

MEMORANDUM

TO: Brad King, State Attorney

FROM: Richard Ridgway, Assistant State Attorney  
Janine Nixon, Assistant State Attorney

RE: State v Conger & Robertson  
2015CF1543A&B

DATE: June 23, 2015

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Brandon Stevens (Stevens) was arrested by the Marion County Sheriff's Office (MCSO) on a violation of probation warrant issued in Lake County. While at the Marion County Jail, Stevens sent a written request to speak to a detective about unspecified crimes. However, he was not contacted and was transferred to the Lake County Jail. Once there he again asked to speak to a detective and was contacted by a Lake County Sheriff's Office Detective. The Lake County Detective interviewed Stevens, but did not take a recorded statement, nor write a report about the interview. Because the information supplied by Stevens related to a residence in Marion County, he simply passed the information along to MCSO.

Stevens claimed to have been on property located at 17459 SE 260<sup>th</sup> Avenue, and been inside a shed located on the property. He claimed that he had seen "Rhino", "Scooby", and "Congo" in the shed, and had seen them take a rocket propelled grenade launcher out of the floor safe in the shed. [Rhino was subsequently identified as Ryan Silberstein (Silberstein) and Congo was subsequently identified as Christopher Conger (Conger). Scooby has not been positively identified.] Stevens claimed he had seen four additional missile containers missiles in the floor safe. He said that he saw Conger return the rocket launcher to the floor safe and then discuss a plan to attack the Eustis Police Department.

Stevens arrest for the charges for which he was on probation was made by the Eustis Police Department. He was well known by the police department, including the chief of police who was familiar with Stevens and his family. The chief was also aware that Stevens had a long history of serious mental health issues that would cast doubt on any statement he made. The chief was not contacted about the matter by MCSO.

Stevens' sister had lived in a trailer on the property described above. According to Silberstein she was allowed to stay there for doing work on the property. However, a dispute arose and she left the property. She, along with her (and Stevens') mother returned to the property in an attempt to recover some of her belongings. When they did so, there was a confrontation with the people there. The sister, and the mother, each made a 911 call to MCSO during the incident, but were not contacted by anyone in response to the calls. The mother also made an anonymous tip to MCSO about the property, the people on the property and the fact that there was drug activity on the premises. Steven's mother and sister denied being aware of the presence of rockets or other such devices, or aware of any type of planned attack.

Once MCSO received the information about the statement from the Lake County detective they did not interview Stevens. They went to the property and were able to confirm the existence of the shed, the fact there was a container built into the floor and that there may have been some type of booby trap device on the property. Based on these observations, and the unrecorded statement of Stevens, a search warrant for the shed was obtained.

During the time that the warrant was sought, law enforcement personnel remained on the property in order to secure the shed and anyone that might be in it. According to jail calls made after the arrest of Conger and Robertson, an occupant of the shed was attempting to make arrangements with a third person to visit the property and "get rid" of the police presence.

Upon the execution of the search warrant Conger and Robertson were found inside the shed. (Robertson gave a false name ostensibly to avoid being arrested on warrants out of Sumter and Lake Counties.) The shed has several rooms and an enclosed porch. The sitting room had two couches, a coffee table, an end table, a TV on top of a short table, and a coat rack. Also in the sitting room were bags, boxes and loose personal items and clothes. The floor safe was in the sitting room built into the floor underneath the coffee table. In another room was a dresser and many other bins and containers with personal items. On the enclosed porch was at least one gas grill and a large tool container (Craftsman metal tool box). There was a bathroom in the shed and an area that could be used as a kitchen on the enclosed porch.

The floor safe contained only a few loose pieces of paper and two photos of Ryan Silberstein and his brother and a couple of young ladies. The dimensions of the safe are not contained in the reports, but based on the photographs it does not appear to be large enough to contain the items described by Stevens.

Drugs were found on the floor under the TV table, under a couch cushion, in a drawstring bag (Michael Jordan bag), and in the Craftsman toolbox. Guns were found in various locations throughout the rooms. The baggies found under the TV stand containing cocaine were processed for finger prints with negative results. No other drug packaging was processed for fingerprints according to the police reports.

The crime scene technician's report indicates that a baggie with cocaine was found in a Michael Jordan Bag. The reports do not indicate where this bag was found or what other items were found in the bag that might circumstantially indicate the owner of the bag and its contents. The photos taken at the time of the execution of the search warrant don't reveal any obviously helpful evidence about the bag or its contents.

Clothing and personal items of Conger's were found in the sitting room in unreported locations. Based on a review of his statement and the photos from the execution of the search warrant, bandanas that could be associated with Conger were found in a small duffel bag in the sitting room. A small safe was located in an unreported location, but believed to be in the sitting room, with a gun that Conger claimed was his as well as documents associated with Conger. The photos seem to indicate that a work shirt with the name Conger embroidered on the front, his wallet and some papers with his name on them were found in an open closet cubby. Conger's paperwork had addresses listed including his parent's home nearby and a Tavares address. None of the documents established his residence at 17450 SE 260<sup>th</sup> Avenue Road, Umatilla.

Personal items of other persons were also found in the shed. The Florida ID card of Steven's sister was found. Various paperwork with other person's names and addresses were located in unreported locations. A dresser in the back room had at least one scale in it and photos of Silberstein. A jewelry/watch box was found in an unreported location, with no apparent identifying features. This box was not collected or processed for prints or DNA.

Scales (untested but presumably used for weighing illegal drugs) were found in various but unspecific locations. None were closely associated with identifying materials, except loosely associated with Silberstein.

Twenty two guns were found in various locations in the shed. From a reading of all the reports and looking at the photos in conjunction with those reports, one of the firearms was in plain view. Other firearms were underneath couch cushions, in bags and cases, on upper shelves, in Conger's safe, behind clothing, in bags within a garbage container and inside the Craftsman tool box.

Also found was a small plastic bottle of commercially produced black powder, used in muzzle loading firearms. A black powder pistol was found. There was nothing found suggesting that the black powder was going to be used for any other purpose.

None of the identifying materials were closely associated with the drugs or guns (except for the guns that Conger said were his which were found inside his safe).

Robertson was interviewed and denied residing at the shed or knowing about any of the illegal contents. He acknowledged being a convicted felon and said that he could not and would not possess firearms. He said he didn't know about any drugs or guns located in the shed. He additionally denied being "Scooby." He stated that he was there to arrange the sale of a car on the property to a third person. During the process of obtaining and executing the search warrant, a person drove up to the premises claiming he was there to buy a car. He was not allowed to enter. His identity was apparently not obtained as it is not in the police reports.

Conger was interviewed and said that he lived elsewhere. He said quite a few people had access to the shed. He admitted that some of his personal belongings were in the shed. He said that he had three guns in the shed and specified which ones. He also admitted that he had a personal amount of cannabis in the shed. He denied knowledge of any of the other illegal contents. He said that none of the guns were Robertson's.

After his arrest for a variety of charges (see below) in connection with the execution of the search warrant, a jail call was recorded where the inmate states his name is "Congo." The call was made to a number associated with Silberstein. The person believed to be Silberstein asks if "they ran across everything?" The inmate identified as Congo didn't answer until later in the conversation when Silberstein asks, "there wasn't nothing left behind?" and Congo said "they done got everything." Congo said a few other things such as "the whole 9." Conger, however, maintained that only certain items were his and that he did not have access to the floor safe and the other guns and drugs were not his. They both discussed that other people have access to the shed.

On May 18, 2015 MCSO took a statement from the owner of the property, Mark Bowling. He indicated that he does not have contact with the property on a day to day basis and that Silberstein pays him rent for the entire property.

On May 19, MCSO took a recorded statement from Silberstein. He said that no one lived at the property and he has no knowledge of illegal activities on the property. He said that he was aware who gave the initial information to authorities (Stevens). He stated that Stevens' sister lived on the property and was kicked off. He also said that Stevens brought a car that Ryan believed to be stolen and left it on the property. Later in the interview he said that Conger might be staying in the shed from time to time.

On May 19, 2015 Silberstein allowed MCSO to walk around some of the property and structures. During this walk through Silberstein claimed not to have a key to the previous searched shed, but offered to call his brother, Dustin, who had a key. In one of the reportedly unoccupied trailers, deputies found a tube that appears to be designed to carry mortar shells sitting out in a bathroom closet. When asked about it, Silberstein said that the last time he was in the trailer the tube wasn't there. The tube was found to be empty and taken into evidence. The tube is inconsistent with a rocket propelled grenade launcher (RPG) or the projectiles associated with an RPG as described by Stevens. In fact, the tube is sold as surplus and identical tubes can be purchased on eBay for less than \$20.

A second search warrant was prepared on May 19, 2015 in order to obtain authorization to search all the structures on the property for explosives. Upon execution of the second search warrant on May 20, 2015 an abandoned marijuana grow operation was located in one of the trailers, a gun that appeared to have the serial number scratched off of it was found in car, a stolen car trailer and a single round of ammunition was found in a tool box on a trailer that belonged to Silberstein. There were no explosives found.

Later that day MCSO went to the Lake County Jail to talk to Stevens. At this time they took a recorded statement from Stevens. Stevens indicated that one of the people who was arrested (apparently Stevens saw Robertson's picture on news reports) was "Scooby." However there is no photographic line up or other clear memorialized statement that Robertson is the person who Steven's knew to be "Scooby."

On May 22, 2015 MCSO applied for three search warrants for phones that were each described as being on the subject when he was arrested, but fails to indicate which suspect. It is unclear whether these are the same phones depicted in photographs of the initial search warrant showing phones in the shed. To date the information collected from the phone has not been set forth in a report. A Deputy orally indicated that nothing of significance has been uncovered.

### Charging Decisions

All current criminal charges stem from the items found after the initial search warrant. If those charges were litigated, the Court would likely be presented with the question of the validity of the first search warrant. The failure of the law enforcement officers to conduct an interview of the source prior to applying for the warrant in order to verify and document his very serious accusations would present a serious problem in an argument in support of the validity of the warrant.

Assuming the warrant is considered to be valid, the merits of each criminal charge is discussed below.

Conger and Robertson (each have the same charges except for count 8)

1. Possession of Cocaine with Intent to Sell
2. Possession of Cannabis with Intent to Sell
3. Grand Theft Firearm (Keltec 9mm pistol)
4. Use of Firearm During the Commission of a Felony
5. Wearing a Bullet Proof Vest during Certain Offenses
6. Possession of Paraphernalia
7. Possession of Synthetic Narcotic
8. Robertson only – Possession of a Firearm by Felon

1. Possession of Cocaine with Intent to Sell
2. Possession of Cannabis with Intent to Sell
6. Possession of Paraphernalia
7. Possession of a Synthetic Narcotic

As for the controlled substance charges, as reported, none of the drugs were found in plain view. The cocaine and some of the pills were collected from “under the television.” This is believed to be referencing a TV stand in the sitting room of the shed. It is within close proximity to Conger and Robertson at the time of the execution of the search warrant (as is most everything in the main room of the shed) but there is no evidence that it was in view. The photos from the search warrant seem to indicate that the drugs were under the TV table and behind DVDs stacked on the floor (this is not perfectly clear, however). The balance of the controlled substances are listed as having been found in either the Michael Jordan bag or the tool box on the “enclosed porch” of the shed (except for the small bag of cannabis that Conger admitted was his and a canning jar that contained residue of cannabis).

Where the state prosecutes a defendant for possession of drugs on a constructive possession theory, the state must prove that the defendant had: “(1) dominion and control over the contraband, (2) knowledge the contraband was within his presence, and (3) knowledge of the illicit nature of the contraband.” *Lee v. State*, 835 So.2d 1177, 1178 (Fla. 4<sup>th</sup> DCA 2002). The defendant’s knowledge and control can be presumed where the defendant has exclusive possession of the premises where the contraband is found. *See Brown v. State*, 428 So.2d 250, 252 (Fla. 1983). “Where, however, the premises are in the defendant’s and another’s joint possession, knowledge of the contraband’s presence and the defendant’s ability to control the same will not be inferred and must be established by independent evidence.” *Edmond v. State*, 963 So.2d 344, 346 (Fla. 4<sup>th</sup> DCA 2007). Mere proximity to the contraband is insufficient to establish dominion and control. *Person v. State*, 950 So.2d 1270, 1272 (Fla. 2<sup>d</sup> DCA 2007). *Ylomon v. State*, 76 So.3d 18 (Fla. 4<sup>th</sup> DCA 2011).

The *Person* Court also addressed the question of whether flight was sufficient to prove the defendant had dominion or control. The Court determined that without sufficient nexus between the flight and the crime with which the defendant is charged, it does not. *Person*, *id* at 1273. And *Ylomon*

citing *Person*, at 20. Additionally, in *Edmond v. State* the Court found that the defendant's attempt to hide and thereafter flee was also insufficient to prove constructive possession. *Edmond v. State*, 963 So.2d 344 (Fla. 4<sup>th</sup> DCA 2007), citing *Person* and *Agee v. State*, 522 So.2d 1044, 1046 (Fla. 2d DCA 1988).

Conger and Robertson were present in the shed at the time of the execution of the warrant and had been for several hours prior the execution. There is evidence that Conger and possibly Robertson were in the shed on at least one occasion prior, but that only through the statement of Stevens. The testimony of Stevens is not reliable, however. The remaining direct evidence, to prove that Conger frequented the shed or kept property there or resided there from time to time, is the testimony of Silberstein. Based upon the evidence obtained thus far, Silberstein should be suspected of possessing the controlled substances. Furthermore, he made different statements about whether Conger resided at the shed or not. He has motive to lie about Conger's involvement and isn't very credible. So we are left with the circumstantial evidence to prove that Conger has possession and control over the items in the shed. Pieces of Conger's property, mail addressed to him and his clothing were found in the shed. Other person's property and documents and clothing were also found in the shed. The jail call, assuming it could successfully be introduced into evidence, supports only slightly the argument that Conger had knowledge and control over the contraband in the shed. Conger made the statement to the effect that law enforcement found "everything." Even if that proves knowledge, it may more clearly point to Silberstein's possession of the illegal drugs. Conger also made a cryptic statement to a girlfriend in a jail call, that if the State tests the drug packages for fingerprints and DNA "we both know who's prints they will find," intimating that it would be Silberstein's. Conger also alluded to the fact that he won't provide authorities with any names.

Also, any argument that Conger and Robertson's failure to come out of the shed earlier, if one could show that they knew of police outside the shed, would not be sufficient evidence to prove dominion and control. There is no nexus between Conger and Robertson's refusal to answer the door and the contraband.

The State cannot show beyond a reasonable doubt that Conger had exclusive possession of the shed, nor can it prove that Conger or Robertson had knowledge and control over the illegal drugs. The combination of the lack of exclusivity of Conger's possession of the premises and the heightened suspicion that Silberstein controls the illegal drugs would cause the prosecution to be unsuccessful.

In order to prove that drugs are possessed with the intent to sell the State must have additional evidence other than the suspicious packaging of the drugs. Although the police reports do not indicate that money or ledgers were found, scales were found. That might support charging with the intent to sell, however, the State cannot conclusively prove that either defendant possessed the drugs so this is a moot point.

### 3. Grand Theft Firearm (Keltec)

The theft of the Keltec occurred in 2011 and there is no evidence that Conger or Robertson participated in the burglary or theft. There is no evidence that either Roberts or Conger ever possessed the Keltec, even if they were in close proximity. Similarly there is no evidence to show *when* either or both of them acquired the Keltec if they ever did. There is no evidence that they should have known that the Keltec was stolen should they have ever seen or possessed it.

4. Use of a Firearm During the Commission of a Felony

Neither Robertson nor Conger had any firearms in their hands or on their persons at the time of the execution of the search warrant. And there is little evidence that Conger, and less that Robertson possessed the drugs found, therefore there is no support for Possession of a Firearm during the Crime of Possession with Intent to Sell drugs. In most cases Possession during the Commission of a Felony is perceived by the courts to be an active felony, and even when accepted during a Possession Crime there should be some special factual quality to the possession of the firearm. Even so, if the State cannot prove possession of the drugs then the State cannot prove this charge.

5. Possession of a Bullet Proof Vest during Certain Offenses

Similar to Count Four, there is little evidence to support Count Five. Florida Statute 775.0847 defines bullet proof vest and then prohibits persons from possessing them while committing certain offenses and in furtherance of any such crime. Controlled substance offenses under 893 are included in such offenses, however, as stated above there is scant evidence of the possession of the controlled substance and none to support that the possession of the vest was in furtherance of the possession of controlled substance with intent to sell. A detailed description of the vest is not provided in the MCSO reports or evidence list in order to determine whether it meets the requirements of the statute. Assuming that it does, the items shares the same constructive possession issue with the other illegal or suspicious items in the shed.

8. Robertson only – Possession of a Firearm by Felon

As for Robertson's possession of a firearm by Felon charge, the evidence to support it is as follows: he was present in a shed at the same time as 22 firearms. There is one firearm that there is some evidence that he could have seen while sitting in the main room. There is no fingerprint evidence or DNA evidence that he touched any of the firearms in the shed. Robertson made a statement and denies knowing there were guns in the shed and also denied that he possessed any of them. Incidentally, he denied knowledge of drugs as well. None of the collected evidence indicates that Robertson lived in the shed or spent a significant amount of time in the shed. The only evidence that Robertson was ever in the shed other than for the hours the police were present on May 5, 2015 is Stevens' statement when he said that "Scooby" was present during the previous incident. This is not enough evidence to prove that any of the firearms were in the care, custody or control of Robertson. *Walker v. State*, 741 So.2d 1144 (4<sup>th</sup> DCA 1999) (defendant's arrest for previously being next to a gun in a zippered pouch in a vehicle was illegal, no probable cause to believe that the defendant knew of the presence of the gun but mere proximity).

Therefore, the State cannot prove any of the above referenced charges beyond and to the exclusion of every reasonable doubt. The State declines to file any of the arrested charges. The evidence could support Conger being charged with the misdemeanor of Possession of Cannabis under 20 grams, however, considering the factual circumstances as a whole, there is no substantial likelihood of a conviction being obtained.