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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JASPER SONES — APPELLANT

VS. — NO. 2007-KA-1342-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

I. THE TRIAL COURT CORRECTLY FOUND THAT SONES LACKED STANDING TO CHALLENGE THE SEARCH OF HUFFMAN'S PROPERTY.

II. BECAUSE THE HUFFMAN PROPERTY WAS SEARCHED PURSUANT TO A SEARCH WARRANT, SONES' SECOND ASSIGNMENT OF ERROR LACKS MERIT.

III. THE TRIAL COURT CORRECTLY FOUND THAT SUFFICIENT PROBABLE CAUSE EXISTED FOR THE ISSUANCE OF A SEARCH WARRANT.

STATEMENT OF FACTS

On February 28, 2001, Mississippi Bureau of Narcotics Agent Brent Young was at the grand opening of the Starkville Super WalMart speaking with loss prevention personnel about methamphetamine precursors available at their store. T. 23. Young's uniform clearly identified him as an MBN agent. T. 23. As luck would have it, Young was in the pharmacy department when a male later identified as Jeremy Sones (hereafter referred to as "Jeremy") picked up two boxes of Sudafed and became very nervous upon spotting Young. T. 23. Jeremy knocked several Sudafed boxes off of the shelf before leaving the pharmacy area. T. 23. Kimberly Weston, a loss prevention employee, followed Jeremy out of the pharmacy area when she noticed his nervous behavior after seeing Agent Young. T. 344. Weston noticed that Jeremy was continually looking over his shoulder and "fidgeting" with the Sudafed boxes as he walked through the store. T. 344. Before grabbing a box of matches containing fifty matchbooks, Jeremy was "back and forth looking to see if anybody was coming down the aisle, or if somebody was watching him while he was on the aisle." T. 24, 345. He then grabbed two ashtrays before checking out. T. 346.

Agent Young followed Jeremy out of the store, and Jeremy continued looking over his shoulder as walked to his vehicle. T. 26. Jasper Sones (hereafter referred to as "Sones") was sitting in the driver's seat of the truck which already had numerous WalMart bags in the back. T. 26. This caught Young's attention because, according to his training and experience, meth manufacturers often go into a store separately to purchase precursors due to the limit on the number of boxes of pseudoephedrine that can be purchased in one transaction. T. 26. Young followed Sones's vehicle, observed the pair stop at a convenient store for a bag of ice, and eventually park at 1284 County Lake Road. T. 28-29. Young and other narcotics officers began watching the house and observed what they opined to be counter-surveillance measures being conducted by individuals at the house. T. 29.

Young also observed individuals at the house smoking outside. T. 36. This furthered Young's suspicion that the Soneses may be manufacturing meth in the house, because smokers cannot smoke in a meth lab due to the flammable nature of the chemicals involved. T. 36.

Young obtained a search warrant for the residence, which was owned at the time by a C.L. Huffman. T. 22, 30, 387, 397. Upon execution of the search warrant, Young observed that the house was unoccupied as a dwelling, as it contained no furniture, appliances, or food in the upstairs living quarters. T. 41-42. Sones was on the premises because he had been hired to refurbish the house for rental. T. 37. When Young searched the basement, he found a WalMart bag full of matchbooks with unburned matches and the striker plates removed, multiple one-gallon containers of acetone, a Rubbermaid storage lid holding matchbook striker plates, several jugs of industrial strength drain cleaner, a food processor, a modified air pump, lye, several containers of salt, lithium batteries, multiple boxes of Sudafed, pH test strips, reaction vessels, air filters, iodine, a Corningware dish containing red phosphorus which had been scraped from matchbook striker plates, digital scales, ephedra, glass gallon jugs with plastic tubing. T. 201-244. Most of these items were grouped together in a large storage container. T. 212. Young explained how each of these items was used in the process of manufacturing meth. T. 201-244. Young also found six receipts from five different stores in which Sudafed had been recently purchased. T. 260. Also in the basement was a notebook, which Sones admitted was his, containing recipes for making meth and a computer printout containing tips for making meth. T. 235-236, 238, 251.

Sones was subsequently indicted, tried, and convicted for possession of precursors.

SUMMARY OF ARGUMENT

Sones has no standing to challenge the search warrant. He was not an overnight guest at the searched property. Rather, he was a construction worker on the premises for business purposes only. Even if Sones could be considered an overnight guest, he failed to meet his burden at the suppression hearing of proving that he had a reasonable expectation of privacy in the searched under construction rental property.

Sones's second assignment of error is based on two misconceptions. First, Sones erroneously claims that the State did not enter the search warrant or search warrant affidavit into evidence. Second, Sones erroneously claims that due to this alleged failure, the preceding search was somehow a warrantless one. This argument lacks factual and legal support, and is wholly without merit.

Based on a totality of the circumstances, Agent Young possessed information which would reasonably lead an officer to believe that contraband or evidence of a crime would be found on the property ultimately searched. The trial court had the benefit of the underlying facts and circumstances attached to the search warrant affidavit, as well as Young's testimony at the suppression hearing. The trial court's finding that probable cause existed for issuance of the search warrant is not clearly erroneous and must, therefore, be upheld.

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT SONES LACKED STANDING TO CHALLENGE THE SEARCH OF HUFFMAN'S PROPERTY.

At the hearing on Sones's motion to suppress, Sones acknowledged that his residence was in Carrier, Mississippi. He further testified that the sole purpose for being in Huffman's rental house was to perform renovations. T. 54. Sones further stated that he would sometimes spend the night in the basement of the rental property, with the owner's son's permission, when he worked on the house for three day stints before going back home to his wife and kids in Carrier. T. 53. The trial court ultimately denied the motion to suppress, finding that Sones had no standing to challenge the search of Huffman's property. C.P. 59.

When a defendant claims that evidence must be suppressed due to an alleged illegal search, the burden is on the defendant to show that his own Fourth Amendment rights were violated. *Lyons v. State*, 942 So.2d 247, 250 (¶11) (Miss. Ct. App. 2006) (quoting *Rakas v. Illinois*, 439 U.S. 128, 132 n. 1 (1978)). If the defendant produces no evidence to show that he has a reasonable expectation of privacy in real property which does not belong to him, his motion to suppress evidence found during a search of that property is properly denied for lack of standing. *Id.* "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Id.* (quoting *Turner v. State*, 573 So.2d 657, 665 (Miss. 1990)). At no time during the suppression hearing did Sones produce evidence to show that he had a reasonable expectation of privacy in Huffman's property. Rather, he admitted that he was only on the premises for business purposes, that is, to renovate Huffman's house. T. 55.

Sones correctly states that the United States Supreme Court held in *Minnesota v. Olson* that

an overnight houseguest may have a reasonable expectation of privacy in his host's home. 495 U.S. 91, 98-100 (1990). In so holding, the *Olson* Court found that an overnight guest's expectation of privacy in his host's home was reasonable and based on "understandings that are recognized and permitted by society." *Id.* at 100. However, Sones had no reasonable expectation of privacy simply because he may have occasionally spent the night in the basement of Huffman's unoccupied rental property. Even Sones admitted at the suppression hearing that he was at the property solely for business purposes. Sones was not a houseguest, he was a contractor renovating rental property. There was no host with whom Sones was calling upon for a social visit; no host "willing to share his house and his privacy with his guest," as envisioned by the Supreme Court in *Olson*. Id. at 99. The rental property was unoccupied and unfurnished. These facts distinguish Sones's classification from Olson's. Further, Huffman's residential income property is more akin to commercial property, which is treated differently than a home for Fourth Amendment purposes. *Minnesota v. Carter*, 525 U.S. 83, 90 (U.S. 1998). "An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home." *Id.* (quoting *New York v. Burger*, 482 U.S. 691, 700 (1987)). In *Carter*, police officers saw though a window the respondent bagging cocaine in someone else's home. The Supreme Court found that Carter lacked standing to claim a Fourth Amendment violation because although he may have been a guest in someone's home, the "purely commercial nature of the transaction" in which he was engaged was markedly different from the overnight social guest status discussed in *Olson*. *Id.* at 91. If Carter had no reasonable expectation of privacy in someone else's home due to the fact that he was there for business purposes, then surely Sones could have no reasonable expectation of privacy when he was at Huffman's property, which was not functioning as anyone's home at the time, solely for business purposes.

Additionally, should this Court find that Sones could somehow be considered an overnight guest, the fact remains that he did not prove at the suppression hearing that he had a reasonable expectation of privacy in the searched property. In *White v. State*, which was decided eight months after *Olson*, the supreme court found that an overnight guest lacked standing to raise a Fourth Amendment claim on appeal. 571 So.2d 956, 959 (Miss. 1990). The court stated, "We do not hold that an overnight guest will never possess a reasonable expectation of privacy in a residence. The defendant, in the instant case, was an overnight guest who failed to prove that he had a reasonable expectation of privacy in Ms. Quarles apartment." *Id.* For the aforementioned reasons, the trial court correctly found that Sones lacked standing to challenge the search warrant.

Because Sones lacked standing, his remaining assignments of error challenging the search and search warrant necessarily fail. However, the State will address the remainder of Sones's issues in the event that this honorable Court disagrees with the State's analysis of the first issue.

II. BECAUSE THE HUFFMAN PROPERTY WAS SEARCHED PURSUANT TO A SEARCH WARRANT, SONES' SECOND ASSIGNMENT OF LACKS MERIT.

Sones's second assignment of error is nonsensical and disjointed. He complains that the State failed to enter the search warrant and accompanying affidavit into evidence at the suppression hearing. He then claims that this alleged failure amounted to a warrantless search of Huffman's property. Finally, he claims that the trial court erroneously considered whether sufficient probable cause existed for the search warrant, instead of considering "whether the circumstances of the search constituted an exception to the requirement for a search warrant."

First, Sones's contention that the State failed to offer the search warrant and affidavit for the search warrant into evidence is contrary to the record. T. 44; Suppression Hearing Exhibit 2.[1] Sones's next claim hardly merits a response. The search in question was unquestionably conducted pursuant to a search warrant. To now claim, erroneously, that the failure to enter the search warrant into evidence retroactively made the search a warrantless one, has no foundation, legal or otherwise.

Finally, Sones claims, "The issue before the Court was not whether there was facts constituting sufficient probable cause for a neutral magistrate to issue a search warrant[,] but whether the circumstances of the search constituted an exception to the requirement for a search warrant." To the contrary, Sones, as the movant, framed the issue as one of sufficient probable cause for issuance of the search warrant. C.P.16-17.[2] Further, the trial court simply had no reason to determine whether a search warrant exception applied, since the property was searched pursuant to

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[1]The transcript showed that these documents were received into evidence, but were not included in the record sent by the circuit court clerk's office. Upon realization of this omission, attorney for the Appellee contacted the supreme court clerk's office which obtained the exhibit from the circuit clerk.

[2]Sones's motion also alleged that the place to be searched was too vague as no address was listed.

a search warrant.

Sones' second assignment of error is wholly without merit.

III. THE TRIAL COURT CORRECTLY FOUND THAT SUFFICIENT PROBABLE CAUSE EXISTED FOR THE ISSUANCE OF A SEARCH WARRANT.

Sones again erroneously argues that the search warrant and affidavit were not entered into evidence. He further claims that the trial court was unable to determine whether sufficient probable cause existed without them. Even if Sones's allegation was true, the trial court heard Agent Young's testimony in which he articulated the facts constituting probable cause which were relayed to the magistrate for issuance of the search warrant, which on its own would be sufficient for the court's consideration. *Lyons v. State*, 942 So.2d 247, 249 (¶8) (Miss. Ct. App. 2006).

Below are excerpts from Young's statement of underlying facts which were presented to the magistrate.

> On Wednesday, February 28, 2001 at approximately 1030 hours, the affiant observed a white male inside the WalMart Super Center in Starkville, Oktibbeha County, Mississippi. While the affiant was standing in the pharmaceutical department, the white male subject came up and got two boxes of nasal decongestant containing pseudoephedrine, a listed precursor item used in the manufacture of methamphetamines[.] [T]he subject then noticed that the affiant was wearing a shirt that identified him as being with the Mississippi Bureau of Narcotics. The subject then knocked several boxes of nasal decongestant off the shelf and acted in a nervous manner. Several minutes later the affiant witnessed the subject purchase the two boxes of nasal decongestant as well as a large package of book type matches, and two ashtrays. Based on the affiant's training and experience, the book matches can be used to extract red phosphorus, another listed precursor item used in the manufacture of methamphetamines. The red phosphorus is contained in the match book striker plate, and it is commonly seen as a source for obtaining the red phosphorus.
>
> The affiant then followed the subject out of Wal-Mart and the subject continued to act in a nervous manner while walking to the vehicle and was seen looking over his shoulder numerous times. The subject was then seen getting into an older model black Chevrolet pick up . . . [T]he vehicle was occupied by another white male that was sitting in the driver[']s seat of the vehicle. The affiant then followed the vehicle out of the parking lot of Wal-Mart and noticed there appeared to be more blue plastic bags, the type Wal-Mart uses, in the back of the vehicle. [H]owever, the affiant only witnessed the subject carrying one bag. Based on the affiant's training and experience, it is common for people purchasing precursor items to make several trips into a store, or visit several different stores for the same items, and also for numerous subjects to enter a store at different times and purchase the

same items and meet back at the vehicle after the precursor items have been purchased.

The affiant then followed the vehicle out of the parking lot. . . . [A]t the Chevron gas station . . . the subject . . . place[d] something in the back of the vehicle . . . that [] appeared to be two bags of ice. Based on the affiant's training and experience, the ice could be used in the manufacture process of methamphetamine, utilizing the red phosphorus method, as a coolant for the condensation chamber in the reaction vessel. The purpose of the condensation chamber is to reduce the amount of phosphorine gas that is produced in the manufacture process.

The vehicle . . . traveled to County Lake Road . . . to the residence stated in the search warrant. Surveillance was then conducted on the residence for approximately 7 hours and in this time there was a gray Ford Bronco II that was seen at the residence and this vehicle left on two separate occasions and was seen headed west on Highway 82. The destination of the vehicle was unknown, but on the second occasion where the vehicle left the residence, the vehicle headed west on Highway 82 once again. When surveillance attempted to follow the vehicle[,] the vehicle turned around and proceeded back east on Highway 82 and turned into another residence . . . . Based on the affiant's training and experience[,] this type of behavior is common when counter-surveillance steps are being taken.

In conducting surveillance on the residence on County Lake Road[,] the two male subjects . . . . appeared to be standing outside the smaller house smoking cigarettes, and based upon the affiant's training and experience, this is also consistent with habits of people using an area to manufacture methamphetamines. Subjects manufacturing methamphetamines will usually go outside of where the methamphetamines are being manufactured to smoke because of the highly flammable solvents used in the manufacture process. . . . .

Suppression Hearing Exhibit 2.

In determining whether probable cause existed for the issuance of a search warrant, reviewing courts will consider the totality of the circumstances. *Phinizee v. State*, 983 So.2d 322, 328 (¶18) (Miss. Ct. App. 2007). "Probable cause exists where it is based on '[i]nformation reasonably leading an officer to believe that then and there contraband or evidence material to a criminal investigation would be found.'" *Id.* (quoting *Rooks v. State*, 529 So.2d 546, 554 (Miss. 1988)). In claiming that there was no probable cause for the issuance of the search warrant, Sones singles out certain facts and omits others. Without considering the totality of the circumstances, it is easy to make an

argument that probable cause did not exist. There is nothing suspicious or illegal about purchasing Sudafed. There is nothing suspicous or illegal about purchasing matches. There is nothing suspicious or illegal about leaving WalMart with one bag and getting into a vehicle which contains another person and numerous other WalMart bags. The same is true of purchasing ice or smoking outside. However, when all of the facts are combined, in addition Jeremy's nervous behavior and Young's extensive training and experience on the subject of meth manufacturing, Young reasonably believed that criminal activity and evidence of a crime would be found.

Contrary to Sones's claim, the trial court was also able to determine whether the warrant was specific enough as to the location to be searched. In addition to the search warrant and affidavit being entered into evidence, which contained a detailed description of and directions to Huffman's rental house, Agent Young testified as follows.

> When we do a search warrant, we put directions specifically with mileage and don't use the physical address normally because it may -- we may have viewed it wrong. In some cases we've had problems with putting physical address with numbers being misplaced or whatnot. So we just use the physical location from a known point in the county.

T. 23. A description of the property to be searched is sufficient "if the places and things to be searched are designated in such manner that the officer making the search may locate them with reasonable certainty." *Pool v. State*, 483 So. 2d 331, 334 (Miss. 1986). Clearly the officers were able to locate the property with reasonable certainty, as they had been watching the property for several hours before obtaining the search warrant. Further, in addition to directions to the house, there was a detailed description of the house included in the affidavit.

Probable cause existed for the issuance of the search warrant, and the warrant sufficiently described the place to be searched. The trial court's findings were not clearly erroneous. Accordingly, Sones's final assignment of error must fail.

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Sones's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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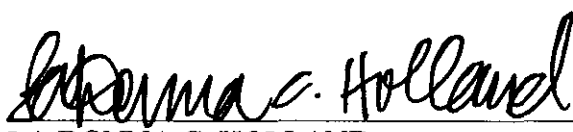
This the 16th day of September, 2008.



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