

**FILED**

**AUG 0 4 2009**

**THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

STATE OF WASHINGTON,

Plaintiff,

vs.

BRIAN L. MOORE,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 09-1-01570-9

**DEFENDANT'S MEMORANDUM OF  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS  
(MMATH)**

**I. FACTS**

For purposes of the defendant's motion, the facts of this case have been alleged in the affidavit of probable cause which has been filed by the State. See attached affidavit of probable cause.

**II. ISSUE PRESENTED**

Whether the charges against the defendant should be dismissed as the facts in the affidavit do not support probable cause for those charges.

**III. LEGAL ARGUMENT**

In the present case, Mr. Moore has been charged with murder in the first degree and conspiracy to commit murder in the first degree. RCW 9A.32.030 set out the elements for the

crime of murder in the first degree. The pertinent part of that statute provides:

- (1) A person is guilty of murder in the first degree when:  
 (a) with a premeditated intent to cause the death of another, he or she causes the death of such person or third person.

The statute which contains the elements of conspiracy is found in RCW 9A.28.040. The pertinent part of that statute provides:

- (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and anyone of them takes a substantial step in pursuance of such agreement.

The facts found in the affidavit of probable cause allege that Shellye Stark shot and killed Dale Stark. There are no facts which suggest Mr. Moore was present at the residence where the shooting took place or shot Mr. Moore himself. Consequently, any sort of criminal liability in regard to the charge of murder in the first degree would be the result of accomplice liability. RCW 9A.28.020 sets out the elements of accomplice liability. The pertinent part of that statute states:

- (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.  
 (2) A person is legally accountable for the conduct of another person when: . . .  
 (c) he is an accomplice of such other person in the commission of a crime.  
 (3) A person is an accomplice of another person in the commission of a crime if:  
 (a) with knowledge that it will promote or facilitate the commission of the crime, he  
 (i) solicits, commands, or encourages, or requests such other person to commit it; or  
 (ii) aids or agrees to aid such other person in planning or committing it.

Currently, Mr. Moore is detained in jail on these charges. The Fourth Amendment permits limited restraint on the liberty of an arrestee. Westerman v. Cary, 125 Wn.2d 277, 293, 892 P.2d 1067 (1994). A police officer may detain an individual without a warrant if the officer

has probable cause to believe the arrestee committed an offense. Id. Citing Gerstein v. Pugh, 420 U.S. 103, 112-14, 43 L.Ed 2d 54, 95 S. Ct. 854 (1975). To justify further pretrial detention, a fair and reliable determination of probable cause must be made by a judicial officer promptly following arrest. Id. Probable cause exists where facts and circumstances within the arresting officer's knowledge and of which the officer has reasonable trustworthy information are sufficient to warrant a person of reasonable caution in a belief a crime has been committed. State v. Wagner-Bennett, 148 Wn.App 538, 541, 200 P.3d 739 (2009). Probability and not a prima facie showing of criminal activity is the standard. Id., at 542. A prima facie case is one established by sufficient evidence and can only be overthrown by rebutting the evidence adduced by the other side. State v. McAllaster, 31 Wn.App. 554, 557, 644 P.2d 677 (1981). However, a bare suspicion of criminal activity does not constitute probable cause. State v. Terrovona, 105 Wn.2d 632, 643, 716, P.2d 295 (1986).

In regard to Count I, the State must have alleged some facts which would show that Mr. Moore was an accomplice to the murder of Dale Stark. The facts alleged in the affidavit of probable cause are insufficient. There are no facts to show Mr. Moore supplied the gun; that was supplied by Mr. Stark's family. There are not facts that Mr. Moore supplied transportation so Ms. Stark could carry out the shooting. The facts show Mr. Moore was not present at the scene.

The only evidence which directly links Mr. Moore to this incident comes from information which will be provided from Ted Pulver. The information would be provided if a Court ordered Mr. Pulver to provide the information. Recently, the Court has ruled that the material from Mr. Pulver is privileged. Furthermore, the affidavit makes it clear that the Stat currently does not have the information they claim will incriminate Mr. Moore. The defense is aware of no authority which allows a defendant to be held on probable cause based on information the State plans to develop. Either the State has evidence which constitutes probable cause or it does not. The

recent ruling concerning the evidence makes it clear the State does not have the evidence and may never get the evidence.

Without that evidence, there are no facts to show Mr. Moore was an accomplice. Something more than mere presence and knowledge of the ongoing activity must be shown. In re Wilson, 91 Wn.2d 487, 492, 588 P.2d 1161 (1979). In order to be an accomplice, that person must associate and participate in the venture as something he wished to make happen or succeed. State v. Luna, 71 Wn.App. 755, 759, 862 P.2d 620 (1993). Knowledge that a principal intends to commit a crime does not impose strict liability for offenses that follow. State v. Roberts, 142 Wn.2d 471, 513, 14 P.3d 713 (2000). In order for accomplice liability to attach, a defendant must not merely aid any crime, but must knowingly aid in the commission of the specific crime. Id., at 509-13.

The fact that Mr. Moore was romantically involved with Ms. Stark does not make him an accomplice. The fact that he was aware that Ms. Stark was serving a no contact order does not make him an accomplice. Even if he was aware that she intended to shoot her husband, that would not make him an accomplice. The fact that Mr. Moore may have tried to access funds belonging to Dale Stark does not make him an accomplice as there must be facts to show he participated in the crime charged and not just any crime. There are no facts which support accomplice liability.


In regard to Count II, conspiracy the same sort of analysis would apply. There are plenty of facts alleged to show that Mr. Moore had a close relationship with Ms. Stark. He went to great lengths to try and help her get out of jail. He tried to help her with her divorce settlement. There are no facts to show Ms. Stark and Mr. Moore entered into an agreement to murder Dale Stark. The only information which would support such a charge comes from information which would be supplied by Ted Pulver. As stated earlier, this is information the State does not currently possess. Thus, the charge must also be dismissed for lack of probable cause.

**IV. CONCLUSION**

Mr. Moore is charge with murder in the first degree and conspiracy to commit murder in the first degree. The alleged facts as presented in the affidavit of probable cause do not support such charges against Mr. Moore.

Therefore, the defendant respectfully requests the charges against him be dismissed.

DATED this 5<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
JEFFREY G. COMPTON  
WSBA # 24082  
Attorney at Law