

STATE OF INDIANA
COUNTY OF WARRICK

WARRICK CIRCUIT COURT
CAUSE NO.87C01-0602-FB-020

STATE OF INDIANA

V.

AARON J. VAUGHN

FILED

MAR 06 2006

Sharon Weichert
CLERK WARRICK CIRCUIT AND SUPERIOR COURTS

ORDER GRANTING MOTION TO SUPPRESS
(MARCH 6, 2006)

The Defendant has challenged two search warrants issued by Vanderburgh Superior Court Judge Pigman and in doing so has asked this Court to suppress evidence seized as a result of the execution of those warrants.

Extensive research by this Court results in the following standards to be applied to a review of those warrants.

1. Provisions of the state Constitution prohibiting unreasonable searches must be liberally construed to protect our citizens from unreasonable police activity in private areas of their lives.
2. In deciding to issue a search warrant, the task of the issuing magistrate is simply to make a practical commonsense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. The officer seeking the search warrant must explain what he knows and how he knows it.
3. In reviewing the issuance of a search warrant, the duty of the reviewing court is to determine whether the magistrate (judge) had a substantial basis for concluding that probable cause existed.
4. In reviewing decisions of the magistrate (judge), the reviewing court considers only the evidence presented to the issuing magistrate and not post hoc justifications for the search.
5. If the reviewing court finds that any of the probable cause information presented in the affidavit is either unreliable or illegally obtained, that information must be excluded and the sufficiency of the affidavit be evaluated in light of the remaining information.

This court must now applies these rules to the facts as presented to this court.

The affidavits in both warrants make numerous references to "daily surveillance" of the defendant and to the defendant being "observed". What Judge Pigman did not know and what this court does know from suppression hearing is that the surveillance and observation of the defendant was done by the use of a GPS

tracking device placed on his vehicle without his consent or knowledge and without authority of a warrant issued by a magistrate or judge. Such truthful information was apparently withheld from Judge Pigman and the State never offered an explanation at any hearing as to why the issuing judge was not told the truth. The requesting officers may have explained what they knew but failed to explain how they knew it.

The surveillance and observation information is clearly critical to the finding of probable cause. With that information excised from the warrants, there is not sufficient probable cause remaining upon which an issuing judge could properly rely in issuing warrants to search the defendant's residence and car.

This court must then exam the allegations of the defendant that the surveillance and observation information must be excluded from the probable cause.

IC 35-33-5-2(b)(1) provides that when based on hearsay, the affidavit must contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished.

In the absence of any evidence by the defendant to the contrary, this court must conclude that the police officers named in the affidavit are credible and the affiant is not stating from first hand knowledge but from knowledge related by those officers which makes that information hearsay. By using hearsay, the affiant must also establish the factual basis for the information furnished. The affiant never mentions the use of a GPS tracking device. Why this not stated in the affidavit? No explanation was ever offered by the State for the exclusion of this critical fact. Did the affiant not want the issuing judge to know the truth?

This court finds that failure to state that a GPS tracking device was used to obtain the surveillance and observation information is a fatal flaw in that the affidavit thus fails to establish a factual basis for the hearsay information. The court therefore must exclude any information of surveillance and observation of the defendant by the GPS device from the probable cause affidavit and without that information, there remains insufficient probable cause to issue the warrant.

The defendant has also raised the question of the whether the secret placement of a GPS device on the car of the defendant is a violation of the Indiana Constitution.

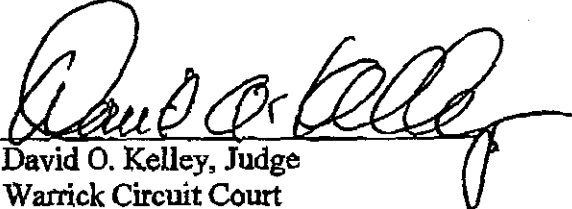
On this issue, Judge Aylsworth had previously determined that the police must at least have a reasonable suspicion of criminal activity to justify placement of the GPS device and determined that an additional hearing should be held to hear evidence of reasonable suspicion. This court conducted that hearing on February 22, 2006 and entered an Order Granting Motion To Suppress, finding that based on the evidence presented at the February 2, 2006 hearing, this court could not find that the officer of the Evansville Police Department that made the decision to

place the GPS device on the car of the defendant had a reasonable suspicion of the defendant's criminal activity.

The State has filed a Motion to Correct Errors with respect to that decision and a Request to reopen the hearing to present more evidence. This court will now deny the Motion to Correct Errors and also deny the request to reopen the hearing of February 22, 2006. The State had a second opportunity to present evidence of reasonable suspicion and failed to do so. The State does not get a third opportunity.

This courts position has not changed from the Order of February 22, 2006 and therefore finds that the surveillance and observation information included in the probable cause affidavits must be excluded on Constitutional grounds as previously stated in Judge Aylsworth's Order of February 14, 2006 and this court's Order of February 22, 2006.

For all the reasons set forth above, the court does now grant the Motion to Suppress the search warrants and orders that any evidence obtained from those warrants be excluded from evidence in trial of this cause.



David O. Kelley, Judge
Warrick Circuit Court

STATE OF INDIANA)
) SS:
COUNTY OF WARRICK)

IN THE WARRICK SUPERIOR COURT
CAUSE NUMBER: 87D02-0601-FD-014

STATE OF INDIANA

AMENDED INFORMATION FOR:

VS

Intimidation
I.C. 35-45-2-1(a)(2)(b)(1)(A)
a Class D Felony

AARON J. VAUGHN

The undersigned, being first duly sworn upon his oath, deposes and says that on or about January 1, 2006 in Warrick County, State of Indiana, Aaron J. Vaughn did communicate to David Morris and/or Dee A. Long a threat, to wit: threatening the slicing of the throats of David Morris and/or Dee A. Long when released from incarceration with the intent that said other person or persons be placed in fear for a prior lawful act to wit: the moving of an inmate and/or or maintaining of order and safety in the Warrick County Security Center, contrary to the form of the statutes in such cases made and provided by I.C. I.C. 35-45-2-1(a)(2)(b)(1)(A) and against the peace and dignity of the State of Indiana.

I affirm under the penalties of perjury that the foregoing representations are true to the best of my knowledge and belief.

T Neff 87-11

Todd Neff,
Warrick County Sheriff's Office

APPROVED BY ME:

William Bruner

William Bruner,
Deputy Prosecuting Attorney for the
Second Judicial Circuit of Indiana
Atty. No. 2949-87

WITNESSES:

Todd Neff
Nathaniel L. Aldridge
Dee A. Long
David Morris

FILED

FEB 10 2006

SHANNON WEISHEIT
CLERK WARRICK CIRCUIT AND SUPERIOR COURTS

**CHRONOLOGICAL CASE SUMMARY
CRIMINAL, WARRICK SUPERIOR COURT NO. 2**

FOR CAUSE NO: 87D02-0601-FD-014

STATE VS VAUGHN

THE HONORABLE ROBERT R AYLSWORTH

ACTION: CLASS D FELONY

DATE FILED: 01/23/2006

ORIG FILE DATE: 01/23/2006

**CT 1: INTIMIDATION
35-45-2-1(a)(1)**

Class D Felony

ENTRY/FEE BOOK:		PAGE: 84	INTIMIDATION
BOOK:	0	PAGE: 0	
BOOK:	0	PAGE: 0	

ATTORNEYS		PARTIES
TAC-PA	TODD CORNE PROSECUTING ATTORNEY ONE COUNTY SQUARE, STE. 180 BOONVILLE IN 47601 812-897-6199	PLAINTIFF STATE OF INDIANA
		DEFENDANT AARON J VAUGHN WALTZ MOTEL 2508 N. FARES AVENUE EVANSVILLE IN 47710

CHRONOLOGICAL SUMMARY OF FILINGS AND PROCEEDINGS

01/23/2006 Notice: N RJO: N
Information and Appearance filed;

01/25/2006 Notice: N RJO: N
State by Jo Ann Jacob Krantz presents affidavit of Todd Neff, Warrick Co. Sheriff's Department for determination of probable cause. (rra/as)

02/02/2006 Notice: N RJO: N
State's motion to amend information filed. Proposed order submitted. (rra:db)

02/02/2006 Notice: N RJO: N
Court, having examined the same now finds that probable cause exists for the filing of the information and the arrest of the defendant. Court orders warrant issued for the arrest of Aaron J. Vaughn. Court sets bond in the amount of \$3,000.00 surety or \$300.00 cash. Clerk is directed to issue warrant for Aaron J. Vaughn. Order accordingly. (rra/as)

02/02/2006 Notice: N RJO: N
Court enters order granting State's motion to amend information. Order accordingly. (rra/as)

**CHRONOLOGICAL CASE SUMMARY
CRIMINAL, WARRICK SUPERIOR COURT NO. 2**

**FOR CAUSE NO: 87D02-0601-FD-014
STATE VS VAUGHN
THE HONORABLE ROBERT R AYLSWORTH**

ACTION: CLASS D FELONY

**DATE FILED: 01/23/2006
ORIG FILE DATE: 01/23/2006**

02/03/2006 Notice: N

RJO: N

Clerk issues bench warrant. ts
Return of warrant, arrested 2/6/06. kh

02/07/2006 Notice: N

RJO: N

Court confirms defendant has been arrested, Court assigns initial hearing for 2-17-06 at 8:30 a.m. Court provides notice to State and defendant at Warrick Co. Security Center. (rra/as)

02/10/2006 Notice: N

RJO: N

Amended information filed by State. (rra:db)

02/17/2006 Notice: N

PAUP

RJO: N

State appears by J. William Bruner. Defendant appears in person and in the custody of the Warrick County Sheriff's Department, this being the day and time set for initial hearing. Defendant acknowledges receiving a copy of the charges. Court advises the defendant as to the nature of the charge, his rights regarding the same, and the possible fines and sentences. Defendant requests appointment of counsel. Court, based upon defendant's current financial situation, finds he is unable to retain counsel on his own and appoints C. Richard Martin as counsel, noting that Mr. Martin currently represents the defendant in a Circuit Court cause. Court assigns this matter for attorney progress on Friday, March 17, 2006 at 9:00 a.m. Defendant requests copies of the CCS minutes of his cases. Court directs the reporter to send copies of the same to the Warrick Co. Security Center to be given to the defendant and to notify Attorney Martin of the appointment. Copy of affidavit and amended information to Attorney Martin. Copy of CCS to State and Attorney Martin. OA RRA/jg

02/22/2006 Notice: N

RJO: N

Attorney Martin advises he may have a conflict in this matter, as he also represents Aldridge, a witness named in this case. Court revokes the appointment here and confirms the 3-17-06 progress hearing. Copy of CCS provided to Attorney Martin, State, and defendant at Warrick Co. Security Center. (rra/as)

02/27/2006 Notice: N

RJO: N

Court receives correspondence from defendant and provides copy to State. (rra:db)