

STATE OF INDIANA)
)SS:
COUNTY OF HANCOCK)

IN THE HANCOCK SUPERIOR COURT 2
CAUSE NO. 30D02-1708-CM-1602

STATE OF INDIANA)
)
vs.)
)
CAROLE POPE)

BRIEF IN SUPPORT OF MOTION TO SUPPRESS

Carole Pope watched in horror as two Greenfield/Hancock County Animal Management Officers and several Hancock County Sheriff Deputies unlawfully barged into her private home, rummaged through and photographed her most private and intimate effects, and seized a dozen of her dogs and four of her horses. The officers claimed to have the lawful authority to enter this citizen’s private home based upon a search warrant. However, the Fourth Amendment continued to shield Carole’s home from the prying eyes and lenses of these government agents because the basis for the warrant – Officer Ronda Jester’s search warrant affidavit – failed to satisfy the constitutionally imposed standard of alleging there was probable cause she was committing a crime.

Officer Jester’s search warrant affidavit is defective in several ways, each of which fatal to a finding of probable cause. First, Officer Jester failed to allege any unlawful conduct, a necessary condition for any finding of probable cause. Second, Officer Jester knowingly misled the magistrate by stating the existence of a fictitious county ordinance requiring the owner of more than five animals obtain a kennel license. Third, in support of and in furtherance of this knowing mistruth, Officer Jester alleged in her search warrant affidavit that Carole told her the day before that she had seven (7) dogs inside, this after Officer Jester wrote in a report dated the day before that Carole told her she had just five (5) dogs inside. Fourth, Officer Jester violated

Indiana law by including within her affidavit an uncorroborated anonymous complaint alleging Carole had fourteen (14) dogs inside. Fifth, Officer Jester knowingly omitted exculpatory facts from her affidavit, namely that Carole informed her that the cats seen outside her home, including two cats with broken legs, were not her cats, but rather were feral cats that roam the rural Hancock County lands of her and her neighbors.

Consequently, no probable cause existed for the issuance of the warrant and subsequent search of Carole's home and seizure of her property, the officers violated Carole's Fourth Amendment right against unreasonable search and seizure, and all evidence obtained must be suppressed at the trial of this matter. The officers may not avail themselves of the good faith exception to the exclusionary rule because Officer Jester knowingly misled the magistrate and no reasonable officer would rely on a search warrant affidavit so lacking indicia of probable cause. Therefore, all evidence derived from the July 11, 2017 illegal search of Carole's home must be suppressed.

STATEMENT OF FACTS

On Monday, July 10, 2017 at around 1:40 in the afternoon, Carole Pope answered the front door of her home. Officer Ronda Jester Search Warrant Affidavit, Exhibit 1. Carole's home – 6125 North 400 East – rests outside the corporate limits of the City of Greenfield, but within Hancock County. Id.; Map of Greenfield, Exhibit 2.

On the other side of the door were two (2) Greenfield/Hancock County Animal Management Officers, Ronda Jester and Heather Hamilton. Ex. 1. Officers Jester and Hamilton had received a call earlier that day that Carole had fourteen (14) dogs inside. Id. While Jester and Hamilton walked up to Carole's front door, they saw three (3) kittens and one adult cat running loose on the property. Id. When Carole opened the front door, Officer Jester told her, "we had

got a call that she had 14 dogs inside the residence, and that she had to have a kennel license to have that many on her property.” Id. Officer Jester asked Carole if she could come inside, but Carole said no. Id.

Carole informed the officers that she had five dogs inside, two of which were not hers in that she was breeding them. Officer Jester County Run Report of July 10, 2017, Exhibit 3. Carole further informed Officer Jester that two of these dogs were pregnant, one of which was in labor, and that the Officers’ presence inside the home would stress out the dog giving birth. Id. Carole told the officers that the cats on her property were not hers, but rather were feral cats that roam both her land and that of her rural Hancock County neighbors. She told the officers that two of these cats had broken legs due to being attacked, but the officers did not see these cats. Ex. 1.

Carole’s insistence in preserving her privacy and protecting the wellbeing of the pregnant female dog that was giving birth led Officer Jester to apply for a search warrant. Id. Officer Jester left Carole’s front door at 2:16p.m. and went to write a report entitled “Officer Jester 402: County Run 7/10/2017.” Ex. 3. In this report she confirmed Carole told her she had just five (5) dogs inside, two of which she did not own. Id. Officer Jester dated her report “7/10/2017” and ended with, “We then left the residence and *are applying* for a warrant.” Id. (emphasis added).

Officer Jester then drafted her search warrant affidavit wherein she testified, under oath, that Carole told her “she currently had 7 dogs inside the residence.” Ex. 1. Officer Jester testified “Per county ordinance there is a maximum of 5 animals of (sic) the property and then a kennel license would be needed.” Id. Officer Jester never testified as to whether or not Carole in fact had a kennel license. Id. Nor did Officer Jester provide a citation to this Hancock County ordinance. Id. Officer Jester testified that she had “received a complaint that the residence at

6125 N. 400 E. had 14 dogs inside the residence.” Id. Officer Jester did not provide any other testimony regarding this complaint. Id.

Officer Jester chose not to inform the magistrate that Carole told her the four cats observed outside were feral and not hers, including the two feral cats with broken legs. See Id. Officer Jester also decided against informing the magistrate that Carole informed her two of the five dogs inside were not hers. Id.; Ex. 3. Based on the foregoing, Officer Jester testified she believed she had probable cause in that “we are concerned for the welfare of the animals inside the home that may be injured as well as the animals that are being kept in the barn.” Ex. 1. Officer Jester proffered no testimony regarding the barn nor the existence or condition of any animals therein. See Ex. 1.

Officer Jester filed her search warrant affidavit the next day on July 11, 2017 at 11:00a.m. July 11, 2017 Search Warrant, Exhibit 4. A Hancock County Circuit Court Judge approved a search warrant at 2:45p.m. that same day. Id. Armed with this search warrant, Officers Jester, Hamilton, and a horde of unknown Hancock County Sherriff’s Deputies descended upon Carole’s home. Officer Amanda Dehoney’s Affidavit for Probable Cause, Exhibit 5.

Carole and her son watched in horror as several strangers with guns entered their home and rummaged through their most private and intimate effects, ransacking her living room, kitchen, bathroom, her bedroom, her son’s bedroom, her yard, and her barn, all while taking photographs and seizing all of her animals. Id. The officers seized twelve (12) dogs – (all mastiffs), sixteen (16) cats,¹ and four (4) horses from Carole’s property. Officer Jester Search Warrant List From Seizure, Exhibit 6.

¹ When speaking to Officers Jester and Hamilton on July 10, 2017, Carole informed them that the cats running around are feral and have been a problem in that they continue to run around her land and that of her neighbors. The

On August 2, 2017 the State filed an Information charging Carole with seven (7) counts of cruelty to an animal as Class A Misdemeanors. See Chronological Case Summary. The government continues to deprive Carole of her property, instead extracting from her a monthly ransom of \$2,200.00. See Agreed Order on State's Motion Pursuant to Indiana Code § 35-46-3-6. This matter is set for a pre-trial conference to commence on the 21st day of December, 2017 at 9:00a.m.

ARGUMENT

THE GOVERNMENT VIOLATES THE FOURTH AMENDMENT WHEN SEARCHING A HOME USING A WARRANT BASED ON AN AFFIDAVIT LACKING PROBABLE CAUSE BY FAILING TO ALLEGE UNLAWFUL CONDUCT AND BY CONTAINING FALSE INFORMATION.

The government must obtain a warrant based upon probable cause issued from a neutral magistrate prior to searching a citizen's home. U.S. Const. Amend. IV; Ind. Const. Art. 1 Sec. 11. Probable cause is a "practical, commonsense decision whether, given all of the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). A reviewing court must determine whether "the magistrate had a substantial basis for concluding that probable cause existed." State v. Spillers, 847 N.E.2d 949, 953 (Ind. 2006). A "substantial basis requires the reviewing court, with significant deference to the magistrate's determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause." Id.

Given that applications for a search warrant are made *ex parte*, due process requires a defendant have an opportunity to challenge the validity of the warrant. Franks v. Delaware, 438

Officers instructed Carole to set out some cat food for these feral cats, on her property, and that the Officers would return the next day to catch them for her and her neighbors. Thus, the Officers were able to seize sixteen (16) cats when they returned on July 11, 2017.

U.S. 154 (1978). The reviewing court may not consider *post hac* justifications for the search. Cassady v. State, 934 N.E.2d 1181, 1189 (Ind. Ct. App. 2010).

- A. The search warrant affidavit fails to allege probable cause because there are no allegations of unlawful conduct.

Officer Jester failed to allege Carole was engaged in any criminal activity. The Fourth Amendment requires the government allege the citizen is engaging in “criminal activity” prior to conducting a search or seizure. Pinner v. State, 74 N.E.2d 226, 230 (Ind. 2017). Indiana has codified this constitutional requirement by requiring an affiant “allege *substantially* the offense in relation” to the facts set forth within the affidavit. Ind. Code § 35-33-5-2(a)(2) (emphasis added).

In Pinner, police officers received a dispatch call stating that a taxi cab driver had called claiming a black male had dropped a handgun when exiting the cab and that the driver felt he was going to be robbed and was afraid. 74 N.E.2d at 228. The cab driver made no claim he was actually robbed or ever threatened with the gun. Id. The officers arrived on scene at the Studio Movie Grill and located Pinner, a man matching the description given. Id. The officers surrounded Pinner as he sat at a bench, asked if he had a weapon, and ordered him to stand and keep his hands up. Id. Upon doing so, the officers saw the butt of a gun in his pocket, leading him to be charged with carrying a handgun without a license. Id. Pinner filed a motion to suppress, arguing his seizure violated the Fourth Amendment because there was no allegation of criminal activity. Id. The trial court denied the motion. Id.

The Indiana Supreme Court reversed, holding the taxi cab driver made “no assertion of illegality.” Id. at. 232. The Court reasoned that a complaint of a man possessing a gun was not an allegation of illegality in that it is not unlawful to possess a gun in Indiana. Id. The Court

reasoned it is only unlawful to carry a handgun without a license and “the officers had no reason to suspect Pinner did not have a valid license to carry the handgun.” Id.

Just as the taxi cab driver failed to allege Pinner was engaged in criminal conduct, so too did the anonymous caller here fail to allege Carole was engaged in criminal conduct. The anonymous caller merely stated that Carole had 14 dogs on her property – perfectly legal conduct not prohibited by any law or county ordinance. Moreover, just as the officers in Pinner had no reason to believe Pinner lacked a concealed carry license, here Officer Jester had no reason to believe Carole lacked a kennel license. Not a scintilla of evidence exists in Officer Jester’s search warrant affidavit regarding the existence of Carole’s kennel license. In short, it is not the conduct of carrying a handgun or possessing 14 dogs that is illegal, but rather the lack of possessing the required license. As the Pinner Court held, simply alleging the former is insufficient to constitute criminal conduct. 74 N.E.3d at 232.

Officer Jester’s failure to allege illegal conduct defeats any finding of probable cause that Carole was engaged in criminal activity, therefore no probable cause existed for the warrant and all evidence obtained therefrom must be suppressed.

B. An affiant’s knowingly or recklessly made false statements must be extracted from the affidavit and cannot support a finding of probable cause.

A court may only issue a warrant if based upon probable cause which is supported by an oath or affirmation. U.S. Const. Amend. IV; Ind. Const. Art. 1 § 11; Ind. Code § 35-33-5-1. If the defendant shows, by a preponderance of the evidence, that the affiant included in his warrant affidavit “a false statement knowingly or intentionally, or with a reckless disregard for the truth,” the reviewing court must set aside such statements and determine if the remaining content is sufficient to establish probable cause. Stephenson v. State, 796 N.E.2d 811, 815 (Ind. Ct. App. 2003); Jaggers v. State, 687 N.E.2d 180 (Ind. 1997). If the remaining content is insufficient to

establish probable cause, “the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.”

Franks, 438 U.S. at 155-56.

In Stephenson, an informant told a sheriff deputy that he – the informant – had purchased methamphetamine from Stephenson at Stephenson’s home. 796 N.E.2d at 813. The deputy drafted a probable cause affidavit, obtained a search warrant, and discovered methamphetamine in Stephenson’s home. Id. Stephenson moved to suppress, arguing that the deputy had misled the magistrate in his affidavit by claiming he had personal knowledge of the drug transaction. Id. The trial court denied the motion and he was found guilty. Id.

The Stephenson Court reversed, holding the warrant was not supported by probable cause given the deputy had misled the magistrate in his warrant affidavit. Id. at 816-17. The Court began by reviewing the deputy’s affidavit wherein he swore he had “personal knowledge” of Stephenson selling methamphetamine to the informant and that he observed “methamphetamine and implements for manufacturing meth” within Stephenson’s home. Id. at 815. The court then reviewed the deputy’s testimony at the suppression hearing – where he admitted to learning all of this from the informant – and held “in light of Deputy Jones’s testimony, it is obvious that none of this was true.” Id. at 816.

Even though the court found no evidence that the deputy knowingly or intentionally made such false statements, it nevertheless held “his testimony clearly evidences a reckless disregard for the truth,” therefore this information was excised from the affidavit leaving insufficient facts to support probable cause. Id. The court concluded by requiring suppression of the evidence, holding that the deputy’s misleading of the magistrate prohibited the good faith exception from applying. Id. at 816-17.

Just as the deputy in Stephenson misled the magistrate by claiming to have personally seen the drug transaction, Officer Jester misled the magistrate by claiming Carol told her she had seven dogs inside when she really said five and by creating a fictitious Hancock County ordinance.

Number of Dogs Inside

In her July 10, 2017 “County Run” report, Officer Jester stated,

“She told us that she had 5 dogs but two of them were not hers she is breeding them.”

Ex. 3. Officer Jester concluded this report by stating, “We then left the residence and *are applying* for a search warrant.” Id. (emphasis added).

Conversely, in her search warrant affidavit submitted the next day on July 11, 2017, Officer Jester testified, under oath:

“Ms. Pope also stated that she currently had 7 dogs inside the residence.”

Ex. 1.

Thus, Officer Jester changed the number of animals that Carole had told her she had, increasing the number from the original 5 to the fabricated 7. Officer Jester knowingly made this fabrication in that she alleged the aforementioned fictitious county ordinance required a kennel license if the owner had *more* than five dogs. Ex.1,3. The reason for the change is painfully obvious when looking at Officer Jester’s July 10, 2017 County Run Report:

“She told us that she had 5 dogs but two of them were not hers she is breeding them. *I then told her it did not matter she could not have more than 5 animals on the property without a kennel license.*”

Ex. 3. (emphasis added). Carol having just five dogs was not enough to violate Officer Jester's fictitious ordinance. She needed to add two more dogs to clear the more than five threshold, which she did by knowingly adding two more dogs out of thin air.

Fictitious County Ordinance

Officer Jester testified in her search warrant affidavit that,

“. . . she had to have a kennel license to have that many [14 dogs] on her property.”

“Per county ordinance there is a maximum of 5 animals of the property and then a kennel license would be needed.”

Ex. 1. Officer Jester failed to include the citation to the Hancock County ordinance she was referencing. This is because no such county ordinance exists. Officer Jester knowingly misled the magistrate by creating a fictitious county ordinance.

Therefore, Officer Jester's knowingly false statement that Carole told her she had 7 dogs inside must be excised. So too must her knowingly false statement alleging the existence of a fictitious county ordinance. The remaining facts are insufficient to constitute probable cause.

C. Indiana law forbids an affiant from testifying as to an anonymous hearsay statement within a search warrant affidavit.

Officer Jester testified in her search warrant affidavit that on July 10, 2017 she “received a complaint that the resident at 6125 N. 400E had 14 dogs inside the residence.” Ex. 1. Officer Jester provided no additional information about this anonymous call. When based on hearsay, the affidavit must either (1) “contain reliable information establishing the credibility of the source of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished,” or (2) “contain information that establishes that the totality of the circumstances corroborates the hearsay.” McCollum v. State, 63 N.E.3d 5 at 10 (Ind. Ct. App. 2016) (citing Ind. Code § 35-33-5-2(b)).

Here, Officer Jester failed to provide the magistrate with any information regarding the hearsay declarant's credibility. Likewise, Officer Jester failed to provide the magistrate with any information setting forth a factual basis for the hearsay declarant's allegation.

Moreover, Officer Jester failed to provide information that would corroborate the hearsay based on a totality of the circumstances. The hearsay declarant claimed Carole had 14 dogs. When Officer Jester spoke with Carole on July 10, 2017, Carole informed her that she had just five dogs. Ex. 3. Having five dogs fails to corroborate the anonymous hearsay allegation of having 14 dogs.

Therefore, Officer Jester's inclusion of the anonymous uncorroborated hearsay statement within her search warrant affidavit violates Ind. Code § 35-33-5-2(b) and must be stricken from her affidavit. See also Jagers, 687 N.E.2d at 182 (citing Gates and identical requirements imposed by the Fourth Amendment on the admission of hearsay statements in search warrant affidavits.)

D. Recklessly omitted material facts must be inserted into the search warrant affidavit to determine if probable cause actually existed.

“A probable cause affidavit must include all material facts known to law enforcement, which includes facts that cast doubt on the existence of probable cause.” Gerth v. State, 51 N.E.3d 368, 374 (Ind. Ct. App. 2016). A warrant is invalid if (1) such material facts were omitted from the affidavit with the intent to make the affidavit misleading or with a reckless disregard of whether it is misleading, and (2) if the affidavit is supplemented with the omitted information, there would be insufficient facts to establish probable cause. Id. A material fact is recklessly omitted if “any reasonable person would have known that this was the kind of thing the judge would wish to know.” Id.

In Gerth, an officer received information from a confidential informant that Gerth was selling marijuana from his home. Id. at 370-71. Shortly thereafter the informant was “deactivated” because he failed to complete all the obligations required before his case was adjudicated. Id. at 371. The officer took no action on the tip until a month later when he received a call from another officer who relayed an anonymous tip that Gerth was dealing marijuana. Id. Soon thereafter the officer applied for and obtained a search warrant for Gerth’s home based upon the two informant tips. Id. The police executed the warrant and discovered marijuana leading to Gerth’s arrest and ultimate conviction despite his motion to suppress. Id.

The Gerth Court reversed, holding that the officer failed to establish probable cause in his affidavit given he did not present specific facts to substantiate either informant’s credibility. Id. at 373-74. More importantly, however, the Court noted that the officer omitted the “highly material” fact that the informant he relied upon had been deactivated. Id. at 374. The Court reasoned the officer should have included this information – even though it cast doubt on a probable cause finding – given that “the best course for police to follow is to include any information that could conceivably affect a probable cause determination.” Id.

The Court held that any reasonable person would have known that a judge would want to know the informant was deactivated after providing the tip and that the police ceased their investigation of Gerth thereafter. Id. at 375. The Court held this information “directly impacts” the assessment of the informant’s credibility that was supported only by a “bare-bones” recitation that he had provided accurate information in the past. Id. The Court concluded by holding the good faith exception did not apply given the officer recklessly omitted such material facts from his affidavit. Id. at 375-76.

Like the Officer in Gerth who recklessly omitted the material fact that the informant had been deactivated, Officer Jester reckless omitted the highly material fact that Carole told Officer Jester on July 10, 2017 that the cats seen outside her home – including the two cats with broken legs - were not hers but were feral cats that roam her rural Hancock County land and that of her neighbors.

Any reasonable person would have known that this was the type of information that a judge would want to know when determining whether probable cause existed. The question of how many animals Carole owned was central to the allegation that she was engaging in unlawful conduct by apparently not having the fictitious required kennel license. By omitting Carole’s statement that the three kittens and one cat seen outside, along with the two cats with broken legs, were feral and not hers, Officer Jester was able to artificially inflate the number of animals on Carole’s property:

“three kittens and one adult cat running loose on the property”	=	4
“. . she also had 2 cats that had broken legs due to being attacked”	=	2
“Ms. Pope also stated that she currently had 7 dogs inside . . . “	=	7
	Total:	13

“That would be a total of 13 animals at the residence.”

Ex. 1.

It is no coincidence that Officer Jester’s knowing omission of these material facts and knowing artificial inflation of Carol’s statement of having five dogs to seven permitted Officer Jester to reach the number 13 and, hence, get extremely close to the number alleged in the anonymous uncorroborated hearsay statement. Officer Jester knowingly misled the magistrate in an attempt to corroborate that anonymous hearsay and therefore justify the existence of probable

cause. These highly exculpatory material facts must be inserted into the search warrant affidavit and therefore further reveals the total and utter absence of any facts that would constitute a substantial basis for a finding of probable cause.

- E. The good faith exception is not available when the officer knowingly misleads the magistrate and the search warrant affidavit is so lacking of indicia of probable cause.

The good faith exception cannot save the government from its unlawful conduct because Officer Jester knowingly misled the magistrate and no reasonable officer would rely upon an affidavit so lacking of indicia of probable cause. Evidence seized in violation of the Fourth Amendment must be suppressed at trial. Jaggers, 687 N.E.2d at 186. The exclusionary rule does not apply, however, if the officers were relying in objective good faith upon a warrant. Id. at 184 (citing United States v. Leon, 468 U.S. 897 (1984)).

This “good faith” exception to the exclusionary rule does not apply when (1) an affiant misleads the magistrate by including false information she knew was false or included with reckless disregard for the truth; (2) the magistrate wholly abandons his judicial role by acting as an adjunct of the police in rubber-stamping the warrant; (3) the affidavit is so lacking of indicia of probable cause that a reasonable officer could not objectively rely upon it; (4) the warrant is facially deficient, i.e. failing to particularly describe the place to be searched. Leon, 468 U.S. at 923.

In Jaggers, an Indiana state trooper received an anonymous call claiming Jaggers was cultivating and trafficking in marijuana at his house. 687 N.E.2d at 181. The caller claimed to have personally seen marijuana in and around Jaggers’ home and that Jaggers was growing marijuana on two plots of land away from his house. Id. The caller also described Jaggers’ home and the location of the off-site plots of marijuana. Id. The officer then went to Jaggers’ home

which matched the description given and was able to locate the off-site plots which in fact had marijuana growing in them. Id. Both plots were off public roads and easily accessible to the public, and both were between two to six miles from Jaggers' home. Id. The officer testified to these facts at a probable cause hearing, but told the magistrate that the off-site plots were "near" Jaggers' home rather than confessing that they were at minimum two miles away. Id. at. 185. The trial court issued the warrant, Jaggers was arrested, tried, and convicted of drug trafficking after the trial court denied his motion to suppress. Id.

The Indiana Supreme Court reversed, holding that the good faith exception to the exclusionary rule did not apply because the officer misled the magistrate and there was no substantial basis for a finding of probable cause. Id. at. 185-86. The Court found that the officer misled the magistrate regarding the proximity between Jaggers' home and the off-site marijuana plots. Id. at 185. The Court reasoned that while the officer's statement that the off-site marijuana was "near" Jaggers' home may have been "an innocent mischaracterization, this representation was critical when viewed in the factual context placing the plots 'near' Jaggers' residence implied a link between Jaggers and the plots that was not supported by the evidence." Id. The court continued that "'this, in turn, implied involvement by Jaggers in marijuana trafficking that was otherwise not reasonably inferable from the officer's testimony.'" Id. The Court held "our cases have stressed the importance of accurately presenting all relevant information to the magistrate." Id.

The Court also held that the information on which the warrant was based was "so lacking in indicia of probable cause that no well-trained officer would reasonably have relied on the warrant." Id. The Court reasoned that the anonymous tip should not have been included in that it was hearsay in which the declarant was neither shown to be credible nor was the information

relayed corroborated, all of which in violation of the warrant statute, Ind. Code § 35-33-5-2, and the requirements imposed on hearsay within a probable cause affidavit imposed by the Fourth Amendment. Id.

Just as the officer in Jaggers misled the magistrate by claiming the marijuana plots were “near” the suspect’s home in order to link him to the unlawful conduct of trafficking in marijuana, Officer Jester misled the magistrate by claiming Carole told her she had seven dogs inside when Carole actually told her she had just five, therefore attempting to link Carole to the alleged unlawful conduct of needing a kennel license. And just as the government in Jaggers was prevented from invoking the good faith exception, so too is the government here. See e.g. Stephenson, 796 N.E.2d at 816-17 (holding good faith exception inapplicable due to officer misleading the magistrate in probable cause affidavit); Gerth, 51 N.E.3d at 375-76 (holding good faith exception inapplicable due to officer recklessly omitting critical material facts in probable cause affidavit).

Not only did Officer Jester mislead the magistrate as to the number of dogs inside, she also knowingly misled the magistrate on several other critical material facts:

<u>Officer Jester’s Claim</u>	<u>Reality</u>
▪ Carole told her <i>seven</i> dogs were inside. Ex. 1	Carole told her <i>five</i> dogs were inside. Ex. 3.
▪ A Hancock County ordinance requires anyone owning more than five animals to obtain a kennel license. Ex. 1.	No such ordinance exists.
▪ Received a call that Carole had 14 dogs inside	Prohibited from being included in search warrant affidavit pursuant to Ind. Code Ind. Code § 35-33-5-2. ²

² “Police officers are reasonably charged with knowing the [warrant] statute’s basic requirements. . .” Jaggers, 687 N.E.2d at 186.

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|---|---|
| <ul style="list-style-type: none"> ▪ Saw three kittens and one adult cat running loose on the property. Ex. 1. | <p>Carole told her these were not her cats, that they were feral cats that run around her land and her neighbors' land.</p> |
| <ul style="list-style-type: none"> ▪ Carole told her she had two cats with broken legs due to being attacked. Ex. 1. | <p>Carole told her these two cats were not hers, they were the feral cats that run around her land and her neighbors' land.</p> |

As in Jaggers, the false statements must be stricken from the affidavit, therefore making the remaining information in the affidavit “so lacking in indicia of probable cause that no well-trained officer would reasonably have relied on the warrant.” Id. at. 185.

Here, after excising the false statements, and including the omitted exculpatory facts, Gerth, 51 N.E.3d at 374, those remaining facts that must be used to support a substantial basis for a finding of probable cause are:

- i. Officers saw three kittens and one adult cat running loose on Carole’s property;
- ii. Carole informed the officers the cats outside were not hers, but were feral cats;
- iii. Carole informed the officers that two feral cats had broken legs after being attacked;
- iv. Officers did not see these two cats with broken legs;
- v. Carole informed the officers that she had five dogs inside;
- vi. Carole informed the offices that two of those five dogs were pregnant and one was in labor and it would stress the dogs out if the officers came inside;
- vii. Officer Jester threatened to come back with a warrant if Carole insisted on not letting the officers into her home;
- viii. Carole refused to let the officers into her home;
- ix. Officer Jester was “concerned for the welfare of the animals inside the home that may be injured as well as the animals that are being kept in the barn.” Ex. 1.

No reasonable officer would objectively believe there was “a fair probability that contraband or evidence of a crime” would be found inside Carole’s home – let alone her barn –

based off this information. It is not unlawful for a rural Hancock County homeowner to have feral cats – even injured ones - running through her property. It is not unlawful to have five (5) dogs inside a home – let alone even seven (7). It is not unlawful to have two pregnant dogs inside a home. It is not unlawful to have a pregnant dog in labor inside a home. It is not unlawful to demand the government adhere to the Fourth Amendment of the United States Constitution by legally obtaining a warrant before allowing government agents to rummage through a citizen’s private home. All of the legally-admissible facts considered, no well-trained officer would have relied upon the warrant, therefore the good faith exception to the exclusionary rule is inapplicable and all evidence seized from the unconstitutional search must be suppressed.

CONCLUSION

Carole Pope respectfully requests the Court issue an Order suppressing all evidence obtained from the unlawful search and seizure of her home and property on July 11, 2017.

Respectfully Submitted:

/s/ I. Marshall Pinkus
Attorney No. 5750-49
Counsel for Defendant Carole Pope

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the following by filing the same with the IEFS on the date of filing:

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