

1 in *State v. Marx*, 287 Or. 351 (1979), probable cause based on third-party information generally requires some
2 indication of reliability or corroboration.
3 Because the grand jury testimony identified that it was Kinley Baker who contacted Officer Rambin and
4 not Sarah Fillis contacting Officer Orozco as established by the probable cause affidavit, there are serious concerns
5 warranting judicial scrutiny related to the reliability of the tip, the presentation of testimony to the grand jury as
6 well as the statements made in the officer's probable cause affidavit – each of which is contradictory when viewed
7 collectively.
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9 **3. Factual Issues Regarding Third-Party Information**
10 The probable cause affidavit in this matter references a third-party tip identifying Defendant as a "known
11 offender." Upon review of the affidavit and supporting documentation, no independent police corroboration of this
12 tip appears to have occurred prior to Defendant's arrest. The discovery materials contain no information regarding
13 the tipster's reliability, basis of knowledge, or any verification procedures employed by law enforcement.
14 Moreover, the record reveals inconsistent attributions as to the source of this information, with
15 contradictory statements about who provided the initial identification. Documentation indicates this identification
16 occurred primarily based on racial characteristics similar to a prior suspect.
17 Oregon courts have established specific requirements regarding reliance on third-party information. In
18 *Draper v. United States*, the Court of held that, when police rely on information from a third party to establish
19 probable cause, corroboration of the informant's tip would establish probable cause. Oregon courts have followed in
20 this practice holding that under Article I, section 9, of the Oregon Constitution, when a police officer relies solely
21 on information from someone else to establish probable cause, the state must demonstrate that the information
22 received is reliable." Similarly, in *State v. Holdorf*, 355 Or 812, 822 (2014), the Oregon Supreme Court held that
23 "the state must establish that an informant's information is reliable under the totality of the circumstances."
24 The documentation in this case lacks any demonstration of such reliability factors. This factual void
25 regarding verification procedures raises significant questions about the initiation of this case that merits judicial
26 examination. What's more is that officers had the benefit of surveillance in their custody which, if consulted, would
27 have established that Defendant was not the individual whom she was misidentified to be, but officers did not
28 conduct a constitutionally sufficient investigation in light of the full set of circumstances. The probable cause
affidavit submitted by Officer Rambin materially misstates and omits critical facts, warranting judicial scrutiny as
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1 to whether these statements present a substantial preliminary showing of potential falsehood or reckless disregard
2 for the truth under *Franks v. Delaware*, 438 U.S. 154 (1978).
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4 **4. Suppression and Spoliation of Evidence**
5 The discovery provided to date does not include certain items referenced in the reports including purchase
6 receipts in Defendant's hand at the time of her arrest proving lawful ownership of the items returned. These
7 omissions, if found to be true, violate *Brady v. Maryland*, 373 U.S. 83 (1963) and Oregon due process standards,
8 warranting dismissal.
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10 **5. Violations of Due Process — Oregon and Federal Constitutions**
11 The cumulative constitutional violations include:
12 a. Unlawful seizure (Art. I, § 9, Or. Const.; Fourth Amendment);
13 b. Deprivation of notice and fair trial (Art. I, § 10, Or. Const.; Fourteenth Amendment);
14 c. Impaired right to counsel and confrontation (Art. I, § 11, Or. Const.; Sixth Amendment);
15 d. Denial of equal protection (Art. I, § 20, Or. Const.; Fourteenth Amendment).
16 These systemic violations undermine the legitimacy of the proceedings and mandate dismissal.
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18 **6. Selective Prosecution Based on Racial Bias**
19 Defendant was targeted based on racial similarity to a prior suspect without individualized reasonable
20 suspicion. Selective enforcement based solely on race violates the Equal Protection Clause of the Fourteenth
21 Amendment and Art. I, § 20 of the Oregon Constitution. See *United States v. Avery*, 137 F.3d 343 (6th Cir. 1997).
22 The state convened a grand jury although internal policies provide that at least three grand jury witnesses are
23 required to qualify a case for grand jury and although Defendant requested a preliminary hearing to challenge the
24 basis for probable cause in the charging process in open court.
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26 **7. Violation of Right to Meaningful Participation in Defense**
27 Despite Defendant's clear invocation of the right to contribute to fundamental trial decisions (such as
28 demurrers), prior counsel failed to raise a demurrer before seeking dismissal. This denial of strategic autonomy
violates *Faretto v. California*, 422 U.S. 806 (1975) and *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).
IV. PRAYER FOR RELIEF
WHEREFORE, Defendant respectfully requests that this Court:
1. Sustain the Demurrer and dismiss the Indictment with prejudice;
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1 2. Suppress all evidence obtained through unconstitutional means;
2 3. Vacate all subsequent proceedings tainted by structural error;
3 4. Preserve all statutory and constitutional objections for appellate review; and
4 5. Grant such other relief as the Court deems just and proper.
5 Respectfully submitted,
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7 Dated this 28th of April, 2025.
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9 Ash Le' Penn
10 Defendant
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