

Failure to Include Known Facts in a Search Warrant Application Can Undermine Probable Cause

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When a search warrant application fails to establish probable cause, the problem isn't normally that the applicant didn't have probable cause. It's that the applicant failed to include important facts that he or she knew. An example of the phenomenon is [State v. Lewis](#), decided this week by the court of appeals.

Hoke County deputies were investigating a string of armed robberies of dollar stores when Smithfield police contacted them about a similar robbery that had just taken place in Smithfield. The Smithfield officers stated that they had seen a man they knew as Robert Lewis fleeing the scene. A Hoke County officer then "drove to Lewis's address, 7085 Laurinburg Road in Hoke County," and saw a Kia Optima and a Nissan Titan parked there. That was significant because witnesses had reported that the robber had used a Kia Optima and a Nissan Titan in the robberies.

The officer parked and watched the house until he saw "a man matching Lewis's description walk from the house out to the mailbox and take mail out." The officer approached the man, who identified himself as Robert Lewis. The officer arrested Lewis on a warrant the Smithfield officers had obtained.

After he arrested Lewis, the officer then spoke to an occupant of the residence, who said that he was Lewis's stepfather and confirmed that Lewis lived there. He also said that Lewis owned the Kia and sometimes used the Nissan. The officer looked in the window of the Kia and saw a "BB&T money bag" in the back seat.

A Hoke County officer then applied for a search warrant for the vehicles and the residence. The application tied the defendant to the robberies and the robberies to the vehicles. As to the residence, however, the application stated only that the officers had "arrested Lewis at a residence located at 7085 Laurinburg Road." A magistrate issued the warrant and the officers executed it, finding a gun and other evidence.

The defendant moved to suppress, arguing that the warrant was not supported by probable cause. A superior court judge denied the motion and the defendant pled guilty, reserving his right to appeal the suppression issue.

The court of appeals ruled that while the application established probable cause for the search of the vehicles, it didn't establish probable cause for the search of the home. The court noted:

[T]he warrant application is missing a key fact known to law enforcement that, if included, would have made this a far easier case. Specifically, the warrant application did not describe how the officers linked Lewis to the 7085 Laurinburg Road address—for example, there is no statement in the warrant application that, after identifying Lewis as the suspect, law enforcement searched records and determined that 7085 Laurinburg Road was Lewis's current residence. The only information in the affidavit linking Lewis to 7085 Laurinburg Road is the fact that officers arrested Lewis at that location.

In other words:

[F]rom the information in the affidavit, 7085 Laurinburg Road could have been a someone else's home with no

connection to Lewis at all. That Lewis visited that location, without some indication that he may have stowed incriminating evidence there, is not enough to justify a search of the home.

Because it wasn't clear which pieces of evidence were found in the residence and which were found in the vehicles, the court of appeals remanded the case for further proceedings.

The lesson for officers is to double check warrant applications to make sure that all the key facts are included. Sometimes it is the most obvious facts that are left out, because they may seem to go without saying, or because an officer may assume that "everyone knows" those facts. One way to guard against the human tendency to skip over elementary facts is to have an officer unfamiliar with the case read the application and look for any missing facts. Of course, some agencies may have other strategies in place for avoiding errors of this kind, and officers should follow their agency policies in this respect.