

1998

## State of Utah v. Steven Knight : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

981046-CA

STATE OF UTAH :  
 Plaintiff/Appellee, : Case No. 981046-CA  
 v. :  
 STEVEN KNIGHT, : Priority No. 2  
 Defendant/Appellant. :

BRIEF OF APPELLEE

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APPEAL FROM CONVICTIONS FOR POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE AND FOR CULTIVATING A CONTROLLED SUBSTANCE, BOTH THIRD DEGREE FELONIES IN VIOLATION OF UTAH CODE ANN. § 58-37-8(1) (1998), IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH, THE HONORABLE GUY R. BURNINGHAM, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

**FILED**

Utah Court of Appeals

JAN 25 1999

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Plaintiff/Appellee, : Case No. 981046-CA  
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**BRIEF OF APPELLEE**  
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**JURISDICTION AND NATURE OF PROCEEDINGS**

This is an appeal from convictions for possession of marijuana with intent to distribute and for cultivating a controlled substance, both third degree felonies in violation of Utah Code Ann. § 58-37-8(1) (1998), in the Fourth Judicial District Court in and for Utah County, State of Utah, the Honorable Guy R. Burningham, presiding. This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(e) (1996).

**STATEMENT OF THE ISSUES ON APPEAL AND  
STANDARDS OF APPELLATE REVIEW**

1. Should this Court consider defendant's challenge to the search of the storage unit where he refused to assert an expectation of privacy in the unit? Because the trial assumed for the sake of expediency, without making findings or formally ruling, that defendant had asserted standing, this issue is before this Court for the first time on appeal,



no standard of review applies.

2. Was the trial court's finding that the search of the storage shed was executed under a signed warrant clearly erroneous? An appellate court reverses a trial court's findings of fact only if they are "'against the clear weight of the evidence,' thus making them 'clearly erroneous.'" State v. 1.37 Acres of Real Property, 886 P.2d 534, 535 (Utah App. 1994) (citations omitted). In making such a determination, the appellate court views the evidence in a light most favorable to the trial court's findings. Id.

3. Did the trial court properly conclude that there was probable cause to search defendant's residence? On appeal, the appellate court does not conduct a de novo review of the magistrate's probable cause determination, see State v. Collard, 810 P.2d 884, 885 (Utah App.) (citations omitted), cert. denied, 817 P.2d 327 (Utah 1991), but only "determines whether the issuing magistrate had a substantial basis for concluding that there were enough facts within the affidavit to find that probable cause existed." State v. Potter, 860 P.2d 952, 956 (Utah App.1993) (citations omitted).

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following determinative constitutional provisions, statutes, and rules are:

### **Fourth Amendment to the United States Constitution**

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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### STATEMENT OF THE CASE

Defendant, Steven Knight, was charged with possession of marijuana in a drug free zone with intent to distribute, a second degree felony, in violation of Utah Code Ann. § 58-37-8(1), -8(5) (1998) (Count I), possession of drug paraphernalia, a class A misdemeanor, in violation of Utah Code Ann. § 58-37a-5 and § 58-37-8(5) (1998) (Count II), cultivating a controlled substance in a drug free zone, a second **degree** felony, in violation of Utah Code Ann. § 58-37-8(1) (1998) (Count III), and possession of tobacco by a person under the age of 19, a class C misdemeanor, in violation of Utah Code Ann. § 76-10-105 (1995) (Count IV) (R. 17-18). Defendant moved to suppress evidence obtained in a search of his residence, and following an evidentiary hearing the trial court denied the motion (R. 62-64, 103-107). Defendant entered conditional no contest pleas to possession of marijuana with intent to distribute (Count I), and cultivating a controlled substance (Count III), both third degree felonies, preserving his right to appeal the court's denial of his motion to suppress, and the trial court dismissed Counts II

and IV (R. 117, 122). Thereafter, the trial court sentenced defendant to statutory zero-to-five year terms in the Utah State Prison, but suspended sentence and placed defendant on supervised probation for thirty-six months (R. 127).

### **STATEMENT OF THE FACTS<sup>1</sup>**

On December 21, 1995, Provo Police Officer Devon Jensen 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 (Affidavit in Support of Search Warrant for storage units, R. 52-54 at 54, attached at Addendum A). In the company of another officer handling “Rudy,” a police service dog having extensive training and experience in the detection of controlled substances, went to Storage USA (R. 53-54). In two separate searches through the storage complex, one on lead and the other off, Rudy alerted on only storage units # 172, 173, and # 175 (R. 53-54). On these facts, Provo Police Officer Russell Billings sought and obtained a search warrant (R. 50-51; 136:18-19).

The same day, police, executing the warrant, searched the storage complex and

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<sup>1</sup> The facts are recited most favorably to the trial court’s findings. State v. Tetmyer, 947 P.2d 1157, 1158 (Utah App. 1997) (“Because we are reviewing the trial court’s decision denying defendant’s motion to suppress, we recite the facts in a light most favorable to the trial court’s findings.”) (citing State v. Montoya, 937 P.2d 145, 147 (Utah Ct. App. 1997)). The State’s statement of facts substantially restates facts set out in the affidavits supporting the two search warrants at issue in this case. With the possible exception of an asserted “inconsistency” in the amount of marijuana expected to found in the storage unit as opposed to that actually found (R. 63), defendant nowhere challenged the accuracy of the affidavits.

found a six pound bale of marijuana in one of the designated storage units (Affidavit in Support of Search Warrant for defendant's house, R. 25-28 at 28, attached at Addendum B).<sup>2</sup> The confidential informant ("CI#2") who informed police that marijuana would be found at the storage complex also told Officer Billings that the designated unit was rented by an individual known to him only as "Steve," and that this individual lived at 172 North 920 West in Orem, Utah (R. 27).<sup>3</sup> Checking records of the Orem Police Department and Provo City Utilities, Officer Billings determined that a "Steven Knight," a person known to the police in several prior dealings, resided at the address given by the confidential informant (R. 27).

The confidential informant also advised Officer Billings that defendant ("Steven Knight") had been dealing marijuana for several years, that defendant was often in possession of large quantities of marijuana both on his person and in his residence, that defendant rented storage units on a regular basis under fictitious names to store large quantities of marijuana, and that defendant had rented the designated storage unit in the name of an individual who lived just down the street from defendant (R. 27). Checking the records of the storage complex, Officer Billings learned that the designated storage

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<sup>2</sup> The storage units are connected by a common duct allowing air currents to send the odor of the controlled substances to adjacent units (R. 53).

<sup>3</sup> In the affidavit in support of the search warrant on the storage units, Officer Jensen states that he received an "anonymous" (R. 54). That same "anonymous" person is identified by Officer Billings as the confidential informant ("CI#2") in his affidavit in support of the search warrant on defendant's house (R. 54, 27-28), and by the trial court in its ruling denying defendant's motion to suppress (R. 106).

unit was rented in the name of a Justin Dzinblenski, who lived at 180 North 1106 West, a residence located just west of defendant's (R. 27). Based on the tip leading to the recovery of the marijuana in the designated storage unit, Officer Billings considered the confidential informant, who gave no false information, to be reliable (R. 26-27).

The confidential informant further advised officers that defendant was receiving large quantities of marijuana from Utah County and sometimes paid for marijuana with guns (R. 27). Officer Billings received information that individuals in possession of a gun were involved in a marijuana buy on December 21, 1995, a transaction from which police obtained information leading to the search of the storage units (R. 27). This transaction occurred at night, a time when Officer Billings was aware that defendant conducted most of his narcotic transactions (R. 27). Finally, the confidential informant informed Officer Billings that during the past week he had observed defendant with large quantities of marijuana on his person (R. 26). Based on this second affidavit, police sought and obtained a search warrant to search defendant's residence (Search Warrant for defendant's residence, R. 29-30, attached at Addendum C). A search of defendant's residence uncovered marijuana, marijuana under cultivation, drug paraphernalia, and tobacco, and defendant was thereafter charged accordingly (R. 17-18, 33-34). The State did not file any charges relating to the marijuana seized from the storage unit (R. 136:141).

Defendant filed a pretrial motion to suppress, which the trial court denied (Ruling

on Defendant's Motion to Suppress, "Ruling," R. 104-07 at 105-06, attached at Addendum D). The details of defendant's arguments, the State's response, and the evidence elicited at the suppression hearing are fully set out in the argument portion of this brief.

## **SUMMARY OF ARGUMENT**

### **POINT I**

Defendant's entire claim on appeal, that police searched the storage unit without a valid warrant and that without the fruits of the storage unit search there was insufficient probable cause to search his residence, are dependent on his establishing an expectation of privacy in the storage unit. However, because defendant has not at any point asserted a privacy interest in the storage unit, he has not established standing to challenge the constitutionality of the search of the unit, and therefore, this Court need not consider the merits of defendant's claim on appeal.

### **POINT II**

Defendant argues that because the search of the storage unit was executed upon an unsigned warrant the search was invalid. However, based on testimony which it plainly regarded as credible, the trial court found that the warrant had been signed and that the search was validly executed. Because defendant fails to adequately challenge the trial court's finding as clearly erroneous, his lengthy argument that the warrant was unsigned is irrelevant to the central issue on appeal.

### POINT III

The affidavit in support of the storage shed stated several facts corroborating information freely given to police by the confidential informant and noting that the informant had seen defendant with large amounts of marijuana on his person, that a controlled buy led police to a marijuana characteristic of the way defendant was known to police to conduct sales of contraband. Thus, even assuming that the search of the storage unit was invalid, the affidavit amply set out facts which, independent of the discovery of marijuana in the storage unit, not only demonstrated that the confidential informant was reliable, but that there was probable cause to search defendant's house.

### ARGUMENT

#### POINT I

**BECAUSE DEFENDANT HAS NOT AT ANY POINT ASSERTED A PRIVACY INTEREST IN THE STORAGE UNITS, HE HAS NOT ESTABLISHED STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE SEARCH OF THOSE UNITS**

“According to the Supreme Court, in order to challenge the propriety of a search, a defendant must first establish ‘a legitimate expectation of privacy in the invaded place.’” State v. Scott, 860 P.2d 1005, 1007 (Utah App. 1993) (quoting Rakas v. Illinois, 439 U.S. 128, 143, 99 S. Ct. 421, 430 (1978)) (emphasis added); State v. Sepulveda, 842 P.2d 913, 915 (Utah App. 1992) (same); accord State v. Atwood, 831 P.2d 1056, 1058 (Utah App. 1992). The entire thrust of defendant's claims on appeal, to wit: police searched the

storage unit without a valid warrant and that without the fruits of the storage unit search there was insufficient probable cause to search his residence, are dependent on his establishing an expectation of privacy in the storage unit. However, because defendant has not at any point asserted a privacy interest in the storage unit, he has not established standing to challenge the constitutionality of the search of the unit, and therefore, this Court need not consider the merits of defendant's claims on appeal.<sup>4</sup>

**A. Factual Background.**

Receiving only unsigned copies of the warrants and supporting affidavits for both searches in response to his discovery request, defendant moved to suppress evidence seized from his residence, vaguely challenging the validity of the search of the storage unit for lack of a signed warrant and the reliability of the confidential informant (R. 13, 50-64).<sup>5</sup> The State answered by arguing in support of the confidential informant's reliability, but principally argued that defendant's motion should be dismissed for failure to assert standing to challenge the search of the storage unit (R. 80-87). Defendant

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<sup>4</sup> The State's challenge to defendant's standing was, as discussed below, clearly presented to the trial court and supported by the record. However, the trial court sidestepped the challenge in the interest of expediency, ultimately concluding that the search of the storage unit was valid (R. 104-05). Thus, the State's claim is properly presented as an alternative argument on appeal. See State v. South, 924 P.2d 354, 357 (Utah 1996) (requiring court of appeals to consider alternative ground for affirmance of convictions).

<sup>5</sup> Prior to the July 11, 1997 hearing on the motion to suppress, the prosecutor provided to the trial court, and presumably defendant, a signed affidavit and warrant relating to the search of defendant's house (R. 25-30, 136:16). On appeal, defendant does not challenge the validity of these documents.



responded, albeit without asserting a privacy interest in the storage units (R. 90-93, 98-101).

On July 11, 1997 there was an evidentiary hearing on defendant's motion to suppress (R. 136).<sup>6</sup> On the issue of standing, the prosecutor again argued that defendant was required to establish his standing before being allowed to challenge the search of the storage units (R. 136:5-8). Defendant expressed reluctance to assert his standing because he feared it would expose him to possible charges stemming from the discovery of the marijuana in the storage unit (R. 136:9, 11). The trial court recognized that whether or not the search of the storage unit was valid, the crucial determination was whether there was probable cause for police to search defendant's residence (R. 136:11-13). Therefore, looking for an expedient way to reach the validity of the residential search, the trial court assumed for the purposes of the hearing only that defendant had asserted a privacy interest in the storage unit and directed the parties to proceed (R. 105, 136:11-14).

**B. Defendant Offered no Reasonable Basis for Refusing to Assert an Expectation of Privacy in the Storage Unit.**

In his response to the State's challenge to his Fourth Amendment standing,

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<sup>6</sup> There was also an earlier, non-evidentiary hearing on defendant's motion to suppress on March 24, 1997 (R. 65). The record of that hearing has not been made part of record on appeal. However, that hearing was held before the prosecution filed its responsive memorandum, raising for the first time the issue of defendant's failure to assert standing, and the trial court continued the matter (R. 65). Since the record was evidently most fully developed at the subsequent July 11, 1997 evidentiary hearing, the State considers the existing appellate record sufficient for this Court to rule on the merits of this issue.

defendant argued that the State was effectively precluded from asserting the challenge based on the supporting affidavit, which implied defendant had an interest in the storage unit (R. 93). He further argued that the State could not consistently deny his standing to challenge the search of the storage unit and at the same time assert his interest in the storage unit in which the marijuana was found to support the search of his residence, allegedly the sole basis for probable cause to search his residence (R. 93).

Defendant's argument is specious because it suggests (1) that it is the State's burden, rather than a defendant's, to assert a privacy interest in searched place, and (2) that it is the beliefs of the police, rather than the assertions of a defendant, that determine the existence of a defendant's privacy interest. In State v. Kolster, 869 P.2d 993 (Utah App. 1994), this Court rejected in a factually similar scenario the same arguments suggested by defendant in this case.

In Kolster, the police received an anonymous tip informing them that the defendant would be receiving marijuana in a package bearing false names and mailed to a friend of the defendant's. Id. at 994. The police intercepted the package, identified the true names of the recipients, obtained a warrant, and opened the package and discovered marijuana. Id. Two days later police secured a second warrant to search the recipient's premises, found defendant on the premises, and arrested him for possession of a controlled substance. Id. Affirming the trial court's determination that the defendant had failed to establish a legitimate expectation of privacy in the package, this Court stated:

First, [the defendant] has not demonstrated a subjective expectation of privacy in the searched package. [The defendant] never asserted a property or possessory interest in the package as required to show privacy expectations under Rakas, 439 U.S. at 148, 99 S. Ct. at 433. [The defendant] simply argues that because narcotics officers learned from an anonymous source that he was the intended recipient, he somehow achieved a subjective expectation of privacy in the package. We disagree. "[A]n officer's belief is irrelevant to the question of a defendant's expectation of privacy." State v. DeAlo, 748 P.2d 194, 197 (Utah App. 1987). What an officer knew or believed is part of our legitimate expectation of privacy analysis only when a defendant has asserted to that officer a permissive or possessory interest in the object searched. See Sepulveda, 842 P.2d at 916; State v. Robinson, 797 P.2d 431, 437 n.6 (Utah App. 1990).

Kolster, 869 P.2d at 995.

As in Kolster, defendant never asserted a possessory interest in the storage unit. Indeed, he equivocated in his response, stating that he had neither denied renting the unit nor argued that he had not, plainly refusing to assert such an interest (R. 99). At the suppression hearing, he plainly admitted that he had never asserted an interest in the storage unit, and again steadfastly refused to assert such an interest (R. 136:6, 9, 14).<sup>7</sup> In

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<sup>7</sup> Defendant argued at the suppression hearing that he was reluctant to assert a possessory interest in the storage unit for the purpose of establishing standing for fear of exposing defendant to criminal liability for possession of the marijuana found in the unit, conduct not then charged (R. 136:9, 11). The argument fails to establish a sufficient basis for a defendant's evading the necessary assertion of an expectation of privacy. Commenting on the applicability of automatic standing, a theory defendant in this case also urged in his response (R. 92), the Washington Court of Appeals explained:

The doctrine of automatic standing was abandoned under federal law because it no longer served the function for which it was created. The rule was designed to avoid the "'constitutional dilemma' of forcing a defendant charged with a possessory crime to choose between preserving" her Fifth Amendment privilege against self-incrimination or invoking her Fourth Amendment rights. . . . However, in Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968), the U.S. Supreme Court held that a defendant's testimony in support of a motion to suppress

sum, because defendant's claims on appeal are fully dependant on his standing to assert a challenge to the search of the storage unit, standing which he has refused to assert, this court should decline to consider any of his claims urged on appeal. However, even considering defendant's claims, they are patently without merit.

## POINT II

**BECAUSE DEFENDANT HAS FAILED TO SHOW THAT THE TRIAL COURT'S FINDING, THAT THERE EXISTED A VALIDLY SIGNED WARRANT FOR THE SEARCH OF THE STORAGE UNIT, WAS CLEARLY ERRONEOUS, HIS ARGUMENT THAT THE SEARCH WAS INVALID BECAUSE THE WARRANT WAS UNSIGNED IS IRRELEVANT**

Defendant argues at length that because the warrant authorizing the search of the storage unit was not signed by a magistrate the search was invalid. Br. of App. at 11-20. The State does not dispute that the validity of an unsigned warrant is an arguable point. However, the argument defendant makes is irrelevant to this case. The trial court found that the warrant authorizing the search was signed, notwithstanding the prosecution's inability to produce a signed copy at the suppression hearing, a finding which defendant only indirectly challenges in presenting his misdirected claim. Br. of App. at 18.

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is not admissible as evidence of guilt at trial. Consequently, in [United States v.] Salvucci, 448 U.S. 83, 100 S.Ct. 2547, 65 L.Ed.2d 619 [(1980)], the Court abolished the federal automatic standing rule because, after Simmons, the risk of potential self- incrimination no longer existed. [Citation omitted.]

State v. Carter, 875 P.2d 1, 3-4 (Wash. App. 1994), aff'd, 904 P.2d 290 (Wash. 1995). See also Kostler, 869 P.2d at 996 (finding automatic standing rule inapplicable).

Because defendant has failed to show that the trial court's finding was clearly erroneous, defendant's argument that the search was conducted without a signed warrant is irrelevant, and this Court should decline to consider it.

**A. Review of a Trial Court's Findings is Highly Deferential.**

In State v. Pena, the Utah Supreme Court set out a highly deferential standard for reviewing a trial court's findings of fact:

Trial courts are given primary responsibility for making determinations of fact. Findings of fact are reviewed by an appellate court under the clearly erroneous standard. For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination. See Wessel v. Erickson Landscaping Co., 711 P.2d 250, 252 (Utah 1985); see also United States v. United States Gypsum Co., 333 U.S. 364, 395, 92 L. Ed. 746, 68 S. Ct. 525 (1948). This standard is highly deferential to the trial court because it is before that court that the witnesses and parties appear and the evidence is adduced. The judge of that court is therefore considered to be in the best position to assess the credibility of witnesses and to derive a sense of the proceeding as a whole, something an appellate court cannot hope to garner from a cold record. In re J. Children, 664 P.2d 1158, 1161 (Utah 1983). [Emphasis added.]

State v. Pena, 869 P.2d 932, 936 (Utah 1994). "Clear error is indicated when the trial court's factual assessment is against the clear weight of the evidence or it induces a firm conviction that a mistake has been committed." State v. Droneburg, 781 P.2d 1303, (Utah App. 1989) (citing State v. Ashe, 745 P.2d 1255, 1258 (Utah 1987)).

**B. Factual Background.**

At the suppression hearing, Officer Billings testified that, as to the search of the

storage units, he specifically remembered the case from his personal involvement, he was sure that he had a signed, sworn warrant at the time he searched the units, and that a return of warrant was subsequently filed with the court (R. 136:19-21 ). However, when he later checked with the court clerks, they were unable to locate anything in the file (R. 136:19-20). He further testified that in the time period at issue he had served hundreds of warrants, that he did not recall the judge who signed the warrant to search the units, but that he had never served an unsigned warrant (R. 136:20-21).

Finding credible and persuasive Officer Billings specific memory of this case and his assertion that he had never served an unsigned warrant, the trial court denied defendant's motion to suppress, finding that a valid warrant had been prepared for the search of the storage unit (Ruling, R. 105-04).

**C. Defendant Fails to Show that the Trial Court's Finding was Clearly Erroneous.**

Imbedded within defendant's ten-page argument that the search of the unit was improperly conducted without a signed warrant, is a single paragraph expressing defendant's doubt that a warrant ever existed because "no signed warrant was offered into evidence and the warrant's absence from the court's file [was] neither explained or [sic] otherwise accounted for." Br. of App. at 18. Considering the substantial deference given to the trial court, this oblique reference to the trial court's finding that the warrant was signed is insufficient to show that it was erroneous. Cf. United States v. Hurd, 642 F.2d 1179, 1183 (9<sup>th</sup> Cir. 1981) (refusing to find erroneous district court's finding that audio

tapes, having some omissions suggesting erasure, of defendant's conversations with government agents, had not been tampered with, based on testimony of agents); Evans v. State, 117 S.W.2d 462, 462 (Tex. Crim. App. 1938) (per curiam) (refusing to set aside trial court finding, that copy of lost or misplaced indictment which allegedly charged fewer offenses was a substantial copy of original indictment, because it was supported by some testimony). Indeed, having assumed the nonexistence of the warrant from the facts asserted, defendant immediately resumes his discussion of the dangers of unsupported searches based on unsigned warrants without any reference to the trial court's express finding. Br. of App. at 18-19.

Further, defendant cites no authority in support of an argument that the trial court's finding was clearly erroneous. Rather, he cites Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684 (1981), to support his principal claim that the Fourth Amendment is violated through an unreasonable search conducted without evidence of a valid warrant. Br. of App. at 17. Among other evidence plainly indicating that no warrant existed for a residential search, the Ohio Supreme Court noted that there was no testimony as to what the warrant contained, that the absence of the warrant was unexplained, and that there was nothing in the record indicating that the warrant in any way described the items eventually found. State v. Mapp, 166 N.E.2d 387, 389 (Ohio 1960). Noting the Ohio Supreme Court's view of the warrant, and the police's illegal entry and inordinately forceful and highhanded manner in conducting the search, the United States Supreme

Court then went on to consider the only legal issue presented, holding that evidence obtained through an unconstitutional search or seizure was inadmissible in a state court. Mapp, 367 U.S. at 644-45, 655, 81 S. Ct. at 1686, 1691. Thus, in Mapp, the circumstances of the search, the lack of any genuine evidence that the warrant existed, and the legal issue before the Court were altogether distinguishable from the factual and legal issues in this case.

In sum, defendant has failed to show that the trial court's finding that the warrant for the storage units had been properly prepared was clearly erroneous. However, even if this Court should find the trial court's finding clearly erroneous, and thus conclude that the search was conducted without a signed warrant, it would not effect the outcome of this case because there was probable cause to search defendant's residence without considering the marijuana discovered in the storage unit. See State v. Sampson, 808 P.2d 1100, 1111 n.19 (Utah App. 1990) (recognizing application of "independent source" doctrine as exception to warrant requirement, whereby evidence that has been discovered by means wholly independent of any constitutional violation is deemed admissible), cert. denied, 817 P.2d 327 (Utah 1991), cert. denied, 503 U.S. 914, 112 S. Ct. 1282-83 (1992).

### POINT III

#### **THE AFFIDAVIT AMPLY SETS FORTH EVIDENCE OF THE INFORMANT'S RELIABILITY AND PROBABLE CAUSE TO SUPPORT THE WARRANT AUTHORIZING THE SEARCH OF DEFENDANT'S RESIDENCE**

Defendant claims that evidence seized in the search of his residence should be



suppressed for lack of probable cause. Specifically, he argues that (1) because the storage unit was not rented in his name, the confidential informant's reliability was not established, and (2) because probable cause for the search of his residence was based exclusively on the alleged illegal search of the storage unit and the consequent discovery of marijuana, there was insufficient probable cause to search his residence. Br. of App. at 20-23. However, because the argument omits crucial facts demonstrating both the confidential informant's reliability and probable cause independent of the fruits of the storage unit search, defendant's claim fails.

**A. The Appellate Court Reviews the Magistrate's Determination of Probable Cause Deferentially.**

“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. Potter, 860 P.2d 952, 956 (Utah App.1993) (citing State v. Purser, 828 P.2d 515, 517 (Utah App. 1992)) (citation omitted). “In determining whether probable cause exists, the magistrate must ‘make a practical, common-sense decision 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.’” Id. (citing Illinois v. Gates, 462 U.S. 213, 239, 103 S. Ct. 2317, 2332 (1983)).

On appeal, the appellate court does not conduct a de novo review of the magistrate's probable cause determination, see State v. Collard, 810 P.2d 884, 885 (Utah

App.) (citations omitted), cert. denied, 817 P.2d 327 (Utah 1991), but only “determines whether the issuing magistrate had a substantial basis for concluding that there were enough facts within the affidavit to find that probable cause existed.” Potter 860 P.2d at 956 (citations omitted). Accordingly, the appellate court reviews the affidavit in “its entirety and in a common sense fashion,” according deference to the magistrate’s determination. State v. Jackson, 937 P.2d 545, 547 (Utah App. 1997), cert. denied, 945 P.2d 1118 (Utah 1997) (citations omitted).

Concerning an informant’s reliability and its relation to probable cause, this Court has stated:

Factors to consider in determining whether probable cause exists include an informant’s veracity, reliability and basis of knowledge. Gates, 462 U.S. at 233, 103 S. Ct. at 2329; State v. Hansen, 732 P.2d 127, 130 (Utah 1987); State v. Brown, 798 P.2d 284, 286 (Utah App. 1990). In some cases, the circumstances may require the supporting affidavit to set forth in detail the basis of knowledge, veracity and reliability of a person supplying information in order to establish probable cause. State v. Bailey, 675 P.2d 1203, 1205 (Utah 1984). In other cases, if the circumstances as a whole demonstrate the truthfulness of the informant’s report, a less strong showing is required. Id. at 1205-06.

Purser, 828 P.2d at 517.

**B. The Affidavit Amply Supports the Confidential Informant’s Reliability and Probable Cause to Search Defendant’s Residence.**

Defendant challenges the informant’s reliability only on the apparent discrepancy between the informant’s assertion that the storage unit was rented by a “Steve” and the storage complex’s listing of the unit to a “Justin Dzinblenski.” In fact, the confidential

informant told Officer Billings that "Steve," whom he knew to be dealing marijuana, rented storage units on a regular basis under fictitious names to store large quantities of marijuana, and that defendant had rented the storage unit identified in the affidavit in the name of an individual who lived just down the street from defendant (R. 27).

Particularly, the informant told Officer Billings that "Steve" resided at 172 North, 920 West in Orem, and police checks of police files, local utility company records and driver licence information revealed that a "Steven Knight" lived at the address identified by the informant (R. 27). A records check with the management of the storage complex listed a Justin Dzinblenski as the renter of the storage unit. The records listed Dzinblenski's address as 180 North, 1106 West, Orem, a location just west of defendant's residence, located at 172 North, 920 West, Orem (R. 27). Further, the informant told the police that defendant was receiving large quantities of marijuana which defendant sometimes paid for with guns, information which was inferentially confirmed from a marijuana buy on December 21, 1995, involving individuals in possession of a handgun, from which police obtained further information leading to the discovery of marijuana in the search of the storage units that same night (R. 27). Finally, the informant gave information about the marijuana held in the storage unit freely, and all of such information was later shown to be accurate (R. 26). See Purser, 828 P.2d at 517 (stating "reliability and veracity are generally assumed when the informant is a citizen who receives nothing from the police in exchange for the information"). Thus, contrary to defendant's claim, the entirety of

facts recited in the affidavit, but which defendant omits from his discussion, strongly support, rather than undermine, the trial court's finding and conclusion that the confidential informant was reliable (R. 104-05).

Defendant also argues that because probable cause for the search of his residence was based exclusively on the alleged illegal search of the storage unit and the consequent discovery of marijuana, there was insufficient probable cause to search his residence. Br. of App. at 22. This claim again disregards the totality of facts set out in the affidavit, which facts demonstrate probable cause to search defendant's residence beyond reference to the discovery of marijuana.

Finding that the affidavit set out facts supporting probable cause to search defendant's house, the trial court wrote: "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" (R. 105).

In addition to the foregoing facts of the informant's reliability, which necessarily constitute part of the probable cause, the record further supports the trial court's finding as to the existence of probable cause to search the house: (1) Provo City Police Officers knew defendant from prior dealings (R. 27); (2) the marijuana buy occurred at night, a time when Officer Billings was aware that defendant conducted most of his narcotic transactions (R. 27); (3) the informant advised Officer Billings that defendant had been

dealing marijuana for several years and that defendant was often in possession of large quantities of marijuana on his person and at his residence (R. 27); Officer Billings had information that defendant transported large quantities of marijuana in his vehicle and that defendant was known to change storage units on a regular basis to avoid discovery by the police (R. 27); (5) the informant told Officer Billings that during the past week he had observed defendant with large quantities of marijuana on his person (R. 26); (6) there was a marijuana buy involving persons in possession of a gun, a known aspect of defendant's nighttime marijuana dealings, the night of December 21, 1995, the same night officers sought the warrant for the search of the house (R. 27); and (7) in Officer Billings experience, marijuana was likely being packaged at defendant's residence (R. 26).

These facts, in their entirety, show that the confidential informant provided reliable, corroborated information indicating that defendant was dealing marijuana from his home. See State v. Doyle, In sum, there was a substantial basis for the magistrate to conclude that a search of defendant's home was supported by probable cause.

**CONCLUSION**

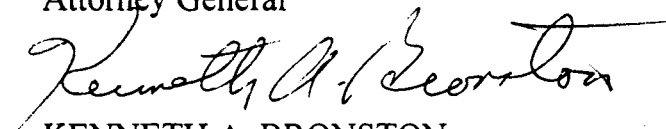
Based on the foregoing discussion, the State respectfully requests that defendant's conviction be affirmed.

**ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED**

Because this case presents no complex or novel questions, the State does not request that it be set for oral argument or that a published opinion issue.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January, 1999.

JAN GRAHAM  
Attorney General

  
KENNETH A. BRONSTON  
Assistant Attorney General

**CERTIFICATE OF MAILING**

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Sheldon R. Carter, Carter, Phillips & Wilkinson, attorneys for appellant, 3325 No. University Ave., Suite 200, Jamestown Square, Clocktower Bldg., Provo, Utah 84604, this 2<sup>nd</sup> day of January, 1999..

Kenneth A. Beaman

## ADDENDA



## ADDENDUM A

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  
: :  
A MATTER OF A NARCOTICS : Criminal No.  
INVESTIGATION :  
SELF STORAGE USA :  
1401 WEST CENTER STREET, :  
STORAGE UNITS #172, 173, AND 175 :  
OREM, UTAH :  
Defendants :

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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 storage unit #175, Rudy indicated the

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.

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AFFIANT- Devon Jensen  
Special Investigations

Subscribed and sworn before me on the \_\_\_\_\_ day of  
September 1995, \_\_\_\_\_, \_\_.M.

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MAGISTRATE

## ADDENDUM B

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  
A NARCOTICS : Criminal No.  
INVESTIGATION :  
PROVO, UTAH :  
Defendants :

-----

STATE OF UTAH )  
 :ss.  
COUNTY OF UTAH )

Comes now Russ Billings, having been duly sworn, who deposes and states as follows:

1. Your affiant is a peace officer for the State of Utah, Utah County, Provo Police Department and has been so employed since July 1, 1990. Your affiant is currently assigned to the Special Investigative Services Bureau. That your affiant has received training in the recognition of controlled substances, including both undercover work and surveillance and controlled transactions. Your affiant is familiar with the appearance and methods of storage, use, packaging and distribution of controlled substances. Your affiant has had training through POST academy in basic narcotics investigation and has also received training in Arizona in an advanced narcotics school.

2. On 12-21-95 officers from NET and Provo Police served a search warrant in Orem, Utah at 1401 West Center Street, based on information from a Confidential Informant (CI#<sup>2</sup>) that a large quantity of marijuana would be contained within the storage unit.

3. Information given by the Confidential Informant (CI#<sup>2</sup>) was that the storage unit contained 85 pounds of marijuana. When officers entered this storage unit during the execution of the

4. This same Confidential Informant (CI#<sup>2</sup>~~X~~) 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 #<sup>2</sup>~~X~~ 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#<sup>2</sup>~~X~~ 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 #<sup>2</sup>~~X~~ to

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



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

Dated this 21 day of December, 1995 P.M.

Russell Billings

AFFIANT- Russell Billings  
Officer/Special Investigations

Subscribed and sworn before me on the 21<sup>st</sup> day of  
December 1995, 7:04, P.M.

[Signature]

MAGISTRATE

## ADDENDUM C

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.

A NARCOTICS  
INVESTIGATION

~~172 N. 920 W. OREM, UT~~  
UTAH

Defendants

:  
: SEARCH WARRANT

: Criminal No.

-----  
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  
2/25 day of December, 1995 that there is  
probable cause to believe the following:

ADH 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.

ADH 2. The property described below is most probably  
located at the premises also set forth below.

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

ADH 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

Confidential Informant.

*[Handwritten signature]*

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.

*[Handwritten signature]*

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

*[Handwritten signature]*

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 21<sup>st</sup> day of December, 1995, 7:01, P.M.

*[Handwritten signature]*  
MAGISTRATE

## ADDENDUM D



## 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



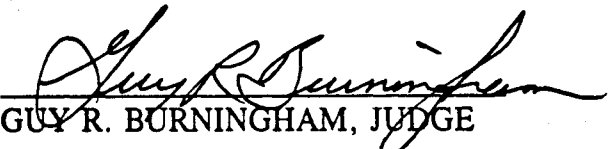
signed. He further testified that he can, at this time, be sure this warrant was signed because he remembers this case and because he has never served a warrant that was unsigned.

### 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.