

**IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
HENDRY COUNTY, FLORIDA** **CRIMINAL ACTION**

**STATE OF FLORIDA,**  
**vs.**

**Case No. 16-MM-1014**

**ROBERT ARCHER,**

Filed  
18 day of Sept. 20 17  
Bernice S. Butler, Clerk  
Henry County, FL  
J. Powell

\_\_\_\_\_/ **Defendant,**

**VERDICT**

**THIS CAUSE** comes before the Court on an “Order to Show Cause,” filed July 22, 2016, pursuant to F. R. Crim. Pro. 3.840 for Defendant to show cause as to why he should not be held in indirect criminal contempt for providing false and/or misleading information in the probable cause affidavit and application for search warrant. Having reviewed the Order to Show Cause, the case file, the applicable law, and having held a hearing on August 4, 2017, the Court finds as follows:

1. The record indicates that the Order to Show Cause was returned as served on Defendant on July 27, 2017. The Order to Show cause alleges that, relying on information provided by Defendant, Detective Rodriguez applied for a search warrant. The information received was that: Defendant was invited in the residence of Toby Coppler by Melissa Sutton, that Charles Hendry fled through the rear of the home, and while talking to Ms. Sutton, Defendant observed suspected methamphetamine and drug paraphernalia in plain view. After the search warrant was denied, Defendant swore a probable cause affidavit charging Mr. Coppler with various charges based on misleading and /or incorrect information, and failed to state in the affidavit that the search warrant had been denied and failed to inform the Court that one had been applied for.

August 1, 2016, the contempt proceedings were filed under the instant case number. On that date, the Court held an arraignment, and advised Defendant of his right to remain silent, right to counsel, and right to file a written answer (Arraignment p. 4). The Court appointed the State Attorney's Office to prosecute the contempt charge (Arraignment p. 3).

3. On August 13, 2016, Defendant filed a Motion for a Statement of Particulars. The Court denied this motion on August 23, 2016. Defendant filed an amended motion on May 27, 2017. The Court took no action on the amended motion, as it had previously ruled.

4. At a status conference, the parties were provided with an opportunity to supplement the record, but both parties indicated they would rely on the transcripts of the Defendant's trial in criminal case 16-707CF as it dealt with most of the same facts. The Court also required the filing of transcripts of the first appearance proceedings for Mr. Coppler, of which the Court takes judicial notice.

5. Indirect criminal contempt is conduct occurring outside the presence of the judge which constitutes "a clear and present danger to the orderly administration of justice ... whether speech constitutes a clear and present danger is measured not by the content of the remark but by the impact on judicial action." Wasserman v. State, 671 So. 2d 846, 848 (Fla. 2d DCA 1996). In an indirect criminal contempt charge, there must be proof beyond a reasonable doubt against the accused. Tide v. State, 804 So. 2d 412, 413 (Fla. 4<sup>th</sup> DCA 2001). Intent is an essential element, and intent can be inferred from the actions of the accused. Power Line Components, Inc. v. Mil-Spec Components, Inc., 720 So. 2d 546 (Fla. 4<sup>th</sup> DCA 1998); Milian v. State, 764 So. 2d 860 (Fla. 4<sup>th</sup> DCA 2000). Where intent is supported by the facts, the court may conclude that the accused's behavior was willful and calculated to hinder the orderly functions of the court. Mann v. State, 476 So. 2d 1369, 1374 (Fla. 2d DCA 1985). Perjury in an affidavit is punishable by

indirect criminal contempt. Haeussler v. State, 100 So.3d 732 (Fla. 2d DCA 2012).

6. The affidavit and application for search warrant indicated that Defendant advised: Defendant was dispatched for a disturbance call. He observed Melissa Sutton and another woman arguing on the front lawn. Ms. Sutton ran into the house. Toby Coppler denied the Defendant entry to speak to Ms. Sutton to complete his investigation, and was arrested for obstruction. Defendant was invited into the home by Ms. Sutton. Multiple people were in the residence, and Charles Hendry fled due to an active warrant. While speaking with Ms. Sutton, Defendant observed narcotics and paraphernalia in plain view.

7. The probable cause affidavit sworn to by Defendant in support of the arrest of Toby Coppler indicated that: He and Deputy Reed responded to a disturbance call. They spoke to one woman in the front yard, who said Ms. Sutton had gone inside the residence. When they went to the front door to make contact with Ms. Sutton, Mr. Coppler denied them entry or access to Ms. Sutton, so he was arrested for obstruction. Ms. Sutton then came to the door and gestured for Defendant to come in. During the conversation, Ms. Sutton told Defendant that she lived at the residence off and on for about a year and a half. Defendant and Deputy Reed stepped out to check warrants for the individuals in the home, and upon return, found one of the men was missing, so they conducted a safety sweep of the home. While checking in the bedroom, Defendant observed narcotics in plain view on the dresser.

8. By agreement of the parties, the Court takes judicial notice of the testimony taken in Defendant's felony case. Detective Rodriguez testified that Defendant called him requesting assistance with applying for a search warrant. He was surprised that individuals were not present to take statements from (T1. 13). Based on information provided by Defendant and his observations at the scene, he wrote the affidavit for the search warrant, which was subsequently

denied (T1. 14, 26). He returned to the residence and started to collect evidence, but Defendant said he would take care of it (T1. 38).

Sergeant Leverenz testified that he met Detective Rodriguez in the office, and they provided the affidavit for search warrant to the judge, but it was denied (T1. 70). They went back to the residence to help Defendant collect evidence, and Defendant told them several times he did not need help (T1. 72). This was not normal, and it surprised him (T1. 73). After they told Defendant the search warrant had been denied, Defendant stated that he thought they knew Ms. Sutton lived there (T1. 81). A DVR, which had been connected to cameras in and around the residence, was never submitted into evidence (T1. 98). Sergeant Leverenz testified that Detective Rodriguez told him that Defendant advised him Ms. Sutton invited him into the residence, and he did not believe there was probable cause for the search warrant because he knew Ms. Sutton did not live there and did not have authority to consent (T1. 104).

9. Sergeant Reed testified that he and Defendant responded to a disturbance call between two females (T1. 108-109). He spoke to one of the women, while Ms. Sutton ran inside the residence (T1. 110). Mr. Coppler denied entry to the home to speak to Ms. Sutton (T1. 111). He arrested Mr. Coppler for obstruction of his investigation (T1. 113). Sergeant Reed observed Ms. Sutton motion them to go inside the residence (T1. 115). Ms. Sutton did not have a conversation with Defendant about whether she lived in the home (T1. 116). After they ascertained one of the men had warrants, and that that individual had fled out the back door, they searched the home, and one bedroom door was shut (T1. 119). Sergeant Reed testified that Defendant went into the closed bedroom and observed narcotics (T1. 119).

10. Toby Coppler testified that Ms. Sutton never lived at the residence, but visited from time to time, because he had custody of their daughter (T1. 139). After he was arrested, he never

had any conversations with Defendant about a yellow vehicle (T1. 143). He observed Defendant forcing Ms. Sutton into the house (T1. 146-147). Mr. Coppler testified that the bedroom with the closed door was his, and he had narcotics in it put away on a shelf (T1. 147). He had cameras on the front yard and inside the house pointed at his bedroom, recording onto a DVR (T1. 148). Melissa Sutton testified that she was not outside arguing with the other woman, and did not go outside the residence until she heard Mr. Coppler had been arrested (T1. 165-166). She denied inviting Defendant inside, verbally or nonverbally (T1. 167). She stated that Defendant grabbed her arm and walked her inside (T1. 168). She stated that Defendant asked her which bedroom was Mr. Coppler's bedroom, and he asked her where the drugs were (T1. 168-169). Defendant unplugged the camera system, and she did not see any drugs in plain view in the bedroom (T1. 172).

11. Sergeant Elver testified that he met Defendant at the residence and Defendant was waiting for a search warrant. He returned later to the residence and was informed the search warrant had been denied (T2. 9). He heard Defendant tell other officers that he did not want their assistance with evidence collection (T2. 9). Defendant told him not to worry about the video because he "took care" of the DVR so it would not work again (T2. 15). When he asked Defendant why he was having a yellow vehicle being towed, when he did not see any reason to tow it from private property and was unaware of any consent to search it, Defendant told him "I'm going to do some creative writing, don't worry, I have got it" (T2. 21). Sergeant Taylor testified that he responded to the scene to see if assistance was required, and overheard Defendant state that they would not have to worry about the DVR working anymore (T2. 40).

12. The Court finds beyond a reasonable doubt that Defendant engaged in conduct which interfered with the Court's administration of justice. It was necessary to continue Mr. Coppler's

first appearance, because the Court had learned about the search warrant from the circuit judge minutes before taking the bench for the first appearance of Mr. Coppler.<sup>1</sup> The State had no information about it, and Defendant had failed to mention anything about the search warrant in the probable cause affidavit in support of the arrest of Toby Coppler. The Court was forced to continue first appearance because the Court needed to have all the information available in order to determine whether there was probable cause and, if so, make a determination setting bond. The Court was required to continue Mr. Coppler's first appearance hearing and special set it that afternoon, requiring additional court time, and interfering with work on other cases, which interfered with the orderly administration of justice. Based on the totality of the information, the Court initially determined there was no probable cause to hold Mr. Coppler, due to incomplete and confusing facts, and the illogical sequence of events and timing described by Defendant. The Court was unable to determine what the facts were. After the excision of the confusing and/or misleading information, there were not sufficient facts in the affidavit to support a finding of probable cause. State v. Marrow, 459 So. 2d 321, 322 (Fla. 3d DCA 1984), *citing* Franks v. Delaware, 438 U.S. 154, 172 (1978). Defendant's conduct affected the determination as to probable cause and bond for Mr. Coppler.

13. The Court finds beyond a reasonable doubt that the Defendant's conduct was intentional and not accidental when he failed to include in the probable cause affidavit the attempt to obtain a search warrant and the information provided in the affidavit for that search warrant. The Court finds Defendant's statement when he testified at his felony trial that he did not believe that information was relevant particularly illustrative for the Court in finding the

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<sup>1</sup> The Honorable James D. Sloan received a phone call on Sunday, concerning the search warrant the day before the first appearance hearing of Toby Coppler. Judge Sloan informed the Court prior to the Court taking the bench that he had been presented information in support of a search warrant and had denied it.

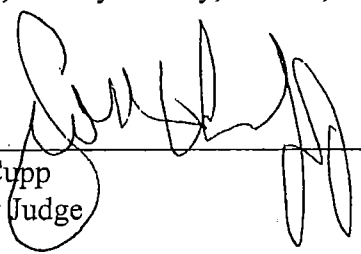
Defendant guilty of indirect criminal contempt. The information in the search warrant affidavit is significantly different from the information in the probable cause affidavit, and Defendant provided the information for both. It is not for agents of law enforcement to decide what information or facts are relevant when writing a probable cause affidavit. The Court requires all available information known to the affiant officer concerning any incident or set of facts leading to an arrest. Certainly, the availability of another affidavit involving the same incident should have been included. The Court finds beyond a reasonable doubt Defendant intentionally, willfully and deliberately deprived the Court of the information about the search warrant affidavit, and the sworn facts contained therein. The Court notes that the information Defendant provided in the probable cause affidavit was refuted by other testimony at the perjury trial. The Court finds Defendant lacked candor to the Court when he filed that probable cause affidavit. Understanding that intent can be inferred from Defendant's actions, Power Line Components, Inc. v. Mil-Spec Components, Inc., 720 So. 2d 546 (Fla. 4<sup>th</sup> DCA 1998); Milian v. State, 764 So. 2d 860 (Fla. 4<sup>th</sup> DCA 2000), and here, words, the Court finds that Defendant's statement that he was going to engage in some "creative writing" particularly troubling and offensive. Looking at the totality of the circumstances, the Court rejects Defendant's explanation for that statement as not credible. Defendant's actions, not only that statement, but the totality of his conduct, clearly show that he does not view the Florida Rules of Criminal Procedure, the Florida Statutes, and the Constitution, as law that must be faithfully adhered to, but as obstacles to overcome and evade in order to achieve his *personal* goal – an arrest. Defendant's conduct here is dangerous and offensive to the criminal justice system, and must be rooted out when found and called what it is – criminal. The Court finds beyond a reasonable doubt that Defendant made a conscious and willful decision to alter the information in the probable cause affidavit of Toby Coppler after the

denial of the search warrant, and this decision interfered with the ability of this Court and the justice system to function properly.

Accordingly, it is

**ORDERED AND ADJUDGED** that the Court finds Defendant **GUILTY** of indirect criminal contempt of court.

**DONE AND ORDERED** in Open Court at LaBelle, Hendry County, Florida, this 18 day of SEPTEMBER, 2017.


  
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Scott Cupp  
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Lee Hollander, Esq., 2681 Airport Rd., S., Ste. C-101, Naples, FL 34112; Office of the State Attorney, P.O. Box 399, Fort Myers, FL 33901-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 18 day of Sept, 2017.

BARBARA S. BUTLER  
Clerk of Court

By:

  
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Deputy Clerk