Appendix "A"

Supreme Court of Florida

THURSDAY, JULY 13, 2023

Hewitt A. Grant, II,
Petitioner(s)
v.
Ricky D. Dixon, etc.
Respondent(s)

SC2023-0704
Lower Tribunal No(s).:
2D07-555;
532006CF00077601XXXX

The petition for writ of habeas corpus is hereby denied as procedurally barred. A petition for extraordinary relief is not a second appeal and cannot be used to litigate or relitigate issues that were or could have been raised on direct appeal or in prior postconviction proceedings. *See Denson v. State*, 775 So. 2d 288, 290 (Fla. 2000); *Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992). No motion for rehearing or reinstatement will be entertained by this Court.

LABARGA, COURIEL, GROSSHANS, FRANICS, and SASSO, JJ., concur.

A True Copy
Test:

SC2023-0704 7/13/2023

John A. Tomasino
Clerk, Supreme Court
SC2023-0704 7/13/2023

LC
Served:
HON. STACY M. BUTTERFIELD
HEWITT A. GRANT, II
HON. MARY BETH KUENZEL
MARILYN FRANCES MUIR
LANCE ERIC NEFF

Exhibit "1"

978 So.2d 862
District Court of Appeal of Florida,
Second District.

Hewitt GRANT, Appellant,
v.
STATE of Florida, Appellee.

No. 2D07-555.
|
April 9, 2008.

Synopsis
Background: Defendant was convicted in the Circuit Court, Polk County, Karla Foreman Wright, J., of misdemeanor cruelty to a dog. Defendant appealed.

Holdings: The District Court of Appeal, LaRose, J., held that:

[1] illegality of deputies' initial warrantless search of property was not cured by defendant's subsequent consent;

[2] evidence that deputies found in house after securing search warrant was tainted by prior illegal warrantless search of property surrounding house and thus was not admissible; and

[3] evidence of animal cruelty was not admissible under inevitable-discovery exception to exclusionary rule.

Reversed.

West Headnotes (5)

[1] **Searches and Seizures**
⇦ Prior official misconduct; misrepresentation, trick, or deceit
Illegality of deputies' initial warrantless search of property was not cured by property owner's subsequent consent to show them around property, although property owner did not consent to search of house; deputies' prior search of property demonstrated to property owner that deputies had absolute right to search, and property owner could have only concluded that refusing consent would have been futile gesture. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[2] **Criminal Law**
⇦ Search or seizure in general
Evidence that sheriff deputies found in property owner's house after securing search warrant was tainted by prior illegal warrantless search of property surrounding house and thus was not admissible in prosecution for misdemeanor cruelty to a dog; deputies obtained warrant based on evidence found during illegal search of property. U.S.C.A. Const.Amend. 4.

3 Cases that cite this headnote

[3] **Criminal Law**
⇦ Inevitable discovery
Evidence of animal cruelty was not admissible under inevitable-discovery exception to exclusionary rule in prosecution for misdemeanor cruelty to a dog; sheriff deputies lacked any basis to secure search warrant absent their observations after they illegally entered property, and any assertion that deputies would have discovered evidence of animal cruelty absent illegal conduct was speculative. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[4] **Criminal Law**
⇦ Inevitable discovery
Inevitable-discovery exception to exclusionary rule requires that the case be in such a posture that the facts already in the possession of the police would have led to the evidence notwithstanding the police misconduct.

Cases that cite this headnote

Exhibit

[5] **Criminal Law**
Inevitable discovery

For purposes of inevitable-discovery exception to exclusionary rule, inevitable discovery involves no speculative elements.

Cases that cite this headnote

Attorneys and Law Firms

James Marion Moorman, Public Defender, and Dan Hallenberg, Special Assistant Public Defender, Bartow, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and John M. Klawikofsky, Assistant Attorney General, Tampa, for Appellee.

Opinion

LaROSE, Judge.

Hewitt Grant appeals his conviction of eighty counts of misdemeanor cruelty to a dog. We have jurisdiction. *See* Fla. R.App. P. 9.140(b)(1)(A). The trial court sentenced Mr. Grant to 364 days in jail followed by 60 months of probation. He argues that the trial court incorrectly ruled that he voluntarily consented to a search of his property. We agree and reverse.

Facts

Polk County Deputies Wright and Harris went to Mr. Grant's home to investigate a report that more than one hundred dogs were on the property. The deputies had no evidence suggesting that any dogs were mistreated. When no one answered the door, the deputies peered over and through the slats of a six-foot privacy fence. They saw only some chained or caged dogs. Then, the deputies walked through a gate and searched the property. They found more than a hundred dogs chained to kennels. Most of the dogs were emaciated and had no food or water. Many had scars.

The deputies left the property and called for backup. A neighbor told them that Mr. Grant was on his way home. When Mr. Grant arrived, Deputy Wright told him that the deputies had searched his property and asked him to show them around to explain the dogs' conditions. Mr. Grant agreed and escorted the deputies around his property. He refused to allow a search of his house. The deputies thereafter obtained a search warrant and found mistreated dogs and other evidence inside. They arrested Mr. Grant for animal cruelty.

Mr. Grant filed an unsuccessful motion to suppress. The trial court concluded that although the State failed to demonstrate that the deputies entered the property lawfully under the plain view doctrine or because of exigent circumstances, the search was lawful because of Mr. Grant's consent and the inevitable discovery rule.

Analysis

We agree with the trial court that the plain view doctrine is inapplicable. *See State v. Morsman*, 394 So.2d 408, 409 (Fla.1981) (holding plain view doctrine did not apply to search and seizure of marijuana in back yard where marijuana was not visible until police entered enclosed yard without warrant). We also agree that no exigent circumstances justified the warrantless intrusion into Mr. Grant's property.

[1] We cannot agree, however, that the illegality of the deputies' initial search was cured by Mr. Grant's subsequent consent to show them around his property. The illegal search prior to Mr. Grant's arrival tainted the consent and rendered the evidence inadmissible as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *Wheeler v. State*, 956 So.2d 517, 518–19, 522 (Fla. 2d DCA 2007). The trial court's twin rationale for finding a valid consent cannot stand. Principally, the trial court reasoned that, because Mr. ***864** Grant refused to allow a search of his house, he knew that he could refuse consent for a search of his property. Of course, the deputies had already searched the property, thus demonstrating to Mr. Grant that they had an absolute right to search and that his "consent" to any further search was a mere formality which he could not refuse. *See Gonzalez v. State*, 578 So.2d 729, 733–34 (Fla. 3d DCA 1991). Under the circumstances before us, Mr. Grant could only conclude that refusing consent would be "a futile gesture amounting to no more than 'closing the barn door after the horse is out.' " *United States v. Chambers*, 395 F.3d 563, 570 (6th Cir.2005);

United States v. Gamez, 389 F.Supp.2d 975, 982 (S.D.Ohio 2005); *see also Norman v. State*, 379 So.2d 643, 648 (Fla.1980) (holding consent knowing sheriff had already seen marijuana in prior illegal search was acquiescence to authority).

Norman amply supports Mr. Grant's position. *See* 379 So.2d 643. There, the sheriff visited defendant's farm on a tip that marijuana was stored in the barn. *Id.* at 645. Finding the gate locked, he climbed over the fence to get to the barn and, looking through a window with the aid of a flashlight, saw marijuana inside. *Id.* He returned to his office and had the farm watched. *Id.* A deputy stopped defendant three days later outside the farm. He told defendant that the sheriff had seen the marijuana. *Id.* He asked if they could go back to the barn to verify that it was still there. *Id.* Defendant agreed. *Id.* The supreme court held that any consent to the deputy's request to view marijuana already found in the warrantless search was "fatally infected by the illegal intrusion." *Id.* at 646; *see also State v. Kelley*, 491 So.2d 1162, 1163–64 (Fla. 2d DCA 1986). Based on the record before us, *Norman* compels the conclusion that Mr. Grant's consent did not validate the initial illegal search.

The trial court's second rationale for ruling that the consent was valid was its finding of an unequivocal break in the chain of illegality between the initial search and Mr. Grant's subsequent consent that dissipated the taint of unlawful police action. *See Norman*, 379 So.2d at 647. The "unequivocal break" principle requires us to ask "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun*, 371 U.S. at 488, 83 S.Ct. 407 (1963) (quoting Maguire, *Evidence of Guilt*, 221 (1959)); *see also State v. Frierson*, 926 So.2d 1139, 1143, 1150 (Fla.2006). Here, the State failed to clearly and convincingly show that the evidence seized following Mr. Grant's consent was not obtained by exploiting what they discovered during the prior search. *See Wong Sun*, 371 U.S. at 488, 83 S.Ct. 407.

[2] Any evidence that the deputies later found in Mr. Grant's house after securing a warrant was also tainted because they obtained the warrant based on evidence found during the illegal search of his property. *See State v. Thomas*, 405 So.2d 462, 463 (Fla. 3d DCA 1981) (holding evidence found pursuant to warrant based on probable cause provided by prior illegal entry was inadmissible as fruit of the poisonous tree).

[3] [4] [5] Finally, we cannot agree that the evidence was admissible under the inevitable discovery doctrine. *See State v. Duggins*, 691 So.2d 566, 568 (Fla. 2d DCA 1997). The doctrine requires that "the case ... be in such a posture that the facts already in the possession of the police would have led to this evidence notwithstanding the police misconduct...." *Moody v. State*, 842 So.2d 754, 759 (Fla.2003). " '[I]nevitable discovery involves no *865 speculative elements....' " *Id.* (quoting *Nix v. Williams*, 467 U.S. 431, 444 n. 5, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)). In this case, the deputies lacked any basis to secure a warrant absent their observations after they entered the property. Any assertion that they would have discovered evidence of animal cruelty absent the illegal conduct is speculative.

Reversed.

SALCINES and KELLY, JJ., Concur.

All Citations

978 So.2d 862, 33 Fla. L. Weekly D964

End of Document

ACCT NAME: GRANT, HEWITT A. II.
BED: G2103S
PO BOX:

ACCT#: H12344
TYPE: INMATE TRUST

BEGINNING BALANCE 07/01/23 $0.00

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
07/18/23	198	LEGAL POSTAGE W	2023061901	000		-	$0.00	$0.00
		LIEN CREATED	- 07/18/2023	2023061901				
07/18/23	198	LEGAL POSTAGE W	2023061902	000		-	$0.00	$0.00
		LIEN CREATED	- 07/18/2023	2023061902				
07/18/23	198	LEGAL POSTAGE W	2023061903	000		-	$0.00	$0.00
		LIEN CREATED	- 07/18/2023	2023061903				
07/18/23	198	LEGAL POSTAGE W	2023070501	000		-	$0.00	$0.00
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		LIEN CREATED	- 07/18/2023	2023070504				
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		LIEN CREATED	- 07/18/2023	2023070509				
07/18/23	198	LEGAL POSTAGE W	2023070510	000		-	$0.00	$0.00
		LIEN CREATED	- 07/18/2023	2023070510				

ENDING BALANCE 07/31/23 $0.00

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50
SUMMARY	LEGAL POSTAGE		$72.00	$72.00
SUMMARY	LEGAL COPIES		$32.40	$17.52
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00
07/18/23	LEGAL POSTAGE	000	$1.74	$1.74

ACCT NAME: GRANT, HEWITT A. II.
BED: G2103S
PO BOX:

ACCT#: H12344
TYPE: INMATE TRUST

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
07/18/23	LEGAL POSTAGE	000	$2.46	$2.46
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07/18/23	LEGAL POSTAGE	000	$0.60	$0.60
07/18/23	LEGAL POSTAGE	000	$0.60	$0.60
07/18/23	LEGAL POSTAGE	000	$0.60	$0.60
07/18/23	LEGAL POSTAGE	000	$0.60	$0.60
07/18/23	LEGAL POSTAGE	000	$0.60	$0.60
07/18/23	LEGAL POSTAGE	000	$0.84	$0.84
07/18/23	LEGAL POSTAGE	000	$0.84	$0.84
07/18/23	LEGAL POSTAGE	000	$0.84	$0.84

ACCT NAME: GRANT, HEWITT A. II.
BED: G2103S
PO BOX:

ACCT#: H12344
TYPE: INMATE TRUST

BEGINNING BALANCE 06/01/23 $0.00

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
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06/09/23	178	LEGAL POSTAGE W	2023042404	000		-	$0.00	$0.00
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06/09/23	178	LEGAL POSTAGE W	2023042701	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023042701					
06/09/23	178	LEGAL POSTAGE W	2023042702	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023042702					
06/09/23	178	LEGAL POSTAGE W	2023042703	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023042703					
06/09/23	178	LEGAL POSTAGE W	2023042704	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023042704					
06/09/23	178	LEGAL POSTAGE W	2023042705	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023042705					
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		LIEN CREATED - 06/09/2023	2023050101					
06/09/23	178	LEGAL POSTAGE W	2023050102	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023050102					
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		LIEN CREATED - 06/09/2023	2023051203					
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		LIEN CREATED - 06/09/2023	2023051204					
06/09/23	178	LEGAL POSTAGE W	2023051205	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023051205					
06/09/23	178	LEGAL POSTAGE W	2023051501	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023051501					
06/09/23	178	LEGAL POSTAGE W	2023051502	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023051502					
06/09/23	178	LEGAL POSTAGE W	2023051503	000		-	$0.00	$0.00
		LIEN CREATED - 06/09/2023	2023051503					

ACCT NAME: GRANT, HEWITT A. II. ACCT#: H12344
BED: G2103S TYPE: INMATE TRUST
PO BOX:

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
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		LIEN CREATED	- 06/09/2023	2023051601				
06/09/23	178	LEGAL POSTAGE W	2023051602	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023051602				
06/09/23	178	LEGAL POSTAGE W	2023051801	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023051801				
06/09/23	178	LEGAL POSTAGE W	2023051901	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023051901				
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		LIEN CREATED	- 06/09/2023	2023053003				
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		LIEN CREATED	- 06/09/2023	2023060101				
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06/09/23	178	LEGAL POSTAGE W	2023060202	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023060202				
06/09/23	178	LEGAL POSTAGE W	2023060801	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023060801				
06/09/23	178	LEGAL POSTAGE W	2023060802	000		-	$0.00	$0.00
		LIEN CREATED	- 06/09/2023	2023060802				

ENDING BALANCE 06/30/23 $0.00

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	LEGAL POSTAGE		$28.86	$28.86
SUMMARY	LEGAL COPIES		$32.40	$17.52
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00

ACCT NAME: GRANT, HEWITT A. II. ACCT#: H12344
BED: G2103S TYPE: INMATE TRUST
PO BOX:

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50
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06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$2.46	$2.46
06/09/23	LEGAL POSTAGE	000	$2.46	$2.46
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$2.46	$2.46
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$1.08	$1.08
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$2.70	$2.70
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60
06/09/23	LEGAL POSTAGE	000	$1.74	$1.74
06/09/23	LEGAL POSTAGE	000	$1.74	$1.74
06/09/23	LEGAL POSTAGE	000	$1.08	$1.08
06/09/23	LEGAL POSTAGE	000	$1.08	$1.08
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$0.84	$0.84
06/09/23	LEGAL POSTAGE	000	$2.46	$2.46
06/09/23	LEGAL POSTAGE	000	$3.18	$3.18
06/09/23	LEGAL POSTAGE	000	$0.60	$0.60

ACCT NAME: GRANT, HEWITT A. II.
BED: G2103S
PO BOX:

ACCT#: H12344
TYPE: INMATE TRUST

BEGINNING BALANCE 05/01/23 $0.00

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
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ENDING BALANCE 06/01/23 $0.00

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	LEGAL POSTAGE		$28.86	$28.86
SUMMARY	LEGAL COPIES		$28.20	$13.32
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50
05/22/23	LEGAL COPIES	000	$4.20	$4.20

ACCT NAME: GRANT, HEWITT A. II. ACCT#: H12344
BED: G2103S TYPE: INMATE TRUST
PO BOX:

BEGINNING BALANCE 04/01/23 $0.00

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
04/10/23	209	LEGAL POSTAGE W	2023032801	000		-	$0.00	$0.00
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04/10/23	209	LEGAL POSTAGE W	2023040401	000		-	$0.00	$0.00
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		LIEN CREATED	- 04/10/2023	2023040402				
04/10/23	209	LEGAL POSTAGE W	2023040403	000		-	$0.00	$0.00
		LIEN CREATED	- 04/10/2023	2023040403				
04/10/23	209	LEGAL POSTAGE W	2023040501	000		-	$0.00	$0.00
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04/10/23	209	LEGAL POSTAGE W	2023040502	000		-	$0.00	$0.00
		LIEN CREATED	- 04/10/2023	2023040502				
04/10/23	209	LEGAL POSTAGE W	2023040503	000		-	$0.00	$0.00
		LIEN CREATED	- 04/10/2023	2023040503				

ENDING BALANCE 04/30/23 $0.00

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50
SUMMARY	LEGAL POSTAGE		$11.28	$11.28
SUMMARY	LEGAL COPIES		$28.20	$13.32
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00
04/10/23	LEGAL POSTAGE	000	$3.66	$3.66
04/10/23	LEGAL POSTAGE	000	$2.94	$2.94
04/10/23	LEGAL POSTAGE	000	$2.94	$2.94
04/10/23	LEGAL POSTAGE	000	$0.60	$0.60
04/10/23	LEGAL POSTAGE	000	$3.42	$3.42
04/10/23	LEGAL POSTAGE	000	$3.42	$3.42
04/10/23	LEGAL POSTAGE	000	$0.60	$0.60

ACCT NAME: GRANT, HEWITT A. II. ACCT#: H12344
BED: G2103S TYPE: INMATE TRUST
PO BOX:

BEGINNING BALANCE 03/01/23 $58.53

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
03/02/23	193	JPAY MEDIA W/D	000148883610	000		-	$3.52	$55.01
03/03/23	045	CANTEEN SALES	21420230302	000		-	$22.31	$32.70
03/04/23	043	CANTEEN SALES	21420230303	000		-	$12.47	$20.23
03/05/23	124	JPAY MEDIA W/D	000148998788	000		-	$5.00	$15.23
03/06/23	111	PROCESSING FEE	WEEKLY DRAW	000		-	$0.35	$14.88
03/07/23	175	LIEN PAYMENT	2140452023	000		-	$14.88	$0.00
		LEGAL COPIES WD	- 03/07/2023	2140452023				
03/07/23	175	LEGAL COPIES WD	2140442023	000		-	$0.00	$0.00
		LIEN CREATED	- 03/07/2023	2140442023				
03/28/23	223	LEGAL COPIES WD	2140682023	000		-	$0.00	$0.00
		LIEN CREATED	- 03/28/2023	2140682023				
03/29/23	148	LEGAL POSTAGE W	2023030101	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023030101				
03/29/23	148	LEGAL POSTAGE W	2023030102	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023030102				
03/29/23	148	LEGAL POSTAGE W	2023031501	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023031501				
03/29/23	148	LEGAL POSTAGE W	2023031502	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023031502				
03/29/23	148	LEGAL POSTAGE W	2023031701	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023031701				
03/29/23	148	LEGAL POSTAGE W	2023032201	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023032201				
03/29/23	148	LEGAL POSTAGE W	2023032202	000		-	$0.00	$0.00
		LIEN CREATED	- 03/29/2023	2023032202				

ENDING BALANCE 03/31/23 $0.00

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50
03/07/23	LEGAL COPIES	000	$17.10	$2.22
03/07/23	LEGAL COPIES	000	$9.90	$9.90
03/28/23	LEGAL COPIES	000	$1.20	$1.20
03/29/23	LEGAL POSTAGE	000	$3.66	$3.66

ACCT NAME: GRANT, HEWITT A. II. ACCT#: H12344
BED: G2103S TYPE: INMATE TRUST
PO BOX:

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
03/29/23	LEGAL POSTAGE	000	$0.60	$0.60
03/29/23	LEGAL POSTAGE	000	$0.60	$0.60
03/29/23	LEGAL POSTAGE	000	$0.60	$0.60
03/29/23	LEGAL POSTAGE	000	$1.08	$1.08
03/29/23	LEGAL POSTAGE	000	$1.08	$1.08
03/29/23	LEGAL POSTAGE	000	$3.66	$3.66

ACCT NAME: GRANT, HEWITT A. II.
BED: G2103S
PO BOX:

ACCT#: H12344
TYPE: INMATE TRUST

BEGINNING BALANCE 02/01/23 $81.56

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
02/12/23	009	CANTEEN SALES	10520230211	000		-	$2.00	$79.56
02/13/23	111	PROCESSING FEE	WEEKLY DRAW	000		-	$0.02	$79.54
02/17/23	009	CANTEEN SALES	10520230216	000		-	$2.55	$76.99
02/20/23	111	PROCESSING FEE	WEEKLY DRAW	000		-	$0.03	$76.96
02/25/23	043	CANTEEN SALES	21420230224	000		-	$7.60	$69.36
02/27/23	111	PROCESSING FEE	WEEKLY DRAW	000		-	$0.08	$69.28
02/28/23	254	JPAY MEDIA W/D	000148787433	000		-	$10.75	$58.53

ENDING BALANCE 02/28/23 $58.53

LIEN DATE	TYPE OF LIEN	LIEN FACL	AMOUNT OF LIEN	AMOUNT STILL OWED
SUMMARY	FEDERAL PRISON LITIGATION		$350.00	$350.00
SUMMARY	STATE PRISON LITIGATION		$594.50	$594.50

Exhibit "2"

appointment with the person that called him about the posting of the property.

A He knew - he told me that he was going to meet with him but I didn't know a specific time.

Q Okay. And so were you aware that Scarborough had the telephone number of the person that he talked to?

A I would imagine he does, yeah.

Q And so when you went out did you see a "No Trespassing" sign posted on the front of the property?

A It's in one of the photos, yeah.

Q Did you go beyond that "No Trespassing" sign?

A Yes, I did.

Q Did you call out, "Sheriff's Department" or anything that would ID you as a police officer when you were walking onto the property?

A I had no reason to believe that - to do that.

Q And did you see any dogs when you were walking onto the property?

A The dogs that Hewitt Grant and the vet tech were with.

Q Did you see them when you were walking down the driveway onto the property?

A Not walking down. Not on the driveway but when I walked around the corner by the tree that's when I saw them -

Q Okay.

A - giving shots to an animal.
Q So you didn't see anything until you walked beyond the "No Trespassing" sign, down the driveway, and beyond another gate?
A Where the vet tech was?
Q Correct.
A Hewitt Grant and the vet were giving shots to an animal.
Q And that was beyond a "No Trespassing" sign?
A Yeah.
Q And that was beyond another gate, correct?
A That was all open to the public and it's a business property there.
Q That's not what I asked you, is it, officer?
A No, it's not. But I'm telling you what that is right there.
Q Okay.
A It's a place of business.
Q It has a "No Trespassing" sign, however, correct?
A Yeah. Uh-huh.
Q What does "No Trespassing" mean to you?
A No trespassing. I know what it means.
Q Okay. And then you walked beyond the "No Trespassing" sign?
A Yes. We were there legally because the property

was posted for the animals - the dogs before.
Q However, did you have a warrant at that time?
A No.
Q And you were aware that Detective Scarborough knew how to get in touch with the owner of the property or the person that said that they would meet him at the property?
A Uh-huh.
Q And you still went onto the property?
A To meet with Hewitt Grant. We knew that he was there.
Q Was there any emergency at that time?
A We don't know that.
Q Was there any exigent circumstances, to the best -
A We don't know that.
Q To the best of your ability. Did you hear someone screaming?
A No. This is not one of those cas -
Q Did you see any -
A This wasn't -
Q Did you see any - please just answer my question.
A I will.
Q Did you see anybody injured?
A No.
Q Did you have any reports that somebody was injured?
A No.

Q Did you have any reports that anything of harm to a human being was going on, on that property?

A Not a human being, no.

Q Okay. Did you have any reports that an emergency situation had occurred on that property?

A The only information that we had was that there was animals that were used for fighting on the property from that tip.

Q But you had -

A That's why we were on the property.

Q You had no personal knowledge at that time that anything was going on, on that property illegal?

A Other than me knowing that -

Q You had no personal knowledge at that time that anything ille -

A I had knowledge that the vet tech was there giving shots to the dogs, that we know that - that we suspected that did not have shots prior to that day.

Q And is that a criminal violation?

A It's a violation of County Ordinance.

Q Did you give him a ticket for that later?

A I didn't.

Q Okay. So at that time you had nothing - you knew nothing - you did not have any indication that something illegal was going on, on that property other than the dogs

not having shots?

A Other than the tip that animals were there that were used for dog fighting.

Q You personally had no knowledge that anything illegal was going on, on the property?

A The tip was the personal knowledge that I had.

Q Did you receive the tip?

A Yes.

Q Who did you receive a tip from?

A From CrimeStoppers.

Q That wasn't in your report that you wrote.

A Because I didn't write a report. I forwarded it to Detective Scarborough.

Q That wasn't in his report. And did Grant ask you why you were there?

A He may have. I don't remember.

Q And at this point you had no warrant, correct?

A That is correct.

Q And at this point you walked Mr. Grant out onto the roadway?

A I asked him to come out and talk to Detective Scarborough.

Q Did you walk with him?

A Yes, I did.

Q Was he free to leave at this point?

A Yes, he was.
Q Did you tell him that?
A He didn't ask.
Q Did you tell him he was free to leave?
A I didn't tell him, no.
Q Okay. Did you tell him you wanted him to go talk to Scarborough?
A I'm sorry?
Q But you said, "I want you to go talk to Detective Scarborough"?
A No. I asked him if he would talk to Detective Scarborough, and he walked with me freely out to talk to Detective Scarborough.
Q And were there other officers there also?
A Deputy Anderson in which he knows from high school, so they have a pretty good rapport.
Q Okay. And then at this point you turned Mr. Grant over to Mr. Scarb - to Detective Scarborough?
A I didn't turn him over to anybody. He walked freely with me out there to talk to Detective Scarborough.
Q And at this point did you see other people talking to Mr. Grant?
A Just Detective Scarborough.
Q You didn't see any civilians standing around talking to him?

whatever he was doing, which I don't know what it was.

Q Okay. And did you see the "No Trespassing" sign posted on the property?

A No, ma'am.

Q Okay. And did you call out or yell out or hear Dixon yell out or call out "police officers" or anything to that effect?

A No.

Q Okay. And did you see anything or hear anything that would make you think that an emergency was going on, on that property?

A No. I just could hear some talkin' and some dogs in the back. That's all I heard.

Q You didn't hear anybody screaming out or -

A No.

Q - yelling bloody murder or anything like that?

A No.

Q Okay. And when you went back on the property you said the gate was about halfway open?

A It was open enough. I didn't measure it to see how far it was open. I know I could walk through it.

Q Okay. And then you had to go around a little corner to see Mr. Grant a little bit?

A No, he could see him actually when you walked through the corner. You just couldn't walk to them without

going around.

Q Okay. But you couldn't see them from the road?

A No.

Q And you couldn't see what was going on from the road?

A No.

Q Okay. And then at that point when Mr. Grant walked back out to the road were you with him?

A Yes. Myself and Sergeant Dixon was with him.

Q Okay. So you were both with him when he walked out to the road?

A Yes, correct.

Q And at that point was Mr. Grant free to leave you?

A No.

Q He wasn't free to leave at that point?

A He was being lawfully detained.

Q Okay. When you were walking back down to the road?

A Yes.

Q Okay. So you had him under lawful detention at that point?

A Yes.

MR. BASSETT: Your Honor, I would object to the relevance of his - what he was thinking.

THE WITNESS: He didn't say he was thinking.

THE COURT: Overruled.

Det. Sanderson, The arresting sent them in and got the warrant Two and a half hours later

motion to suppress 5-15-15

A Yes. Okay. I understand what you're saying.
Q Yeah, I mean - I'm sorry.
A I thought you were just - you were talking about people in the community.
Q No, no.
A No, no.
Q From another series of events the next day.
A Correct.
Q You got another tip?
A Correct.
Q Okay. So that's two tips, correct?
A Correct.
Q And at this point did you try to apply for a warrant?
A No.
Q Based on these two tips and you hearing dogs on the property you did not try to apply for a warrant?
A At that time there's no reason to apply for a warrant. I need to make contact with the person who is there and see what the circumstances are.
Q Okay.
A Just because I've got two tips that says something is going on, there's got to be a little more evidence than two tips.
Q And you had already made an appointment with

someone that told you they were Mr. Grant for 5 o'clock in the afternoon, correct?

A That is correct.

Q Okay. And did you tell Dixon or Anderson that you had an appointment with him?

A I told Sergeant Dixon.

Q Okay. And at that time he still said, "Go ahead to the property early"?

A We were under the assumption that Mr. Grant was already there because the vet had notified us and I was afraid that if there were dogs there knowing that he now has an injunction against owning animals that the animals may be removed from the property. So we responded to the scene.

Q However, you knew the vet was going there to give shots to the dogs, correct?

A Correct.

Q And in your training and experience is this the sign of someone that's going to move dogs around if they have a vet on the property at that time?

A It's possible. It's also possible that he's getting shots and going to go to Animal Control and get the tags before I get there at 5 o'clock so that he doesn't have any reason to let me look at his dogs.

Q But at this point you still didn't try to get a warrant even though you thought illegal activity was taking

place on the property?

A What illegal activity? He has an injunction against owning dogs. I don't need a warrant for that to verify that.

Q And did you see the "No Trespassing" signs when you pulled up?

A I did.

Q And you never got out of your truck and went onto the property, correct?

A Correct.

Q Only Dixon and Anderson did?

A Correct.

Q Okay. And you didn't see how they entered the property in the back, correct?

A I did not.

Q Okay. And then when he walked back out with them -

A Uh-huh.

Q - who was with him, did you see?

A I did not. I saw Deputy Anderson kind of walked up to the back of my truck and pointed at the window where I was sitting at. Mr. Grant walked up to me and then I saw Deputy Anderson walk away. So it was just me and Mr. Grant standing there. Or he was standing, I was sitting.

Q And did you tell Mr. Grant he was free to leave at any time?

A No. I didn't tell him he was detained either.
Q Okay. And you never saw any dogs at this time, correct?
A At this time, no.
Q And was there any emergency or exigent circumstances that would call for the other officers to go onto the property at that time?
A Emergency circumstances? I would say no for emergency circumstances.
Q Were there any exigent circumstances such as someone being hurt, someone yelling out, a person being in danger?
A I couldn't answer that. I wasn't standing there with them.
Q Okay. And did you ever hear - was your window up or down when they went on the property?
A Up.
Q Okay. So you couldn't hear what they were saying?
A No, ma'am.
Q Okay.
A Even if it was down I probably couldn't have heard them. I'm at the front of the building and they're behind the building, so probably wouldn't -
Q Okay.
A - have heard a conversation anyway.

EXHIBIT "3"

Dr. Tim Brooks testified that he works at Bartow Animal Clinic and he received a call from Defendant to vaccinate 18 dogs that same day. Dr. Brooks arrived at the location and Defendant opened the gates to let him in. Defendant did not close the gates. They began inspecting the dogs. Two officers entered the backyard. Defendant did not appear surprised to see them. Defendant walked away with one deputy while the other deputy stayed in the backyard and inquired about the vaccinations. The second deputy then went back to the front of the property. Defendant left with the first deputy about 5 minutes after the officers arrived. Defendant never told the officers to get off his property, there was no arguing or profanity from the deputy. Dr. Brooks vaccinated six dogs before Defendant came back and said stop the vaccinations as the officers were taking the dogs.

Defendant testified that on October 21, 2014, he saw a notice on his front door. He called the number and set an appointment for the following day at 5:00 p.m. The next day the Defendant called a vet about the vaccinations. The Defendant has two fences enclosing the backyard, a picket fence and a six-foot privacy fence. There is a "No Trespassing" sign posted. Inside the backyard the Defendant has another privacy fence. Defendant testified that he closed the gate when Dr. Brooks arrived. The vet was examining the dogs when Defendant heard his gate crash open and two officers walked in. Defendant told the officers to get off his property. Sgt. Dixon then began to yell at the Defendant and used profanities. The exchange lasted 20-30 minutes before Defendant was escorted to the front to meet with Det. Scarborough. Det. Scarborough never read the consent to search form and Defendant believed that it was a form surrendering the dogs. Defendant retrieved a key to open the bar after realizing he had been tricked into signing a consent form. Defendant believed that the officers were going to search anyway and that he had no choice in the matter. Defendant testified that he is a high school graduate.

CONCLUSIONS OF LAW

The Court finds that the initial entry into the curtilage of the commercial property was illegal. There was testimony, and evidence presented, that there were two separate fences that enclosed the back of the property. The first fence was a picket fence while the second fence was a six-foot privacy fence. Defendant even testified that there was another privacy fence in the backyard that enclosed the dogs. There was some discrepancy in the testimony regarding whether or not the gates were closed. Defendant testified that he closed the gate after the

to review it. Correct.

THE COURT: If you need to file rebuttal you may do that.

MR. BASSETT: Thank you, Your Honor.

[redacted]

MS. BEHNSTEDT: [redacted]

THE COURT: Wouldn't all that be vitiated by the fact that he signed a consent to search?

MS. BEHNSTEDT: Our argument would be that he did not willingly signed the consent to search. As he said, he believed that he was signing the consent for them to take the dogs away from him, but in -

THE COURT: Okay. Then that's where you're resting your argument then, that the form he signed he didn't know was a consent?

MS. BEHNSTEDT: [redacted]

MS. BEHNSTEDT: [redacted]

THE COURT: I'm simply saying wouldn't that have been -