

## People v. Westerfield

(2019) 6 Cal.5th 632

### Issue

In the investigation into the abduction and murder of a seven-year old girl, did the affidavits in support of five search warrants establish probable cause?

### Facts

On a Saturday morning at about 9:30 A.M., the parents of seven-year old Danielle Van Dam discovered that she was missing from their home in San Diego. It appeared that someone had entered through a door in the garage. The ensuing investigation was intensive and it quickly focused on 49-year old David Westerfield who lived alone in a house two doors away. Ms. Van Dam informed investigators that she and some friends had gone to a local bar on Friday night and that Westerfield was there also. She said she remembered speaking with him and that she left at about 2 A.M. According to one of her friends, Westerfield had left at least 90 minutes earlier.

While canvassing the area, officers spoke with all of the neighbors except Westerfield who was not at home. He returned, however, on Monday morning and was met by investigators who wanted to know why he had left on Saturday and what he had been doing for the past two days. His explanation was bizarre. For brevity we have omitted some suspicious circumstances, discrepancies, and plain lies. But the gist of his story was as follows:

He awoke at about 6:30 on Saturday morning and had a sudden desire to spend the weekend exploring the desert. So he drove his SUV to a storage lot where he kept his motorhome, drove the motorhome back to his house, loaded it with groceries, and headed off. On the way to the desert, however, he realized he had forgotten his wallet at home and did not have enough cash for such a long trip, so he decided to visit a state park near Coronado instead. When he arrived, he paid for a three-night stay but almost immediately decided it was “too cold,” so he drove back home to retrieve his wallet. He arrived at about 3:30 P.M. and noticed a lot of police activity on the street, including a mobile command post and several news vans. He then remembered that he had left his wallet in his SUV, so he drove off and headed back to the storage lot. After retrieving his wallet, he decided to visit a “sand dune area” located about 160 miles away.

On Monday morning—at around 4 A.M.—Westerfield decided to drive home to San Diego. He arrived at about 7:00 A.M., and the first thing he did was drive to his dry cleaners where he dropped off a jacket, two comforters, and some other bedding. The proprietor later told officers that, although it was a cold morning, Westerfield was wearing a thin T-shirt, thin shorts, no shoes, and no socks. Later that day, Westerfield returned to the dry cleaners and dropped off a sweater, pants, and a T-shirt. He requested same day service.

After hearing Westerfield’s story, a detective obtained his consent to search his home and vehicles. As the detective entered the house, he noticed that it was “immaculately clean,” that the comforter on Westerfield’s bed was missing, and there was an odor of bleach in the garage. A cadaver dog later “displayed an interest” in Westerfield’s garage door. Officers then searched Westerfield’s motorhome and, among other things, noticed that this bed also lacked a comforter. In addition, the K9 “alerted” to a storage compartment and showed “interest” in a shovel.

When they returned to the police station, Westerfield said he had stopped at a certain place during his trip. But, as he recounted it, he accidentally referred to it as “this little place that *we*, where *we* were . . . .” When the detective asked why he used the term “*we*” when he supposedly alone, he said it was “just a slip.” Later that night, investigators arrested Westerfield for abduction.

At about 2 A.M. on Tuesday, a detective obtained a search warrant based mainly on the above information. The warrant authorized the seizure of DNA samples from Westerfield and further searches of his home, SUV, and motorhome. While officers were searching the motorhome, the cadaver dog “alerted” or “showed an interest in certain places and things. On Wednesday and Thursday, the detectives obtained two additional search warrants based primarily on the information contained in the first affidavit. One of the warrants was for cell phone records, and these records indicated that Westerfield “had not been truthful to investigators concerning his activities during the weekend in question.”

On the following Monday, a detective obtained a fourth warrant to conduct a forensic search of the clothing that Westerfield had dropped off at the dry cleaners. The following week, a detective obtained a fifth warrant for a more extensive search of trace evidence found in Westerfield’s home.

On February 27, searchers found Danielle’s nude and partially decomposed body near a trail in an unincorporated town east of San Diego. The searchers had gone to this area because it was a possible route that Westerfield might have taken on his trip. Because of the condition of the body, the coroner was unable to determine a cause of death or whether she had been sexually assaulted. As noted, investigators had seized several items that were submitted for forensic analysis. Among other things, it was determined that clothing Westerfield dropped off at the dry cleaners contained bloodstains and DNA linked to Danielle, along with her fingerprints and hair.

Before trial, Westerfield filed a motion to suppress most of this evidence, but the motion was denied and the case went to trial. Westerfield was found guilty and was sentenced to death.

## **Discussion**

Westerfield argued that all of the evidence obtained pursuant to the five search warrants should have been suppressed because the affidavits for the first warrant failed to establish probable cause, and that probable cause for the others was based on the information contained in the first one.

While it was true that the first warrant was based mainly on circumstantial evidence, “it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have any tendency to make the existence of any fact that is of consequence to the determination more probable or less probable than it would be without the evidence.”<sup>6</sup> Furthermore probable cause is “a flexible, commonsense standard, which requires only that the facts available to the officer would warrant a person of reasonable caution in believing that the item may be contraband or stolen property or evidence of a crime.”<sup>7</sup>

Consequently, the court ruled that all the searches were lawful and it affirmed Westerfield’s conviction and death sentence. (On March 13, 2019, Governor Gavin Newsome nullified Westerfield’s death sentence on grounds that he believes the death

penalty “has discriminated against defendants who are mentally ill, black and brown, or can’t afford expensive legal representation.”). POV

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