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I. **JURISDICTION STATEMENT**

This case is an appeal from the District Court's denial of Donnelly Williams's third motion to suppress. The co-defendant and co-appellant, Kendra Williams joined this motion. Donnelly Williams appeals his conviction for Conspiracy to Possess with Intent to Distribute Heroin in violation of 21 USC 846, Possession of firearms during and in furtherance of a drug trafficking crime in violation of 18 USC 924(c); and Felon in possession of firearms and ammunition in violation of 18 USC 922(g)(1). Kendra Williams appeals her conviction of Felon in possession of firearms and ammunition in violation of 19 USC 922(g)(1) and Using or maintaining a drug involved premises in violation of 21 USC 856. Jurisdiction of the United States Court of Appeals for the Fourth Circuit is appropriate pursuant to 18 U.S.C. Sec 1291. Both Defendants made conditional guilty pleas to the charges and preserved their right to otherwise appeal the suppression issue. The District Court entered final judgment as to both Defendants on January 11, 2007. Donnelly Williams filed his notice of appeal on January 11, 2007 and Kendra

Williams filed her notice of appeal on January 23, 2007 pursuant to Rule 3 and Rule 4 of the Federal Rules of Appellate Procedure.

II. STATEMENT OF ISSUES

The issues in this appeal are:

- a. Did the trial Court err in denying the defendants motion to suppress drugs, weapons and other contraband discovered during the execution of a search warrant that was improperly issued as the affidavit for the search warrant lacked critical information to determine probable cause that the Defendant Donnelly Williams was engaged in current criminal activity? (Issue preserved at App. Pages 29-31 and pages 66-107).

III. STATEMENT OF CASE

The defendant Donnelly Williams appeals his conviction for Conspiracy to Possess with Intent to Distribute Heroin in violation of 21 USC 846, Possession of firearms during and in furtherance of a drug trafficking crime in violation of 18 USC 924(c); and Felon in possession of firearms and ammunition in violation of 18 USC 922(g)(1).

Kendra Williams appeals her conviction of Felon in possession of firearms and ammunition in violation of 19 USC 922(g)(1) and Using or maintaining a drug involved premises in violation of 21 USC 856. Jurisdiction of the United States Court of Appeals for the Fourth Circuit is appropriate pursuant to 18 U.S.C. Sec 1291. Both Defendants made conditional guilty pleas to the charges and preserved their right to otherwise appeal the suppression issue. (App. 162 paragraph 5 as to Donnelly Williams; App. 208 paragraph 5 as to Kendra Williams). The District Court entered final judgment as to both Defendants on January 11, 2007. Donnelly Williams filed his notice of appeal on January 11, 2007 and Kendra Williams filed her notice of appeal on January 23, 2007 pursuant to Rule 3 and Rule 4 of the Federal Rules of Appellate Procedure.

IV. STATEMENT OF FACTS

The facts in the case are generally not in dispute. Donnelly Williams and Kendra Williams are husband and wife. On March 21, 2006, Portsmouth Virginia Detective T. McAndrew filed an affidavit for Search Warrant with the Portsmouth Virginia Magistrate. (App 33-37). The only evidence in support of probable cause for the issuance of the search warrant was the affidavit of T. McAndrew. The facts of the affidavit were proffered to the Magistrate by Officer McAndrew. The general facts contained in the

affidavit were that “within 72 hours it (confidential informant) has been up to and inside of 48 Gillis Road, Portsmouth, Virginia. The CI stated that while inside the above residence it observed “Fat Donnie” who is described in part two of this affidavit in possession of and selling quantities of heroin. The CI stated that “Fat Donnie” drives a Green Mazda MPV van with chrome rims. This affiant showed the CI several photographs one of which was of Donnelly Parrish Williams who is described in part two of this affidavit. The CI positively identified the photograph as being the same subject it knows as “Fat Donnie...” (App 77:13-15 and App 33-37). Based solely on the affidavit, the Magistrate issued a Search Warrant which was executed at 48 Gillis Road, Portsmouth, Virginia on March 23, 2007. The search warrant was executed against the property, not against Donnelly Williams as the warrant was served on the property to the defendant Kendra Williams before Donnelly Williams had arrived. Subsequent to the search, various drugs, weapons and other contraband was discovered in the premises and in the vehicle that the Defendant Donnelly Williams was operating at the time the search warrant was executed.

V. **SUMMARY OF ARGUMENT**

The Search Warrant Affidavit, which was the sole evidence produced to the Portsmouth Magistrate, lacked critical information to determine probable cause existed that criminal activity was currently ongoing at 48 Gillis Road, Portsmouth, Virginia. As the affidavit was the only information presented to the magistrate, the District Court improperly concluded that the magistrate

had sufficient information to exercise independent judgment about the existence of probable cause.

VI. ARGUMENT

i. STANDARDS OF REVIEW

The issue of whether there was sufficient probable cause presented to the Portsmouth Magistrate to issue a search warrant in this case is a question of law, and, therefore, subject to de novo review by this Court. *United States v. Gray*, 137 F. 3^d 765, 770 (4th Cir 1998) (en banc).

ii. DISCUSSION

This case is substantially similar to *US v. Holt*, 196 *Fed. Appx.* 213 (2006, 4th *Circuit Unpublished*). The *Holt* case is the fundamental basis for the arguments contained in this brief. In *Holt* the Court suppressed evidence obtained by the search warrant affidavit on almost identical facts and circumstances as are contained in this case.

Both the *Holt* case and this case have the search warrant affidavit as the sole facts and evidence presented to the magistrate. Therefore, this Court should examine the affidavit, as it stands, to determine if the magistrate lacked sufficient information to exercise independent judgment about the existence of probable cause. (App. 33-35). There is no indication in the affidavit that the defendant Donnelly Williams resides at 48 Gillis Road, Portsmouth, Virginia or has ever been on the premises prior to the single occasion that the officer testified a CI had been “up and in the premises within 72 hours of the affidavit for the search warrant.” There is no indication that Donnelly Williams owned,

or paid rent, or was an invited guest at 48 Gillis Road, Portsmouth, Virginia. There is no information provided to show whether the previous drug dealings were inside or outside the house. There is no information that Donnelly Williams had an additional amount of heroin for sale or that he would return with more at a later time. There is not even an indication of the quantity sold on that one occasion that the CI had alleged he witnessed drug dealing. In summary, there is no information that links ongoing or future drug activity to this home, and thus there is no indication that a search of the home would yield any evidence of drug activity.

The defendant contends that the search warrant issued in this matter was therefore invalid as the magistrate lacked sufficient information to exercise independent judgment about the existence of probable cause. See [United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 \(1984\).](#); [United States v. Lalor, 996 F.2d 1578, 1582-83 \(4th Cir. 1993\).](#)

The Defendant anticipates that the government will argue that the *Leon* good faith exception should apply. This will be a misapplication of the *Leon* exception. Any officer who had the experience and training of Officer McAndrews (McAndrews testified he was a law enforcement officer for 12 years (App 77:18)) should have known that Officer McAndrews' affidavit, which is the only information the magistrate had, provided no indicia of probable cause to believe contraband would be found at 48 Gillis Drive, Portsmouth, Virginia. Just because a CI said he saw drug dealing there on a previous date, does not provide sufficient information to believe drug dealing would be occurring at a subsequent date, and in the affidavit, there is no stated probable cause to make that leap. From an objective standpoint any reasonably well-trained officer -- especially one with Officer McAndrews' training and

experience would have known that the search was illegal despite the magistrate's authorization. This affidavit clearly fits within the third circumstance identified in Leon that bars application of the good faith exception. Specifically, the officer had no reasonable grounds for believing that the warrant was properly issued because the affidavit on which the warrant was based was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." [Leon, 468 U.S. at 923](#); see also [United States v. Bynum, 293 F.3d 192, 195 \(4th Cir. 2002\)](#). Donnelly Williams contends that had the officers taken steps to verify Williams connection to the home, for example by providing "a utility bill in his name or some information that his wife owned the home, the search may have survived scrutiny. Absent such a step, the search was invalid even under the Leon exception.

CONCLUSION

The District Court erred in the suppression of the search warrant and accordingly, this Court should vacate the convictions of both Defendants and remand the cases to the District Court with direction to suppress the search warrant and any fruits recovered from the unlawful search.

VII. REQUEST FOR ORAL ARGUMENT

The appellant respectfully requests the opportunity to argue this appeal before a panel of judges of this Court.

RESPECTFULLY SUBMITTED

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