

1979

State of Utah v. Lester Ralph Romero : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, :
v. :
LESTER RALPH ROMERO, :
Defendant-Appellant. :

BRIEF OF APPELLANT

Appeal from a verdict
rendered at a bench trial
by the Honorable James A. ...
Third Judicial District
from the denial of
Arrest of Judgment

ROBERT HANSEN
Attorney General
State Capitol
Salt Lake City, Utah
Attorney for Respondent

FILED

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IN THE SUPREME COURT OF THE
STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	BRIEF OF APPELLANT
v.	:	
LESTER RALPH ROMERO,	:	Case No. 16638
Defendant-Appellant.	:	

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with the criminal offense of Theft by Receiving, a second degree felony.

DISPOSITION IN THE COURT BELOW

Appellant was convicted at a bench trial on April 2, 1979. A Motion in Arrest of Judgment was heard and later denied on May 17, 1979. On August 20, 1979, the appellant was sentenced to one to fifteen years in prison which was stayed pending a ninety day evaluation at the prison and further stayed pending this appeal. The appellant was admitted to bail.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the conviction with an order to dismiss the information.

STATEMENT OF THE FACTS

On August 25, 1979, Investigator Charles Collins of the Salt Lake County Attorney's office arrested the appellant, Lester Romero, under authority of an arrest warrant issued in another matter. Investigator Collins, who had been investigating the appellant on a wide range of matters full time for six weeks prior to this arrest, (R-133) went to appellant's home at 8:30 a.m., with a sheriff's sergeant and, pursuant to plan, waited for the appellant to get in a vehicle and drive out on a public roadway whereupon he was stopped. (R-132)

After appellant was taken into custody, he was asked for permission to search the truck he was driving and he refused. (R-110-111) After conferring by radio with a deputy county attorney who advised him to "seize the vehicle for evidence," (Def. Ex. 3, Attached Appendix A), Investigator Collins impounded the truck which was registered to "Golden Circle Investments by Lester Romero." (R-111) Investigator Collins then went through the truck seizing numerous items, mostly documents, including a stamped, sealed envelope addressed to "ABC" in Woods Cross, Utah, (States Exhibit 10) which became the critical link to all evidence used against the defendant in this case.

While the State contended at the Motion to Suppress that this was a "routine impound inventory," (Memorandum in Opposition R-23, et. seq.) no written impound inventory was made. In response to a court order to produce the inventory, Investigator

Collins furnished a "Supplementary Report" to the Salt Lake County Attorney's Office, (Exhibit D-C, attached hereto as Appendix A) which describes the arrest, search and seizure and lists the "items of possible evidence" which were "seized pending further investigation." Following the list of documents and papers, the report stated further: "These items were all secured for further investigation and as possible evidence." Thus, inventory of the seized items was made at the County Attorney's Office some time following the seizure. (R-124, 154).

The report also described in general terms (e.g., "miscellaneous tools, fishing gear, mechanical equipment.") the items which were not "secured." Contrasting the nature of the items seized and inventoried, "for further investigation" with those "not secured" or inventoried in the report, (Exhibit D-6, Appendix A), clearly establishes the investigatory nature of the seizure and refutes any claim that the items were seized to protect the property. For example, a scrap of paper with numbers written on it and a lawyer's business card were seized, inventoried and photocopied, while tools and sporting equipment were not.

With the exception of the safety inspection sticker which was improperly affixed to the windshield, Investigator Collins had no probable cause to believe that any of the items and papers which were seized were contraband, instrumentalities of an offense, or even evidence of an offense. Investigator Collins testified at the hearing on a motion to suppress that he attached

no significance to the "ABC envelope" until a "confidential informant" asked to see the items seized because there was "something in there we needed to know about." (R-127) Investigator Collins showed a photocopy of the envelope to the informant who told him that he had been told by the appellant that there was a stolen semi-tractor stored at "ABC."

That information, along with further information derived therefrom and the contents of the envelope (money orders for rent became the probable cause evidence contained in the affidavit for a search warrant of storage units at ABC Storage in Woods Cross. (Exhibit D-3, Attached hereto as Appendix B) The search under that warrant produced the critical evidence linking appellant to the stolen semi-tractor, which was the subject of the instant prosecution.

At the hearing on the motion to suppress, the envelope and the fruits of the ABC Storage search, appellant's counsel attempted to obtain the name of the person who was the informant because appellant believed the informant was his lawyer's investigator. (R-148-151) The hearing court refused to compel Investigator Collins to divulge whether or not the informant was appellant's lawyer's agent. (R-151) Defense counsel put on the undisputed testimony of appellant, that he had discussed what was taken in the seizure and his concern about the envelope and the stolen semi-tractor with his attorney and the attorney's investigator, Craig McLaglahn, in obtaining advice concerning the legality

of the seizure. (R-151-162) Based upon this showing, defense counsel again attempted to verify if the informant was party to a privileged attorney-client conference because of the probable violation of the constitutional right to counsel. The State objected, without any evidence or representation establishing a need for preserving secrecy of the informant's name and the Court sustained the objection. (R-162-63) The appellant's motion to suppress was denied although this does not appear in the record. At trial, appellant's counsel objected to each item of evidence which was the fruit of the seizure of appellant's papers and/or the information on the grounds that the use of such evidence violated the Fourth, Sixth and Fourteenth Amendments to the United States Constitution. The objections were overruled and appellant convicted.

Following the conviction, appellant made a motion in arrest of judgment based upon newly discovered evidence that the confidential informant, who told Investigator Collins that appellant was concerned that an envelope which had been seized would lead to a stolen truck, had obtained the information from a privileged attorney-client conversation. (R-65)

At the hearing on that motion, Investigator Collins testified that: At the time of the searches and seizures, investigating the appellant was his "major project." (R-239) That the confidential informant had told him that appellant was concerned about the envelope which had been seized because it could lead the

investigation to stolen property. (R-243) That among the papers which were seized was a deed conveying property to Craig McLaglahn's father and that he had discussed that document with Craig McLaglahn. (R-244) That Collins knew McLaglahn was an investigator for criminal defense attorneys and shared an office with appellant's corporate lawyer. (R-245) That Collins exchanged information with McLaglahn and McLaglahn had given information regarding appellant. (R-247-48) That Collins had told McLaglahn that he did not want any information coming from an attorney-client situation. (R-248-49) That Collins had no knowledge that any information received from the confidential informant was from attorney-client conversation. (R-248-49)

The court sustained the State's objection to the ultimate question of whether McLaglahn was the confidential informant, but the court in doing so, stated he was assuming from the evidence that McLaglahn was the informant. (R-254, 256) The court at that point also stated that the testimony of Collins indicated that the information regarding appellant's concern about the seized envelope was obtained by McLaglahn from a source other than an attorney-client conversation. (R-256) However, there was no direct evidence that this was in fact true. Collins had only testified that he told McLaglahn that he did not want privileged information (R-258-60) and that the confidential informant told him he had heard the conversation at a trailer court. (R-253) The whole thrust of this testimony was that Collins had no know-

ledge that information came from attorney-client conversation. (R-248, 249, 250) Collins, of course, could not testify as to where McLaglahn had, in fact, received the information.

Mr. David Bown testified he was an attorney at law. That he was retained by the appellant. That McLaglahn was acting as a defense investigator and that he had conditioned his acceptance of taking appellant's cases upon McLaglahn's assistance. (R-267) Mr. Bown testified that he had taken particular care to clearly define McLaglahn's status so as to make information McLaglahn obtained privileged because he was concerned about McLaglahn receiving an investigative subpoena from the County Attorney's Office. (R-278) Appellant came to Mr. Bown seeking advice as to whether the papers seized by Collins could be legally used and appellant expressed his concern particularly about the ABC envelope because it could lead to a stolen truck. (R-267-69, 274) Mr. Bown testified that the only other person present during the conversation was McLaglahn. (R-270)

Appellant, again, testified that he had not expressed his concern about the envelope to any other person.

It was the State's position on the motion in arrest of judgment that, if the information came from an attorney-client conversation, the State had no knowledge that it did and, hence, there was no state action involved. The State further argued that the conversation was not privileged because it pertained to ongoing criminal conduct, the possession of stolen property.

court indicated that it rejected the latter argument. (R-290)

The court took the matter under advisement and then denied the motion. The court stated in its order that the facts claimed by the defendant were not supported by credible evidence. (R-73)

ARGUMENT

POINT I: THE SEIZURE OF APPELLANT'S PAPERS VIOLATED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE USE OF INFORMATION DERIVED THEREFROM TO OBTAIN A SEARCH WARRANT RENDERED THE USE OF EVIDENCE SEIZED THEREUNDER INADMISSABLE.

The Fourth Amendment to the United States Constitution states:

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, and particularly describing the place to be searched, and the persons or things to be seized.

With regard to the instant case, it should be noted that "papers" are explicitly specified protected items and that the amendment prohibits unreasonable seizures as well as unreasonable searches.

While appellant believes that the search of the vehicle itself was unreasonable since it is rather clear that the investigator serving the arrest warrant planned the arrest as a pretext to search the vehicle, (see Exhibit D-6, attached hereto as Appendix A) it is not necessary for appellant to attack the search since the seizure of the envelope for investigatory purposes

was clearly unreasonable. Thus, it is appellant's contention that even if Investigator Collins had a right to go through the contents of the vehicle which appellant was driving, he clearly had no right to seize papers without any probable cause to believe they were contraband or evidence.

Since there was no search warrant, the burden is upon the State to show that the seizure of appellant's papers was within one of the exceptions to the warrant requirement of the Fourth Amendment. McDonald v. United States, 335 U.S. 451, 456 (1948); United States v. Jeffers, 342 U.S. 48, 51 (1951); United States v. Murrie, 534 F.2d 695, 698 (6th Cir. 1976).

In the court below, the State argued that the search and seizure came within the "routine impound inventory" and "plain view" exceptions to the warrant requirement.

The "routine impound inventory" exception permits the necessary search of an impounded vehicle to make an inventory of its contents to protect the owner's property interests, and to guard against false claims of lost property. South Dakota v. Opperman, 428 U.S. 364 (1975); State v. Criscola, 21 Utah 2d 272, 444 P.2d 517 (1968).

In the first instance, this was not a "routine impound inventory." Investigator Collins did not list all items in the truck at the time of the impound. No such inventory was ever made--let alone done as a part of the impound process with copies to the tow truck driver and appellant. Instead, Collins went through

the items in the truck, and seized anything which might be of evidentiary or investigative value and left unsecured and uninventoried those items of no interest in his investigation of appellant. Later, at the County Attorney's Office, (R-120,124,154), he listed the seized items in his supplementary report as items which "were all secured for further investigation and as possible evidence." (Exhibit D-6, attached hereto as Appendix A).

The seized papers were not put away for safekeeping but were photocopied (R-126,127) and shown to informants. (R-128, 187; Affidavit for Search Warrant, Defendant's Exhibit 2, attached hereto as Appendix B) The "ABC" envelope was torn open and the contents studied, two money orders and a note stating "rent" with the unit number of the storage unit which was ultimately searched. (R-124, Affidavit, Appendix B)

The nature of the items "secured for further investigation and as possible evidence" (Appendix A) clearly demonstrates the extremely broad scope of Investigator Collins' interest in appellant's business and associates. In contrast, the nature of the items not secured or inventoried demonstrates Collins' complete lack of concern for protecting valuables which were in the vehicle. Where the police do not make a complete list of the property in an impounded vehicle but only list that which may be incriminating, it cannot be fairly characterized as an inventory search. State v. Gluck, 518 P.2d 703, 707 (Wash. 1974).

The impound inventory search exception to the warrant require

ment cannot be used as a "pretext concealing an investigatory police motive." South Dakota v. Opperman, supra, at 375-76. Here there was not even a pretext of an impound inventory until the hearing on the motion to suppress.

However, even if Collins discovered the envelope during a bona fide impound inventory search, he had no justification whatsoever to seize it and use it in his continuing investigation. At the time it was seized, he had no idea of its evidentiary value. (R-128) It was only when Craig McLaglahn told him that appellant was worried about an envelope which Collins had seized which could lead to a stolen truck, that Collins had anything like probable cause to believe it was evidence of a crime. Appellant is not arguing the distinction between "mere evidence" and "fruits or instrumentalities of a crime" because, when seized, the envelope was neither. In the words of Investigator Collins, the papers were seized "for further investigation and as possible evidence." (Defendant's Exhibit 3, Appendix A, p. 5) (Emphasis added)

The "plain view" exception to the warrant requirement merely excuses a search warrant where an officer in the lawful course of his duties sees contraband or otherwise seizeable articles-- it does not dispense with probable cause and allow an officer to seize anything he can see for further investigation.

In State v. Elkins, 422 P.2d 250 (Ore. 1966), it was held that where an officer makes a lawful search and he observes some-

thing which he does not know to be contraband but of which he is suspicious, seizure of the item is unreasonable even though his suspicion eventually proves well founded. The court observed:

If the rule were otherwise, an officer who desired to inculcate an arrested person in another crime, could seize everything in such person's immediate possession and control upon the prospect that on further investigation some of it might prove to have been stolen or to be contraband. It would open the door to complete temporary confiscation of all an arrested person's property which was in his immediate possession and control at the time of his arrest for the purpose of a minute examination of it in an effort to connect him with another crime.
422 P.2d at 254.

The instant case presents an even more unreasonable seizure than the seizure in Elkins, for here, Collins did not have even a reasonable suspicion that the envelope was evidence of anything. If the State's theory is upheld here, it would mean that a police officer could arrest a lawyer, for example, on a parking ticket warrant, seize his brief case, and take it to the County Attorney's office and photocopy the contents for leisurely perusal. Or, an officer invited to a social worker's office could seize and photocopy a psychologist's report because it was in "plain view" from where he lawfully was. It is difficult to hypothesize a more serious infringement of the security of a person's papers guaranteed by the Fourth Amendment, than the

seizure which occurred in the instant case.

In United States v. Chadwick, 433 U.S. 1 (1977), the United States Supreme Court held that the opening of a locked footlocker, seized from a lawfully arrested person's vehicle, and which the officers had ample probable cause to believe contained narcotics, was unreasonable without a warrant because a footlocker is frequently a depository for personal papers and effects. Here Investigator Collins, without probable cause, seized, not a possible container for papers, but the papers themselves and he opened a sealed envelope which he knew to contain papers.

A reading of the affidavit, (Appendix B), makes apparent the extent to which the "ABC" envelope was used in developing the probable cause for the search of the ABC Storage units in Woods Cross. Not only were the contents themselves described but the information in the affidavit which was obtained from both the informants and one witness was elicited by showing them the envelope or a photocopy. (Affidavit for Search Warrant, Appendix B; R-187) Hence, the information obtained from the informants, the manager of ABC Storage, and the evidence seized under the search warrant were all "fruit of the poisonous tree" and should have been suppressed. E.g., Wong Sun v. United States, 371 U.S. 471, 488 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). The admission of that evidence at trial over appellant's Fourth Amendment objection requires reversal. E.g., Mapp v. Ohio, 367 U.S. 643 (1961).

POINT II: THE AFFIDAVIT SUPPORTING THE
SEARCH WARRANT WAS INADEQUATE ON ITS FACE
TO PERMIT A MAGISTRATE TO MAKE AN EVALUATION
OF THE RELIABILITY OF THE INFORMATION
CONTAINED THEREIN.

Regardless of the legality of the means used to gather the information contained in the affidavit used to obtain the search warrant for ABC Storage, appellant contends that information was inadequate to enable the magistrate to evaluate its reliability. Under Utah law, the information presented to a magistrate to establish probable cause for issuance of a search warrant must be given under oath and in writing. Sections 77-54-3 through 77-54-6, U.C.A. (1978 Ed.); State v. Jasso, 21 Utah 2d 24, 439 P.2d 844 (1968). The affidavit submitted to the magistrate to support the issuance of a search warrant for ABC Storage was introduced into evidence at the hearing on appellant's motion to suppress (Defendant's Exhibit 2) and is reproduced in Appendix of this brief.

While it is clear that hearsay information may be used to develop probable cause for issuing a search warrant, it is equally clear that the magistrate must be given sufficient information to enable the magistrate to make an independent judgment as to the credibility of the informant and the reliability of the information. Spinelli v. United States, 394 U.S. 410, 413 (1969); United States v. Harris, 403 U.S. 573 (1971).

The information, in the affidavit, that a stolen semi-tractor was in the ABC Storage units was hearsay from an unnamed con-

dential informant and from Ron Lyle, a prison inmate. There is no information contained in the affidavit supporting the credibility of the confidential informant and no basis whatsoever upon which the magistrate could have made a determination as to his credibility.

The information from the prison inmate, Ron Lyle, was subject in part, to verification but the critical connection to the ABC Storage was not. In the court below, the State argued that Lyle's information was a statement against penal interest. However, the affidavit does not state whether or not Lyle was given immunity or offered any benefit for his information. The State should not be allowed to mislead a magistrate into assuming a statement is a confession subjecting the declarant to liability, by remaining silent about the circumstances when a full disclosure of the circumstances surrounding the statement would indicate otherwise. Furthermore, while the details of Lyle's statement concerning the theft of the semi-tractor were incriminating to himself and to an extent verifiable, the information that the semi-tractor had been turned over to appellant and stored at ABC Storage was neither self-incriminating nor verified. Rather, it was a classic statement of an accomplice incriminating another in his crime. In addition, Lyle's claim that he saw the truck in the storage units in December of 1977, did not give probable cause to believe it was still there eleven months later.

Thus the magistrate had before him only the hearsay statement

from a source about which he knew absolutely nothing and the hearsay statement of a convicted felon and accomplice that the truck had been in the storage unit ten months earlier, made under unknown circumstances regarding immunity and reward for implicating appellant. This information clearly failed to meet the test of Spinelli, supra. See, also, Aguilar v. Texas, 378 U.S. 108 (1964).

POINT III: THE COURT HEARING THE MOTION
TO SUPPRESS ERRED IN REFUSING TO COMPEL
DISCLOSURE OF WHETHER OR NOT SOME OF THE
INFORMATION USED TO OBTAIN THE SEARCH WARRANT
CAME FROM A PRIVILEGED ATTORNEY-CLIENT
COMMUNICATION.

At the hearing on the motion to suppress, it became apparent to appellant that the confidential informant, who had informed Collins that appellant was concerned about an envelope which Collins had seized because it could lead to a stolen truck, must have been the defense investigator who was present when appellant sought legal advice about the seizure.*

Section 78-24-8(5), U.C.A. (1953 Replacement) provides:

A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

*Citations to the record supporting factual assertions are contained in the Statement of Facts, supra.

However, here there was no showing by the State that the confidential informant made the statement to Collins "in official confidence" even if it is assumed that Collins is a "public officer." What is more important, there was no showing whatsoever that "the public interests would suffer by the disclosure." Concealing a violation of a breach of the attorney-client confidence, particularly in a criminal case where Sixth Amendment rights are involved, certainly is not in the public interest.

This ruling effectively prevented appellant from raising the Sixth Amendment violation (discussed infra in Point IV) before the judge who was ruling on the motion to suppress. While appellant had an opportunity to raise the issue later before a different judge on a motion in arrest of judgment, it is submitted that appellant had a right to have the judge who was deciding whether or not to suppress the evidence review all constitutional defects in the obtaining of the warrant including evidence that part of the information came from a constitutionally privileged source.

The judge who heard the motion in arrest of judgment was necessarily the trial judge whose duty it was to enter judgment. Furthermore, a motion in arrest of judgment is only vaguely defined under Utah law and there are no standards regarding burden proof. See Section 77-35-10 U.C.A. (1977 Ed.) What in effect is a collateral attack after conviction is no substitute for presenting evidence to the judge making the ruling on the motion to

suppress. The United States Supreme Court has on two occasions refused to utilize post-conviction fact finding as a remedy where the possibility of an intrusion on attorney-client communications came to light after conviction, and, instead, summarily vacated the conviction and remanded for trial so that the defendant could adequately protect himself against the use of tainted evidence. Black v. United States, 385 U.S. 26 (1966); O'Brien v. United States, 386 U.S. 345 (1967).

Because of the lack of foundation showing that the information sought fell within the "official communication" privilege of Section 78-24-8, the court erred under Utah law in sustaining the objections to divulging whether the informant was the defense investigator. Even if the statute protected any information the State wished to call "confidential," such a statute would have to yield to inquiry necessary to protect Sixth Amendment interests. This error can only be rectified by reversal and remand for further proceedings on the motion to suppress in the event that this Court does not reverse on grounds raised in the other point

POINT IV: THE USE OF INFORMATION BY THE
STATE OBTAINED FROM A DEFENSE INVESTIGATOR
WHO WAS PRIVY TO ATTORNEY-CLIENT COMMUNICATIONS
VIOLATED THE FOURTH, SIXTH AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION
AND ARTICLE 1, SECTION 12 OF THE CONSTITUTION
OF UTAH.

The issue addressed in this point was raised before the trial court by means of a motion in arrest of judgment. (R-64)

The court's denial of the motion because he found that the facts claimed by the appellant were not supported by credible evidence (R-73) is perplexing because there was little factual dispute at the hearing on the motion.

There was no question that the investigation of this case began when a confidential informant came to Investigator Collins and informed him that appellant had expressed concern about an envelope which Collins had seized because it could lead to where a stolen truck was stored. (R-243) That information was included in the Affidavit for Search Warrant. (Exhibit D-3, Appendix B) While the court would not compel Collins to state whether or not the confidential informant was Craig McLaglahn, the court stated he was assuming it was. (R-254) David Bown, an attorney at law, testified that appellant came to him seeking advice on the legality of the seizure of the envelope, that Craig McLaglahn was present as a paid investigator for Mr. Bown, and that appellant had expressed concern that the envelope could lead to where a stolen truck was stored. (R-262, et. seq.) The appellant testified to the same effect. (R-282, et. seq.) This evidence was not disputed or contradicted.

The only factual contention involved appellant's testimony that he had not discussed the envelope seizure except with his attorney. (R-283) Somewhat opposed to this was Collins' testimony that he had told McLaglahn he did not want information from attorney-client sources (R-258) and McLaglahn had told him that

the information came from conversations at a trialer court. (R-253) Neither side was willing to call McLaglahn as a witness, so there was no evidence that McLaglahn followed instructions or told Collins the complete truth.

In the absence of any findings of fact or conclusions of law, it is difficult to determine the basis of the court's reasoning below. Surely, the court did not find that Mr. Bown was not telling the truth under oath on the strength of what McLaglahn told Collins about the source of his information. It is appellant's contention, supported infra, that the undisputed evidence shifted the burden to the State to establish that McLaglan had obtained the information in some way completely unconnected with his capacity as agent for appellant's attorney.

Looking at the evidence in the light most favorable to the State, it is submitted that the most that can be said, and this seems to have been the State's position below, is that the prosecution was not aware that the information came from an attorney-client communication and had not intended to intrude on the attorney-client relationship.

The law is quite clear that placing a double agent in a defense camp requires reversal. E.g., Caldwell v. United States, 205 F.2d 879 (D.C. Cir. 1953). In Caldwell, the agent had, like McLaglahn, been warned against getting involved in attorney-client conversations. However, when the agent learned that the attorney and defendant were plotting another crime, caution was thrown

to the wind, and the agent reported regularly to the prosecution while working as a defense aid. The court vacated the conviction, holding that the breach of the right to counsel compelled reversal without any showing of prejudice.

In Black v. United States, 385 U.S. 26 (1966), the Supreme Court summarily vacated a conviction when the Solicitor of the United States informed the Court that the F.B.I. had tapped telephone conversations and had furnished notes to the prosecutors. According to the representation of the Solicitor, upon which the Court was acting, the Tax Division which was prosecuting had not thought the material relevant to the prosecution and was not aware the notes contained any attorney-client information until a year after the trial.

In O'Brien v. United States, 386 U.S. 345 (1966), the Solicitor again informed the Court that the F.B.I. had intercepted a phone call wherein the defendant had requested his lawyer to get the territorial limits on his bail conditions changed. No information regarding any calls was ever communicated outside the F.B.I., but, again, the Court summarily vacated the conviction.

The inference from Black and O'Brien is that any breach of secrecy of attorney-client communications, per se, requires reversal and the dissents in those cases noted that. However in Weatherford v. Bursey, 429 U.S. 545 (1977), the majority rejected the interpretation stating:

If anything is to be inferred from these two cases [Black and O'Brien] with respect to the right to counsel, it is that when conversations with counsel have been overheard, the constitutionality of the conviction depends on whether the overheard conversations have produced, directly or indirectly any of the evidence offered at trial. 429 U.S. at 553.

In Weatherford, an undercover agent had been arrested along with some bona fide demonstrators. To maintain his cover he was charged and retained his own counsel. He attended a meeting with a co-defendant's lawyer, again to maintain his cover, but communicated nothing that he learned to the prosecution. His testimony at trial was confined to events preceding arrest. The Court held:

There being no tainted evidence, no communication of defense strategy to the prosecution, and no purposeful intrusion by Weatherford, there was no violation of the Sixth Amendment as it is applicable to the states by virtue of the Fourteenth Amendment. 429 U.S. at 558.

Regardless of what inferences can now be drawn from Black and O'Brien, the inference from Weatherford, itself, is that where the overheard attorney-client "have produced, directly or indirectly, any of the evidence at trial" a Sixth Amendment violation does occur. 429 U.S. at 553. It should be noted that the Court found that the agent Weatherford had no intent to violate the attorney-client privilege. In the instant case,

McLaglahn certainly had the intent to violate the attorney-client privilege and did so on behalf of the State, even if Collins did not and had instructed McLaughlahn not to relay attorney-client conversations.

However, intent or motive should play a small part in determining the result of an infringement of the attorney-client confidence. Caldwell v. United States, *supra*; Barber v. Municipal Court, 48 Law Week 2207, (Cal. Sup. Ct. 1979) (Decided on State Constitution grounds.) The point is that defendants must have absolute confidence that what they reveal to their lawyers will not and cannot be used against them if they are to have effective assistance of counsel. The Sixth Amendment right to counsel could be rendered meaningless if that confidence were violated by the lawyer himself without any intent, or indeed knowledge, the part of the prosecutor.

Perhaps the clean hands or lack thereof of the prosecutor or the agent's superiors would be relevant where, as in Caldwell, *supra*, or Barber, *supra*, little or no prejudice could be demonstrated, or in deciding whether the remedy should be suppression or out-right dismissal. However, here where the disclosure started the whole chain of the investigation, the prejudice is obvious and the question of suppression versus dismissal is not particularly meaningful because suppression would result in dismissal any way.

If this Court does not wish to enter the Sixth Amendment

thicket, then, it is respectfully submitted that reversal on this point could be grounded on Section 12 of Article One of the Constitution of Utah or on the Court's general supervisory powers over the judiciary and bar. Surely, the people of this State in seeking advice from a lawyer have a right to have absolute confidence that what they tell the lawyer will not turn up in an affidavit for a search warrant.

CONCLUSION

It is respectfully submitted that the massive use of evidence obtained in violation of the State and Federal Constitutions requires reversal of the conviction, and, since it is apparent that without the illegally obtained evidence a conviction could not be obtained, remand with instructions to dismiss the information. In the alternative, appellant requests that this Court establish guidelines as to the burden of proof in determining whether a violation of the attorney-client privilege occurred and remand for further proceedings on the motion to suppress and a new trial if appropriate.

Respectfully submitted,

JOHN D. O'CONNELL
Attorney for Appellant

Served two (2) copies of Appellant's Brief upon the Attorney General by leaving the same at his office at the Utah Capitol on this _____ day of March, 1980.

APPENDIX A

DEFENDANT'S EXHIBIT <u>3</u> CR78-1046

Supplementary Report
Salt Lake County Attorneys Office
Criminal Division

DEFENDANT'S EXHIBIT NO.

OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY & CASE NUMBER
COMPLAINANT	ADDRESS	RESIDENCE PHONE		BUSINESS PHONE	

ADDITIONAL INFORMATION & SYNOPSIS

ARREST OF LESTER RALPH ROMERO

On August 25, 1978, at approximately 0750 hours, I proceeded to the area of the suspect's home. I made a drive past the suspect's home and observed in and around the suspect's home four vehicles. There was a white over green Thunderbird. There was a green Chevette and a green Volkswagon and a light blue over dark blue Ford pickup truck with a camper.

I then proceeded to park on 6200 South at approximately 1800 West. At approximately 0815 hours, Sgt. Dennis Harwood from the Salt Lake County Sheriff's Office joined me and set up surveillance west of the suspect's home.

At approximately 0830 hours, Sgt. Harwood contacted me by radio and advised that the suspect had just left his home and had gotten into the blue Ford pickup truck with the camper.

I then started the engine in my vehicle, pulled forward, and observed the suspect as he came to the stop sign at 2200 West on 6200 South. Suspect made a right turn and proceeded eastbound on 6200 South. I made a U-turn prior to the suspect getting to my location; and as the suspect passed, I pulled in behind the suspect and awaited Sgt. Harwood's arrival to stop the suspect with his red light. However, prior to Sgt. Harwood's arrival, I observed the suspect pull his pickup truck to the right and off the roadway and turn off the engine.

I exited my vehicle and proceeded to meet the suspect at the left rear corner of his pickup truck. I there displayed my badge and identification card and requested the suspect to produce a driver's license. Suspect pulled out his wallet from his right hip pocket and started looking through it. The suspect appeared to be quite nervous and his hand was visibly shaking. The suspect did not appear to be locating a driver's license.

I asked the suspect if he had a driver's license and he stated that he did. He continued to look but was not able to come up with one. I then asked the suspect if he had any kind of identification. He then gave me a card, typewritten, with his name and address on it. He asked what this was all about. I advised him that I had an outstanding warrant for his arrest.

At this time, Sgt. Dennis Harwood had parked his vehicle to the rear of mine and had come forward. Mr. Romero was advised as to the charges against him and taken to Sgt. Harwood's car and given a field search by Sgt. Harwood.

Sgt. Harwood, at my request, then removed the suspect's wallet and I looked through the wallet and asked the suspect if there was any cash money in the wallet for security reasons. He wanted to know why I was interested in cash money, and I advised him that it was for security purposes so that upon his arrival at the jail if there was any money with him at the time of arrest, that there would be an agreement as to how much that was. Suspect stated that there was no money in his wallet.

DISPOSITION	INVESTIGATOR'S SIGNATURE	DATE	APPROVED BY
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Supplementary Report
Salt Lake County Attorneys Office
Criminal Division

OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY AGENCY
COMPLAINANT	ADDRESS	RESIDENCE PHONE		BUSINESS PHONE	
<p>ADDITIONAL INFORMATION & SYNOPSIS</p> <p>I then continued to look through the wallet and located a temporary driver's license, #C224958, a Class C license signed by Lester Ralph Romero. It indicated it was a duplicate license from DS28-36-8859. The suspect's wallet was then returned to him and he was placed in the front seat of Sgt. Harwood's vehicle.</p> <p>A check was then run through the Sheriff's frequency dispatcher to determine the status of Mr. Romero's driver's license. The Sheriff's Dispatcher Frequency Two advised that Mr. Romero's driver's license was suspended. The license in his possession indicated an examination date of 6-27-78 and an expiration date of 9-27-78.</p> <p>I then took a copy of the warrant #78-CRS-368 and gave a copy of the warrant to Mr. Romero. I then removed Mr. Romero from Sgt. Harwood's vehicle and advised him of his Constitutional rights from the standard P.O.S.T. Rights Card. This was at approximately 0845 hours. Mr. Romero stated that he understood his rights.</p> <p>Mr. Romero's vehicle was stopped at 0833 hours and he was arrested at 0835 hours.</p> <p>After reading Mr. Romero his rights, I asked him who owned the vehicle. He asked me why I wanted to know. I advised Mr. Romero that it made a difference as to what action was taken in regards to the vehicle. I advised him that if the vehicle was his property that we would probably do with it as he directed and that if he wanted it parked and locked we would probably do that. I advised him, however, that if the vehicle did not belong to him that we would contact the party to whom it did belong and advise them where they would be able to locate the vehicle.</p> <p>Mr. Romero then stated that the vehicle belonged to Golden Circle Investment Corporation. I asked Mr. Romero who I should contact at Golden Circle and he stated that I should contact Bill Hamilton. I asked him if he could advise me how to get a hold of Mr. Hamilton and he stated that he could not understand why I wanted to know since I had been at Mr. Hamilton's home just the day before. I advised Mr. Romero that that was correct; however, I was not going to travel to Mr. Hamilton's home at this time. If he had a telephone number for Mr. Hamilton, I would contact him. He stated that he had none.</p> <p>I then asked him what his connection with Golden Circle Investment was. He stated that he was the maintenance man for Golden Circle and then declined to make any further statement.</p> <p>I then contacted via County Attorney radio frequency Greg Bown and advised him of the situation. Prior to doing this, however, Sgt. Harwood had asked Mr. Romero for permission to search the vehicle, and he had declined giving such permission.</p> <p>After advising Greg Bown of the situation, I requested information as to what action to take concerning securing or releasing the vehicle. Mr. Bown advised that the vehicle should be seized as evidence. Upon receiving this information, Sgt. Harwood requested from the Sheriff's</p>					
DISPOSITION	INVESTIGATOR'S SIGNATURE	DATE	APPROVED BY		

Supplementary Report
Salt Lake County Attorneys Office
Criminal Division

OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY & CASE NUMBER
COMPLAINANT		ADDRESS		RESIDENCE PHONE	BUSINESS PHONE

ADDITIONAL INFORMATION & SYNOPSIS

frequency a wrecker for evidence impound. The Sheriff then dispatched Harmon's '66 Service Wrecker. Mr. Harmon, from the wrecker company, came to the scene and subsequently impounded the vehicle Mr. Romero was in at 2860 West 3500 South, Salt Lake City, Utah 84119, telephone number 969-4749. No further action was taken toward the truck until the arrival of Mr. Harmon.

Upon Mr. Harmon's arrival, myself and Sgt. Harwood did an inventory of the contents of the vehicle. We found in the cab of the vehicle several items which appear to be items of possible evidence. These items were seized pending further investigation. These items consisted of the following:

1. A 1978 vehicle registration for the vehicle which was impounded, a 1970 Ford pickup, license #WS 4921. This registration indicated the owner of the vehicle as Golden Circle Investment, Box 15998 (2255 West North Temple, Salt Lake City). The vehicle, however, was signed owner's name - Golden Circle by Lester Romero.
2. A letter addressed to Ervin Romero, Box 15998, Salt Lake City, Utah 84115. This letter being from the Douvall Press Finance Publications.
3. A letter addressed to Gary Nyer, 8701 West 3500 South, Magna. It had the return address of Royal Acceptance Corporation in Salt Lake City and through that was scratched the address of 338 East 100 South and the address 6266 South Morgray Drive printed over the top (this is the suspect Romero's home address).
4. A card from John E. Runyand, Attorney at Law, Salt Lake City.
5. A check made out to RotoStripper for \$12.95. The check was on the First Security Bank of Utah, #51-14015-23. It was signed Lester Romero and had been cashed. The address on the check for Romero was 616 Colorado Street, Salt Lake City, 84084. However, that had been written through and the address of 6266 South Morgray Drive had been written in. The check was paid by the bank on February 21, 1978.
6. Also in the front seat was found a copy of a Quit-Claim Deed from Lester Romero and Maxine Romero to Golden Circle Incorporated. This was notarized by Margo Bartholomew. There was a statement on the other side to the effect that it was a true copy of an original document. On this was also written "Defendant's Exhibit 17-D."
7. Also in the truck was found in the cabin an Abstract of Title prepared by Alex E. Carr Company on the same property as related in the Quit-Claim Deed.
8. Also in the vehicle was a copy of a registration for a trailer, A 60797, indicating the owner's name as Don Hurst, dba S & T. This was signed by Don Hurst; however, the signature appeared to be that of Lester Romero's.

DISPOSITION	INVESTIGATOR'S SIGNATURE	DATE	APPROVED BY
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Supplementary Report
Salt Lake County Attorneys Office
Criminal Division

OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY #
COMPLAINANT	ADDRESS			RESIDENCE PHONE	BUSINESS PHONE
ADDITIONAL INFORMATION & SYNOPSIS					
<p>9. There was also a customer's copy of a Walker Bank BankAmericard made out to Geraldine P. Barker and signed by Ronald Barker for a total of \$9.51. The invoice was to Quinn's Auto Parts.</p> <p>10. There was another one to Genuine Auto Parts on the same credit card signed by Ronald Barker. However, the signature on these two invoices appeared to be different.</p> <p style="padding-left: 40px;">Invoice in #9 for \$9.51 was #5083663 and the invoice in #10 for \$27.39 was #5144421.</p> <p>11. The next item found was a note indicating payment of \$1,007.00 for Industrial Power of some type.</p> <p>12. Next item was a letter from the Murray City Corporation to Murray Trailer Court, Box 15998, Salt Lake City, Utah apparently regarding the disconnection of service of electricity, water, and sewage.</p> <p>13. There were also two bank statements for Golden Circle from the Herby Bank & Trust, 4129 South 1750 West in Salt Lake City. The bank statements were in effect deposit receipts, one for \$2,888.52 and another for \$858.28.</p> <p>14. There was also a check made payable to Industrial Power for \$1,007.00 on the Golden Circle Investment account. The check was dated 7-13-78 and was check #155 and was signed by Dale Smith.</p> <p>15. There was also a yellow piece of paper which stated "Received from Les Romero August 15th \$15.00 for a refrigerator." It was signed "Beverly E. Etherington."</p> <p>16. There were also three keys to some Chrysler-type vehicle.</p> <p>17. The next item was a bulk mailing circular to Ervin Romero at Box 15998 Salt Lake City. On the other side, in what appeared to be Lester Romero's handwriting, was a membership request form filled out for a three-year membership in apparently some type of a club.</p> <p>18. Next item was a sealed envelope with two one-cent stamps on it and addressed to A B C, 2250 South 800 West, Woods Cross, Utah 84087. The return address was to Brother Dis Co, at 3955 South State, Salt Lake City, Utah. Through the envelope could be seen what appeared to be checks. I then opened the envelope and found two money orders one for \$30.00; #04-704,887,078 made out to A B C. This was on State Savings & Loan Association. I also found one made payable for \$35.00 #04-710,300,860 also made payable to A B C. There was a piece of paper in the envelope which said "Art Well #85 I think." Also in the envelope was what appeared to be a piece of chipped rhinestone or possibly a diamond.</p> <p>19. Next item found was a checkbook with checks to Robert Dolan, 735 West North Temple, 261-9267 on the Valley Bank & Trust at 1225 South Redwood Road, account #09-11-653-2. There was one check made payable to cash in the checkbook, check #134 for \$2,000 for Robert and signed simply "Robert." This check was dated 7-13-78. There was no check register in the checkbook itself.</p>					
DISPOSITION	INVESTIGATOR'S SIGNATURE	DATE	APPROVED BY		

Supplementary Report
Salt Lake County Attorneys Office
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OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY & CASE NUMBER
COMPLAINANT		ADDRESS		RESIDENCE PHONE	BUSINESS PHONE
ADDITIONAL INFORMATION & SYNOPSIS					
<p>20. Next item was a receipt from Western Alternator & Generator Starter Company made out as "Sold to Ron Barker, 2780 South State" and the sum of \$13.00 received as authorized signature Lester Romero. Total bill was \$16.27.</p> <p>21. There was also a promissory note for \$5,000 dated 8-21-78 from the Broadway Office of Zion's First National Bank. It was apparently a 30-day note to be repaid 9-20-78. Person signing it was "Al Johnson". Al Johnson signing it both places, giving as his address as 736 North West Temple, Salt Lake City, Utah.</p> <p>22. There was also a checkbook for Beaver Investments on the Zion's First National Bank, 102 South Main Street, Salt Lake City, account #01-13343-8, check made out 8-24-78 and #611 signed Al Johnson. The check was blank being payable to no one for no specific amount.</p> <p>23. Also there was a piece of paper indicating license plate for dump truck #A 60797. This number matches the registration found in the truck signed by Don Hurst.</p> <p>24. There was also a Warranty Deed wherein N. W. McLachlan, grantor conveying property to Sirren Bybee of Salt Lake City. This document, however, was not notarized, but it was signed purporting to be the signature of N. W. McLachlan.</p> <p>25. Also in the vehicle was a partial Utah plate, sticker number Utah '79 and it had the month 2 on it and was sticker #91486. This was found in the rear behind the actual seat itself.</p> <p>26. In the rear of the truck was found a box. On the box was an envelope from "The Greenhouse" from Great Neck, New York. The letter was apparently mailed July 11, 1978 and was mailed to Dale Smith, Box 15998, Salt Lake City, Utah.</p> <p>These items were all secured for further investigation and as possible evidence.</p> <p>Also in the truck items which were left in the truck and were not secured. The following items were found in the cab of the truck:</p> <ol style="list-style-type: none"> 1. One AC fuel pump 2. Two sets of miscellaneous keys 3. One old fuel pump 4. There were miscellaneous tools and small items of that nature. 5. There were other papers and other minor items such as a cup, tooth brush and things of that nature. <p>In the rear of the vehicle items which were left are as follows:</p> <ol style="list-style-type: none"> 1. One spare tire with the rim with the tire in tack. 2. A toolbox made of wood with miscellaneous-type tools inside. 					
DISPOSITION	INVESTIGATORS SIGNATURE		DATE	APPROVED BY	

Supplementary Report
Salt Lake County Attorneys Office
Criminal Division

OFFENSE AS REPORTED	CODE VIOLATION	DATE REPORTED	DATE OCCURRED	CASE NUMBER	OUTSIDE AGENCY CASE NO.
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ADDITIONAL INFORMATION & SYNOPSIS

3. There were two high-lift jacks and other miscellaneous tools scattered across the bed of the truck.
4. There were a number of other types of miscellaneous fishing gear and mechanical equipment.

Prior to leaving the scene, the vehicle was impounded. See Sheriff's Department Report #78-60205.

Mr. Romero was then taken to the Salt Lake County Jail where he was booked.

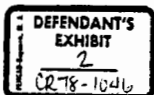
Also included in the items taken was a Motorola Metro-Page Boy, #09945.

Mr. Romero was booked into jail at approximately 0935 hours.

Propr to the truck being impounded, I also noticed that the green Safety Inspection sticker did not appear to be stuck to the window. A closer examination revealed that the sticker was taped on with scotch tape and had no writing on the back. This sticker was very easily removed and secured as evidence. Also taken into evidence was driver's license C224958 and secured as evidence as well.

DISPOSITION	INVESTIGATORS SIGNATURE	DATE	APPROVED BY
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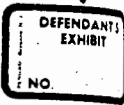
APPENDIX B



IN THE _____ CIRCUIT COURT BOUNTIFUL CITY
COUNTY OF DAVIS, STATE OF UTAH

SALT LAKE COUNTY.)

STATE OF UTAH) ss.



AFFIDAVIT FOR
SEARCH WARRANT

BEFORE S. Mark Johnson, 745 South Main, Bountiful, Utah
JUDGE ADDRESS

The undersigned being first duly sworn deposes and says:

That he ~~XXXXXX~~ (is positive) (has reason to believe) 2250 South 800 West Woods Cross
That ~~XXXXXX~~ (on the premises known as) A B C Storage/consisting of 4 separate concrete block
buildings containing 128 rental unit storage garages
which are 12 x 12 x 60 feet storage garages rented to
A B C in the name of Art Wall

In the City of Woods Cross, County of Davis
State of Utah, there is now certain property, namely,
A 1975 Conventional Kenworth Tractor Truck
Model W 900
Vin #143758S or VIN #1333833
or parts of that truck including a 425 Caterpillar diesel engine
Minnesota license plate PR 20326
Ownership or registration papers for said vehicle in the name of Max
DeFlorin, 964 West Country Road, St. Paul Minnesota, or Fabrege Inc.
Rayette Division St. Paul, Minnesota or any personal property identifiable as belonging to Max DeFlorin or his wife
☒ Stolen or embezzled property
☐ Property used as a means of committing a felony
☒ Property or things in the possession of a person with the intent to use it as a means of committing a public offense or in the possession of another to where he may have delivered it for the purpose of concealing it or preventing its being discovered
☐ Controlled substances and any device, instrument, or paraphernalia used for consuming, inhaling, or to facilitate the distribution or production of controlled substances

The facts to establish the grounds for issuance of a Search Warrant are:

Your affiant is and at all times mentioned herein as been an Investigator employed by the Salt Lake County Attorney's Office, and a Peace Officer and Deputy Sheriff for the Salt Lake County Sheriff's Office.

On 8-25-78 your affiant arrested Lester Ralph Romero at 1800 West 6200 South Salt Lake County.

At the time of his arrest and pursuant to his arrest, the truck which he was driving, a 1970 Ford pickup truck was seized. An inventory search was done of that vehicle. On the front seat of the vehicle was an envelope with a return address of BRODISCO 3955 South State Street, Salt Lake City, Utah 84115. The envelope had two one-cent stamps on it and was addressed to A B C 2250 South 800 West, Woods Cross, Utah 84087.

Inside that envelope were two money orders from State Savings & Loan Company. One was #04710-300-860 in the amount of \$35.00. The payee on it was A B C and it was not dated. The second one was #04-704,887,870 for \$30.00. The payee being A B C with no date on it.

These two money orders were inside a piece of paper that had the name Art Wall #85 I think (this was handwritten "I think" was also written on the paper). On the back were a number of figures and the word "rent" written with an "r" through the figures.

A check with the July 1978 Salt Lake City Telephone Directory and adjacent town directory indicated that A B C was a storage company and that it was at the address indicated on the envelope.

Continued on Page Two

Your affiant on 10-23-78 spoke with a confidential informant, who observed a copy of the front of this envelope to A B C. He stated that he had been told by Lester Ralph Romero in the presence of other people that inside of the storage units at A B C there was a stolen semi-tractor. He stated that he had had this information as of approximately ten days prior to the date of this interview which was 10-23-78.

This informant stated that he did not want his name used in any legal proceedings because he feared retaliation against him in the form of physical injury to himself or to his family.

On 10-24-78 your affiant talked with Ron Lyle, who is presently an inmate of the Utah State Prison. Lyle advised that approximately a year and a half ago during the summer of 1977, he was approached by Lester Ralph Romero, who asked Lyle to go to Provo, Utah and steal a Kenworth tractor that Lyle could find at a particular location. Lyle stated that his best recollection was that it was a Kenworth Conventional tractor which was blege in color and he believed a 1972 to 1973 model tractor. He stated that it had a Caterpillar engine in it, a 13-speed Fuller transmission, it had a sleener, no C.B. radio, it had men and women's clothing in it, all black interior, and polished aluminum wheels. He stated it had what appeared to be new General tires also on the vehicle.

He stated that at the request of Lester Ralph Romero he traveled to Provo, Utah with another individual and there entered this truck and stole it. Lyle stated that when he stole it, the truck was in a large empty lot across from the Ramada Inn directly opposite the golf course in Provo, Utah. Lyle stated that at the time he went down that it had started to rain and that during the time he drove the truck from Provo to Salt Lake it was raining.

Lyle stated that he drove the truck from Provo, Utah to approximately 60th South and West Temple in Salt Lake County where he met Lester Ralph Romero and turned the truck over to Romero. He stated that he received \$1,000 from Romero for stealing the truck.

Lyle stated that sometime later the truck was painted black and silver. He stated that shortly after that he had had a conversation with Lester Ralph Romero in which Romero stated that the Sheriff's Department had stopped him at 2100 South and had arrested him. He stated that they had taken at that time a brief case which contained a rental receipt to the garage at 60th South and West Temple. He stated as a result the truck needed to be moved.

Lyle advised your affiant that he and a relative of his then went to Woods Cross to a mini-storage yard there and rented a storage unit under he believed the name of Don Malone. He stated that he rented three units at that time and that those units were turned over to the control of Lester Ralph Romero, who placed padlocks on the units and who maintained and retained the keys to those units.

He further stated that after being advised by Lester Ralph Romero of the necessity to move the vehicle that it was transported by a friend of his from 60th South and placed inside the mini-storage unit. He stated that he had been told by Lester Ralph Romero that he had done work on that tractor at the mini-storage unit, but he did not actually see the work. He stated, however, that he did go to the mini-storage unit on several occasions and did see the work as described by Lester Ralph Romero had been done on the tractor. He stated further that he last saw the tractor in the mini-storage unit in December of 1977 with the tires and wheels removed.

Your affiant talked to the aforesaid confidential informant on 10-23-78 and he was advised of the color of the tractor in the mini-storage unit on Woods Cross was black and silver.

On 10-24-78 your affiant talked to Lt. Bud G. Gillman of Provo City Police Department. He stated that a Stolen Motor Vehicle Report was filed with Provo City Police Department which indicated the following.

A Max DeFlorin of 964 West Country Road, St. Paul, Minnesota had been in Provo with a 1975 Conventional Kenworth tractor, Model W 900 VIN #143758S on July 1, 1977. He stated that DeFlorin reported that his tractor had been stolen sometime during the night of 7-1-77 and 7-2-77. He stated the report was made at approximately 7:00 A.M. on 7-2-77.

He stated that the report indicated that Max DeFlorin had told the officer taking the report that he had his wife had been traveling cross country together on this trip. They had stopped at the Holiday Restaurant in Provo for dinner and returned to their motel at the Ramada Inn at approximately 10:00 P.M.

He stated that the report said that at that time the tractor-trailer was still there. He stated that he estimated the time of the theft was between 11:00 and 12:00 o'clock on 7-1-77 as it apparently occurred about the time it started raining on that night.

He stated that there had been an insurance claim filed and apparently it had been paid.

He stated that only the tractor was taken. The trailer was left. When your affiant talked to Ron Lyle, Lyle said that there was a trailer attached to the tractor at the time of the theft but the trailer was left and only the tractor was taken.

Lt. Gillman advised your affiant of the following information which was on the stolen report.

He stated that it was a stolen 1975 Kenworth Conventional tractor. It had new paint on the cab which was white over yellow. He stated that there was a black emblem on the door which indicated that the truck belonged to Faberge Inc. Rayette Division, St. Paul, Minnesota.

He stated that they had first received the VIN #1333833 but it had been corrected by the driver to VIN #143758S and that that number was currently entered on the stolen report out of N.C.I.C.

The engine in the truck was a 425 Caterpillar engine. He stated that the report indicated that it had all new General tires and all aluminum wheels. The report stated that there was no C.B. in the truck and that it had license plate PR 20326 in Minnesota.

On 10-26-78 your affiant spoke with James Oam who is also an investigator for the Salt Lake County Attorney's Office. He stated that he had just interviewed one of the owners of A B C by the name of Riley Goodfellow. Mr. Goodfellow stated that he received a money order in the mail 10-25-78 for \$65 for the continued rental of Units 76 and #85 in Building 3 of the A B C complex. He stated that the envelope was the same as the BRODISCO one shown to him which was a copy of the one taken from Lester Ralph Romero on 8-25-78. He stated that he applied this money to Unit #76 and #85 rental in the name of Art Wall. He had no knowledge of what was in the unit and did not know Art Wall. The size of the two connected units which are actually 35 are still controlled by the person renting as Art Wall. Mr. Goodfellow stated that units 76 and #85 are still controlled by the person renting as Art Wall.

XX-101-5-1 (Rev. 1-1-64) Use the above information to correct and furnish Bureau of the following
no dependent trust return

[illegible]

(H) The damage to life or limb of the affiant or any other may result if such notice is required.
This case is hereby referred to the court.

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