

1
2
3 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
4 **FOR THE COUNTY OF LINCOLN**

5 **STATE OF OREGON,**

6 Plaintiff,

7 vs.

8 **JACK SIGLER,**

9 Defendant.

Case No.: 20CR67214

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF MOTION TO SUPPRESS
SEARCH WARRANTS**

DEFENSE #14B

10
11 **Oregon and Federal Constitution Challenges to the Warrant Searches**

12 Separate and apart from ORS 133.693, the Oregon and United States Constitutions
13 also, under certain circumstances, prohibit reliance on misleading affidavits. Under the
14 Oregon Constitution, such issues affect the determination of whether a warrant was “validly
15 obtained” for purposes of Article 1, §9. *State v. Esplin*, 314 Or. 296, 302 (1992). Validity
16 requires both that an officer subjectively believe in the truth of any statements in an affidavit,
17 and that such belief be objectively reasonable under the circumstances existing at the time of
18 the application. *Id.* 303-305. The Oregon Constitution imposes a negligence standard on
19 officers applying for search warrants.

20 The Fourth and Fourteenth Amendments to the United States Constitution also provide
21 for challenges to statements in affidavits. Under federal law, the questions are whether “a false
22 statement knowingly and intentionally, or with reckless disregard for the truth, was included by

1 the affiant in the warrant affidavit,” and whether “the allegedly false statement [was] necessary
2 to the finding of probable cause.” *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). A
3 “substantial preliminary showing” that such elements are met entitles a defendant to a hearing.
4 *Id.* Then, if the defendant can establish “perjury or reckless disregard,” the affidavit’s false
5 statements are to be set aside, and if “the affidavit’s remaining content is insufficient to
6 establish probable cause, the search warrant must be voided and fruits of the search warrant
7 excluded to the same extent as if probable cause was lacking on the face of the warrant.”
8 *Franks* at 156. Like the Oregon Constitution, the United States Constitution allows challenges
9 based on omissions as well as affirmative statements.¹

10 **State and Federal Law Prohibit Overbroad Warrants, Seizures, and Searches**

11 The Fourth Amendment to the United States Constitution secures the right of the people
12 to be secure in “their persons, houses, papers, and effects” against unreasonable searches and
13 seizures. Evidence obtained by government searches and seizures which themselves violate the
14 Fourth Amendment is subject to the exclusionary rule. *Weeks v. United States*, 232 U.S. 383
15 (1914). The Due process clause of the Fourteenth Amendment makes the exclusionary rule
16 applicable in state courts. *Mapp v. Ohio*, 367 U.S. 643 (1961). In searches conducted under the
17 authority of a warrant, the search warrant must be tailored in order to allow an officer enforcing
18

19
20
21 ¹ See, e.g., *United States v. DeLeon*, 979 F.2d 761, 764 (9th Cir 1992) (“Where, as here, a
warrant’s validity is challenged for deliberate or reckless omissions of facts that tend to
mislead, the affidavit must be considered with the omitted information included.”).

1 the warrant to seize only that which is supported by probable cause². The Fourth Amendment
2 requires a warrant supported by probable cause for law enforcement to collect information such
3 as cell-site location information from third-party service providers. *Carpenter v. United States*,
4 138 S Ct 2206 (2018).

5 Article 1, §9 of the Oregon Constitution requires a valid warrant to be supported by an
6 application that is “sufficiently particular in its description of ... the grounds for believing that
7 evidence related to the criminal investigation [is] likely to be found” in the subsequently
8 authorized search. *State v. Mansor*, 363 Or 185, 207 (2018).

9 See also ORS 133.545 and ORS 135.565³. If an affidavit is based in whole or in part
10 on hearsay, the affiant shall set forth facts bearing on any unnamed informant’s reliability and
11 shall disclose, as far as possible, the means by which the information was obtained. Hearsay is

12
13
14
15 ² See *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (“By limiting the authorization to
16 search to the specific areas and things for which there is probable cause to search, the
17 requirement ensures that the search will be carefully tailored to its justifications, and will not
take on the character of the wide-ranging exploratory searches the Framers intended to
prohibit.”)

18 ³ **133.565 Contents of search warrant.** (1) A search warrant shall be dated and shall be
19 addressed to and authorize its execution by an officer authorized by law to execute search
warrants.

(2) The warrant shall state, or describe with particularity:

20 (a) The identity of the judge issuing the warrant and the date the warrant was issued;

21 (b) The name of the person to be searched, or the location and designation of the premises
or places to be searched;

(c) The things constituting the object of the search and authorized to be seized

1 included in the affidavits in this investigation the but the affiants do not disclose as far as
2 possible the means by which the information is obtained⁴.

3 If an item is seized during a warrant search, (as several items were in this search on
4 December 6, 2020) and the item is not named in the warrant the item(s) are outside the scope of
5 the warrant authorization. If an area is searched that is not otherwise authorized or described
6 the officers cannot exploit the unauthorized searches to obtain evidence. The officers here
7 seized items that were outside the scope of the warrant and the items were not contraband or
8 otherwise seizable. *State v. Jones* 58 Or App 277 (1982).

9 The State cannot dispute the seized items were outside the scope of the warrant. The
10 State, in response to this challenge and the previous written challenges cannot establish the
11 items were otherwise seizable because Mr. Sigler consented to searching and seizing. He did
12 not. Mr. Sigler contends that the entire search was unlawful because any previous consent was
13 invalid and any additional consent otherwise obtained on December 6, 2020 is poisoned fruit
14 from prior poisonous fruit.

15 James Burke’s application for a search warrant [‘12-6’ Affidavit] requested authority to
16 search: “only the room of Jack Sigler in the unattached garage.”

17 James Burke sought authority to search for and seize the following particular items:

- 18 • Samurai Swords
- 19 • Asian Throwing Starts

20 _____
21
22 ⁴ This is further developed and argued in Defense #14C
PAGE | 4 DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS SEARCH
WARRANTS DEFENSE #14B

1 Law enforcement exceeded the scope of the warrant⁵. Twenty-one (21) line items
2 appear on the two page property evidence report for the search on December 6, 2020. Several
3 line items are comprised of multiple sub-items. The items include a computer, four flashlights,
4 jeans, men’s tennis shoes, purse, pocket knife, swords, nun-chucks, (5) Asian throwing stars,
5 (7) folding pocket knives, a calligraphy set and other items. The officers also photographed
6 items.

7 Next, the limited area authorized to be searched via the Court authorized warrant, was
8 “only the room of Jack Sigler in the unattached garage.” Jack Sigler’s room is a separate area
9 inside the garage, the sleeping quarters are divided from the rest of the garage by a doorway
10 with a curtain that provides privacy and acts as the boundary. Upon entering the main garage
11 area and before entering the bedroom, law enforcement searched the separate, non-bedroom
12 portion of the premises. The police also took photographs of this area. This search location was
13 not authorized by the warrant.

14 Abigail Dorsey and another officer do not search in places reasonably likely to reveal
15 the ‘swords and Asian throwing swords’ which are the only items they authorized to look for
16 and seize. Even accepting the room in a garage was in state of uncleanliness and disarray. The
17 video demonstrates there was no overhead light. The officers still searched areas not reasonably

18
19
20 ⁵ The affiants in subsequent affidavits do not inform the Court items were seized on
21 December 6, 2020 that were beyond the scope of the warrant.

1 likely to reveal the swords or throwing stars, and as the officers reveal and even discuss the
2 scope of authorization, they continue to search beyond the authorized areas of the warrant.

3 **C. The Warrants Here Are The Fruit of an Unreasonable Search, Unlawfully Compelled**
4 **Statements and Violations of the Right to Counsel**

5 The '12-6' affidavit omits the fact that Mr. Sigler invoked his right to counsel. The '12-
6' affidavit omits the fact that the officers continued to question Mr. Sigler long after he
6 invoked. Mr. Sigler invoked in his bedroom. Mr. Sigler invoked outside in the back driveway
7 area of his home. Law enforcement acknowledged his invocation at the scene. Mr. Sigler
invoked at the Waldport City Hall.

8 After Sigler spoke with Deputy Shinholster, Trooper Severson and Deputy Honse, he
was detained and taken to City Hall in Waldport. Sigler was mirandized and subsequently
9 spoke with myself and Detective Urbigkeit. During our conversation, Sigler was wearing
black rain pants. ['12-11' Affidavit page 3 line 33]

10 This averment creates the inference that Mr. Sigler provided statements to law
enforcement that were lawfully obtained. Moreover, the affiant references *Miranda* in a way
11 that is completely misleading to the reader.

12 Mr. Sigler invoked in the evening of December 7, 2020. All affiants omit this from
13 the magistrate's consideration.

14 During the execution and service of the '12-6' warrant, Abigail Dorsey asks Mr. Sigler
15 multiple questions. The contact begins with a question posed to Mr. Sigler:

16 'if you want to give us the rest of the stuff.. like you said that would be good..' ⁶

17
18
19
20
21 ⁶ The question is summarized from video footage, the video recordings are expected to be
admitted for the Court's review at the hearing on this matter.

1 This is a question by law enforcement. It is couched as it is taken from a previous
2 unrecorded statement and is not any indication of voluntary consent. The State may
3 characterize this statement as an invitation, an instruction, or even clarification of an earlier
4 question. No matter the characterization, the conduct violates Mr. Sigler's right to counsel and
5 is a continuation of the earlier violations.

6 Law enforcement posed several questions during the execution of the '12-6' warrant,
7 the responses are inadmissible. This sequence of exploitation and ongoing violation of Mr.
8 Sigler's right to remain silent and counsel are additional contributing factors requiring the
9 exclusion the physical evidence obtained in this investigation. The police posed additional
10 questions, some include:

- 11 (a) 'anything else?'
- 12 (b) 'anymore of these?'
- 13 (c) 'you want...get this...back to the rightful owners?'
- 14 (d) 'what's with the jeans?'
- 15 (e) 'are you on the H yet?'
- 16 (f) '[when] you last see Jon?'

17 Law enforcement then included Mr. Sigler's statements and responses from the
18 execution of the '12-6' warrant in the '12-9' Affidavit.

19 Specifically, the affiant states⁷:

20 ...Sigler told me there was additional property in his room and in the garage that
21 he stole...(p3 line 21)

22 ⁷ The underlines are added to indicate the affiant is including statements obtained from Mr.
23 Sigler.

1 ...Sigler told me where the items were and gave me consent... (p3 line 23)

2 ...I seized the following additional items pursuant to Sigler's consent: (p3 line 24-30)

3 (1) black Dell laptop 16" screen with a power cord with "Remy" label, (40)
4 \$1.00 color coins in a black USA sport bag, jewelry including (16) rings,
5 (1) necklace, (1) bracelet, cufflinks, (7) folding pocket knives, (2) silver
6 metal throwing stars, (19) assorted watches in a black Footjoy bag, (1)
nun-chucks, a coin collector book with (12) coins, (1) red Makowsky purse
with silver metal trim

7 Sigler told me that those were the shoes and pants he was wearing while he
8 committed the burglary prior to December 6, 2020 and was trying to conceal
them as he knew they would be evidence. I seized those items. (page 3 Line
35-37)

9 I know Sigler used his cell phone to take images of the property he admitted
10 to stealing from 1680 S. Crestline Drive, Waldport, Oregon. (page 10 line
10).

11 Mr. Sigler's statements and responses from the execution of the '12-6' warrant are also
12 included in the '12-11' Affidavit⁸.

13 During the execution of the search warrant, Sigler told me there was
14 additional property in his room and in the garage that he stole from the
15 residence located at 1680 S. Crestline Drive, #3, Waldport, Oregon. Sigler told
me where the items were and gave me consent to seize them.... [page 4 lines 1-
11 list previously included above]

16 Sigler told me that he burglarized Remy's apartment two times and that on the
17 second time he made two separate trips. Sigler gave me the screwdriver...[page
4 lines 14-16]

18 Sigler told me that those were the shoes and pants he was wearing while he
19 committed the burglary prior to December 6, 2020 and was trying to conceal

20
21 ⁸ The underlines are added to indicate the affiant is including statements obtained from Mr.
22 Sigler.



LINCOLN COUNTY SHERIFF'S OFFICE

225 W OLIVE ST.
NEWPORT OR 97365
541-265-4912

PROPERTY / EVIDENCE REPORT

CASE # 205-02838

LOCATION (where seized or found) 1040 S. Crestline Dr., Waldport, OR 97394		DATE / TIME 12/6/20 @ 2228
<input type="checkbox"/> owner <input checked="" type="checkbox"/> received from <input type="checkbox"/> other	NAME JACK EDWARD SIEGLER	PHONE 541 992 7177
	ADDRESS 1040 S. Crestline Dr., Waldport, OR 97394	DOB 2/19/68
<input type="checkbox"/> owner <input type="checkbox"/> received from <input type="checkbox"/> other	NAME	PHONE
	ADDRESS	DOB
VEHICLE TOWED TO		REASON

Disposition: E=Evidence F=Found SK=Safekeeping C=Contraband D=For Destruction

ITEM NUMBER	QTY	DISPO	DESCRIPTION / IDENTIFYING INFORMATION (make, model, serial#, OAN, VIN, color)
	1		Calligraphy set, BLK case, 4 stone pieces, 2 ceramic red-yellow velvet interior, 2 brushes, 13x8.5x2"
	1		DELL Laptop, 16" screen, BLK, power cord says 'Remy'
	5		5 Asian throwing stars, gold color
	1		Makowsky red purse, silver metal trim
	40		40, \$1 coins, gold color, in USA SPORT.COM blk satchel bag
	22		22 piece jewelry, 16 rings, 1 necklace, 1 bracelet, 3 misc. metal pieces, 1 cuff link in Bettordecor blk bag
	7		Folding pocket knives
	3		2 silver metal throwing stars (blades), 1, 2 set blk throwing knives - all 3 blk sheath
	1		1 Asian pattern red bag (square) 16"x16"
	1		1 gold color asian fan in purple sheath
	19		19 Assorted watches in footjoy blk bag
	4		4 small, handheld blk flashlights, under 6"
	17		Assorted swords (training? metal)
	1		Nun-chucks

RELEASED TO / RECEIVED FROM (print name) Jack E Siegler	(signature)
REPORTING DEPUTY DEP. HONISE	DATE / TIME 12/6/20 @ 2229

CONTINUATION PROPERTY REPORT

DET.	JUV.	DA	LCSO	NPD	OSP	OTHER	CASE NO. 205-02838	
ITEM NO	PROPERTY DETAIL Collector coin Book (Chinese), 12 coins							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL LRG 'YACHATS' HOODIE							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL 13" Flathead Screwdriver, wood handle							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL 30x32 blk 'George' jeans							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL 10.5 or 11 Avia mens tennis shoes, dark, wet							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL 2 socks 1 grey 1 blk							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL 1 silver spring assisted pocket knife							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release
ITEM NO	PROPERTY DETAIL							<input type="checkbox"/> Release
	Type Item	Serial No.	Brand/Make	Size/Caliber				<input type="checkbox"/> Tow Co.
	Color	Owner Applied NO.	Value	Description				<input type="checkbox"/> Prop. RM
	Other Information							<input type="checkbox"/> Release

RELEASED TO OR RECEIVED FROM:		541-992-7177	
Name Jack Sighr	Address 1040 Crestline Drive	Phone	Signature <i>[Signature]</i>
REPORTING OFFICER(S) DET. HONSE	RECEIVED PROP RM	DATE/TIME 12/6/20 @ 2229	BY 2229
		DATA ENT.	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

******* CERTIFICATE OF SERVICE *******

I hereby certify that I caused to be served the DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS SEARCH WARRANTS (DEFENSE MOTION #14B) on the following person(s), in the following manner: by OJD File & Serve, by mailing (First-Class postage prepaid), by faxing; or by electronic mail, on the date subscribed below:

Ms. Lanee Danforth
Lincoln County District Attorney’s Office
Lincoln County Courthouse
225 W. Olive Street, Suite 100
Newport, OR 97365
ldanforth@co.lincoln.or.us

U.S. POST OFFICE
/ /
 FACSIMILE
/ /
 ELECTRONIC MAIL
4/22/2022
 OJD FILE & SERVE
4/22/2022

DATED: Friday, April 22, 2022.

/s/Jennifer Fashbaugh
Jennifer Fashbaugh
Legal Assistant

CERTIFICATE OF SERVICE

STEVE LINDSEY
ATTORNEY AT LAW, P.C.
405 NW 18TH AVENUE
PORTLAND, OR 97209
P: (503) 223-4822 | F: (503) 221-1632