

State of Texas

IN DISTRICT

v

Marvin Louis Guy

Cause No. 79-111 / Court 27<sup>TH</sup>

Judicial Dist -  
Bell Co. Tx.

Pre-Trial Motion Amendment #4

Sufficiency of Affidavit

Challenge the Constitutionality invalidity  
of the affidavit used to obtain warrant

To search defendant's apartment and automobile

(I) Marvin Louis Guy, the defendant in the above  
entitled Cause No. 72927 / 79-111 Re-indictment  
Cause No. Respectfully Move the Court to under the  
4 corner Rule of the 9 pages affidavit pursuant to  
the Fourth and Fourteenth amendment of the United  
States Constitution Art. 1 Section 9 of the Texas  
Constitution: Chapter 18 of the Texas Code of  
Criminal procedure 18.01(b) 18.01(c)

(II)

Sufficiency of Affidavit did not meet Constitution

"Muster"

Expressing the view that probable cause for the issuance of the search warrant did not exist where the independent investigation revealed a discrepancy between the informant's predictions and the actual sequence of events.

As a matter of constitutional law, an affidavit reciting that the affiant received reliable information from a credible person, and that affiant believed that narcotics were being kept at described premises for illegal sales and use, is not sufficient to establish probable cause for a judge to issue a search warrant since the affidavit states mere conclusions of an unidentified informant and contains no affirmative allegations that the affiant or the informant spoke with personal knowledge of the matters contained in the affidavit.

(III) Other No Facts other than the affiant's career & history as a peace officer. Affiant John Mosley Facts. In his affidavit of any crime between the C-I and defendant at 1104 Circle M Dr. Apt C. Here is what's in the 4 corners of the first affidavit he opens an investigation after investigating two other crimes on Circle M in the 1100 block. A C-I came to him and stated a guy known as "G" was selling cocaine in the 1100 block of Circle M. At this point he opens an investigation into the C-I ward.

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He said at some point that I was seen going to and from the apartment and a passer by could have seen the same thing - This is easy attainable information and doesn't reach the level of criminal activity. Affiant states that during his investigation he witnessed people walking up to me & around my automobile, (again, any passer by could have witnessed the same thing). It is only his belief that in some public place what he witnessed was criminal activity.

I am impressed with the affiant's training and experience along with his career as a peace officer but gone from that training & experience is any criminal acts. In affiant's career I'm sure he understands that he can't request a search warrant to bust into a home to make a routine felony drug arrest if there is not a nexus between the criminal activity at public places he states in the 4 corners of the affidavit.

### (III) The Fourth amendment requirement

The Fourth amendment protects the individual's privacy in a variety of settings. In none is that zone of privacy more clearly defined than bounded by unambiguous physical dimensions of an individual's home. A zone that finds its roots in clear and specific constitutional terms. In the Texas Constitution Art. 1 Section 9 and the Fourth amendment of the United States Constitution at its very core stands the right of a man

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to retreat into his own home and there be free from unreasonable governmental intrusion. In terms that apply equally to seizures of property and to the seizures of people. The Fourth amendment has drawn a firm line at the entrance of the home, the case of criminal procedure offers a greater protection under ch. 18.

It's important to note that this case did not involve drugs

### Affidavit Invalid

• Now comes defendant requesting a Frank hearing, challenging adequacy of affiant affidavit.

i. > Defendant will show deliberate falsehood and (or) deliberate falsehood and reckless disregard for the truth by affiant

2. > There's no specific portion, affiant doesn't state the conclusion in the affidavit of a crime and (or) criminal activity at the place.

3. > affiant makes all claims with no facts

## Issue #3

IF the issuing court relied solely on the affiant to establish and to issue a search warrant. Only information that is found in the 4 corner of the affidavit can be considered in determining whether facts exist. There was no justification in the 4 corner of the affidavit giving as to why the affiant wanted to about the knock announce rule. This is put in place as a safety mechanism for all concerned. It has to be put in the affidavit, even where a magistrate examines the affiant or affiants under oath or even conducts an ex-parte judicial hearing on whether to issue the warrant and conclude from that that sufficient grounds exist to move forward with the warrant.

Also in making such determination it is of no consequence that the affiant might have had additional information which could have been given to the issuing magistrate. The court states; unless it is incorporated in a written sworn complaint (affidavit) sufficient facts showing why the warrant was issued it wouldn't be in compliance with the constitution & laws of the United States or of this state. IF upon investigation made by another magistrate facts are developed in a suppression hearing, such facts could and should have been

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incorporated in the affidavit

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The word affidavit has been defined to mean "a statement in writing of a fact or facts signed by the party making it. In short, without a written record an adequate judicial review can not be had. 18.01(d).

The affiant had no facts only speculation or personal belief. When no facts are presented, the issuing judge wholly abandoned his judicial role and failed to perform his neutral and detached function serving merely as a rubber stamp for the police. The affidavit supporting the warrant was lacking with no grounds to stand firm.

The informant has only provided one occasion that I sale drugs. Then 2 other events where he made a claim that I was in "control" of drugs inside of said bag within a public place. The affiant never did attempt to establish that the defendant's residence was being used for selling or storing drugs, either by surveillance nor any other form of observation. How can a C.I mix his beliefs with facts? The C.I stated that I sold said drugs from a blue car & that I kept scales, packing materials & items commonly associated with the sale of drugs. These items are household items that are common to be in every house hold.

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what's unclear is when the info was provided and how he knew before hand. The warrant request that the items would be where he said they would be. The fourth amendment requires and states that the given information is it sufficient to establish any well rounded fact. The affidavit did not contain information to provide a nexus between the drugs at either residence in the 4 corner rule. The way he tried to nexus the criminal activity was by saying that I was seen coming to and from the apartment & to my car, this being the only available route through out my daily activities to and from. No other available route exists.



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The amendment is to be more specific about issues my counsel refuses to do after years of me requesting he do so. Motion #4 of counsel's motions touch on certain issues, but not in a way if I get convicted. If I was to bring up the issue it would be waived. The 6<sup>th</sup> amendment gives me the right to be and/or make a defense. ABA rule 6.03 isn't working in this case. At this point I request an ex parte hearing to request new counsel or represent myself. My current defense is trying to mislead me of which denies me a fair trial. My counsel has made no attempt to attack false statements in motion to suppress #4 of John A. Mosley affidavit. Counsel also refused to attack the false statement in #5 Plowick affidavit. When my counsel refuses to make winnable arguments, it is my duty as the defendant to do so. The false statement state on page (2) "line marked (2) when he asked to search for items at 1104 circle M - dr. apt C where no specific offense had been committed. This is one of the components. The home nor apartment listed in the affidavit had no criminal acts. Nor is there any "No Knock" exigent circumstances disclosed in the affidavit that would justify which was known known at the time affiant applied for search warrant.

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T.C.C.P. 45.19(A) b Pet. Ref rubber stamped  
facsimile signature of officer complainant not  
valid. Complainant must state facts sufficient  
to show commission of charged offense. Page (3)  
#5 the lychn cocaine from a blue Ford. It is  
important to note there was no drugs sale  
substantiated or found at 1104 circle M. Dr.

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1. State Vs. Callaghan 222. S.W. 3d 610 TX APP  
Houston-14 Dist - 2007 14-06-00468

2. Davis Vs. State  
122007 TX CA1, 01-06-00744

3. Bedford Vs. State  
020463 TX CA10, 10-02-296

4. 338 S.W. 3d 725 Jones Vs. State

5. Bedford Vs. State  
131 S.W. 3d 514 TX APP. Waco 2004 / 10-02-296

6. Price Vs. State

93 Southwest 3d-358 TX. APP. Houston-14 Dist.  
-2002-14-01-01

7. Broussard Vs. State 685. 3d 197 / TX. APP. Houston  
1 Dist. / 2002 / 01-00-01102

8. Allen Vs. State

249 S.W. 3d 680 / TX. APP. Austin 2008 / 03-04-  
00557

9. Ballard Vs. State

1045 S.W. 3d 312 / TX. APP. Beaumont 2003 / 09-  
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