# Reasonable Inference Can Satisfy the Probable Cause Requirement for the Issuance of a Search Warrant

In *Murphy v. State*,[1] the Supreme Court of Georgia unanimously affirmed a lower court's admission of incriminating evidence which had been seized pursuant to a search warrant based upon a police officer's inference that the items sought could be found at the suspect's residence.[2] This is the first time that the supreme court has allowed a mere presumption to satisfy the test for probable cause for a search warrant.

The defendant was convicted of rape, burglary, and armed robbery. Reliable witnesses had placed him near the scene of the crime shortly after it occurred, and at a lineup conducted on the day of the crime the victim identified the defendant as her assailant. At trial, the defendant contended that a search warrant for his residence had been issued without probable cause and that items of clothing and a box of .32 caliber bullets seized during the search should have been suppressed. Although the affidavit clearly gave facts to show that the crimes had occurred, that the defendant had probably committed those crimes, and that the items sought during the search of the defendant's residence were instruments of the crimes, the defendant contended that the affidavit for the issuance of the search warrant was insufficient because it failed to show any reason to believe that the pistol sought would be found at his residence.

Cases factually similar to *Murphy* are controlled by the Fourth Amendment to the U.S. Constitution which provides that warrants shall not be issued "but upon probable cause."[3] Before a search warrant can be issued, it must first be shown that there is probable cause that the items sought will be found on the premises to be searched.[4] Case law has affirmed this principle. In *Brinegar v. United States*,[5] the U.S. Supreme Court held that the standards required for determining probable cause are not as strict as those for determining guilt in a criminal case: "Guilt in a criminal case must be proved beyond a reasonable doubt . . . . However, if those standards were to be made applicable in determining probable cause for an

1. 238 Ga. 725, 234 S.E.2d 911 (1977).

2. *Id.* at 727, 234 S.E. 2d at 913.

3. U.S. CONST. amend. IV.

4. W. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS 208 (1972). *See* Nathanson v. United States, 290 U.S. 41 (1933). "Under the Fourth Amendment, an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from the facts or circumstances presented to him under oath or affirmation. Mere affirmation of belief or suspicion is not enough." *Id.* at 47.

5. 338 U.S. 160 (1949).

arrest or for search and seizure, . . . few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end."[6] In Georgia, probable cause for the issuance of a search warrant has been interpreted to require facts and circumstances sufficient to warrant a man of reasonable caution in the belief that a crime has been or is being committed.[7]

In *Murphy*, the Georgia Supreme Court intimated that it was not necessary to connect Murphy's residence to the chain of events surrounding the commission of the crime. The issuance of the search warrant was upheld despite the fact that the police officer was unable to aver that Murphy had ever returned to his residence after the crime.[8] The court cited *United States v. Old Dominion Warehouse, Inc.*,[9] a 1926 decision written by Judge Learned Hand, which discussed what constituted a reasonable inference by an affiant police officer. In that case, a prohibition agent averred that he had seen a truck allegedly loaded with liquor barrels drive into a warehouse. He was unable to state, however, that the barrels had been unloaded and left at the warehouse. In upholding the resulting conviction and the issuance of the search warrant, Judge Hand reasoned that: "A warehouse is for the storage of goods, and men ordinarily bring things there to leave them. It is perhaps possible that the truck went there to add to its load; but we may take notice that a dozen barrels is in itself a fair load. No more is required than a fair presumption; the probabilities are with the officer's conclusion."[10]

In applying this rationale in *Murphy*, the Georgia Supreme Court concluded that it was a fair presumption that Murphy would return to his home after the crime and leave the incriminating evidence.[11] The supreme court failed to ascertain the major distinction between *Old Dominion Warehouse* and *Murphy*—in the former case it was averred that the incriminating evidence had been on the premises to be searched at some time, whereas in the latter case there was no reason to believe that Murphy had ever returned to his home after the crime. Using this rationale, it would have been just as logical or reasonable to have allowed a warrant to have been issued for any private residence the defendant was likely to frequent. Clearly, this would not have satisfied the Fourth Amendment's probable cause requirement because there was no reason to believe that the items sought would be found at the place to be searched.

Courts in other jurisdictions have differed in their interpretation of the quantity and certainty of facts necessary to constitute probable cause. In

6. *Id.* at 174.
7. State v. Causey, 132 Ga. App. 18, 20, 207 S.E.2d 225, 228 (1974).
8. 238 Ga. at 727, 234 S.E.2d at 913.
9. 10 F.2d 736 (2d Cir. 1926).
10. *Id.* at 738.
11. 238 Ga. at 728, 234 S.E.2d at 913.

*United States v. Bailey*,[12] a case factually similar to *Murphy*, the Ninth Circuit refused to allow evidence to be admitted which was seized from an automobile in which the defendant had been apprehended six weeks after the crime. As in *Murphy*, there was no indication that the defendant had had any connection with the area searched prior to his arrest. The court in *Bailey* reasoned that there was "no indication that the car had been used in the robbery, that Bailey owned it, or that he had ever been seen in it before his arrest."[13] The court concluded that "there was no foundation for any inference that the automobile contained the fruit of the search."[14]

In *United States v. Flanagan*,[15] the Fifth Circuit held that even if it was reliably established that a suspect had committed a crime, this information by itself was not sufficient to authorize a warrant to search the suspect's house which was located miles from the scene of the crime. In *United States v. Lucarz*,[16] the Ninth Circuit categorically stated "[s]imply from the existence of probable cause to believe a suspect guilty, [it does not follow in all cases] that there is also probable cause to search his residence. If that were so, there would be no reason to distinguish search warrants from arrest warrants . . . ."[17] And in *Smith v. State*,[18] a Wyoming court concluded that not only must there be a showing that a crime had occurred but also there must be an indication that elements or instrumentalities of the crime are in the place to be searched.

Does it follow then, in view of the cases just discussed, that the Georgia Supreme Court ruled erroneously in *Murphy*? Before this question can be satisfactorily answered, the implications of the *Murphy* decision must first be considered. In order to maintain a safe and secure community, courts have permitted law enforcement officials to make reasonable intrusions against individual privacy in the name of public good.[19] "Basic to the reasonableness of a search under the Fourth Amendment is the finding of probable cause."[20] The question, therefore, is whether there was probable cause to issue a search warrant for defendant Murphy's residence when there was no indication that he had ever returned there after the crime. A careful scrutiny of *Old Dominion Warehouse*, upon which the supreme

12. 458 F.2d 408 (9th Cir. 1972).

13. *Id.* at 411.

14. *Id.* at 411-12.

15. 423 F.2d 745 (5th Cir. 1970).

16. 430 F.2d 1051 (9th Cir. 1970).

17. *Id.* at 1055. *See also* Go-Bart Co. v. United States, 282 U.S. 344, 357 (1931). "It [the language of the Fourth Amendment] is general and forbids every search that is unreasonable; it protects all, those suspected and known to be offenders as well as the innocent . . . ."

18. 557 P.2d 130, 134 (Wyo. 1976).

19. State v. Boswell, 131 Ga. App. 657, 206 S.E.2d 682 (1974). "While recognizing the established doctrine 'That a man's home is his castle' we nevertheless must apply the principles of common sense and practicality . . . ." *Id.* at 661, 206 S.E.2d at 285.

20. 238 Ga. at 727, 234 S.E.2d at 913.

court relied heavily, reveals that although it was a reasonable presumption that the items sought would be found in the area searched, there was ample reason to believe that the items sought had been on the premises of the warehouse at one time.[21] This case is not really applicable to *Murphy* because it was never ascertained that the defendant there had returned to his residence after the crime. It therefore fails to support the court's reasoning and decision.

A more thorough research effort would have revealed significant case law to support the validity of the presumption that Murphy would likely store the incriminating implements of the crime at his residence. In *Lucarz*, the court considered "the type of crime, the nature of the missing items, the extent of the suspect's opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property."[22] A New Jersey court has upheld the validity of a search warrant issued upon an inference that a suspect would probably secrete the fruits of his crime in his automobile or in his apartment.[23] In *United States v. Mulligan*,[24] another case factually similar to *Murphy*, the Ninth Circuit permitted a common sense inference by a magistrate to stand in the determination of whether probable cause existed.[25] And in *Vessels v. Estelle*,[26] a federal district court concluded that it was reasonable for a magistrate to issue a search warrant for a suspect's residence on the basis that the house was a place where the particular implement sought was likely to be stored.

Although the Georgia Supreme Court could have based its decision on more appropriate authority, *Murphy* is not an erroneous ruling. It has established that a reasonable inference can afford the basis of the probable cause necessary before a search warrant can be issued. The supreme court has wisely interpreted the Fourth Amendment's fundamental guarantee of privacy while reaffirming the necessity for efficient law enforcement procedures. The rationale of *Murphy* should be extended to other fourth amendment probable cause situations. It will now be less difficult for a law enforcement official to secure a search warrant, and prosecutors will be provided with more evidence with which to obtain convictions. The probable cause requirement of the Fourth Amendment has not been eliminated or relaxed, but rather it has been prudently interpreted in light of the complexities of modern society.

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21. 10 F.2d at 738.

22. 430 F.2d at 1055. *See also* United States v. Pheaster, 544 F.2d 353, 373 (1976).

23. State v. Harris, 143 N.J. 314, 362 A.2d 1300, 1302 (1976). *See also* State v. Boswell, 131 Ga. App. 657, 661, 206 S.E.2d 682, 685 (1974).

24. 488 F.2d 732 (9th Cir. 1973).

25. "Although there was no direct evidence that any evidence from the burglary was inside . . . . [the residence], there was sufficient evidence from which the magistrate could use his common sense to infer that the loot and tools, if not buried, were probably in the house." *Id.* at 736.

26. 376 F. Supp. 1303 (S.D. Tex. 1973).