezell for believing the following described property: certain controlled dangerous substances listed in the Schedules of the Controlled Dangerous Substances Act of the State of the State of Oklahoma, to wit:

METHAMPHETAMINE AND OTHER CONTROLLED DANGEROUS SUBSTANCES

listed in the schedules of the Uniform Controlled Dangerous Substance Act of the State of Oklahoma, with the unlawful intent to possess, use and distribute said substances in violation of the laws of the State of Oklahoma.

Further, your affiant prays that the Court will grant law enforcement officers conducting the service of this search warrant permission to seize other items commonly used to facilitate the use and distribution of controlled substances, to wit:

MONIES OR UNEXPLAINED WEALTH, RECORDS AND FINANCIAL RECORDS IN PHYSICAL, DIGITAL, OR ELECTRONIC FORM, PROOF OF RESIDENCY, CELLULAR PHONES, KEYS, SAFES, SURVEILLANCE EQUIPMENT, FIREARMS

is located at, and is now being kept, possessed, and concealed by the above named defendant, or by other persons in whose possession he has placed it for the purpose of concealment, at or upon or within a certain vehicle and/or house, building or premises, the curtilage thereof and the appurtenances thereto belonging, in Tulsa County, Oklahoma, described as follows:

THE RESIDENCE TO BE SEARCHED IS A SINGLE FAMILY RESIDENCE LOCATED IN THE 4300 BLOCK OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS THE EIGHT RESIDENCE NORTH OF EAST 43RD STREET NORTH LOCATED ON THE EAST SIDE OF NORTH ELGIN AVENUE. THE RESIDENCE TO BE SEARCHED IS CONSTRUCTED OF BRICK AND COMPOSITE SIDING, AND HAS A LIGHT COLORED COMPOSITE ROOF. THE FRONT DOOR OF THE RESIDENCE FACES WEST, AND THE RESIDENCE HAS THE NUMBERS "4331" AFFIXED TO THE FRONT OF THE HOUSE. THE RESIDENCE TO BE SEARCHED IS MORE COMMONLY KNOWN AS 4331 NORTH ELGIN AVENUE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA.

The affidavits being positive that the above described property is on the person, or in the place to be searched and there being a likelihood that said property above described will be destroyed, moved, or concealed.

YOU ARE THEREFORE COMMANDED at any time of the day to make search of said person, vehicle and/or house, building and premises, the curtilage thereof and the appurtenances thereunto belonging for the described property, and if found to seize the same and safely keep it, and bring it before me at the Tulsa County Courthouse in accordance with the subsequent order of the court, and make return hereof within Ten days.

WHEREFORE WITNESS MY HAND this 1 day of November 2019.

JUDGE OF THE DISTRICT COURT OF TULSA COUNTY, STATE OF OKLAHOMA

Time Signed 8:00

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

vs.

Corey Shamon McKinney,

Claire V. Eagan, U.S. District Judge

Plaintiff,

Case No.: 20-cr-19-CVE

Date: 10/4/2021

Court Time: 10:58 a.m. to 11:10

Defendant(s),

MINUTE SHEET - SENTENCING

Counsel for Plaintiff: Mark Morgan

C. Portilloz, Deputy Clerk

Greg Bloxom, Reporter

Probation Officer: Jennifer Toppah

Counsel for Defendant: Randy Lynn

Appt. sworn; N/A

Defendant appears in person with counsel Counsel waived Evidentiary
 Plaintiff & Defendant reviewed PSI: Obj's by: Pltf Deft; No Obj's; Court adopts/accepts
 18:3553 Findings re: PSI/Sentence made; Findings re: Plea Agreement Accepted
 Sentence re: Guideline; Findings made; Departure: Variance: Upward Downward
 Defendant and counsel asked if they care to say anything before sentence is pronounced, and no cause to the contrary being shown
 Motion [Dkt.]: Granted Denied Granted/Denied in part Moot

SENTENCE: As to Count(s) 1, 2, 3, 4, 5, 6, 7, and 8

of the Superseding Indictment :

Bureau of Prison for a term of

Total of 137 Months. 77
Months as to each of Counts
1-6, and 8, to run concurrently
each with the other. 60
Months as to Count 7 to run
consecutively to Counts 1-6,
and 8

Concurrent Consecutive

Probation for a term of

Concurrent Consecutive Not Eligible

Supervised Release for term of

3 Years as to each of Counts
1-8

Concurrent Consecutive Not Imposed

Fine:

\$ With Interest

Interest Waived Not Imposed

Restitution:

\$ With Interest

Interest Waived Not Applicable

Special Monetary Assessment

\$ 800.00

Due Immediately As Directed

Order of Forfeiture [Dkt. 85

]: is hereby incorporated into the Judgment by reference

STANDARD CONDITIONS as previously adopted by this court including the following additional conditions:

Firearm, Ammunition, et al Restriction

Gambling; to include treatment

DNA Sample

Home Detention Condition - months*

Controlled Substances Restriction

Immigration

Alcohol Abstinence

Mental Health; to include treatment

Community Confinement - months

Restitution

Community Service - hours

Search & Seizure

Computer Restriction

Sex Offender - Paragraphs

Curfew - months*

Sober Living

Domestic Violence Program

Substance Abuse Treatment & Testing

Drug Testing Drug Testing Suspended

Workforce Development

Financial

*Entire cost of the electronic monitoring shall be paid by: Prob Deft

 Defendant advised of right to appeal

Court recommends to BOP:

Appeal affidavit required

Designate a facility located in or near: Oklahoma or Louisiana

Remaining counts ordered dismissed: Original Indictment

Residential Drug Abuse Treatment Mental Evaluation

Defendant remanded to custody of U.S. Marshal

Most comprehensive substance abuse and treatment available

Other: Vocational Training including welding