

IN THE CIRCUIT COURT OF PULASKI COUNTY, MISSOURI
DIVISION I

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.)
)
 CALVIN LEON CORLEY,)
)
 Defendant.)

Case No. CR501-1050FX

*Filed
10-26-04
W.C. Long
Judge*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION TO DISMISS**

On September 20, 2004 the above-captioned cause was on for jury trial before this Court. A jury was called and present in the courthouse. Prior to trial and outside the presence of the jury this Court took up Defendant's Motion to Dismiss. The Court heard testimony from Sergeant Mark Williams and Detective D. Andrew Davis both of the Phelps County Sheriff's Department. The Court was provided with two exhibits presented during the course of the hearing and with a portion of the Phelps County audit from July 6, 2001 (for the years 1999 and 2000) that contained information regarding seized property inventory procedures of the Phelps County Sheriffs Department and a portion of the Phelps County audit from September 29, 2003 (for the years 2001 and 2002) that contained information regarding Sheriff's Seized Property. After hearing the testimony and reviewing the documents presented the Court makes the following findings:

1. A search warrant was obtained and served on November 23, 2000 at the Defendant's residence located at 1349 East Highway 72, Lot No. 27 in Rolla, Missouri.
2. Detective Schrimpsheer of the Phelps County Sheriff's Department acted as "seizing officer" at the execution of the search warrant.
3. Detective Schrimpsheer was called to each location of the discovery of evidence by a searching officer as he was the only officer designated to seize items at Defendant's residence.
4. Sgt. Williams served as the "recording officer" who logged the evidence as it was seized by Detective Schrimpsheer exclusively.
5. Sgt. Williams photographed some but not all of the evidence as it was seized at Defendant's residence.
6. Detective Schrimpsheer placed the seized items into evidence bags held by Deputy

James Williams but did not seal them at Defendant's residence.

7. Detective Schrimpsheer removed the items from the scene in unsealed evidence bags and brought the unsealed bags to the Phelps County Sheriff's Department.

8. At the Phelps County Sheriff's Department, in the detective's office, Detective Schrimpsheer sealed the evidence bags while Sgt. Williams completed the inventory that was returned to the Circuit Clerk for filing with the search warrant.

9. The evidence bags contain a mark with Detective Schrimpsheer's name and DSN and a mark from the Missouri State Highway Patrol Lab. Sgt. Williams' mark does not appear on the evidence bags.

10. The officers completed the inventory and sealing of the evidence bags at approximately 3:00 a.m. on November 24, 2000.

11. Sgt. Williams was the evidence officer or evidence custodian in charge of the Phelps County Sheriff's Department's evidence room from 1997 or 1998 to 2002 a span of four to five years that contains the year within which this search warrant was executed.

12. Detective Schrimpsheer was the assistant evidence officer during the time period that the search warrant in this case was executed.

13. Sgt. Williams either placed the seized evidence in the evidence vault that night or left it in a temporary location within the detective's office and placed the seized evidence in the evidence vault the next morning.

14. Sgt. Williams completed an evidence record some time after these items were seized that indicates that he was the person that seized the evidence.

15. Detective Schrimpsheer delivered the evidence bags to the Missouri State Highway Patrol laboratory for analysis.

16. An audit of the Phelps County Sheriff's Department shows that in the years 1999 to 2003, the Phelps County Sheriff's Department was unable to account for evidence for about 730 cases including weapons and drug cases.

17. Sgt. Williams was removed from his duties as evidence custodian and replaced by Detective D. Andrew Davis on June 1, 2003.

18. Detective Davis was unable to produce five pounds of marijuana seized prior to his tenure as evidence custodian at a court proceeding in Phelps County in June of this year.

CONCLUSIONS OF LAW

19. Before a Court can allow evidence of a laboratory test and its result the Court must be satisfied that the evidence that was analyzed at the lab is the same evidence that was purportedly seized at the Defendant's residence.

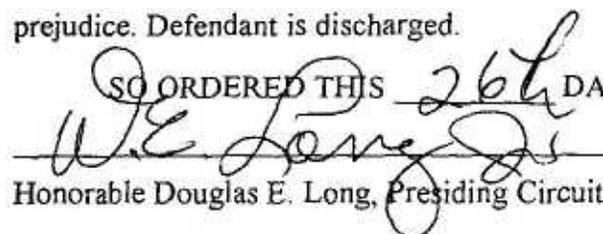
20. This is especially true when that evidence is not unique or distinguishable such as drugs. see State v. Bode, 125 S.W.3d 924 (Mo.App. 2004) quoting State v. Davenport, 924 S.W.2d 6, 10 (Mo.App. 1996).

21. The Court must be satisfied "as to the identity of the exhibits *and that the exhibits were in the same condition when tested as when they were obtained.*" State v. Dawson, 985 S.W.2d 941, 953 (Mo.App. 1999).

22. Based on the evidence presented, including the exhibits and the audit the Court is not reasonably assured that the evidence in this case was not tampered with or contaminated.

23. Further the court finds that the cocaine sought to be introduced into evidence was not disclosed to the Prosecuting attorney for approximately 45 months after it was allegedly found in the defendants vest pocket, the night before the case was set to be tried to a jury and not disclosed to defense counsel until the day of the trial. Such delay is inexcusable.

THEREFORE IT IS ORDERED, that the evidence is suppressed and this cause is dismissed with prejudice. Defendant is discharged.

SO ORDERED THIS 26th DAY OF October, 2004.

Honorable Douglas E. Long, Presiding Circuit Judge, 25th Judicial Circuit