

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) S.CT. NO. 19-1052  
 )  
 PATRICK BRACY, )  
 )  
 Defendant-Appellant. )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR MARSHALL COUNTY  
HONORABLE JOHN A. HANEY, JUDGE

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APPELLANT'S APPLICATION FOR FURTHER REVIEW  
OF THE DECISION OF THE IOWA COURT OF APPEALS  
FILED JANUARY 21, 2021

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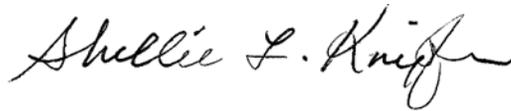
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## CERTIFICATE OF SERVICE

On February 5, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, Patrick Bracy, No. 6424206, Ft. Dodge Corr. Facility, 1550 L Street, Ft. Dodge, IA 50501-5767.

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## **QUESTION PRESENTED FOR REVIEW**

I. Four unreliable statements do not equate to being reliable just because there were multiple claims of Bracy dealing methamphetamine. The warrant application lacked probable cause because the confidential informants were not shown to be reliable. Therefore, the district court erred when it denied Bracy's motion to suppress.

A. The search warrant application was not supported by probable cause, and therefore, should not have been granted.

1. The anonymous tips do not have sufficient indicia of reliability.

2. Without the anonymous tips, the warrant application cannot meet the probable cause standard.

3. Considering the totality of the circumstances, there was not probable cause for the magistrate to grant the warrant application.

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## **STATEMENT IN SUPPORT OF FURTHER REVIEW**

This court should grant further review in this matter for the following reason:

(1) The court of appeals has entered a decision in conflict with a decisions of the United States Supreme Court and of this court on an important matter. The court of appeals found that the multiple unreliable anonymous tips add up to be reliable tips. But multiple unreliable tips do not equate to be true statements. There was no confirmation of confidential informants' statements beyond things that were public knowledge – such as where Bracy's father lived. The statements failed to state how the tipsters knew the information, failed to provide detailed information, or provide predictive information. See Florida v. J.L., 529 U.S. 266 (2000)(no indicia of reliability where no information how informant knew of the criminal activity, no predictive information to test credibility); Alabama v. White, 496 U.S. 325 (1990)(found indicia of reliability where there was corroboration and prediction of future movement); Gates v.

Illinois, 462 U.S. 213 (1983)(tip gave specific facts including flight and hotel information that court was able to supplement with law enforcements subsequent investigation); State v. Kooima, 833 N.W.2d 202 (Iowa 2013)(no ability to test information). “[W]hen the criminal activity is concealed, the tip must provide more than just a description of the alleged criminal and his location.” Kooima, 833 N.W.2d at 214 (Mansfield, J., dissenting). Here the confidential informants merely alleged Bracy was dealing in methamphetamine and living with he father. There needed to be more information that could be tested beyond the fact that he lived with his father.

See Iowa R. App. P. 6.1103(b)(1).

## STATEMENT OF THE CASE

**Statement of the Case:** This is an appeal by the Defendant-Appellant, Patrick Bracy, from the judgment and sentence following appellant's convictions for: possession of a controlled substance with intent to deliver (Count 1), in violation of 2018 Acts, ch. 1026, §§ 39, 182 (codified as amended at Iowa Code § 124.401 (2019), 124.411 (2017), and 2017 Acts, ch. 122, §§ 10, 11 (codified as amended at Iowa Code § 124.413 (2019)); possession of a controlled substance, third offense (Counts 2, 3, 4, and 5), in violation of 2018 Acts, ch. 1138, §§ 28, 31 (codified as amended at Iowa Code § 124.204 (2019)), 2018 Acts, ch. 1026, §§ 39, 182 (codified as amended at Iowa Code § 124.401(5) (2019)), 124.206, and 2017 Acts, ch. 27, §§ 7-9, 11 (codified at Iowa Code § 124.210 (Supp. 2017)); failure to affix Iowa drug stamp (Count 6), in violation of 2018 Acts, ch. 1041, § 127 (codified as amended at Iowa Code § 453B.3 (2019)), 453B.1(3)(a)(1) (2017), 453B.1(10) (2017), and 453B.12 (2017); prohibited acts (Count 7), in violation of Iowa Code

sections 124.402(1)(e) (2017) and 2017 Acts, ch. 54, § 76 (codified as amended at Iowa Code § 124.402 (Supp. 2017)); and unlawful possession of a prescription drug (Count 8), in violation of Iowa Code section 155A.21 (2017). (Sentencing Order, 06/17/2019) (App. pp. 24-30). The Honorable John J. Haney presided over the trial and sentencing proceedings in Marshall County District Court.

## **ARGUMENT**

**I. Four unreliable statements do not equate to being reliable just because there were multiple claims of Bracy dealing methamphetamine. The warrant application lacked probable cause because the confidential informants were not shown to be reliable. Therefore, the district court erred when it denied Bracy’s motion to suppress.**

### **Discussion.**

**A. The search warrant application was not supported by probable cause, and therefore, should not have been granted.**

The federal and state constitutions protect the right to be secure in their persons, houses, and personal effects against unreasonable searches and seizures. See U.S. Const. amend. IV; Iowa Const. art. I § 8. “[N]o Warrants shall issue, but

upon probable cause.” U.S. Const. amend. IV. Under State v. Fleming, both the federal and state provisions have the same “scope, import, and purpose.” 790 N.W.2d 560, 564 (Iowa 2010). Probable cause exists to approve a warrant when “a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a crime could be located there.” State v. Gogg, 561 N.W.2d 360, 363 (Iowa 1997) (citations omitted). “Probable cause to search requires a probability determination that ‘(1) the items sought are connected to criminal activity and (2) the items sought will be found in the place to be searched.’” Id. (citations omitted).

The search warrant submitted by Bowermaster was lacked probable cause because: (1) the anonymous tips that were relied upon by the magistrate did not have sufficient indicia of reliability, and (2) without the anonymous tips, the warrant application cannot stand up to the probable cause standard. As such, the district court should have granted Bracy’s motion to suppress. (Search Warrant Application,

9/11/2018) (Conf. App. pp. 25-35). The ruling of the district court must be reversed and remanded to comply with Bracy's Fourth Amendment and Article 1 section 8 rights.

**1. The anonymous tips do not have sufficient indicia of reliability.**

Anonymous tips for a search and seizure or warrant application must have sufficient indicia of reliability. See Florida v. J.L., 529 U.S. 266 (2000); State v. McNeal, 867 N.W.2d 91 (Iowa 2015). The Iowa Supreme Court has enunciated several helpful factors for showing the reliability of anonymous tips: 1) "Whether the informant was named," 2) "the specificity of facts detailed by the informant," 3) "whether the information furnished was against the informant's penal interest," 4) "whether the information was corroborated," 5) "whether the information was not public knowledge," 6) "whether the informant was trusted by the accused," and 7) "whether the informant directly witnessed the crime or fruits of it in the possession of the accused." State v. Weir, 414 N.W.2d 327, 332 (Iowa 1987); see State v. Kooima, 833 N.W.2d

202 (Iowa 2013)(applying five factors); McNeal, 867 N.W.2d at 91 (same); State v. Robbins, No. 16-1694, 2018 WL1433525 (Iowa Ct. App. March 21, 2018)(same). Similarly, the United States Supreme Court relied heavily on the details of the information provided and whether the information was public knowledge in their decisions in White and J.L.. Alabama v. White, 496 U.S. 325, 327 (1990); J.L., 529 U.S. at 266.

In Gates v. Illinois the Court applied the totality of the circumstances test, looking to the specificity, public knowledge, and corroboration of anonymous tips. 462 U.S. at 238 (1983). The Court identified two issues with this letter: (1) the letter did not provide any reason to trust the author or find the information reliable, and (2) there was no basis given as to *how* the author gained this information. Id. at 227.

Instead, the Court used the letter as a way to supplement the affidavit, rather than be the foundation. Looking to prior cases, the Supreme Court noted that, "...an affidavit relying on hearsay 'is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented.'"

Gates, 462 U.S. at 242-243 (quoting Jones v. United States, 362 U.S. 257, 269 (1960)). The Court in Gates found that the specificity and predictions that were able to corroborated by officers provided the sufficient reliability needed to establish probable cause. Gates, 462 U.S. at 245-46.

Similarly, the Supreme Court in Alabama v. White evaluated an anonymous phone call that provided the following to the Montgomery Police,

“On April 22, 1987, at approximately 3 p.m., Corporal B.H. Davis of the Montgomery Police Department received a telephone call from an anonymous person, stating that Vanessa White would be leaving 235–C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine inside a brown attaché case.”

White, 496 U.S. at 327.

Just as in Gates, the Court in White did not find this tip alone to be sufficient, as it lacked “the necessary indicia of reliability” as the tip was void of any sort of notion that the author was honest or providing reliable information. White, 496 U.S. at 327. Moreover, the Court noted that there was no

basis in the tip as to *how* this tipster was aware of White's criminal activities. White, 496 U.S. at 327.

The White Court upheld the warrant because officers were able to corroborate the tip by trailing White in the vehicle matching the tipster's description and followed it to the location that was predicted. White, 496 U.S. at 327. The Court ruled that there were sufficient indicia of reliability within the anonymous call based upon the corroboration and prediction of future movement of the Respondent. White, 496 U.S. at 332 (It is important to note, that while White was analyzing the indicia of reliability for a Terry stop, this standard of reasonable suspicion is lesser than probable cause.)

In contrast, Florida v. J.L. analyzed an anonymous tip which provided officers the following information: "A young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268 (analyzing anonymous tip for the purpose of meeting the reasonable suspicion standard for a Terry stop). The Court noted that

the tip provided no “predictive information” and, therefore, “left the police without means to test the informant’s knowledge or credibility.” J.L., 529 U.S. at 271. The Court also noted that there was no audio recording of the tip and nothing was previously known about the informant. Id. at 268. Even though officers found a gun on J.L. during a frisk, the Court stated “[t]hat the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct.” Id. The Court found no supporting indicia of reliability, and granted J.L.’s motion to suppress the evidence. Id. at 274.

The Iowa Supreme Court in State v. Kooima analyzed an anonymous tip reporting a drunk driver. 833 N.W.2d at 203. The anonymous tipster called 911 to report a drunk driver and for the officers to look into the described vehicle [description given was a BC299 Silver Suburban] that was driving in the location. Kooima, 833 N.W.2d at 204. The tipster gave details that there was a “carload of Rock Valley merchants,

huge money guys” and that this tipster was bothered because “these guys get away with everything, cuz they know everybody in Rock Valley and they think they can do everything.” Id. The call continued with the tipster stating he knew that the driver and passenger of this Suburban were all intoxicated. Id. A dispatch went out to officers in the area, broadcasting the information from the anonymous tipster. Id. at 205. An officer followed Kooima’s vehicle and ultimately pulled the vehicle over, based on the anonymous tip and not a traffic violation. Id. The officer had Kooima perform several field sobriety tests [which he failed] and placed him under arrest. Id.

The Iowa Supreme Court stated that, “[a]s J.L. teaches us, without a means for the police to test an anonymous tipster's *personal knowledge* or credibility, the tip is nothing more than a hunch.” Kooima, 833 N.W.2d at 209-10 (emphasis added)(quoting J.L., 529 U.S. at 271). The court held that this tip did not have any sort of requisite indicia needed to be reliable.

The trial court in Bracy's case found that Bowermaster corroborated information provided by "CD1" and "CD2." (Other Order, pp. 9-10, 04/30/2019) (Conf. App. pp. 78-79). This corroboration included identifying Bracy's home address listed as 614 West Linn Street in police department records. (Other Order, pp. 9-10, 04/30/2019) (Conf. App. pp. 78-79). Bowermaster also witnessed the White Mazda Tribute, registered to Bracy's father Donald, leaving the 614 W. Linn address, and having personal knowledge that Bracy lived with his father Donald. (Other Order, pp. 9-10, 04/30/2019) (Conf. App. pp. 78-79). The court also relied upon the fact that Bracy had a criminal history of a controlled substance violation from 2017. (Other Order, pp. 9-10, 04/30/2019) (Conf. App. pp. 78-79).

With Gates and White serving as the gold standard for reliability of anonymous tips, and utilizing J.L. and Kooima as the examples of inadequacy, it is clear that anonymous tips alone are unreliable and the corroboration was all public information. Gates, 462 U.S. 213; White, 496 U.S. 325; J.L.,

529 U.S. 266; Kooima, 833 N.W.2d 202. And turning to the Weir factors, the record before the magistrate does not satisfactorily show the confidential informants to be credible. See Weir, 414 N.W.2d at 332 (listing seven factors to consider). There was no showing of any of the seven factors. The only information corroborated was Bracy's living situation which would have been public knowledge.

Moreover, in the present case, the totality of these circumstances does not equate to probable cause. The detectives in this case provided unreliable tips without corroboration, and the magistrate incorrectly found probable cause, which the trial court affirmed.

**a. Tip from Criminal Defendant 1 (CD1)**

CD1 and Bowermaster had contact in the second week of August 2018. (Search Warrant Application, Att. A, ¶ 2, 09/27/2018) (Conf. App. p. 28). CD1's tip was as follows:

“... they knew Pat Bracy to be a large level meth dealer, who was in possession of multiple ounces of methamphetamine. CD1 told me that Pat lived on Linn Street...”

(Search Warrant Application, Att. A, ¶ 2, 09/27/2018) (Conf. App. p. 28).

First and foremost, it is not explained *how* CD1 knew the above information. How confidential informant obtains information is a reoccurring issue. See White, 496 U.S. at 327 (there was no basis in the tip as to how the person learned of White’s criminal activities); Gates, 462 U.S. at 227 (there was no basis given for how the informant gained the information); State v. McNeal, 867 N.W.2d 91, 103 (Iowa 2015)(named informant had personal knowledge of the due to his direct involvement in crimes); Kooima, 833 N.W.2d at 208 (Cases finding an anonymous tip had sufficient indicia of reliability to justify a Terry stop contain three common elements: (1) accurate description of vehicle, (2) tipster based information on *personal eyewitness observations*, and (3) tipster describes specifics of traffic violations showing was more than a hunch. These three elements allow determination of “whether an anonymous tip contains sufficient detail to permit a reasonable inference the tipster

had the *necessary personal knowledge* that a person was driving while intoxicated.” (emphasis added)).

CD1 was not able to identify the house where Bracy lived, only the street that he lived on. This is akin to the issues in J.L. that “the observations relayed to the police were such that anyone in the general public could observe.” Kooima, 833 N.W.2d at 211. The information that Bracy lived on a particular street would be public knowledge to any neighbor, friend, or member of the community. Simply because the officer was able to corroborate public information, does not mean that the rest of the tip was accurate. Moreover, with today’s technology, this information could easily be looked up online. The Attachment to the affidavit does not include why Bowermaster had contact with CD1, how they came into contact, or if there were prior tips provided by CD1.

There was no follow up to the hearsay statements provided by CD1. The only tip that the officers were able to follow up on, was the address Bracy lived. This flies in the face of White, where the anonymous tip alone was not enough

to warrant reasonable suspicion, and independent police work was necessary to corroborate the tips information. White, 496 U.S. at 326-27.

The Supreme Court in White made note that,

[a]n anonymous telephone tip without more is different, however; for even if the officer's testimony about receipt of the tip is found credible, there is a second layer of inquiry respecting the reliability of the informant that cannot be pursued. If the telephone call is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity. The reviewing court cannot judge the credibility of the informant and the risk of fabrication becomes unacceptable.

496 U.S. at 275 (Kennedy, J. concurring).

This tip does not come close to the detailed nature of Gates or White, nor does it provide any sort of predictive information as demanded by the Supreme Court in J.L. and the Iowa Supreme Court in Kooima. Gates, 462 U.S. 213; White, 496 U.S. 325; J.L., 529 U.S. 266; Kooima, 833 N.W.2d 202. With no indicia of reliability and no additional police corroboration, this tip must be redacted from the search warrant application.

### **b. Tip from Criminal Defendant 2 (CD2)**

CD2 met with Bowermaster during the third week of August 2018. (Search Warrant Application, Att. A, ¶ 4, 09/27/2018) (Conf. App. p. 28). CD2 was able to properly identify where Bracy was residing, and stated, “...they also knew Pat to be a meth dealer moving anywhere from ounce to pound level quantities.” (Search Warrant Application, Att. A., ¶ 4, 09/27/2018) (Conf. App. p. 28). Again, there was no information provided as to why Bowermaster made contact with CD2, how they knew each other, or if CD2 had provided tips in the past. (Search Warrant Application, Att. A., ¶ 4, 09/27/2018) (Conf. App. p. 28). Compare State v. Gogg, 561 N.W.2d at 364-5 (This court noted that “the officer testified that the informant had provided reliable information on two prior occasions.”).

The tip from CD2 is similar in nature to the anonymous caller in Kooima and J.L., as it is simply a statement that this anonymous individual *knows* Bracy to be a meth dealer, as in Kooima where they *knew* the driver of the vehicle to be

intoxicated, and in J.L. where the caller *knew* there was gun. Kooima, 833 N.W.2d at 204; J.L., 529 U.S. at 268. In both instances, there was no information given as to how the anonymous tipster came of this information or why it should be believed.

The only information given that could be corroborated by officers was the address, and again, Bracy's address is public knowledge. As the Court in J.L. noted,

An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

J.L., 529 U.S. at 272.

The fact that CD2 also states that Bracy deals in methamphetamine, does not corroborate the same statement by CD1. There was no predictive information given, and the only information given was to identify Bracy. See J.L., 529 U.S. at 272.

### **c. Tip from Concerned Citizen 1 (CC1)**

The first concerned citizen contacted the Marshalltown Police Department during the second week of September. CC1 told the officer that "... Pat was a meth dealer and knew Pat was in possession of large quantities of meth." (Search Warrant Application, Att. A., ¶ 8, 09/27/2018) (Conf. App. p. 29).

The officers did not corroborate the tip further which is contrary to Gates and White. In Gates and in White, the officers trailed the defendant, investigated, and contacted outside authorities to corroborate the tip. Gates, 462 U.S. at 226-28; White, 496 U.S. at 327.

"[T]here was no predictive information and the tip involved concealed criminal activity... What J.L. emphasizes is that when the criminal activity is concealed, the tip must provide more than just a description of the alleged criminal and his location." Kooima, 833 N.W.2d at 214 (Mansfield, J., dissenting). The criminal activity in this case, possession of methamphetamine, is concealed, and under J.L., there must

be more information than merely the location of an individual and an allegation. Kooima, 833 N.W.2d at 214.

The two tips from CC1 and CC2 were both given by anonymous individuals. There is no detail given how they knew the information to be true, there were no details provided to the officers, and there was no way to identify this concerned citizen. For all the detective knew, CC1 could have been a neighbor who merely disliked Bracy. Any individual could call in, under these facts, and give whatever information they wanted to the officers.

This tip, as well as the first two, was unreliable and does not provide for probable cause. As such, it too should be redacted from the search warrant.

**d. Tip from Concerned Citizen 2 (CC2)**

The only information provided by concerned citizen two was that they *heard* Bracy had left pound quantities of meth behind (after his arrest). (Search Warrant Application, Att. A., ¶ 9, 09/27/2018) (Conf. App. p. 29). The State in their resistance to the motion to suppress concedes that “[T]he

information is based on rumors heard by CC2 rather than personal observations or knowledge.” (Resistance, p. 9, 04/08/2019) (App. p. 16). This tip is unreliable hearsay and need not be evaluated.

**e. The unreliable tips do not corroborate each other and become reliable.**

The court of appeals erroneously asserts that the most sensitive information from the tippers, the notion that Bracy was dealing methamphetamine, was corroborated by the several tips. The anonymous tips were still unreliable. They failed to state how the informant knew the claims, they lacked specificity, the informant was not named, any specific information made was public knowledge, and it was unknown the relationship between the informant and Bracy. Multiple unreliable statements do not suddenly become reliable statements just because there is more than one.

**2. Without the anonymous tips, the warrant application cannot meet the probable cause standard.**

Without the anonymous tips, the four corners of this search warrant cannot stand up to the probable cause standard. “When there is no evidentiary hearing before the magistrate judge, the probable cause determination must be based upon only that information which is found within the four corners of the affidavit.” United States v. Olvey, 437 F.3d 804, 807 (8<sup>th</sup> Cir. 2006). Here, there was no evidentiary hearing held by the magistrate judge, meaning all determinations came from the search warrant application. (Search Warrant Application, p. 3, 09/11/2019) (Conf. App. p. 27).

Once a portion of an affidavit is suppressed, the reviewing Court may then decide whether what’s left of the affidavit is sufficient to create probable cause of the search.’ If the first paragraph of the affidavit here is deleted and the remaining contents are insufficient to establish probable cause, the warrant is void and the evidence obtained in the search ... must be excluded.

Franks v. Delaware, 438 U.S. 154, 155-56 (1978).

Without the anonymous tips from CD1, CD2, CC1, and CC2, the search warrant application is left with a search of Bracy's criminal history, assumptions, and boilerplate language used to suggest an outcome not tied to Bracy.

**a. Bracy's Criminal History**

The third paragraph of Attachment A describes Bracy's prior criminal charges. (Search Warrant Application, Att. A, ¶ 3, 09/27/2018) (Conf. App. p. 28). "The relevance of the prior drug convictions, and their underlying facts, necessarily fades with time." State v. Kolbeck, No. 04-0376, 2005 WL 157382, at \*4 (Iowa Ct. App. Jan. 26, 2005). Bracy has two convictions that were three and four years old, and the remaining conviction was a possession of a controlled substance from 2017. (Search Warrant Application, Att. A, ¶ 3, 09/27/2018) (Conf. App. p. 28).

As stated in Kolbeck, the relevance of these convictions fades with time, and this isolated incident in 2017 merely establishes that at one time, Bracy was in possession of methamphetamine, not that he was ever dealing these drugs.

Kolbeck, No. 04-0376, 2005 WL 157382 at \*4. “To support the inference that drugs would be found on [Kolbeck's] property, there must be at least some more recent evidence indicating that [Kolbeck's] current drug use is somehow linked to his property.” Kolbeck, No. 04-0376, 2005 WL 157382 at \*4.

Under this principle, without more, this mere conviction alone does not establish probable cause for this search warrant application.

**b. Bracy’s Phone Calls Made from the Jail**

Paragraphs 10 and 11 of Attachment A provide minimal information in regards to two phone calls that Bracy made while in jail. (Search Warrant Application, Att. A, ¶ 10, 11, 09/27/2018) (Conf. App. p. 29).

The first phone call was to Bracy’s father, Donald, and all that Bowermaster included about this call was that Bracy told Donald, “...Don’t let nothing happen to my safe man. There is a lot of money in that safe. That’s where everything is.” (Search Warrant Application, Att. A, ¶ 10, 09/27/2018) (Conf.

App. p. 29). There was nothing further provided, only that Bracy was concerned about the money that was kept in his safe.

As with most citizens, valuables such as money, jewelry, passports, or a social security card are safeguarded within a safe or lock box. Officers created an inference that the money must be coming from dealing drugs. However, many individuals choose not put money into a banking account, and simply keep their funds on their person or in their home. There is nothing nefarious about keeping money within a safe.

The second phone call was to Cervantes. During this call, Bowermaster makes note that Bracy told Cervantes, “It’s like I told him, all that shit is right there from my dads (sic) house.” (Search Warrant Application, ¶ 11, 09/27/2018) (Conf. App. p. 29). This paragraph continues by Bowermaster saying, “I know from experience that people often refer to meth as ‘shit’.” (Search Warrant Application, Att. A, ¶ 11, 09/27/2018) (Conf. App. p. 29).

The word “shit” is slang, which can be used as a noun, verb, or exclamation. “Shit” is defined by Webster’s Dictionary as, “excrement”. Webster’s Third New Int’l Dictionary 2098 (1993). To assume that merely because someone uses this word to describe the contents of a safe means that there is methamphetamine located there is not based on professional experience, but on an assumption not founded in fact. This word is used synonymously with stuff or things, and as Bracy told his father, that is where all of his money is located. (Search Warrant Application, Att. A, ¶ 10, 09/27/2018) (Conf. App. p. 29). As stated in Seager, “mere suspicion, rumor or even ‘strong reason to suspect’ a person's involvement with criminal activity is inadequate to establish probable cause.” Seager, 341 N.W.2d at 427-28.

Moreover, even if this paragraph is found to be reliable based upon Bowermaster’s personal experience, this one paragraph alone cannot meet the probable cause standard to grant this warrant application.

**c. Boilerplate language is suggestive of outcome not tied to Bracy**

Finally, turning to paragraph 12, which includes subparagraphs A-Y. (Search Warrant Application, Att. A, ¶ 12, 09/27/2018) (Conf. App. pp. 29-32). All 25 subparagraphs are blanket generalized statements on what Bowermaster had learned from his training and experience. (Search Warrant Application, Att. A, ¶ 12, 09/27/2018) (Conf. App. pp. 29-32).

Not one of these 25 subparts were actually linked to Bracy in any way, and none of them reference any part of the information in the rest of the Attachment. (Search Warrant Application, Att. A, ¶ 12, 09/27/2018) (Conf. App. pp. 29-32). This boilerplate language is suggestive of an outcome that is not linked to Bracy in any way. These are blanket statements, without connection of this experience or training to anything related to Bracy. Without that connection to Bracy, the officer's experience alone cannot create probable cause and the entirety of paragraph 12 is inapplicable here.

**3. Considering the totality of the circumstances, there was not probable cause for the magistrate to grant the warrant application.**

Under Gates, all of the information in the search warrant, in totality, must establish probable cause. Gates, 462 U.S. at 245-46. It is easy to look at each factor individually and find that no such standard could be met, but the case must be analyzed as a whole. With both Gates and White the Supreme Court looked at the anonymous tips in conjunction with the officer's corroboration, investigation, and other relevant information. Gates, 462 U.S. at 245-46; White, 496 U.S. at 327. The Court in both Gates and White looked at all of this information under the totality of the circumstances. Because there was outside corroboration of the anonymous tips, that is why the Court could find the tips more reliable. Therefore, the Court could use these tips in their determination of probable cause.

In Bracy's case, the officers did not conduct any such outside investigation. They did not conduct surveillance of

Bracy's home, or track his day to day movements. That is because the anonymous tips given offered only minimal information for the officers to corroborate the tipster's statements. The officers could have had surveillance on Bracy, watched the home, followed his vehicle, or conducted a further investigation. Instead, the officers took the anonymous tips at face value, looked at Bracy's criminal history, heard him use the word "Shit", and put it all together and presented their application for a search warrant to the magistrate.

If a disgruntled employee or a displeased neighbor could call the local police stations anonymously and make allegations against Bracy, and the officers are not required to have anything more than anonymous tips to invade Bracy's homes and his privacy, he no longer has rights under the Fourth Amendment. The officers obtained a search warrant, without probable cause, and illegally obtained evidence from Bracy's home. Therefore, the evidence seized as a result of the warrant, and its fruits, should be suppressed. Wong Sun v. United States, 371 U.S. 471, 485-86 (1963).

## **CONCLUSION**

Patrick Bracy respectfully requests this court grant further review and reverse the district court's decision denying the motion to suppress and remand with orders to suppress all fruits of the illegal warrant.

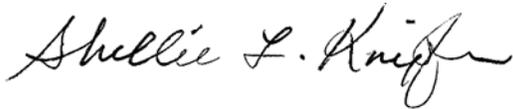
## **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$3.50, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR  
FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 5,105 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



Dated: 2/5/21

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