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State of Utah v. Steven Knight : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,)	
)	BRIEF OF APPELLANT
Plaintiff,)	
)	
vs.)	
)	Case No. <u>981046-CA</u>
STEVEN KNIGHT,)	
)	
Defendant.)	

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THIS IS AN APPEAL FROM A CRIMINAL CONVICTION ENTERED IN
THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY, STATE OF
UTAH. THE HONORABLE GUY BURNINGHAM, TRIAL JUDGE.

PRIORITY NO. 2

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JURISDICTION OF APPELLATE COURT

Authority for said appeal is found within the confine of Section Rule 26 of the Utah Rules of Criminal Procedure; Utah State Constitution Article I, Section 12; Utah Code Annotated Section 77-1 6(g); and Section 78-2-2 (i) Utah Code Annotated, and the Rule of the Utah Court of Appeals.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Appellant seeks review of the trial court's ruling denying the defendant's motion to suppress.

Defendant filed a motion to suppress challenging the search of a 'storage unit' and of his 'home'. The defendant entered a "Sery" plea on September 24, 1997. He reserved the right to appeal the trial court's denial of his motion to suppress evidence. The State was unable to produce a signed search warrant. The officer asserted that the basis for entry into the 'storage unit' was the search warrant. The fruits obtained in the 'storage unit' search were the basis for the probable cause finding to enter his home. Defendant asserts the search of the home falls under the 'fruit of the poisonous tree' doctrine and the evidence found therein should be suppressed.

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES

Article 1, section 14 (Unreasonable searches forbidden -- Issuance of warrant.):

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Utah State Code 77-23-201:

A search warrant is an order issued by a magistrate in the name of the state and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized by him and brought before the magistrate.

Utah State Code 77-23-207: The officer, after execution of the warrant, shall promptly make a verified return of the warrant to the magistrate and deliver a written inventory of anything seized, stating the place where it is being held.

Utah State Code 77-23-209. The magistrate shall annex to the depositions and affidavits upon which the search warrant is based, the search warrant, the return, and the inventory. If he is without authority to proceed further with respect to the offense under which the warrant was issued, he shall return them to the appropriate court of the county having jurisdiction within 15 days after the return.

STATEMENT OF CASE

The appeal is from a final order of this Court entering judgment against the defendant on December 19, 1998. A 'Sery" plea was made reserving defendant's right to appeal. See Entry of Plea September 24, 1997. The trial court also entered a 'Certificate of Probable Cause.' The essence of the appeal is to seek a review of the denial of defendant's motion to suppress. Defendant sought the Court to suppress evidence taken from the defendant's residence.

STATEMENT OF RELEVANT FACTS

The defendant was convicted of the following:
'possession of marijuana with intent to distribute' in violation of U.C.A. 58-37-8 and 'cultivation of marijuana' in violation of U.C.A. 58-37-8. Both third degree felonies.

The defendant filed a motion to suppress seeking suppression of evidence located within his home. The officers herein searched the residence of the defendant on December 22, 1995 which is the basis for the charges. The home search was authorized by a signed search warrant. The home search was based on a probable cause finding relating to the contraband located in 'storage units' search by police previously.

The search of the 'storage unit' was made based on the reported authority of a search warrant. That warrant was never signed or authorized by a proper Court. The search of the 'storage unit' operated as the springboard to a probable cause finding to search of the defendant's home by warrant. Excepting the contraband located in the 'storage unit', no probable cause exist to search the residence.

Defendant questions the legality of the storage unit search and thereby the residential search.

The second search warrant (defendant's residence) was based

on an affidavit. The defendant draws attention the following provisions and questions whether probable cause exists:

- a. The officers served a warrant (search) on a storage unit at 140 West Center Street, Orem, Utah. This was based on information from a confidential informant who reported that a large quantity of marijuana (85 pounds) was located therein.
- b. The informant reported that the person renting the unit was known as Steve and he lived at 172 North 920 West, Orem, Utah. See paragraph 4 of affidavit. This was contradicted by the lease or rental agreement for the storage unit.
- c. Reports that Steven used a fictitious name to rent out the storage unit noted above under a fictitious name of a person who lived down the street from Steven. See paragraph 8.
- d. The officers conducted a records check of the storage unit and learned that the unit was listed to a Justin Dzinblenski as a renter. Mr. Dzinblenski resided at 1106 West 180 North, Orem, Utah.
- e. The copies of the warrant and affidavit provided the defendant for authority to search the 'storage unit' were neither signed by the Court or the affiant.
- f. No information is given as the basis for which the information was obtained. The affidavits report only that the informant relayed this data to the officers and the officers believe him to be reliable, although various inconsistencies exists throughout the affidavits.

The police entered a storage unit under the pretext of a approved search warrant. No signed warrant was produced at trial and none was filed with the Court pursuant to the statutorily mandated procedure. The evidence obtained from the search was used as a springboard to a probable cause finding to search the defendant's home.

Defendant moved to suppress evidence in the above case and alleging that the probable cause set out in the affidavit to support the issuance of the search warrant was insufficient. Secondly, the probable cause used to support the search of the defendant's home on December 21, 1995 was based on improperly obtained evidence; more particularly the officers entered a storage unit under the authority of the unsigned search warrant.

A hearing to suppress evidence was conducted on July 11, 1997, before the Honorable Guy Burningham wherein evidence was given. The State called Officer Russell Billings of the Provo Police Department.

The Court prior to taking evidence made findings as follows:

The Court: There was a search of a storage unit. Based upon the search of that storage unit it led to a request for a search warrant of a home, the home of the defendants. And that search was conducted. We need to go back, I guess to the search of the storage unit. There's some question, I guess because we haven't seen a signed copy of that warrant. . . .

Mr. Hadfield (for the State of Utah): We have copy of the warrant and affidavit but not signed.

The Court: But neither are signed. So we need some evidence. I guess, to guess whether or not either were signed. (Transcript Page 4 Lines 14- Page 5 Line 2)

(Further: Page 16 Line 1 through Line 10.)

The Court: I've got the unsigned affidavit for the storage unit.

Mr. Hadfield: We all have that.

The Court: I have the unsigned search warrant for the storage unit.

Mr. Hadfield: I'm sure you have the stuff on the home.

The Court: I have the signed warrant on the home dated the 27 day of November, 1995, which is on the home, a 171 north 920 west Orem: is that correct.

Officer Russell Billings was called and testified that he was asked to provide copies of the warrant and affidavit for the search of the storage unit and he provided unsigned copies of the same. (T. 19 Lines 8-11). The officer believed that the warrants were signed. (T. 19 Line 17.) His file only contained a copy of the affidavit and the warrant and he asserted that the signed copies were returned to the Court for filing. (T. 19 Line 22-25).

Apparently, the documents had not been returned to the Court as provided under the statutory mandates of U.C.A. 77-23-207 & 77-23-209. The officer reported that the clerks were unable to find anything in the file. (T. 20 Lines 10-11). The officer could not recall which judge they went to obtain the Court's signature. (T.20 Lines 12-14) (T. 23 Line 16).

The officer reported that at times they have went to the Justice Court magistrates or even to a Municipal Justice Court to have

warrants signed. The officer reported that they had, in the past, went to a Justice of the Peace for Pleasant Grove which was not authorized to approve warrants dealing with felony matters or one having geographical jurisdiction over the conduct. Further he failed to return the documents to the Court for filing and recordation and thereby preserving the integrity of the document.

SUMMARY OF ARGUMENT

The evidence seized during both searches should be suppressed. Both the Fourth and Fourteenth Amendments, as well as their state counterparts, protects persons from unreasonable searches. The state's failure to produce a signed warrant at trial supports the demand that the evidence be suppressed under the exclusionary rule. Demand for a signed warrant having been made, the prosecution could only produce a unsigned warrant. The police failed to follow statutory guidelines for the preservation of the integrity of the warrant and had not justifiable reason why the warrant was not returned to the Court. The results of the failure to comply with statutory mandates by the police should not prejudice the defendant but should fall upon the party responsible for such a failure.

The seizure of this property by the unsigned warrant provided additional cause (although illegal) in combination with uncorroborated information from a confidential informant to enter

the defendant's home and search the premises. Also, the information received from the confidential informant failed to establish the requisite probable cause.

The evidence found while searching of the defendant's residence should be suppressed under the 'fruits of the poisonous tree doctrine.'

DETAILS OF ARGUMENT

1) The State failed to evidence that a proper court sign the search warrant presented by the peace officers to the defendant and the warrant was never produced at trial;

2) The officers did not follow the statutory mandates relating to the proper return of the warrant and affidavits to the issuing Court; and

3) There was no probable cause to approve the search of the home.

POINT ONE

AN UNSIGNED WARRANT IS NOT ADMISSIBLE. IT MUST BE SIGNED BY THE MAGISTRATE.

Both the Fourth Amendment to the United States Constitution and the corresponding provision of the Utah Constitution, Article 1 §14, contain a warrant requirement. The warrant requirement protects individual privacy from unrestrained exercise of governmental power. This warrant requirement is not to be taken

lightly.

"A search or seizure which is undertaken without a warrant or pursuant to an invalid search warrant is unreasonable per se under the Fourth Amendment" to the Constitution and violates, Article I § 14, of the Utah Constitution. See, e.g., United States v. Glover, 104 F.3d 1570 (10th)

A search warrant is defined under Utah State Code ~ 77-23-201:

A search warrant is an order issued by a magistrate in the name of the state and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized by him and brought before the magistrate.

Under this section of the Utah Code it is clear that only a "magistrate" of the court can issue a search warrant. The term "issue" requires that the magistrate physically sign the search warrant to verify its authenticity. Utah case law supports the notion that a search warrant is valid only once the magistrate has signed it. See, e.g. State v. Potter, 860 P.2d 952, 954 (Utah Ct. App. 1993); State v. McIntire, 768 P.2d 970 (Utah App. 1989); and State v. Singleton, 854 P.2d 1017, 1019 (Utah Ct. App. 1993).

Although Utah courts have yet to specifically address the issue of whether an unsigned search warrant is valid, the issue has not gone unnoticed in other jurisdictions. Just last year in Idaho the same issue was presented before the Idaho Supreme Court in Mathews v.

State, 934 P.2d 931 (Idaho 1997). The Supreme Court held that due to the judge's failure to sign a warrant to search a residence, in which the murder weapon and shoes were discovered, the search warrant was invalid. Id. at 934.

In Michigan, the state court of appeals reached the same conclusion as the Idaho court. In People v. Hentkowsk. 154 Mich.App. 171, 397 N.W.2d 255 (1986), the court found that a search and seizure made pursuant to a warrant not signed by a magistrate was unconstitutional. In that case, the magistrate stated that he intended to sign the warrant, still the court ruled that it was unconstitutional "even though failure to sign was merely inadvertent." Id. at 258.

In State v. Williams. 57 Ohio St.3d 24, 565 N.E.2d S63 (1991), the Supreme Court of Ohio ruled that evidence found during the search of suspect's home made pursuant to a search warrant that was not signed by the judge was required to be suppressed, as "the warrant was void ab intio." Id. Here the Court reasoned that a signature requirement "is indeed the best device for safeguarding an individual's rights as provided in the Fourth Amendment." Id. at 565.

In addition to the above case support, public policy does not support the encouragement of police misconduct which could result if searches based on unsigned warrants were declared valid. The potential for abuse is clear. On the other hand, the police are not overly burdened by a signature requirement. Those officers who execute a search must limit their search to the dictates of the

warrant. Thus, they must necessarily review the document before they search. When the improperly issued document is discovered, the police can take corrective measures and thereafter conduct the search. See United States v. Mayer, 620F. Supp. 249 (D. Utah 1985), rev'd on other grounds, 818 F.2d 725 (10th Cir. 1987) where a warrant was struck down for the peace officer's failure to follow the procedures in obtaining a telephonic warrant.

The simple requirement of a signature provides needed protections and assurances to persons in control of property that is to be searched. When such persons are presented with a document, which is alleged to be a search warrant, they must be able to review the document and determine whether or not they should allow the officers to search. The custodian should not have to guess as to whether a magistrate intended or did not intend to sign the document which is presented to the custodian.

Under the exclusionary rule, evidence obtained by an illegal search is suppressed "as a necessary consequence of police violations of this section [UT Const. Art. I, § 14]." State v. Larocco, 794 P.2d 460 (Utah 1990).

Signature requirements have long been recognized as fulfilling cautionary functions in protecting an individual's rights. In Utah, signature requirements are necessary for wills and the transfer of real property. Also, a will is invalid unless it is in writing and signed. See, U.C.A. § 57-18 2. Certainty, the protection of one's right as

guaranteed by the United States Constitution and the Constitution of this state to be free from unreasonable searches and seizures should not be granted any less protection than that afforded to property rights. To protect this constitutional right, it is necessary to require the signature of the issuing magistrate on a search warrant prior to the search.

A. GOOD FAITH EXCEPTIONS
AND PROCEDURAL ERRORS

The courts are aware that small technicalities can occur during the issuance of a search warrant and therefore a "good faith" exception exists for police officers who fail to follow the correct procedures in obtaining a search warrant as outlined in § 77-23-204(2). However, this exception only applies when the mistake is in "good faith" and not when the possessor of the search warrant "should have known it was patently invalid." United States v. Mayer, 620 F. Supp. 249 (D. Utah 1985), rev'd on other grounds, 818 F. 2d 725 (10th Cir. 1987).

In Mayer, the Court dealt with a telephonically obtained warrant wherein the procedures for obtaining such were not followed per the dictates of statute. The Court found that under Utah law, the police may obtain a telephonic warrant but the magistrate must record the warrant as read to him and he must then signed what he has recorded. In Mayer, the officers read nothing to the magistrate. Nothing was signed and nothing was returned. The magistrate did not record what was related to him. No duplicate

originals was made out and kept by the officers. Accordingly, there was no facially valid warrant on which the officers could have relied. The Court found that this was not a minor defect which could be swept away under the "good faith" exception. It was a difficult proposition to accept that an experienced law enforcement agent could, in good faith, believe that an unsigned search warrant was valid.

In State v. Anderton, 668 P.2d 1258 (Utah 1983), it was argued by the defense that a magistrate's failure to return the search warrant and related documents to the appropriate court within fifteen days (in compliance with U.C.A. 77-23-9 (1953)) rendered the document void. The Court declined to rule so and found that the violation was nothing more than a failure to perform a ministerial act which did not affect the validity of the warrant. However, the Court noted that the defense failed to show that the failure to comply with the statute affected defendant's substantial rights or in any compromised the integrity of the documents.

Here, the State purposes to use an unsigned warrant based on the officer's statement that it was signed. However, the officer did not recall which magistrate approved the warrants; does not recall if it was a proper magistrate authorized to approve warrants dealing with felony matters or one having geographical jurisdiction over the conduct. He failed to return the documents to the Court for filing and

recording and thereby preserving the integrity of the document. Here, the substantial rights of the defendant are affected by an unsigned warrant which we have simply the officer's testimony alone to assure that they were in fact signed.

B. FAILURE TO PRODUCE THE SIGNED WARRANT AT TRIAL

The State's failure to produce the unsigned warrant at trial raises further suspicion as to its authenticity. In Mapp v. Ohio, 81 S.Ct. 1684 (1961), the Supreme Court reversed the Ohio Supreme Court in a similar criminal case. In Mapp the police showed the defendant a piece of paper "claimed to be a warrant." Id., 1686. But at trial, "no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for." The state court had held that even though the existence of the warrant was in doubt, the fact that the evidence had not been "taken from the defendant's person by brutal or offensive physical force against the defendant" that the search was not unreasonable. State v. Mapp, 170 Ohio St. 427, 431, 166 N.E.2d 387, 389-90 (1960). The United States Supreme Court reversed, holding that the rule excluding illegally seized evidence is of Constitutional origin and protected by the Fourth Amendment. Id. at 1686 88. The Supreme Court stressed that it is not the physical force that is offensive in an illegal search but rather "the invasion of his inalienable right of personal security, personal liberty and private property." Id., 1687.

The Supreme Court of Utah has held, in State v. Sessions, 583 P.2d 44 (1978), that when a warrant is not properly challenged at trial it "must be presumed valid, and the evidence thereby obtained was properly admitted." This is opposed to substantive issues addressed here.

Here, considerable doubt as to whether there ever was any warrant for searching the storage unit. No signed warrant was offered into evidence, and the warrant's absence from the Court's file is neither explained or otherwise accounted.

From the facts, the search of the storage unit appears to have been without a proper warrant and therefore illegal under the Utah Constitution and the Fourth Amendment Constitution of the United States. Indeed, it would be a *strange burden for the court to place upon the accused the necessity to prove the existence of a signed or unsigned search warrant when the accused never had possessed control or had access to such a document.*

It would run contrary to good public policy, by allowing the police to engage in sloppy, unsupported searches. It would run contrary to public policy to allow police to utilized unsigned warrants or to allow sloppy accounting of said warrants and their return to the judiciary.

It promote good public policy to forewarn police of the necessity to maintain a proper accounting of the warrants and return them to the judiciary for safekeeping and thereby allowing the

accused and public access to such documents.

To provide otherwise seems to be far too comprehensive and susceptible to abuse by police and prosecution authorities.

C. STATUTORY GUIDELINES

The legislature has provided for an accounting of the search warrant and the actions of the police in confiscating property by warrant. U.C.A. 77-23-206 requires that a receipt be left with the person or property searched. U.C.A. 77-23-207 requires that police make a verified return of the warrant to the magistrate and deliver a written inventory of anything seized and state the place where it is being held. The police are required to safely keep the property confiscated. U.C.A. 77-23-208.

Upon return to the issuing magistrate, he/she is required to annex the depositions and affidavits upon which the warrant is based to the search warrant, the return, and the inventory. If said magistrate is without jurisdiction, the magistrate shall forward onto the proper court having jurisdiction within 15 days. U.C.A. 77-23-209. Thus police are accountable to the judiciary; allowing the judicial supervision over the legal authorization to enter into a person's home and property. The return of such documents to the judiciary allows inspection by the accused or the public. It preserves the integrity of the process and avoids challenges as this.

Clearly per the testimony of the officer, the procedures were not followed to assure the proper preservation (integrity) of the search warrant, the inventory, the affidavit or depositions. The clerk of the court could find no evidence of their filing. No records were found to substantiate the magistrate's signature and the legality of the search.

Obviously, when the integrity of the warrant is challenged, the filing of such documents with the Court would resolve such doubts. Any presumptions should be made against the person charged with the burden of preserving the documents integrity.

POINT TWO. THE SEARCH WARRANT OF THE
DEFENDANT'S HOME IS INVALID BECAUSE IT IS
BASE ON AN AFFIDAVIT LACKING PROBABLE
CAUSE

Under Article 1, § 14 of the Utah Constitution searches not supported by probable cause are forbidden. The article states that a warrant will only be issued upon "probable cause." Before issuing a search warrant, a neutral magistrate must review an affidavit containing specific facts sufficient to support a finding of probable cause. State v. Babbell, 770 P.2d 987, 990 (Utah 1989). The magistrate must not merely ratify the bare conclusions of others. Illinois v. Gates 462 U.S. 213 (1983). The magistrate's task is to decide "whether, given all the circumstances set forth in the affidavit

before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238.

Utah courts, in determining whether probable cause has been established, rely on the "totality of the circumstances doctrine" established in Gates. See, e.g. State v. Weaver 817 P.2d 830 (Utah Ct. App. 1991). This standard looks at "the totality of the circumstances and holds that the affidavit should be viewed in its entirety in a common sense fashion." State v. Espinoza, 723 P.2d 420 (Utah 1986). Utah courts stress that although veracity, reliability, and basis of knowledge of confidential informants are no longer strict prerequisites for establishing probable cause, "they are still relevant considerations, among others, in determining the existence of probable cause under 'a totality-of-the-circumstances'" test. State v. Droneburg, 781 P.2d 1303, at 1306 (1989).

In the subject case, the confidential informant informed the officers that the person renting the unit was known as "Steve" and that he lived at "172 North 920 West, Orem, Utah." However, when the officers conducted a records check of the storage unit they learned that the unit was listed to a "Justin Dzinblenski" who resided at " 1106 West 180 North, Orem, Utah." Under a "common sense" "reasonable person" test this erroneous information should have caused the police officers to question their information. Espinoza, 723

P.2d at 421.

This very fact that the informant's information contradicted the lease or rental agreement of the storage unit raises grave doubts as to "probable cause." Although the marijuana in the storage shed corroborates some of the informant's information, "it certainly was not substantial, independent information that would establish probable cause." See Droneburg, 781 P.2d at 1306. Partial corroboration of deficient information does not transform the underlying facts and circumstances into probable cause. Id.

In the subject case, defendant asserts after it was determined that "Steve" was not the lessee of the storage shed and thereby the warrant's remaining content was "insufficient to establish probable cause" and the warrant should be voided.

Secondly, evidence seized from the defendant's residence is not admissible when the only probable cause used to produce the residential search warrant was obtained from the illegal storage unit search.

Evidence obtained from unlawful searches is not admissible in the state of Utah under the exclusionary rule. State v. Lacrocco, 794 P.2d 460 (199). The Supreme Court has held that "evidence seized during an unlawful search could not constitute proof against the victim of the search." Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341 (1914). This exclusionary prohibition extends to direct as well as indirect products of such invasions. Sliverthorne Lumber Co. v. United States.

251 U.S. 383, 40 S.Ct. 182 (1920). The Court has held that the Government might not make use of information obtained during an unlawful search to subpoena from the victims the very documents illegally viewed. Id. At 392.

Under the "fruit of the poisonous tree" doctrine, information that would not have come to light except for illegal police actions can not be used as evidence. Wong Sun v. United States. 371 U.S. 471, 488, 83 S.Ct. 407, 418 (1962). This principle that evidence obtained as the result of an unlawful search and seize should not be admitted at trial has been adopted in Utah. State v. Lacrocco, 794 P.2d 460, 471 (1990). "Fruits of the poisonous tree" must be exclude despite their probative value, unless the facts of the case justify a finding of sufficient attenuation. United States v. Ceccolini. 435 U.S. 268, 280 (1978). Furthermore, the Supreme Court has held that evidence obtained by an unconstitutional search is inadmissible, in state prosecutions, under the Fourteenth Amendment. Mapp, 367 U.S. at 655. The Mapp Court stated that search and seizure "evidence secured by official lawlessness in flagrant abuse of a basic right, reserved to all persons as a specific guarantee against that very same unlawfill conduct" was inadmissible. Id. Thus. because the state used evidence found in the illegal search of the storage unit to secure a warrant to search defendant's residence, the evidence seized from the residence must also not be admitted. The state cannot use the "fruits" of an illegal search to justify further searches.

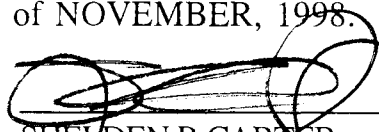
CONCLUSION

Physical entry into the home is the chief evil against which the wordings of the Fourth Amendment/Art. I Section 14 is directed. Under the guise of tainted memory, the trial court ignored the mandates and protections afforded by the Fourth Amendment and Art. I Section 14 of the Utah State Constitution.

As a matter of public policy, the Courts should not allow police to invade homes or property unless a signed warrant justifies the entry. Further, the police/prosecution should be required to make a proper accounting of such an invasive power to the judiciary. If the Court simply looks the other way and sweeps such violations away under a 'good faith' exception or 'ministerial act' provision, intrusive acts as entering our homes shall not be deterred but promoted.

The police and prosecution's task is simple. First, get a signed warrant. Secondly, report back to the Court and file the warrant. If you do not, your case will fail. Otherwise, we promote sloppy and unrestrained police conduct where officers can be cured such errors by taking the stand and remembering that the warrant must have been signed.

DATED this 12 day of NOVEMBER, 1998.


SHELDEN R CARTER
Attorney for Defendant

ADDENDUM

Attached our the following:

1. Unsigned warrant with affidavit to search storage unit.
2. Affidavits and Warrants to search home.
3. COURT RULING ON MOTION TO SUPPRESS

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 12 day of November, 1998, by first-class, U.S. Mail, postage prepaid to the following:

Utah Court of Appeals (8 copies)
230 S. 500 East, Suite 400
Salt Lake City, Utah 84102

Attorney General for the State of Utah (4 copies)
Utah State Capitol
Salt Lake City, Utah



Shelden Carter

KAY BRYSON
UTAH COUNTY ATTORNEY
100 EAST CENTER, SUITE 2100
PROVO, UTAH 84601
PHONE: (801) 370-8026

JAN 1995

FOURTH CIRCUIT COURT
UTAH COUNTY

STATE OF UTAH,

Plaintiff,

vs.

A NARCOTICS
INVESTIGATION

1380 South University Ave, Room #220
PROVO, UTAH

Defendants

:

:

:

:

SEARCH WARRANT

Criminal No.

Sheldon Carter

THE STATE OF UTAH TO ANY PEACE OFFICER OF THE STATE OF UTAH:

Magistrate's
Endorsement

It has been established by oath or
affirmation made or submitted to me this
_____ day of December, 1995 that there is
probable cause to believe the following:

- _____ 1. The property described below:
was unlawfully acquired or unlawfully possessed;
has been used or is possessed for the purpose of
being used to commit or conceal the commission of
an offense; or
is evidence of illegal conduct.
- _____ 2. The property described below is most probably
located at the premises also set forth below.
- _____ 3. The person or entity in possession of the property
is a party to the alleged illegal conduct.
- _____ 4. That this warrant may be served without notice of
intent or authority to search, due to the fact that
the property to be searched for may be easily
secreted, disposed of, or destroyed if notice of
intent to search is given. Officers are aware that
Steven Knight is known to carry a handgun on a
regular basis based on information from a reliable

Sheldon Carter

Confidential Informant.

- _____ 5. That this warrant may be served in the night time hours as the delay of this search would result in the distribution of the illegal narcotics into the community. Furthermore, your affiant is aware that Steven Knight conducts most narcotic transactions during the late evening hours.

NOW, THEREFORE, YOU AND EACH OF YOU, are hereby directed to conduct a search of the residence described as a single-family dwelling located at 172 North 920 West, Orem, Utah, Utah County. It is a two-story home, with gray aluminum siding. The residence faces west on 920 West and has the numbers "172" posted on a support beam at the front entrance of the home. There is an attached two-car garage. You are also hereby directed to conduct a search of curtilage, attached or unattached, to the home.

You are also hereby directed to search vehicles, and the person of any individuals present at the time of the execution of this warrant, including vehicles belonging to those individuals.

You are directed to search for the presence of the following property: controlled substances, together with associated paraphernalia, including items used or capable of being used for the storage, use, production, or distribution of marijuana and other controlled substances.

IF YOU FIND THE DESCRIBED PROPERTY, you are directed to bring the property forthwith before me at the above Court or to hold the same in your possession pending further order of this court. You are instructed to leave a receipt for the property with the person in whose possession the property is found or at the premises where the property was located. After execution of the warrant you shall promptly make a verified return of the warrant to me together with a written inventory of any property seized identifying the place where the property is being held.

_____ THIS WARRANT MAY BE SERVED ANY TIME DURING THE NIGHT TIME HOURS.

_____ THIS WARRANT MAY BE SERVED WITHOUT NOTICE OF INTENT OR AUTHORITY OF PURPOSE.

THIS WARRANT MUST BE SERVED WITHIN TEN (10) DAYS FROM THE DATE OF ISSUANCE.

DATED this _____ day of December, 1995, _____, ____ .M.

Sheldon Carter

4. This same Confidential Informant (CI#1) also gave your affiant information that the individual who rented the storage unit was known to him only as Steve. Your affiant received information from this Confidential Informant that Steve (last name unknown) lives at 172 North 920 West in Orem, Utah in a two-story gray home.

5. Your affiant checked with Orem Police Department, as well as City Utilities, and received information that the individual described to your affiant by the Confidential Informant is Steven Knight. Officers are familiar with an individual named Steven Knight who has had several dealings with officers in the past. Your affiant received information from Orem Police Department that Steven Knight, DOB 11-24-77, has prior records with Orem Police Department at the above-listed address. Furthermore, driver's license information returns to Steven Knight at 172 N. 920 W., Orem, Utah. Utilities information from Orem City lists this residence in the name of Howard and Laura Knight, whom your affiant found from Orem Police Department to be the legal guardians of Steven Knight.

6. A second Confidential Informant (CI#2) advised officers that Steven Knight is receiving large quantities of marijuana from another individual in Utah County and sometimes receives/gives payment for marijuana with guns. Your affiant received information on 12-21-95 that individuals involved with a marijuana transaction on this date were in possession of a handgun. This marijuana buy lead to the information to obtain the search warrant for the storage unit mentioned in #2 and 3 above. Furthermore, this marijuana buy took place during the night time hours, as your affiant is aware that Steven Knight conducts most narcotic transactions during the late evening hours.

7. Confidential Informant #1 advised your affiant that Steven Knight has been dealing marijuana for several years and is often in possession of large quantities on his person and at his residence. Your affiant also has information that Steven Knight transports large quantities of marijuana in his vehicle. The Confidential Informant also advised your affiant that Steven Knight rents storage units on a regular basis under fictitious names to store large quantities of marijuana within the units. Steven Knight is known to change storage units on a regular basis, to avoid discovery by police.

8. CI#1 told your affiant that Steven Knight rented the storage unit where the search warrant was served in #2 and 3 above under a fictitious name of an individual that use to live just down the street from Steven Knight. After execution of the search warrant at the storage units at 1401 W. Center in Orem, a records check with management of those units listed Justin Dzinblenski as the renter of said storage unit with an address of 1106 West 180 North, Orem, Utah. This address is located just west of Steven Knight's residence.

9. That your affiant believes confidential informant #1 to

Sheldon Carter

be reliable in that information about the storage units listed in items #2 and 3 above lead to the recovery of six pounds of marijuana by NET and Provo Police officers. That the informant has given no information which has proved to be false. That the Confidential Informant freely gave officers the information regarding the marijuana contained within the storage unit at 1401 W. Center, Orem, Utah.

10. The amounts of marijuana imply possession of amounts for use and distribution. Such amounts of marijuana are typically packaged in baggies of one ounce or less, quite small in volume. Such baggies can quickly or easily be hidden in clothing or destroyed if notice is given of intent to search. Moreover, it is my experience that persons with a potentially violent disposition may react with violence when confronted with a search. Your affiant believes that Steven Knight may have a potentially violent disposition when confronted by officers in that he advised your affiant's Confidential Informant that he carries a gun on a regular basis. Entry without notice allows officers to secure the residence and effectively preserve officers safety and evidence. Furthermore, entry into the residence under the veil of darkness will greatly preserve officer safety and preservation of evidence.

11. Marijuana and Paraphernalia are often kept in vehicles. Failure to search the person of individuals present, and vehicles located at the residence at time of the execution of this warrant, as well as the Defendant's personal vehicles will likely result in officers missing important evidence. It is your affiant's experience that most of the people encountered with the unlawful use of marijuana also occasionally sell, sometimes paying for their use with profits from sales. It is so common as to be the rule, rather than the exception, to find evidence related to the distribution of narcotics whenever marijuana is located within a residence.

12. The residence to be searched is more particularly described as a single-family dwelling located at 172 North 920 West, Orem, Utah, Utah County. It is a two-story home, with gray aluminum siding. The residence faces west on 920 West and has the numbers "172" posted on a support beam at the front entrance of the home. There is an attached two-car garage.

13. Your affiant expects to locate additional controlled substances in the residence together with associated paraphernalia including items used or capable of being used for the storage, use, production, or distribution of controlled substances.

Wherefore, your affiant requests that a warrant be issued by this court authorizing the search of the residence, the curtilage (attached or unattached) together with the person of all individuals present within the residence, and all vehicles located at said residence at the time of search for presence of controlled substances together with associated paraphernalia including items used or capable of being used for the storage, use, production or

Sheldon Center

distribution of marijuana and other controlled substances to be executed without notice of intent or authority during the night time hours.

Dated this _____ day of December, 1995 __.M.

AFFIANT- Russell Billings
Officer/Special Investigations

Subscribed and sworn before me on the _____ day of
December 1995, _____, __.M. -

MAGISTRATE

SEARCHED
SERIALIZED
INDEXED
JAN 4 1996

KAY BRYSON
UTAH COUNTY ATTORNEY
100 E. CENTER, SUITE 2100
PROVO, UTAH
PHONE: (801) 370-8026

FOURTH CIRCUIT COURT, STATE OF UTAH
UTAH COUNTY

STATE OF UTAH :
Plaintiff, : AFFIDAVIT IN SUPPORT OF
-vs- : A SEARCH WARRANT
: Criminal No.
A MATTER OF A NARCOTICS :
INVESTIGATION :
SELF STORAGE USA :
1401 WEST CENTER STREET,
STORAGE UNITS #172, 173, AND 175
OREM, UTAH
Defendants :

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

Comes now DEVON JENSEN, having been duly sworn, who deposes and states as follows:

1. I am a police officer with the Provo Police Department and currently assigned to the Special Operations Bureau. As an officer I have participated in operations involving the undercover purchase of narcotics and/or the arrest of person for substance abuse related violations. I have experience working undercover providing first hand experience with narcotics trafficking.

2. That on 12-21-95 your affiant received an anonymous tip that 85 pounds of marijuana was being kept in storage units #172, 173, and 175 at Storage USA, 1401 West Center St., Orem, Utah.

3. That your affiant, along with NET narcotics officers and Deputy Adams of the Utah County Sheriff's Office and his dog Rudy, did go to Storage USA at 1401 West Center in Orem. That Deputy Adams deployed his police service dog, Rudy, searching the air currence in and about the storage units. Deputy Adams and Rudy began the pass of the storage units at the west end of the storage complex, walking eastbound by each storage unit. Units #172, 173, and 175 are in the center of the storage complex. As police service dog Rudy passed by units #172, 173, and 175, Deputy Adams observed a large amount of marijuana in the units.

presence of a controlled substance by alerting on the storage unit door in Rudy's usual manner. As Deputy Adams and Rudy proceeded eastbound by storage unit #173 Rudy again alerted on the storage unit door and also on storage unit #172. In the usual manner he indicates to Deputy Adams the presence of a controlled substance.

4. That after Rudy alerted on the three above-listed storage units (172, 173, and 175), Deputy Adams walked Rudy east to the end of the complex. No other units were alerted on. Deputy Adams then deployed police dog Rudy in a second search off lead allowing the dog to perform the search on his own. Rudy went from the east farthest unit in the complex and proceeded west without alerting. When Rudy got to storage unit #173, he immediately gave a strong alert on this storage unit, indicating the presence of a controlled substance.

5. That your affiant found the storage units to have common vents that pass through each unit, therefore allowing air currents in one storage unit to send the odor of controlled substances to the adjacent storage units.

6. Rudy has been trained as a police dog with specific training in the detection of controlled substances. He has been trained to exhibit "alerting" type behavior when he detects the odor of controlled substances. Rudy began service as a police dog with training with handler Grant Ferre at the Alabama Canine Law Enforcement Training Center in 1989. Rudy has worked as a police dog since that time, participating in hundreds of narcotics searches and police encounters. In 1992 he attended the Adlerhorst K-9 Course in Riverside California. Rudy has demonstrated consistent reliability in detecting controlled substances.

7. That the address 1401 West Center Street in Orem, Utah is a storage unit complex named Storage USA. The storage complex sits on the south side of Center Street, west of I-15. Storage units #172, 173 and 175 are located in the center of the complex and face south. They have orange garage-type doors with the numbers of each unit labelled above the door. Each unit has private pad locks.

8. Due to the fact that this is a business that operates during normal business hours, your affiant feels it would be in the best interest of the public that officers search these units during the night time hours. Furthermore, officers are conducting twenty four hours surveillance on these units in order to preserve evidence. That accompanied with the fact that they are storage units, night time service would be less intrusive than a day time service of this warrant.

9. Your affiant expects to locate additional controlled substances, specifically but not limited to, marijuana, and associated paraphernalia and any other items associated with the distribution, use, manufacture, or possession of illegal controlled substances.

10. Your affiant respectfully requests that the manager or owner of Storage USA turn over to police any documentation on the storage units to be searched in order for police to establish ownership/rental of said units.

Wherefore, your affiant requests that a warrant be issued by this Court authorizing the search of storage units 172, 173 and 175 of Storage USA, 1401 West Center, Orem, Utah, Utah County for presence of controlled substances together with associated paraphernalia including items used or capable of being used for the storage, use, production or distribution of marijuana and other controlled substances to be executed in the night time hours.

Dated this _____ day of December 1995 __.M.

AFFIANT- Devon Jensen
Special Investigations

Subscribed and sworn before me on the _____ day of
September 1995, _____, __.M.

MAGISTRATE

KAY BRYSON
UTAH COUNTY ATTORNEY
100 EAST CENTER, SUITE 2100
PROVO, UTAH 84601
PHONE: (801) 370-8026

FOURTH CIRCUIT COURT
UTAH COUNTY

STATE OF UTAH,

Plaintiff, :

vs. :

SEARCH WARRANT

A MATTER OF A NARCOTICS :
INVESTIGATION
SELF STORAGE USA
1401 WEST CENTER STREET,
STORAGE UNITS #172, 173, AND 175
OREM, UTAH

Defendants :

THE STATE OF UTAH TO ANY PEACE OFFICER OF THE STATE OF UTAH:

Magistrate's
Endorsement

It has been established by oath or
affirmation made or submitted to me this
_____ day of December, 1995 that there is
probable cause to believe the following:

_____ 1. The property described below:

was unlawfully acquired or unlawfully possessed;

has been used or is possessed for the purpose of
being used to commit or conceal the commission of
an offense; or

is evidence of illegal conduct.

_____ 2. The property described below is most probably
located at the storage units set forth below.

_____ 3. The person or entity in possession of the property
is a party to the alleged illegal conduct.

_____ 4. Due to the fact that this is a business that
operates during normal business hours, your affiant
feels it would be in the best interest of the

public that officers search these units during the night time hours. Furthermore, officers are conducting twenty four hours surveillance on these units in order to preserve evidence. That accompanied with the fact that they are storage units, night time service would be less intrusive than a day time service of this warrant.

NOW, THEREFORE, YOU AND EACH OF YOU, are hereby directed to conduct a search of storage units #172, 173 and 175 located at 1401 West Center, Orem, Utah, Utah County which is more particularly described as a storage unit complex named Storage USA. The storage complex sits on the south side of Center Street, west of I-15. Storage units #172, 173 and 175 are located in the center of the complex and face south. They have orange garage-type doors with the numbers of each unit labelled above the door. Each unit has private pad locks.

You are directed to search for the presence of the following property: additional controlled substances, specifically but not limited to, marijuana and any other items associated with the distribution, use, manufacture, or possession of illegal controlled substances.

IF YOU FIND THE DESCRIBED PROPERTY, you are directed to bring the property forthwith before me at the above Court or to hold the same in your possession pending further order of this court. You are instructed to leave a receipt for the property with the person in whose possession the property is found or at the premises where the property was located. After execution of the warrant you shall promptly make a verified return of the warrant to me together with a written inventory of any property seized identifying the place where the property is being held. Due to the serious hazardous/contaminated materials, chemicals, etc. involved with clandestine laboratories, you are ordered to destroy those items after samples have been obtained.

_____ THIS WARRANT MAY BE SERVED WITHOUT GIVING NOTICE OF INTENT OR AUTHORITY.

THIS WARRANT MUST BE SERVED WITHIN TEN (10) DAYS FROM THE DATE OF ISSUANCE.

DATED this _____ day of December 1995, _____, ____ .M.

MAGISTRATE

IN THE FOURTH DISTRICT COURT IN AND FOR UTAH COUNTY
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

STEVEN H. KNIGHT and
SPENCER KNIGHT,

Defendants.

Case # 961400271
961400272

**RULING ON DEFENDANTS'
MOTION TO SUPPRESS**

This matter comes before the Court on Defendants' Motion to Suppress. A search warrant for the residence of the defendants was signed by Judge Fred D. Howard in December, 1995. When the search warrant was executed at the residence on December 22, 1995, controlled substances and paraphernalia were found. This formed the basis for the charges filed against the defendants. On March 24, 1997, a Suppression Hearing was held and arguments were heard by the Court. On July 11, 1997, an additional Hearing was held and arguments regarding the validity of a previous search warrant executed on a storage unit and the defendants' standing to object to that search, were heard by the Court. The Court has reviewed all evidence, memoranda and the file, and being fully advised in the premises, makes the following:

RULING

Reliability of Confidential Informant

Defendants argue that the evidence should be suppressed because the reliability of the confidential informant was not sufficiently established. The reliability of information received from informants is one of the factors considered when determining the sufficiency of an affidavit in support of a search warrant. A search warrant may be issued when, under the totality of the circumstances, the information given by multiple confidential informants is sufficient to establish probable cause. State v. Singleton, 851 P.2d 1017 (Utah App. 1993).

In the instant case, the affidavit in support of the search warrant for the residence of the defendants cites information received by the affiant from two confidential informants. It states that on December 21, 1995, officers served a search warrant on a storage unit in Orem, Utah. This search was based on information from a Confidential Informant (CI#2) that a large quantity of marijuana (85 pounds) would be contained within the storage unit. When the officers executed the warrant, they located six pounds of marijuana. The difference in the amount of marijuana found does not make the confidential informant unreliable. Six pounds is still a large amount and while there is a difference in the amounts, it is not a significant distinction to render the information unreliable. Thus, the information from CI#2 regarding the storage unit proved to be reliable.

Officers were given additional information from CI#2 including information that the person who rented the storage unit was known to him only as "Steve" and that this person had been dealing marijuana for several years and is often in possession of large quantities on

his person and at his residence. Another confidential informant (CI#1) gave the affiant information that "Steve" lived at 172 North 920 West in Orem, Utah in a two-story gray home. The affiant conducted a sufficient amount of verification both with the Orem Police Department, the utilities company, and the driver's license division to determine that the individual described to him by the confidential informant was Steven Knight.

The affiant had a great deal of information regarding the defendants from confidential informants in this case. The determination of probable cause by Judge Howard did not turn solely on the fact that the storage unit had been searched and that marijuana had been found there.

Search of the Storage Unit

In its Response to Defendants' Motion to Dismiss, the State asserts that Defendants do not have standing to challenge the search of the storage unit. In their Additional Memorandum in Response to the May 14, 1997 Hearing, Defendants state that they have never asserted that the storage unit was not rented by them and have relied on the State's arguments and the probable cause affidavit to set forth their standing. At the July 11, 1997 Hearing, the Court, without ruling on the issue of standing, allowed Defendants' attorney to assert standing on behalf of his clients for the purposes of that hearing only. Defendants did so and argued that they have never been supplied with a signed copy of the search warrant executed on the storage unit. Defendants therefore question whether the warrant was ever signed by a magistrate before being executed. At this Hearing, Officer Russell Billings testified that he participated in going to the magistrate and having the warrant approved and

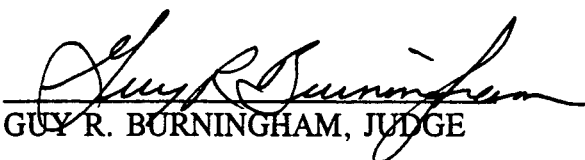
signed. He further testified that he can, at this time, be sure this warrant was signed because he remembers this case and because he has never served a warrant that was unsigned.

CONCLUSION

The Court finds that the affiant sufficiently verified the information given to him by the confidential informants and given the totality of the circumstances, the Court finds that the information is reliable. Therefore, there was a basis for Judge Howard's determination of probable cause based on the information provided by the confidential informant and the affiant's verification of that information.

Based on the testimony of Officer Billings, the Court finds that there was a valid search warrant prepared for the search of the storage unit. Therefore, the Motion to Suppress is **DENIED**.

Dated this 29 day of July, 1997.


GUY R. BURNINGHAM, JUDGE

cc: Shelden Carter, Esq.
Phillip W. Hadfield, Esq.