

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA

2024 NOV 19 P 4:54

SHANNON KOHLER

NUMBER CV 03-857

VERSUS

DIVISION D-M-2

SIGN BY DEPUTY CLERK

PAT ENGLADE, ELMER LITCHFIELD,
DETECTIVE CHRISTOPHER JOHNSON,
CITY OF BATON ROUGE, and PARISH OF
EAST BATON ROUGE

**OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF PAT ENGLADE AND
CHRISTOPHER JOHNSON**

Comes now Shannon Kohler, and opposes the defendants' motion for summary judgment, as follows:

FACTS.

The facts are well pleaded. Detective D. Hamilton, and later Detective Christopher Johnson of the Baton Rouge City Police Department under the auspices of an informal conglomerate known as the "Multi-Agency Homicide Task Force", contacted Shannon Kohler and asked for a saliva /cheek swab in connection with the investigation of three (eventually six) rape murders, linked by DNA evidence. After considering the request, Kohler declined. Detective Hamilton told Kohler if they had to get a court order he could be publicly identified as a rape-murder suspect in the media. Kohler still declined, and Johnson submitted an affidavit request for a "Seizure Warrant." The affidavit was based on two anonymous tips which stated no facts. The warrant was issued, served on Kohler at his home and the swab taken. Kohler requested a copy of the affidavit, and was refused. He was left a copy of the warrant. He called the office of the issuing judge, Richard Anderson, and was told they had no record of the affidavit.. He called the East Baton Rouge Clerk of Court's office, and was told they had

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no affidavit. He left a message for Johnson for a copy. The call wasn't returned. That ternoon, four days after the swab was taken, and his first request refused, Johnson intentionally filed the affidavit, warrant, and return in the records of the Clerk of Court of the 19rh Judicial District Court.

Mysteriously the media found out, and in a couple of hours television reporters appeared at his home. Within hours the story about Shannon Kohler, the non-co-operating suspect in a triple rape-murder case, was televised and published via the internet literally all over the world. There was no legitimate purpose and no legal requirement for Johnson to intentionally expose Kohler to worldwide publicity. Weeks later, the Baton Rouge Police Department notified the media Kohler's DNA did not match crime scene evidence. A single sentence in the Baton Rouge Advocate noted his DNA did not match the crime scene DNA. How long the information was sat on is not known.

The affidavit in support of the motion is not reliable. It is based almost entirely on the affidavit of Christopher Johnson used by him to obtain the "seizure warrant" for the body of Shannon Kohler on November 12, 2002. A "seizure warrant" is not provided for in Louisiana law, Code of Criminal Procedure, LSA-C.Cr.P. Article 201-232, although the physical seizure of the body of Shannon Kohler, requested by Johnson and ordered by the judge, is the seizure of the person protected against by the Fourth Amendment of the U.S. Constitution and Article 1., Section 5 of the Constitution of Louisiana. Seizure of the body equates to "arrest" as defined in C.Cr. P. Article 201.¹ The body (person) of Shannon Kohler was seized (arrested) by Johnson.²

¹ C.Cr.P. Article 201. Arrest defined

Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.

² Defendants' Statement of Uncontested Facts, No. 6; Johnson's Affidavit Par. 14. , Defendants' unnumbered third page in their memorandum , "It is undisputed that Plaintiff was seized by Det. Johnson in Baton Rouge, Louisiana - -".

The warrant affidavit does not establish probable cause to believe Shannon murdered or raped anyone, although Johnson swears he has probable cause to believe his body is relevant evidence of criminal conduct. The only way Shannon Kohler's DNA is relevant evidence of criminal conduct, is if there is probable cause to believe he is the rapist-murderer, not that there is possible cause to suggest he, like the other 4,998 tip-victims, should be "checked out". If Johnson or any other member of the Task Force honestly believed they had probable cause to believe Kohler was the murderer-rapist, a warrant for his arrest should have been obtained, as well as a search warrant for his home and work place for bloody size 10 or 11 shoes, bloody clothing, a knife, and "souvenirs" taken from the murder scenes. No arrest warrant and arrest, and no search warrant and search, means not the tiniest smidgen of honest belief there was probable cause to arrest or search, regardless of what sillines Johnson swore to.

The affidavit is composed of the rankest hearsay, including 5,000 unidentified and probably anonymous tipsters, whose 5000 tips resulted in not a single arrest; 600 tip-victims whose "voluntary" swabs resulted in not a single arrest, and two anonymous or undisclosed tipsters suggesting Shannon Kohler "as a possible person who needed to be checked." Not a single act or activity that suggested or hinted possible cause; not a single act or activity that was suggested for investigation for possible cause.³

The "seizure" warrant" concocted by the defendants was more than a warrant for the arrest of Shannon Kohler, it was a hybrid search warrant, also.⁴It only asked for a saliva swab, not bloody size 10 or 11 shoes, knife, bloody clothes or souvniers. Since the same probable cause standards apply to either a search warrant or an arrest warrant, why not both in the same document? *Whiteley v. Warden, Wyoming Penitentiary* 401 U.S. 560 (1971). At the time of *Whiteley*, *Auguilar v. Texas*, 378 U.S. 108 (1964) required the magistrate be given some sworn information that an undisclosed informant be credible or his information reliable. That test was dropped in *Illinois v. Gates*, 462 U.S. 213, 103 S.

³ In the probable cause cases cited by defendants, virtually every one involved a tip by someone who gave specific facts concerning the commission of crime, which was more or less checked out. No such facts are involved here.

⁴ "Hybrid" is a genetic term. An appropriate legal term might be "illegitimate."

Ct. 2317, (1983) and replaced by the “totality of circumstances test”. The Court emphasized, however, that an informant’s veracity, reliability, and basis of knowledge remain highly relevant in assessing an informant’s tip. See *State v. Robertson*, No. 197-2960 La. 10/20/98 No. 97KK-2960 for the Louisiana jurisprudence on the evolution of informers’ tips, and binding on Detective Johnson.

In trying to convince Kohler to “voluntarily” give a DNA swab, officers told him if he refused, they would get a Court order, and he could or would get his name in the media. That, at least, was true, but not part of the Affidavit. Affidavit of Kohler. It is likely the New Orleans Saints will win the Superbowl ten years running before a citizen of Baton Rouge asserts a constitutional right before a Detective Johnson.

After executing the seizure of Kohler, and compelling him to surrender the saliva swab, the officers left. Kohler unsuccessfully tried to obtain a copy of the affidavit from Johnson and was refused it. He asked Judge Anderson’s office, and was told they were not aware of it. He asked the Court records office and they had no record of it. On November 18, 2002, Johnson filed the affidavit, warrant, and return in the office of the Clerk of Criminal Records of the 19th Judicial District Court. The document bears his signature, certifying the search was completed on March 14, 2002, and that return was made to Judge Richard Anderson on the 18th of November 2002. Unfortunately that return does not indicate it was made to the judge, and therefore Johnson’s affidavit in support of defendant’s motion is, most charitably speaking, doubtful at best. So also is that part of the motion affidavit that swears he filed the documents “in accordance with Louisiana law” (not cited) and “Baton Rouge City Police Department policies and procedures”, (also not cited). The purpose of filing the affidavit in the public records was to punish Kohler for knowing his rights, and to warn others not to rely on theirs.

THE SOURCE WARRANT

One week before Johnson got his warrant, a Louisiana State Trooper used an almost identical affidavit to obtain a warrant for Thomas Goins in the 32nd Judicial District Court in Beauregard Parish. Before the warrant could be served, Goins' lawyer filed a motion to quash the seizure warrant. Because of lack of probable cause, the issuing judge quashed the seizure warrant. The Goins proceedings from the 32nd Judicial District Court are attached as **Exhibit 1**.

THE TOTALITY OF CIRCUMSTANCES TEST

In evaluating a warrant obtained by an officer based on an informant tip, the United States Supreme Court has adopted the "totality of circumstances test" to determine if an informer's tip is worthy of belief. *Illinois v. Gates*, 462 U. S. 213, 241,

"Our decisions applying the totality-of- the-circumstances analysis outlined above have consistently recognized the value of corroboration of details of an informant's tip by independent police work."

Gates involved An anonymous letter tip with substantive details, including the suspect's description, activities, associates and behavior indicative of criminal conduct. In *Gates* the tip, an anonymous letter, gave at least twenty specific details of predicted criminal conduct. The police were able to check out and verify all but one or two. Of the 5,000 reported tips to the Task Force, two persons supposedly referred to Shannon Kohler "as a possible person who needed to be checked out."- Just as the Goins tip only suggested Goins as a "possible person to be checked out." At least in Goins possible criminal acts were suggested, but they did not check out.

The affidavit recites an investigation. In truth, detectives only spoke to Mr. Kohler. He volunteered his 1982 simple burglary conviction, and his full pardon. In his sworn recitation of the

totality of the circumstances, Johnson decided it would be better for Judge Anderson if he didn't know about the full pardon. Mr. Kohler pointed out the police had publicly announced the killer wore size 10 or 11 Rawlins running shoes, and they had observed his size 14s. Johnson decided it would be better for Judge Anderson not to know that bit of totality—although the FBI Behavioral Analysis Unit (profilers) thought it important enough to their totality of circumstances to place it in page 1. of their profile. Defendants' Exhibit E., Page 1.⁵ Questioned about working near where a victim's phone had been found on Choctaw Drive in Baton Rouge, Mr. Kohler said he'd worked for a company that had an office or shop near Choctaw and Airline in Baton Rouge, several miles distant and had worked near Choctaw and Scenic Highway 10 or 11 years earlier. Johnson decided Judge Anderson would be better off not knowing about the distance, and would certainly be better off not knowing it had been 10 or 11 years before.

QUALIFIED IMMUNITY

Malley v. Briggs 475 U.S. 335 (1986) dealt with a far more detailed affidavit than Johnson's. It had been held not to establish probable cause. The issue was whether the officer who submits a constitutionally defective affidavit is absolutely or only qualifiedly immune for the violation of the citizen's civil rights. The Court held an officer who submits an affidavit no reasonably well trained officer would have submitted to a magistrate is not immune. To counter this, Johnson offers his subjective feelings about his conduct.

⁵ Interestingly enough the profilers didn't mention the race of the murderer, while the task force stumbled about in their hypnotic trance looking for a white one, the black murderer continued to rape and kill.

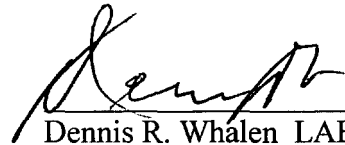
CONCLUSION

Johnson's subjective evaluation of his constitutional error in copying a previous edition of the "possible cause" affidavit does not bring him to the level of competence protected by qualified immunity.

Chief Pat Englade is Johnson's Chief of Police. Nothing in the motion for summary judgment, Johnson's affidavit or the statement of facts claims that Johnson had any supervision by Englade or anyone between. Englade has not given an affidavit to establish this. When you give a policeman the power to ruin citizens' lives, you should supervise him.

Both motions should be denied.

By Attorney:



Dennis R. Whalen LABN 13,389
854 Main St.
Baton Rouge, LA 70802
Tel: (225) 336-2098

Fax: (225) 336-0365

CERTIFICATE OF SERVICE

I certify a copy of this opposition affidavit and exhibit has been mailed to opposing counsel
this 19th of November, 2004:

Mr. James Hilburn
Special Assistant Parish Attorney
10500 Coursey Blvd. Suite 205
Baton Rouge, LA 70816

A handwritten signature in black ink, appearing to read 'D. Whalen', is written over a horizontal line.

Dennis R. Whalen

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SHANNON KOHLER

NUMBER CV 03-857

VERSUS

DIVISION D-M-2

**PAT ENGLADE, ELMER LITCHFIELD,
DETECTIVE CHRISTOPHER JOHNSON,
CITY OF BATON ROUGE, and PARISH OF
EAST BATON ROUGE**

AFFIDAVIT OF SHANNON KOHLER

Personally appeared before me, Notary,

SHANNON KOHLER

Who being sworn, deposes and says that my name is Shannon Kohler. I make this affidavit of my own personal knowledge. I was born on January 27, 1958. I am a citizen of the United States and of the State of Louisiana. In the summer 2002 I was in Arizona looking for work as a welder. I called my home phone in Baton Rouge to check on my messages. There was a message from a police officer. I called him, and left a message I was in Arizona and would call when I got back in a few days.

I got back a few days later and I called the officer. I left a message . He called my house. He said he was Detective Hamilton. He told me it was about the serial killer case and he wanted a DNA swab. At first I agreed. When he came to my home, I told him I had changed my mind and did not want to give a swab. He told me they had two tip calls that I possibly should be checked. He never said a word about why I was suspected. I told him they could check my whereabouts from work records on the date

and time of the three murders. He wasn't interested. He only wanted a swab. I told him "By now you probably checked and found I had a 1982 burglary conviction, and I have a full pardon, including the right to own firearms." He asked about my employment and if I'd ever worked around an area on Choctaw. I told him I'd worked for a company that had an office near Choctaw and Airline Highway, and had worked for another company just off Choctaw near Scenic, 10 or 11 years ago.

I showed him my feet. I was wearing my size 14-4E work boots. I told him my feet are size 13-4E and I wear size 14-4E work boots. I told him I knew about the Police announcement (by Cpl. Godowa) which was on TV and in the Advocate newspaper, saying at one murder scene the killer left bloody footprints from a size 10 or 11 Rawlins running shoe. She said something like "This is a sure thing!" The first and only physical characteristic in the FBI profile of the killer is size 10 or 11 shoes. He wasn't interested in the obvious discrepancy. He only seemed interested in a swab.

I again told him I wasn't going to give a swab. He said "If we have to get a Court order, it will go in public records and you could get your name in the papers." I considered that a threat, but I still believed they had no reason to get a swab, and I didn't believe a judge would order a swab.

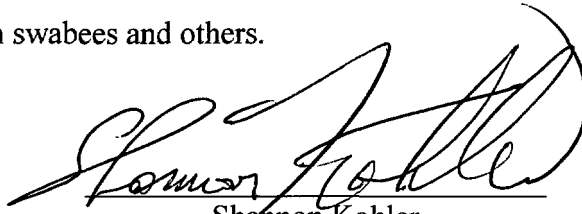
After I refused the swab he left. Six days later Hamilton called and asked if I'd changed my mind. I said I hadn't. I think that was my last contact with Hamilton. I later got a call from Detective Johnson, saying he had taken over from Hamilton, and had I changed my mind. I said I had not. He called several more times, over a couple of months and I still hadn't changed my mind.

On November 14, Det. Johnson and another, officer, a deputy sheriff, came to my house to get the swab. Johnson didn't have a copy of the warrant for me. The deputy left and returned with a copy. Johnson served the warrant on me, and I submitted to him taking a swab. He left.

On the morning of November 18 I called the judge's office and the Clerk's office to get a copy of the affidavit Johnson used to get the warrant. I was told they had no record of my warrant. I called Johnson and left a message asking about getting a copy of the affidavit. He didn't return the call. He filed everything in the Court records at 1:29 P.M. That afternoon a television reporter with his cameraman came to my house and showed me a copy of the affidavit Johnson had used to get the warrant. The television piece that aired that evening did not use my name or picture. An Advocate newspaper reporter called later that day and asked some questions for a story for the morning edition. He informed me that they were going to use my name despite my request not to. They did. About two months later a newspaper article that said the DNA of the Washington D. C. snipers did not match the serial killer DNA. A single sentence said mine didn't either.

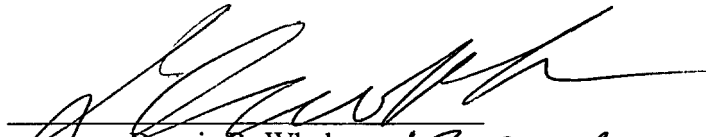
Johnson's affidavit stated less than fifteen persons had refused to be swabbed. Other warrants may have been used to collect DNA from the 600, but of the 5000 tips my name was the only one to wind up in the public record, resulting in enormous media

interest and me being named world wide as a multiple murder rape suspect as well
numerous calls from swabees and others.



Shannon Kohler

Sworn to and subscribed before me this 19th of November, 2004, at Baton Rouge,
Louisiana



Dennis R. Whalen 13,389

Clerk of Court-Beauregard Parish



RONALD L. NICHOLS
CLERK OF COURT

THIRTY-SIXTH JUDICIAL DISTRICT
P. O. Box 100
DERIDDER, LOUISIANA 70634
(337) 463-8595

JIM MARTIN
CHIEF DEPUTY

November 20, 2003

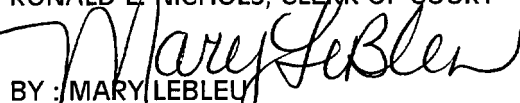
Dennis R. Whalen
200 Lafayette Street, Suite 500
Baton Rouge, Louisiana 70801

RE: State of Louisiana Versus Thomas R. Goins; CR-762-03

Dear Mr. Whalen,

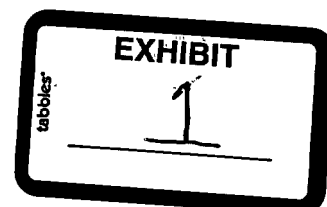
Please find enclosed the information you requested. If you need any further information or if you have a question concerning this matter, please do not hesitate to contact me at the address above or at (337) 463-8595.

Sincerely,
RONALD L. NICHOLS, CLERK OF COURT


BY : MARY LEBLEU
DEPUTY CLERK OF COURT

ML:ml

Enclosure(s)



STATE OF LOUISIANA
PARISH OF BEAUREGARD

FILED

AFFIDAVIT FOR SEIZURE WARRANT
2002 NOV - 7 AM 9:16

CLERK OF COURT
BEAUREGARD PARISH

Sergeant Rock Schexnaydre, Louisiana State Police

affiant now appears before the undersigned Judge authorized to issue warrants in criminal cases, and makes this affidavit, under oath, in support of the issuance of a seizure warrant for the following:

The body of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094, last known addresses: 916 Tulane St., DeRidder, La., or 267 Dupliss Rd., DeRidder, La.

and to seize and make return thereof according to law the following property or things which constitute evidence of criminal conduct, to wit:

Investigators to collect saliva samples (by swab) from the mouth of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094

Affiant says that he has probable cause to believe that the above-listed thing to be seized is relevant evidence based upon the following facts:

On 09/23/01, Ms. Gina Green was murdered in her home at 2151 Stanford Ave. On 05/31/02, Ms. Charlotte Pace was murdered in her home at 1211 Sharlo Ave. On 07/12/02, Mrs. Pamela Kinamore was abducted from her home at 8338 Briarwood Place. Her body was later found in a wooded area near the Whiskey Bay exit from Interstate 10. All three deaths were determined to be homicides with some sexual assault involved as well. Items taken from Gina Green's residence by the perpetrator were found behind the Ready-Portion Meat Company in the 1500 block of Choctaw Dr.. The investigations into the three murders yielded evidence left at the crime scenes from which LSP Crime Lab technicians were able to obtain the suspect's DNA profiles. The LSP Crime Lab technicians further determined that the DNA profiles from the three different crime scenes belonged to the same unknown male suspect.

Following this finding, a multi-agency task force was formed and a "tip-line" was set up to handle the multitude of callers with information. To this date, more than 5000 "tips" have been received by the task force investigators suggesting investigators "check out" various white males for various reasons. Many of these tips are anonymous out of the callers' concerns about reprisals. More than 600 white males have been contacted for the purpose of obtaining oral saliva swabs for DNA comparison. Out of that number, less than 15 have refused the voluntary submittal, the overwhelming majority being more than eager to be formally eliminated from suspicion.

A "tip" was received regarding the subject Goins as a possible person who needed to be checked. The "tip" included the information that Goins had been a suspect in a murder in Tuscaloosa, AL and in a rape of an elderly woman in Baton Rouge. Investigators were not able to confirm that Goins was a suspect in either of the two mentioned cases. Background investigation of Goins revealed that he is a convicted felon - from a possession of marijuana charge in 1993. Goins was contacted in October by an investigator with Louisiana State Police and asked to provide a voluntary saliva swab. He refused to submit saying that the investigators did not need the sample.

The undersigned officer(s) request(s) a warrant to seize from the aforesaid body of Thomas R. Goins, W/M, dob 12/29/68 the saliva samples specified in this affidavit.

It may become necessary to conduct the seizure during the night time, or on Sunday or a Holiday, and affiant(s) request(s) that the warrant authorizes a night time, Sunday, or Holiday seizure.

Sgt. Rock Schexnaydre
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY
OF November, 2002, at 9:10 A.M. ~~P.M.~~

A TRUE AND CORRECT COPY
OF THE ORIGINAL
Maurice
Deputy
Clerk of Court
Beauregard Parish, LA

[Signature]
JUDGE, 36TH JUDICIAL DISTRICT COURT

FILED

2002 NOV -7 AM 9:16

SEIZURE WARRANT

CLERK OF COURT
BEAUREGARD PARISH

STATE OF LOUISIANA
PARISH OF BEAUREGARD

To any Peace Officer in and for the Parish of Beauregard

An affidavit has been made before me upon the oath of:

Sergeant Rock Schexnaydre, Louisiana State Police


alleging that the body/person of Thomas R. Goins, located at 267 Duplissess Rd. or 916 Tulane St., in the Parish of Beauregard, City of DeRidder, State of Louisiana, is a place where:

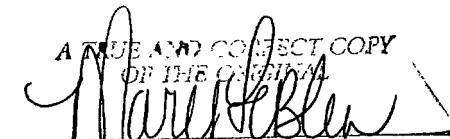
Evidence requested: Detectives to collect saliva samples from the mouth of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094.

is (are) located, and the affidavit submitted in support of this seizure warrant shows the necessary probable cause for its issuance. The purpose and reason for the seizure is to collect the item(s) listed above.

YOU ARE HEREBY ORDERED to seize the aforesaid body/person of Thomas R. Goins at any time of the day or night, including Sunday and Holidays, and if the thing(s) specified are found there, to seize them and hold them in safe custody pending further orders of the court. This shall be your warrant, whereof you are to make due return according to law.

WITNESS my official signature on this 7 day of November, 2002, at 9:10 o'clock. AM


JUDGE, 36th JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
PARISH OF BEAUREGARD

A TRUE AND CORRECT COPY
OF THE ORIGINAL

Deputy Clerk of Court
Beauregard Parish, LA

STATE OF LOUISIANA
PARISH OF BEAUREGARD

FILED

DEC 30 PM 4: 25

IN RE: AFFIDAVIT FOR SEIZURE WARRANT **THOMAS R. GOINS**

CLERK OF COURT
BEAUREGARD PARISH

FILED: December 30, 2002 : Maury Blue
DEPUTY CLERK OF COURT

MOTION TO QUASH SEIZURE WARRANT

NOW INTO COURT, through undersigned counsel, comes Movant,
THOMAS R. GOINS, who respectfully represents:

1.

A Seizure Warrant was issued ordering **THOMAS R. GOINS** to provide saliva samples to any Peace Officer in and for the Parish of Beauregard in connection with an affidavit submitted by Sergeant Rock Schexnaydre of the Louisiana State Police. Said warrant was issued by Hon. Stuart S. Kay, Jr., District Judge for Division A of the 36th Judicial District Court on November 7, 2002.

2.

Movant, **THOMAS R. GOINS**, alleges that the affidavit of Sgt. Rock Schexnaydre, of the Louisiana State Police, made in support of the issuance of the seizure warrant is insufficient as a matter of law to justify the issuance of the warrant herein attached. More specifically, the defendant alleges that the affidavit fails to state probable cause for the issuance of the aforesaid warrant because the affidavit is based solely and entirely upon information furnished to the affiant, i.e., hearsay, and the affiant has failed to either (1) independently corroborate the hearsay information or (2) show the reliability or credibility the informant.

3.

The affidavit is silent as to whether or not this informant has previously provided information to law enforcement agencies.

4.

The only substantive information contained in the affidavit are allegations that movant has been unable to confirm. THE ONLY OTHER SUBSTANTIVE ALLEGATION ALLEGED BY THIS AFFIDAVIT AND UPON WHICH THIS WARRANT IS BASED IS THAT DEFENDANT HAS A CONVICTION FOR POSSESSION OF MARIJUANA IN 1993, WHICH IS EXTREMELY INSUFFICIENT UPON WHICH TO PREMISE THIS INVASIVE REQUEST.

Code of Criminal Procedure Article 162.1 mandates that a Search Warrant/Seizure Warrant must be issued upon probable cause. Movant contends that said probable cause does not exist in this case.

WHEREFORE, movant, **THOMAS R. GOINS**, moves this Honorable Court to grant his motion to quash and relieve him from any obligation to provide saliva samples to any law enforcement officers.

BY ATTORNEY:



CHARLES A. "SAM" JONES, III
105 N. Stewart Street
P.O. Box 995
DeRidder, La. 70634-0995
(337) 463-5532
Bar No. 14404

STATE OF LOUISIANA
PARISH OF BEAUREGARD

IN RE: AFFIDAVIT FOR SEIZURE WARRANT - THOMAS R. GOINS

FILED: December 30, 2002

Mary Ellen
DEPUTY CLERK OF COURT

ORDER

Considering the foregoing,

IT IS ORDERED that the seizure warrant for saliva samples from

Thomas R. Goins, is hereby recalled.

DeRidder, Louisiana, this ~~30th~~ ^{30th} day of December, 2002.

[Signature]
DISTRICT JUDGE

Reasons for Recall

Review of affidavit and State v. Barrilleaux, 620 So.2d 1317, (La. Supreme Court 1993) leads Court to conclusion that probable cause does not exist as stated within the four corners of the affidavit. There is no information in support of the reliability of the "source" of the information, nor was any independent investigation by police able to verify through credible sources that information is reliable. Prior drug conviction is not in same crime family as respect crimes. Goins refusal to voluntarily submit does not constitute probable cause in and of itself. If additional information is submitted, warrant will be re-evaluated.

TRUE AND CORRECT COPY
OF THE ORIGINAL

Mary Ellen
Deputy Clerk of Court
Beauregard Parish, LA

12/30/02

STATE OF LOUISIANA
PARISH OF BEAUREGARD

IN RE: AFFIDAVIT FOR SEIZURE WARRANT - THOMAS R. GOINS

FILED:

December 30, 2002

Mary Ellen
DEPUTY CLERK OF COURT

MEMORANDUM IN SUPPORT OF
MOTION TO QUASH SEIZURE WARRANT

Movant, **THOMAS GOINS**, has not been arrested in connection with the above entitled and numbered cause. However, on November 7, 2002, a Seizure Warrant was issued for the collection of saliva samples from the mouth of movant, Thomas R. Goins.

The affidavit submitted along with the Seizure Warrant states that more than 600 white males have been contacted for the purpose of obtaining oral saliva swabs for DNA comparison. The only information obtained from officers in which they based their request to obtain movant's samples was a "tip" that Thomas R. Goins was a suspect in a murder in Tuscaloosa, Alabama and in a rape of an elderly woman in Baton Rouge, Louisiana. Investigators could not confirm either of these "tips". There officer have no justification whatsoever to base their request for said samples.

The affidavit fails to state who the "informant" was, whether or not said informant has provided information to law enforcement officers in the past, and the accuracy record of said informant.

In Illinois v. Gates, 462 U.S. 213, 103 S. Ct., 2317, the Court issued guidelines that the courts should look at the totality of the circumstances test. In State vs. Ruffin, 448 So. 2d 1274 (La. Sup. Ct. 1977) also adopted the totality of circumstances test, but still considered as key factors, the past reliability of the informant and the factual basis upon which he obtained his information.

Unsubstantiated hearsay cannot be used to buttress an insufficient informant tip since this information has very little, if any value. See State v. Tassin, 343 So. 2d 681 (La. Sup. Ct. 1977).

In the case at bar, the defendant contends that the seizure warrant was based upon the word of an unknown individual whose information concerning the defendant's involvement in two (2) prior crimes were unfounded.

Due to the lack of proof of the unknown "tipster", movant contends that said seizure warrant was not based upon probable cause and the same should be quashed.

Respectfully submitted:



CHARLES A. "SAM" JONES, III
105 North Stewart Street
P.O. Box 995
DeRidder, La. 70634
(337) 463-5532
La. Bar No. 14404

STATE OF LOUISIANA

FILED

AFFIDAVIT FOR SEIZURE WARRANT

2002 NOV -7 AM 9:16

PARISH OF BEAUREGARD

Sergeant Rock Schexnaydre, Louisiana State Police

CLERK OF COURT
BEAUREGARD PARISH

affiant now appears before the undersigned Judge authorized to issue warrants in criminal cases, and makes this affidavit, under oath, in support of the issuance of a seizure warrant for the following:

The body of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094, last known addresses: 916 Tulane St., DeRidder, La., or 267 Duplissas Rd., DeRidder, La.

and to seize and make return thereof according to law the following property or things which constitute evidence of criminal conduct, to wit:

Investigators to collect saliva samples (by swab) from the mouth of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094

Affiant says that he has probable cause to believe that the above-listed thing to be seized is relevant evidence based upon the following facts:

On 09/23/01, Ms. Gina Green was murdered in her home at 2151 Stamford Ave. On 05/31/02, Ms. Charlotte Pace was murdered in her home at 1211 Sharto Ave. On 07/12/02, Mrs. Pamela Kinsmore was abducted from her home at 8338 Briarwood Place. Her body was later found in a wooded area near the Whiskey Bay exit from Interstate 10. All three deaths were determined to be homicides with some sexual assault involved as well. Items taken from Gina Green's residence by the perpetrator were found behind the Ready-Portion Meat Company in the 1500 block of Choctaw Dr.. The investigations into the three murders yielded evidence left at the crime scenes from which LSP Crime Lab technicians were able to obtain the suspect's DNA profiles. The LSP Crime Lab technicians further determined that the DNA profiles from the three different crime scenes belonged to the same unknown male suspect.

Following this finding, a multi-agency task force was formed and a "tip-line" was set up to handle the multitude of callers with information. To this date, more than 5000 "tips" have been received by the task force investigators suggesting investigators "check out" various white males for various reasons. Many of these tips are anonymous out of the callers' concerns about reprisals. More than 600 white males have been contacted for the purpose of obtaining oral saliva swabs for DNA comparison. Out of that number, less than 15 have refused the voluntary submittal, the overwhelming majority being more than eager to be formally eliminated from suspicion.

A "tip" was received regarding the subject Goins as a possible person who needed to be checked. The "tip" included the information that Goins had been a suspect in a murder in Tuscaloosa, AL and in a rape of an elderly woman in Baton Rouge. Investigators were not able to confirm that Goins was a suspect in either of the two mentioned cases. Background investigation of Goins revealed that he is a convicted felon - from a possession of marijuana charge in 1993. Goins was contacted in October by an investigator with Louisiana State Police and asked to provide a voluntary saliva swab. He refused to submit saying that the investigators did not need the sample.

The undersigned officer(s) request(s) a warrant to seize from the aforesaid body of Thomas R. Goins, W/M, dob 12/29/68 the saliva samples specified in this affidavit.

It may become necessary to conduct the seizure during the night time, or on Sunday or a Holiday, and affiant(s) request(s) that the warrant authorizes a night time, Sunday, or Holiday seizure.

Sgt. Rock Schexnaydre
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY
OF November, 2002, at 9:10 A.M. LA

[Signature]
JUDGE, 36TH JUDICIAL DISTRICT COURT

1-821 P 002/002 F-173

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FILED

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SEIZURE WARRANT

CLERK OF COURT
BEAUREGARD PARISH

STATE OF LOUISIANA
PARISH OF BEAUREGARD

To any Peace Officer in and for the Parish of Beauregard

An affidavit has been made before me upon the oath of:

Sergeant Rock Schexnaydre, Louisiana State Police

alleging that the body/person of Thomas R. Goins, located at 267 Duplissess Rd. or 916 Tulane St., in the Parish of Beauregard, City of DeRidder, State of Louisiana, is a place where:

Evidence requested: Detectives to collect saliva samples from the mouth of Thomas R. Goins, W/M, dob 12/29/68, SSN 434-33-4094.

is (are) located, and the affidavit submitted in support of this seizure warrant shows the necessary probable cause for its issuance. The purpose and reason for the seizure is to collect the item(s) listed above.

YOU ARE HEREBY ORDERED to seize the aforesaid body/person of Thomas R. Goins at any time of the day or night, including Sunday and Holidays, and if the thing(s) specified are found there, to seize them and hold them in safe custody pending further orders of the court. This shall be your warrant, whereof you are to make due return according to law.

WITNESS my official signature on this 7 day of November, 2002, at 9:10 o'clock. AM

A TRUE AND CORRECT COPY
OF THE ORIGINAL

Yvonne R. [Signature]
Deputy

Clerk of Court
Beauregard Parish, LA

[Signature]
JUDGE, 36th JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
PARISH OF BEAUREGARD

Filed: January 3, 2003
By: Mary J. B...
Deputy Clerk of Court

STATE OF LOUISIANA
PARISH OF BEAUREGARD

FILED CR-762-03

JAN -3 AM 10:56
CLERK OF COURT
BEAUREGARD PARISH

IN RE: AFFIDAVIT FOR SEIZURE WARRANT - THOMAS R. GOINS

MOTION FOR EXPUNGEMENT OF SEIZURE WARRANT

NOW INTO COURT, through undersigned counsel comes
Defendant, THOMAS R. GOINS, who moves the Court pursuant to L. R.S.
44:9(A) to expunge his name from any and all records in the investigation
into the murder of Gina Green, Charlotte Pace Pamela Kinamo.

1.

A warrant was issued on November 7, 2002, by the 36th Judicial
District Court, Parish of Beauregard, DeRidder, Louisiana, for the seizure of
saliva samples from the person of THOMAS R. GOINS, after application
was made by Sergeant Rock Schexnaydre of the Louisiana State Police.

2.

A Motion to Quash said warrant was filed on December 30, 2002, on
behalf of Thomas R. Goins due to lack of probable cause.

3.

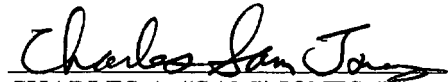
On December 30, 2002, Honorable Stuart S. Kay, Jr., District Judge
signed an Order recalling the seizure warrant stating that "probable cause
does not exists as stated within the four corners of the affidavit . . ."

4.

It should be ordered that all agencies and law enforcement officers
having any record of the warrant, whether on microfilm, computer card,

tape, or any other photographic, electronic or mechanical method of storing data, destroy any such record containing the name of THOMAS R. GOINS.

Respectfully submitted:



CHARLES A. "SAM" JONES, III
105 North Stewart Street
P.O. Box 995
DeRidder, Louisiana 70634
(318) 463-5532
Bar No. 14404

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing MOTION FOR EXPUNGEMENT has this day been forwarded to the State of Louisiana, through the Office of District Attorney, properly addressed and postage pre-paid.

DeRidder, Louisiana, this 2nd day of January, 2003.



CHARLES A. "SAM" JONES, III

STATE OF LOUISIANA Filed: January 11, 2003
PARISH OF BEAUREGARD By: Mary Steble
Deputy Clerk of Court

IN RE: AFFIDAVIT FOR SEIZURE WARRANT - THOMAS R. GOINS

ORDER

Considering the above and foregoing Motion;

IT IS ORDERED that the name of THOMAS R. GOINS, be expunged and erased from any record with law enforcement agencies conducting an investigation into the murder of Gina Green, Charlotte Pace and Pamela Kinamore, whether on microfilm, computer card, tape, or any other photographic, electronic or mechanical method of storing data.

DeRidder, Louisiana, this _____ day of _____, 2003.

Request denied. Expungement under 44:9 is for arrests and convictions. There are no provisions for expungement of warrants not executed. Defendant has other authority. It should be cited and supported with the memo required by court rule in conjunction with Rule to show cause served on date.

TRUE AND CORRECT COPY OF THE ORIGINAL
Mary Steble
Deputy Clerk of Court
Beauregard Parish, LA