



SMITH RODGERS
ATTORNEYS AT LAW, PLLC
LEGAL CONSULTANTS TO LAW ENFORCEMENT

State v. Bailey

May 15, 2020
Volume 19, Number 7

Forming Connections

By Brian Beasley,
Legal Adviser, High Point PD

ROLL CALL TRAINING

*From North Carolina's 24/7 Police
Attorney Law Firm*

PO Box 4803
Greensboro, NC 27404-4803
Telephone (336) 691-7058
fax (336) 969-1879
www.policehelp.net

As the travel and movement restrictions put in into place as a result of the COVID pandemic start to loosen, more people are able to leave their homes and see people in person rather than solely on a Zoom or Microsoft Teams virtual meeting call. For some, this is good news as they have missed the connections that come with face to face interaction. For those more introverted souls, there might be questions as to why people would ever prefer an in-person conversation to one where there exists the ability to mute audio and/or disable video.¹ If there was not a need to get away from the other people they have been trapped with for the past month, we might never see some of those introverts in person again.²

Today, I want to discuss a different type of connection that often comes up in legal matters. In criminal cases, this connection is called a “nexus”³ and almost always deals with whether a search warrant application contains enough information to create a connection between the evidence sought and the place to be searched. As we will see, this issue is often raised when a search warrant is sought for the home of a suspected drug dealer as it was in this month’s case from the N.C. Supreme Court, State v. Bailey.⁴

In April of 2017, Detective Dallas Rose⁵ of the Carteret County Sheriff’s Office applied for a search warrant to search a residence based on the following information, which he set out in the affidavit to support his application. Around 5:35 p.m., officers were conducting surveillance of the parking lot of an apartment complex when they observed a blue Jeep Compass occupied by James White and Brittany Tommasone pull in. They knew these two subjects from previous drug activities and also knew that they did not live at the apartment complex but lived together in another residence across town.

After the Jeep parked, a female passenger got out of another parked car and walked over to enter the Jeep. After about 30 seconds, she exited the Jeep, got back in her vehicle and both vehicles then quickly exited the parking lot and drove away. Officers followed the female and pulled her over a short distance away after observing several traffic violations. Pursuant to that stop, the female, one Autumn Taylor, admitted that she had just purchased a twenty dollar bag of heroin from White and consumed it in the car.⁶ Meanwhile, other officers had

¹ I have a theory that the COVID pandemic is God’s punishment on extroverts for being so gosh-darn outgoing all of the time. He was like, “Enough! Go sit in your house for a while – I can’t take your energy and enthusiasm anymore. And stop being so touchy-feely with everybody.” (I’m kidding, of course. God loves even hopeless extroverts.)

² I’m only speaking hypothetically here and not from personal preference or experience, of course.

³ “Nexus” is a cool sounding word that seems very futuristic. The “nexus” was an extra-dimensional ribbon in space in the underwhelming “Star Trek: Generations” movie, the one where Kirk and Picard meet. In computer land, it is an internet site to find modification programming for popular video games, called “mods.”

⁴ 360A19 (1 May 2020).

⁵ Another great name even though it sounds made-up. Although in a sense, I guess all of our names are made-up. Sorry, quarantine does strange things to the brain.

⁶ This might explain all of the traffic violations she committed shortly thereafter.

followed the Jeep back to the known residence of White and Tommasone and observed them exit the vehicle and enter their apartment.⁷

Detective Rose applied for and received a search warrant for the residence which was executed around midnight. Inside the residence were White and Tommasone, along with Nicholas Bailey and his girlfriend. After 41 grams of cocaine, drug paraphernalia, and \$924 in cash were found in Bailey's bedroom, he became our defendant and was later convicted of trafficking in cocaine.

On appeal, Bailey argued that the search warrant affidavit did not establish probable cause to search his residence because there was no nexus shown between the residence and the drug activity observed earlier that day. Specifically, there was no evidence showing that drugs were sold at or near the residence nor any evidence that drugs were being kept there. In order to evaluate this argument, the N.C. Supreme Court looked at three previous decisions.

The earliest decision, and the one the defendant was relying on, was State v. Campbell.⁸ In Campbell, officers obtained a search warrant for a house on the basis that three people who lived at the residence had recently sold drugs to an undercover SBI agent. The sales apparently did not take place at the residence and the court found that there were no circumstances detailed in the affidavit which would provide a magistrate any reasonable basis to conclude that drugs would probably be found there.⁹ In other words, the affidavit merely stated the conclusion that there would be drugs in the residence but offered no reason based on information known or the officer's training or experience that would support that conclusion.

The second case was State v. Arrington.¹⁰ This set of facts carried a much clearer nexus as the affidavit documented that a confidential informant stated that he had purchased marijuana from the defendant and that the defendant was growing it at his mobile home. Also in the affidavit was information from another source that he had observed a heavy amount of traffic in and out of the mobile home within the past month, including many known drug dealers. The court held in this case that there was sufficient information in the affidavit to give probable cause that drugs would be found inside the mobile home.

Finally, the court looked at the more recent case of State v. Allman.¹¹ In Allman, half-brothers Sean Whitehead and Jeremy Black were travelling together in a vehicle which was stopped by Agent Cherry,¹² who worked for the Brunswick County Sheriff's Office. One thing (an exterior sniff by a K-9 unit) led to another (an alert by the K-9 on the vehicle) led to another (a search of the vehicle) and 8.1 ounces of marijuana packaged in a Ziploc bag inside of a vacuum sealed bag inside of a manila envelope was discovered in the car along with over \$1600 in cash. Both Black and Whitehead had criminal histories which included drug charges. Whitehead told Cherry that he and Black lived at 30 Twin Oaks Drive but police later determined that they actually lived at 4844 Acres Drive and had lived there for a few years.

Based on this information, a detective applied for a search warrant for the Acres Drive address and included in the affidavit a statement that his training and experience had taught him that "drug dealers typically keep evidence of drug dealing at their homes, including but not limited to the drugs themselves, records of drug dealing activities, tools and materials used to weigh and package drugs, large amounts of cash, and expensive things purchased with drug money." The detective also made sure to include the fact that the defendants lied

⁷ This building was described as a "multi-family wooden dwelling" divided into "three separate known living quarters." This means that it was a "triplex" which is also a really cool word. I think it's the "x" that makes these words cool. It's only cool, though, when the "x" comes in the middle or the end but not at the beginning, like in "X-Games" or "ex-police attorney."

⁸ 282 N.C. 125 (1972).

⁹ The most interesting fact about this case is that the residence at issue was across the street from "Ma's Drive-in" which was also known as "Bill's Drive-in" according to the court's opinion. I guess it all depended on who was in charge that particular night.

¹⁰ 311 N.C. 633 (1984).

¹¹ 369 N.C. 292 (2016).

¹² I realize that my name thing might be getting out of hand, but the names of the actual people involved in this case sound like a game of "Clue." Professor Plum, Colonel Mustard, Agent Cherry, Jeremy Black, and Sean Whitehead. See what I mean?

about where they lived. Because of these facts, the court again held that the affidavit set out sufficient information to show probable cause that evidence of drug crimes would be found in the residence.

Based on these previous cases, the court in the Bailey case ruled that the affidavit demonstrated probable cause that evidence of drug crimes would be found in the apartment. The court noted that the affidavit set out the activity in the parking lot and that the detective believed, based on his training and experience, that a drug sale had just occurred. In addition, he knew White and Tommasone had a history of dealing drugs and that they lived in the apartment to which they returned. Finally, the buyer was pulled over shortly after the observed transaction and had admitted buying heroin from them.

Even though there was no direct evidence that drugs were actually being sold at the defendant's residence, the court stated that this was not necessary. All that was necessary was some sort of "nexus" and the court ruled that this affidavit made that connection. At minimum, the facts showed that the proceeds from the particular sale would likely have been taken into the apartment. Unlike the Campbell case, where the affidavit simply stated that the suspects lived at a particular place, the court found that Detective Rose's affidavit provided a link between the residence and the criminal activity. The fact that White and Tommasone returned to the residence immediately after the drug deal was significant in that regard. As a result, Bailey's conviction was upheld.

Some Search Warrant Writing Advice

Writing a good search warrant, like most things, is something that improves with practice. If an officer puts in the effort to get better, each search warrant he or she writes will become easier and better. I often advise officers who don't have a lot of experience writing search warrant affidavits to go through the following exercise before they start to write. First, think about the conclusion you want to reach (for example, "I believe there are probably drugs inside this residence.") Then list on a sheet of paper all of the reasons you can think of that have caused you to develop this belief.

Next, read over the list of facts and circumstances that you have created and ask yourself two questions: (1) have I left out any details or facts that support my conclusion and (2) are there any facts and details that I've listed that require me to explain what they mean or why they are important based on my own knowledge, training, and experience? If so, make sure that you also include these explanations in your affidavit as you write it. And, of course, while going through this exercise you should also ask whether all of the facts that you've listed are enough to support your original conclusion. These steps will go a long way to making sure your affidavit is complete and sufficient.¹³

It's usually a great idea to have another person with search warrant experience read over your affidavit before you present it to the magistrate in addition to getting supervisory approval. A fresh set of eyes can more easily see when something doesn't make sense or when a connection is missing. And remember, if you didn't include it in the affidavit, it didn't happen (or might as well not have.) A reviewing court can only judge the sufficiency of probable cause based on the affidavit itself, not what you meant to put in it. As the kids these days say (but not in gatherings of more than 10), you have to "show the receipts."

**Brian Beasley
Police Attorney
High Point Police Department**

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

¹³ Depending on the case, there may be other conclusions you have to make that you need to be sure are supported in the affidavit by asking questions like "Why is the stuff that I'm looking for evidence of a crime?" But that's usually apparent in drug cases.



Smith Rodgers, PLLC

provides 24-hour real-time legal support for client law enforcement agencies.

“The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of Smith Rodgers may of course contact the firm’s 24-hour switchboard for immediate legal consultation in real-time.”