

1989

# State of Utah v. Danny Hugh Knight and Gay Knight : Brief of Respondent

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

STATE OF UTAH,	)	
	)	
Plaintiff-Respondent,	)	Case No. 890220-CA
	)	
vs.	)	Category No. 2
	)	
DANNY HUGH KNIGHT and	)	
GAY KNIGHT,	)	
	)	
Defendant-Appellant.	)	

BRIEF OF RESPONDENT STATE OF UTAH

APPEAL FROM A JUDGMENT, SENTENCE, STAY OF EXECUTION OF SENTENCE, AND ORDER OF PROBATION ON A CLASS B MISDEMEANOR OF POSSESSION OF A CONTROLLED SUBSTANCE AS TO BOTH DEFENDANTS, AND A CLASS B MISDEMEANOR OF POSSESSION OF DRUG PARAPHERNALIA AS TO DEFENDANT DANNY HUGH KNIGHT ALONE FOLLOWING A NON-JURY TRIAL IN THE FIFTH CIRCUIT COURT FOR IRON COUNTY, STATE OF UTAH, THE HONORABLE ROBERT F. OWENS PRESIDING.

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	)	
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BRIEF OF RESPONDENT STATE OF UTAH

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DANNY HUGH KNIGHT and	)	
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	)	
Defendant-Appellant.	)	

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BRIEF OF RESPONDENT STATE OF UTAH

JURISDICTION OF THE COURT OF APPEALS

The Utah Court of Appeals has jurisdiction to hear this appeal under Utah Code Ann. §78-2a-3(2)(d) (1989).

NATURE OF THE PROCEEDINGS

This is an appeal from a Judgment, Sentence, Stay of Execution of Sentence, and Order of Probation following a motion to suppress which was denied and a non-jury trial in which the Defendants-Appellants were both convicted on Possession of a Controlled Substance, and Defendant Danny Hugh Knight was convicted of Possession of Drug Paraphernalia, all offenses being Class B Misdemeanors.

ISSUES PRESENTED ON APPEAL

- Is a search warrant valid when issued by a magistrate?
- Did the officers act in objectively reasonable reliance on the search warrant?
- Does the good faith exception bar application of the exclusionary rule?

DETERMINATIVE RULES AND STATUTES

Utah Code Ann. §77-23-1 (1982):

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 Code Ann. §77-1-3(4) (1988):

"Magistrate" means a justice of the supreme court, a judge of the district courts, a judge of the juvenile courts, a judge of the circuit courts and a justice of the peace or a judge of any court created by law.

STATEMENT OF THE CASE

The State of Utah hereby adopts Defendants' statement of the case supplemented by the trial court's findings for the purpose of this brief.

SUMMARY OF ARGUMENT

A justice of the peace is a magistrate statutorily authorized to sign search warrants. The officers acted in good faith reliance on the search warrant; therefore, the exclusionary rule is inapplicable.

ARGUMENT

POINT I

JUDGE MILLER WAS STATUTORILY AUTHORIZED TO EXECUTE THE SEARCH WARRANT. THE MERE INSERTION OF AN ERRONEOUS SUBTITLE DOES NOT INVALIDATE THE WARRANT.

Judge Margaret Miller, the duly elected Justice of the Peace for Iron County, Cedar City Precinct, executed the search warrant

at issue in this appeal. Utah Code Ann. §77-23-1 (1982) states, "A search warrant is an order issued by a magistrate . . ." (emphasis added). Utah Code Ann. §77-1-3(4) (1988) defines "magistrate" as, among others, "a justice of the peace." Furthermore, the Utah Supreme Court has held that the mere fact a justice of the peace is not a law-trained judge does not render the warrant defective. See State v. Van Dyke, 589 P.2d 764 (Utah 1978).

Counsel for Defendant concedes this point but claims the subtitle of circuit court temporary judge beneath Judge Miller's signature constitutes an unconstitutional abuse of power or claim of authority. The State of Utah fails to see any unconstitutional abuse. Remove the subtitle. Is the result an invalid search warrant? Indeed not. As the Utah Supreme Court has held, "minor technical deficiencies" should not invalidate an otherwise valid search warrant. State v. Anderson, 701 P.2d 1099, 1103 (Utah 1985). As the trial court found, the underlying criminal charges had yet to be filed in a specific court. Therefore, despite her erroneous subtitle, Judge Miller was not acting as a circuit court judge, but rather in her statutorily authorized position as magistrate. The findings of the trial court may not be set aside unless they are clearly erroneous. Utah R. Civ. P. 52(a); State v. Walker, 743 P.2d 191 (Utah 1987).

#### POINT II

THE OFFICERS ACTED IN GOOD FAITH, OBJECTIVELY REASONABLE RELIANCE ON THE SEARCH WARRANT. THE GOOD FAITH EXCEPTION PRECLUDES APPLICATION OF THE EXCLUSIONARY RULE. FURTHERMORE, THE PURPOSE OF THE EXCLUSIONARY RULE WOULD NOT BE MET IN THIS CASE.



The State of Utah concedes Utah Code Ann. §78-4-15 (1987), which authorized circuit court judges to refer cases to justice of the peace courts, was repealed effective April 25, 1988. The State of Utah also concedes, therefore, that the criminal case referral order issued by the Honorable Robert T. Braithwaite, Fifth Circuit Court Judge, and dated October 7, 1988, is invalid. The State of Utah also concedes the erroneous subtitle below Judge Miller's signature was based on the invalid criminal case referral order. The State of Utah does not, as expressed in Point 1, concede that the erroneous subtitle invalidates the warrant.

However, should this Court find that the insertion of the subtitle, together with whatever implications may be drawn therefrom, invalidate the search warrant, the State of Utah submits that the good faith exception bars application of the exclusionary rule to the facts in the instant case. The trial court specifically made no finding as to the applicability of the good faith exception in this case. Nevertheless, "[t]his Court may affirm a trial court's decision to admit evidence on any proper ground, even though the trial court assigned another reason for its ruling." State v. Thompson, 751 P.2d 805, 810. (Utah App. 1988).

In Thompson, this court held that although Utah's codification of the good faith exception, Utah Code Ann. §77-35-12(g) (1982), was invalid, the exception as established in U.S. v. Leon, 468 U.S. 897 (1984), is still accepted law in Utah. The good faith exception precludes application of the exclusionary

rule where an officer acts in objectively reasonable reliance on a subsequently invalidated warrant. Counsel for Defendant contends since the Iron County Attorney had adequate notice of the statutory repeal and the constitutional amendment, good faith cannot be implied to the officers. The State of Utah submits there was no bad faith on the part of the Iron County Attorney. There was ignorance and perhaps simple negligence in failing to determine the current law. The Iron County Attorney relied on the invalid circuit court order, so the same ignorance and simple negligence, if any, may be attributed to the court as well. But this is all irrelevant. The good faith exception concerns the officer's good faith, not the prosecutor's nor the magistrate's. In the instant case, the officers in good faith requested a search warrant from the Iron County Attorney. The sufficiency of the affidavit is not being challenged. Iron County has only one circuit court judge and he was unavailable that day. As was the common practice in Iron County, the Iron County Attorney in good faith approached Judge Margaret Miller to execute the search warrant. At no time did the officers have any knowledge that Judge Miller had no authority to act as circuit court judge. The officers acted in objectively reasonable reliance on the warrant. The deterrent effect and remedial purpose of the exclusionary rule would not be served should the rule be applied in this case. Therefore, the trial court was correct in not suppressing the evidence.

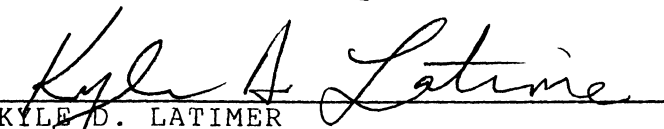
CONCLUSION

The trial court correctly found that Judge Miller as Justice of the Peace and a magistrate could execute a search warrant. The erroneous insertion of the subtitle did not work to invalidate the warrant. In any event, the officers acted in good faith and objectively reasonable reliance in procuring a search warrant and thereafter executing it. There is no logical nor valid purpose applying the exclusionary rule to the facts of the instant case. The State of Utah respectfully requests this Court to affirm the trial court's denial of the Defendants' motion to suppress and to affirm the convictions.

DATED this 29 day of August, 1989.

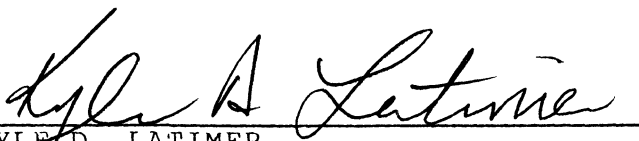
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By:

  
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for Plaintiff-Respondent State of  
Utah

MAILING CERTIFICATE

I HEREBY CERTIFY that I mailed four (4) true and correct copies of the foregoing BRIEF OF RESPONDENT STATE OF UTAH to Mr. James L. Shumate, Attorney for Defendant-Appellant, P.O. Box 623, Cedar City, Utah 84721-0623, by first-class mail, postage fully prepaid, on this 29 day of August, 1989.

  
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Utah