

## FLORIDA CASE LAW UPDATE 16-03

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Case: Russ v. State, 41 Fla. L. Weekly D333 (Fla. 5th DCA)

Date: February 5, 2016

Subject: **Search Warrant Affidavit Lacked Details to Justify Search for Evidence of Other Crimes**

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FACTS: Russ was arrested for burglary after he was caught peering through a broken store window while wearing a single glove and a shirt wrapped around his face. Russ informed the police (investigating a rash of burglaries in the area) that he lived with his mother and provided her address. He confessed to burglarizing the store, but denied committing any other burglaries. Police recovered a hooded sweatshirt, a second glove, a pry bar and a cash drawer at the scene. The police sought a search warrant for his mother's house to search for evidence of several other burglaries that had occurred in the area. The search warrant affidavit stated that there were twelve other burglaries involved and that they occurred in a two week period. The affidavit did not provide the dates of any of the other burglaries, nor did it give a description of the facts of the other burglaries. The affidavit stated only that the burglaries occurred "in the same general area," and were involving "the same modus operandi." The search warrant affidavit stated that it sought "any and all burglary tools, stolen items, or any similar items pertaining to this or any other recent burglary." Russ moved to suppress the evidence seized from his mother's home pursuant to the search warrant. The trial court denied Russ's motion and he pled no contest to the charges, reserving his right to appeal.

RULING: Russ's convictions for the other burglaries were reversed because the search warrant affidavit to search the mother's residence was legally deficient and therefore the evidence should have been suppressed. The Fifth District found that because the affidavit was deficient in details, the judge was unable to (a) properly evaluate the likelihood that evidence of the burglaries would be found in the house, and (b) to compare the modus operandi of those burglaries to Russ's burglary. The court also found the search warrant affidavit was deficient for failing to further specify the items that were sought in the search.

DISCUSSION: Florida law is well settled that a probable cause inquiry is limited to the four corners of the search warrant affidavit. The affidavit must set forth facts supporting two elements: (1) commission-- that a particular person has committed a crime; and (2) nexus-- that the particular evidence of the crime is likely to be located in the place to be searched. See State v. Felix, 942 So. 2d 5 (Fla. 5th DCA 2006). The appellate court found the search warrant affidavit to be deficient for two reasons. First, the court stated that the affidavit was deficient because the connection between Russ, the mother's house, and the twelve other burglaries was "attenuated at best." The court faulted the police for failing to include specific dates or a description of the other burglaries as support for their search. Second, the court stated that the search warrant failed to adequately specify the items to be seized. Search warrants that fail to adequately specify material to be seized and leave the scope of the seizure to the discretion of the executing officer are constitutionally overbroad. See State v. Nelson, 542 So. 2d 1043 (Fla. 5th DCA 1989).

COMMENTS: The Russ opinion does not state what, if any, other probable cause existed to search the mother's residence, but all relevant facts in support of probable cause should have been contained in the four corners of the affidavit and with more detail than was given. If the police had provided the dates and locations of the other burglaries, described the modus operandi involved in the crimes, and articulated with more specificity *what* they were searching for in the residence, the outcome of this case might have been different.

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**Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.**