

**State of Oregon v. Henderson, 142 P.3d 58 (2006)**

Discussion Questions

- 1) A search warrant is valid only if it is supported by probable cause. There is probable cause if a reasonable person believes that the seizable thing will be found in the location described in the affidavit.
  - a. What is probable cause?
  - b. How do courts determine what a reasonable person would think?
  - c. Is this an objective or subjective standard?
  - d. Why do we have a reasonableness standard of determining probable cause? Are there any problems with this standard? Are there any other standards we can use?
- 2) When there are doubtful or marginal cases, the courts resolve them in favor of the preference for valid search warrants. Is this favoritism warranted? Can you think of any reasons why courts make this presumption? Any reasons why courts should not make this presumption?
- 3) Another requirement for a warrant to be valid is that it be presented to a neutral or impartial magistrate (judge). What are the reasons for this requirement?
- 4) Before issuing a warrant, the magistrate requires to see an affidavit (a statement of facts) that states the premises to be searched with specificity as well as the supporting facts. Why do magistrates require specificity in affidavits?
- 5) Most search warrants describe the address of the place to be searched and list numerous structures in or around the house that will be searched as well. However, this area is generally limited to the curtilage of the home. How would you define the curtilage of the home? Does this geographical limitation make sense?
- 6) The defendant was convicted of two counts of endangering the welfare of a minor based on the fact that the defendant kept illegal drugs in the residence where she lived with her minor children. What other facts, if any, would you want to know before concluding that the minors' welfare as endangered?
- 7) What are the family policy reasons for having laws that protect minors? Do these laws conflict with family privacy?
- 8) Would you rule differently if you were the court?
- 9) After reading the case, please answer the following questions:
  - a. What was the court's holding?
  - b. On what response did the court base its decision?
  - c. If you were the court what would your ruling and your reasoning be?

d. What arguments did the defendant make? Would you make any other arguments?

### Facts

- Detective Robert Carpenter of the Roseburg Police Department submitted an affidavit requesting a warrant to search the defendant's home. The affidavit described the premises that Carpenter wished to search with specificity, naming them by address and including cars, soil, and other properties within the curtilage of the defendant's home.
- Carpenter explained in his affidavit that he had been investigating the theft of two purses containing two diamond rings. Witnesses tipped off Carpenter to a woman named McCorquodale, who, at the time of the theft in Roseburg, had been attempting to sell rings just like the ones that were stolen.
- Carpenter located McCorquodale and she admitted to having stolen the rings and subsequently selling them to the defendant in payment for methamphetamine debt. McCorquodale showed Carpenter the house of the defendant.
- Carpenter verified with the police that the defendant indeed lived at that residence. Carpenter also verified with the DMV the license plate of the vehicle in the driveway, which belonged to defendant's boyfriend. McCorquodale also confirmed this fact.
- The affidavit also described Carpenter's education, his professional training and his experience investigating thefts. In Carpenter's experience, suspects generally hide stolen property in their residence, cars, soil around their house, or on their person.
- The magistrate issued a search warrant.
- Carpenter and several other police officers executed the warrant and the search revealed glass pipes for smoking marijuana and methamphetamine. They also found the diamond rings and methamphetamines.

### Issue

Did the affidavit present enough facts to establish probable cause?

### Trial Court's Decision

The trial court convicted the defendant of one count of possession of illegal drugs and two counts of endangering the welfare of a minor.

## How did the Case Reach the Oregon Supreme Court?

Defendant Henderson appealed from the trial court's decision to the Oregon Court of Appeals. The Oregon Court of Appeals reversed and held that the warrant was invalid because the evidence in the supporting affidavit was insufficient to allow the magistrate to find probable cause to issue the warrant. The Court of Appeals reasoned that the affidavit had listed myriad and diverse locations where the rings might be found and, in doing so, had diffused the probability that the rings might be in any of those locations. The State of Oregon petitioned for review to the Oregon Supreme Court. The Oregon Supreme Court granted the petition and reversed the decision of the Oregon Court of Appeals.

## Arguments

The defendant argued that Carpenter's affidavit has not established probable cause because it had provided insufficient information from which a judge could conclude that the defendant had placed the rings at her residence, or that the rings were still there three weeks after the defendant had brought them from McCorquodale.

The State of Oregon argued that the affidavit had established probable cause that the rings were in the defendant's home even three weeks after the purchase from McCorquodale.

## Who Won?

State of Oregon won. The Oregon Supreme Court found that the magistrate's issuance of the warrant was proper and that the Circuit Court had properly denied the defendant's motion to suppress the evidence obtained pursuant to the warrant.

## The Court's Reasoning

**General Rules:** A search warrant shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that the objects of the search are in the places, or in the possession of the individuals to be searched. ORS 133.545(4)

A judge reviewing the application for a warrant and the affidavit shall issue the search warrant if there is probable cause to believe that the search will discover things specified in the application.

Probable cause exists when the facts set out in the warrant lead a reasonable person to believe that seizable things will probably be found in the location to be searched.

There are thus four requirements for a valid search warrant:

1. Probable cause
2. Supported by oath
3. Stating with particularity things to be seized and places/persons to be searched
4. Impartial judge/magistrate must review the application for warrant and affidavit

Doubtful or marginal cases are resolved in favor of the preference for warrants.

**Application to our facts:** The evidence before the magistrate supported the conclusion that there was probable cause to search the defendant's residence. This is because:

1. Carpenter had expertise in the area
2. Carpenter had independently verified the information he obtained from McCorquodale.
3. Rings are non-perishable and might be kept around for longer than three weeks to increase their value with time or for personal use.

Having determined that there was probable cause, the rest of the requirements for a valid search warrant were met:

1. Carpenter took an oath
2. The affidavit stated with particularity the place to be searched by giving the address and listing potential structures within the curtilage of the property that would need to be searched
3. An impartial judge reviewed the affidavit.

### Application

This case discusses what it takes to establish probable cause in order to obtain a search warrant. It emphasizes the existence of probable cause in the eyes of a reasonable person – an objective

standard. The case also discusses the particularity element of search warrants. This element requires that places, persons and things to be searched must be described with specificity in the affidavit. This case stands for the rule that stating the address of the defendant and listing potential structures within the curtilage of the home is sufficient specificity. However, it must be noted that this inquiry is a highly fact-specific inquiry that must be undertaken with full consideration of the totality of the circumstances.