

A WARRANT FOR THE WOODSMAN

By Steve LaCheen



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I represented a woodsman once. I never knew exactly how he had become the steady suitor of the sister of a client of mine, but it was clearly a case of “opposites attract,” as she was a sophisticated urbanite, and he was as much the taciturn, rough-hewn backwoodsman as Gary Cooper pretended to be. Wayne Reed was his name; from Vermont he came. He was a cook and a whittler of wooden whistles shaped like birds, and pipes shaped like kites because they could make you feel like you were flying.

Wayne lived in the far reaches of rural Chester County, where he whittled his wooden birds while cooking up batches of methamphetamine for his girlfriend’s brother in Philadelphia. Unfortunately for Wayne, his secluded aerie was not as private as he had thought, and word of his activities eventually came to the attention of the local law enforcement authorities, who obtained a warrant to search the premises. Execution of the search warrant produced none of the expected product, only residue from previously completed efforts. Disappointed, but undaunted, the police arrested Wayne anyway, and his case soon found its way on the Criminal Trial List in Chester County.

As in many Pennsylvania counties, the Chester County Court of Common Pleas operated on a calendar that recognized

four terms of Court during the year; and the protocol was that every lawyer in every case was required to appear for the Call of the List by the President Judge on the first day of the new term of Court. The Judge would call the list, and the attorneys in each case would advise the Court of the status of their case; that is, whether the case was to be a guilty plea; or given a date for trial; or, in most cases, to be scheduled for pre-trial motions or just passed to the next term of court.

Being from Philadelphia, I was, of course, a stranger in those precincts; and the judge, D.T. Morrone, asked me to introduce myself to the members of the local bar in attendance, about 20 attorneys. He then welcomed me to Chester County. “We don’t see many Philadelphia lawyers out here, although more now than before

when they needed a passport to get into our Courthouse.” That drew a laugh from the captive assembly.

“Most times now,” the judge continued, “out-of-towners trust their cases to Chester County lawyers, so it’s nice to be able to see a new face sometimes. What, then, is your client’s pleasure?”

“We are prepared to proceed with a motion to suppress evidence whenever the Court sets the matter for hearing,” I responded.

“Well, if there is that level of lawyering coming our way, I want to be the judge that learns something from an erudite Philadelphia Lawyer; so I will list this matter for suppression hearing two weeks from today at 9:00 a.m., unless, of course, starting at that time will create a hardship for counsel.”

I declined to take the bait and assured the Court a 9:00 a.m. listing was no problem.

“We will see you then; and you are excused until then,” said the Judge.

I believed I had an open-and-shut successful suppression argument which was plain on the face of the search warrant. The officer executing the warrant had crossed out the address on the warrant of

The Court asked if there were any exigent circumstances that would have justified a warrantless search. There were none, the prosecutor admitted, as the officer's report recounted that Mr. Reed had been sitting on the porch, whittling away when the officer arrived, and had made no effort to hide, or destroy evidence, or even make a furtive move.

the premises to be searched, which had originally read "106" Tree Lane, changing the address to read "109" Tree Lane. Apparently, upon arriving at the property, he noticed the address was 109 Tree Lane and not 106 as designated on the search warrant as the property to be searched. Rather than return to the Magistrate to obtain an official correction of the warrant, he had simply made the change to reflect the address of the property he would actually search.

The problem with that, of course, was that it was only a "neutral and detached magistrate" who had the authority to issue, or amend, a search warrant; and I was certain that the officer's assumption of an authority to which he was not entitled would require a finding by the Court that the warrant was invalid, and, unless there existed circumstances which would have justified a warrantless search—which I was certain was not the case—the fruits of the search would have to be suppressed.

As sure as I was, however, I did the research anyway, and drafted an appropriate Memorandum of Law for the Court. Unfortunately, I was unable to find a Pennsylvania case "on all fours," as we used to say, but I found support for my argument in analogous federal appellate opinions.

On the day set for hearing, I traveled to West Chester, arriving before 9:00 a.m., only to learn that the Judge had scheduled an emergency injunction hearing which was already in progress. That hearing concluded right before noon, and the Judge declared a recess until 2:00 p.m.

When court reconvened, whether it was because ours was the only case in the Courtroom and the Judge had no other audience, or because Wayne and I had sat through the entire morning proceedings with obvious interest (and no signs of impatience), the Judge's demeanor had

undergone a sea change.

"O.K.," he said, with a slight smile, "The Court appreciates the patience of both counsel, and we will proceed without further delay. Counsel for the Defendant, it would be helpful, if you wouldn't mind, to provide the Court with a summary of your argument; perhaps it will moot the necessity to have a full evidentiary hearing, if the facts are not in dispute."

I summarized the facts, being careful not to exaggerate or overstate them; and handed up a copy of the search warrant, which clearly showed the alteration of the address of the property to be searched, from 106 to 109. The Judge asked the prosecutor if he intended to put on evidence that would contradict my representations that the warrant had been altered by the officer. The prosecutor declined the opportunity to do so. The Court asked if there were any exigent circumstances that would have justified a warrantless search. There were none, the prosecutor admitted, as the officer's report recounted that Mr. Reed had been sitting on the porch, whittling away when the officer arrived, and had made no effort to hide, or destroy evidence, or even make a furtive move.

"Well," said the Judge, "I guess that's all she wrote. I don't need the Supreme Court to tell me that little corrective editing violates the Pennsylvania Constitution. Motion granted. Does the Commonwealth want a continuance to consider an appeal?"

The prosecutor said that would not be necessary and moved to dismiss the case.

I objected to dismissal unless it would be "with prejudice," failing which I moved for trial. Motion granted. The Commonwealth rested. Verdict: Not Guilty. As he was leaving the bench, the Judge said, "Nice work, young man. Come back any time."

Wayne and I left the courthouse and walked around the corner for a celebratory

beer.

"Nice work, young man," he said, and I thought he was making fun of the judge, but he was serious.

"I ain't sure exactly what happened in there, but I know my case is over. I don't get what that judge meant by 'corrective editing.'"

I explained again why it was wrong for the officer to have altered the address in the warrant.

"Because he searched the wrong house?"

"No," I said, "because he changed the address on the warrant to conform to the address of the property he was actually going to search."

"But he really didn't," said Wayne.

"What do you mean 'he really didn't'?" I asked. "Of course, he did. He changed '106' to '109' when he saw the address on the door."

"No," said Wayne, "he didn't. The correct address is 106. It just looks like '109' because the nail got loose and the '6' swung upside down. It just looked like '9,' but it's a '6.'"

"So, he changed the warrant when he didn't have to?"

"Yup."

"Didn't he ask you the address?"

"Yup."

"Well...?"

"He asked me the address, and I just pointed to the numbers. I never said a word."

I raised my glass. Wayne raised his, tapped mine.

"Nice work, counselor," he said.

"Thank you, Your Honor," I replied. ■

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