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Failure to Allege, in an Application for a Search Warrant, that the Premises to Be Searched Is the Suspect's Home

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Sometimes officers have probable cause to believe that a person committed a crime, have probable cause that evidence of the crime will be found in the person's residence, and seek a search warrant for the address at which the residence is located, but fail to include in the application a statement that the address in question is, in fact, the suspect's home. What happens then?

The best thing that can happen is that the judicial official to whom the application is presented notices the problem and asks the officer to fix it. But sometimes the judicial official doesn't notice this type of failure to connect the dots. Then problems may ensue.

The leading case in this area may be *United States v. Laughton*, 409 F.3d 744 (6th Cir. 2005), where the Sixth Circuit found that a search warrant should not have issued. Although the application recited that an informant had made controlled purchases; that the suspect had "various stashes around the home"; and that the informant had seen "more controlled substances located at or in the residence or located on the person [of the defendant]," the application did not explicitly "make any connection between the premises to be searched and the facts of criminal activity that the officer set out in his affidavit," nor did it directly "indicate any connection between the defendant and the address given." *See also United States v. Rice*, 704 F.Supp.2d 667 (E.D. Ky. 2010) (an officer obtained a search warrant for a specific address based on evidence that the defendant had engaged in unlawful elk hunting, but a court later ruled that the application "fails in two critical ways: (1) it fails to indicate that the place to be searched is [the defendant's] residence, and (2) it fails to demonstrate why evidence of the crime would be found at this location"); *United States v. Bautista*, 2012 WL 1014995 (W.D. Ky March 22, 2012) (unpublished) (an officer arrested a drug user, who told the officer that he had purchased drugs from the defendant at the defendant's residence; the officer obtained a search warrant, but the affidavit did "not indicate at any point that [the premises listed as the location to be searched] was in fact [the defendant's] residence"; the prosecution argued that "given all the circumstances . . . the inference can be made [that the location to be searched] is [the defendant's] residence," but the court ruled for the defendant because "the affidavit contains no evidence from which such an inference could be made").

The dissenting judge in *Laughton* viewed things slightly differently. While agreeing that the warrant was invalid, that judge would have applied the *Leon* good faith exception because "[t]o not link the affidavit's references to 'the home' and 'the residence' to [the defendant] and the stated address [is] an unwarranted hypertechnicality." In a similar vein is *State v. Koen*, 152 P.3d 1148 (Alaska 2007), a child pornography case in which the court ruled that although a search warrant did not expressly state that the premises to be searched was the defendant's residence, it was reasonable to infer that the premises was the defendant's residence given the repeated references in the application to evidence witnesses had seen in the defendant's home.

What brings all of this to mind? The North Carolina Court of Appeals recently issued an opinion on a somewhat similar fact pattern in *State v. Parson*.

Facts. The following are the key facts contained in the search warrant application in *Parson*:

- The defendant and an associate purchased decongestant at Wal-Mart about 15 minutes apart. Law enforcement began to surveil them. A third person picked them up. The group went to the driver's house at 59 Fie Top Road, where they unloaded items from the trunk.
- The driver then dropped the defendant off at "the burned [sic] residence and blue recreational vehicle/motor home located at 394 Low Gap Road." Later, officers began to surveil 394 Low Gap Road. They saw the defendant leave the RV, at which point they approached him, told him they believed he was cooking meth, and asked for consent to search the premises. He did not consent.
- Meanwhile, other officers went to 59 Fie Top Road and talked to the driver and the defendant's associate. The associate admitted buying decongestant, which she said she needed for her allergies. She said that she "presumed" that it was with the defendant. The driver allowed officers to walk around the property, but not to search it.
- Both the defendant and his associate had previously been blocked from buying pseudoephedrine as a result of exceeding transaction limits. Each had previously been charged with meth-related offenses, though the defendant had no convictions. The associate admitted using meth in the past.

Based on these facts, a judge issued a search warrant for 394 Low Gap Road. Officers searched the property and found a meth lab.

Procedural history. The defendant was charged with several drug offenses. He moved to suppress, contending in part that the facts did not sufficiently implicate 394 Low Gap Road. A superior court judge denied the motion and the defendant pled guilty and appealed.

Court of appeals ruling. The court of appeals reversed. As I read the court's opinion, I think it was concerned mainly with two things:

1. *Lack of evidence that 394 Low Gap Road was the defendant's home.* The court stated that "[n]othing in the affidavit provides context to where Defendant's 'home' was or that his 'home' was 394 Low Gap Road."
2. *Lack of evidence that the defendant's drug activity was taking place there, as opposed to elsewhere.* The court noted the defendant's history and other facts that tended to support the idea that the defendant was involved in meth, but found that the affidavit failed "to sufficiently connect the property located at 394 Low Gap Road with any illegal activity."

Comment. *Parson* is slightly different than most of the cases discussed above. For one thing, there is some evidence about 394 Low Gap Road in the application -- the disconnect between the facts recited in the application and the premises to be searched isn't complete. For another thing, the result might have been the same even if the application had alleged that 394 Low Gap Road *was* the defendant's home. The court might still have concluded that the nexus between the illegal activity and the premises was took weak. But given the close temporal connection between the trip to Wal-Mart and the defendant's presence at 394 Low Gap Road, and the associate's statement that she presumed that the decongestant was with the defendant, it would at least have been a closer call.