

2002

State of Utah v. Robert Barney : Brief of Appellant

Utah Court of Appeals

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CONTROLLING STATUTORY PROVISIONS

All relevant statutory and constitutional provisions are set forth in the Addenda.

STATEMENT OF THE CASE

A. Nature of the Case

Robert Barney appeals from the judgment, sentence and commitment of the Fourth District Court after the entry of a conditional plea to the charge of possession with intent to manufacture or produce a controlled substance, a third degree felony.

B. Trial Court Proceedings and Disposition

Robert Barney was charged by information filed in Fourth District Court on or about August 18, 2000, with 1) unlawful production of marijuana, a controlled substance, a third degree felony, in violation of Utah Code Annotated § 58-37-8(1)(a)(i), 2) possession or use of marijuana, a controlled substance, in a drug free zone, a Class A Misdemeanor, in violation of Utah Code Annotated § 58-37-8(2)(a)(i), and 3) unlawful possession or use of drug paraphernalia in a drug free zone, a Class A Misdemeanor, in violation of Utah Code Annotated § 58-37a-5(1) (R. 2).

On June 20, 2001, Barney waived his right to a preliminary hearing (R. 50). On July 10, 2001, Barney filed a motion to suppress all evidence seized as a result of the execution of a search warrant, arguing that 1) the magistrate lacked probable cause to authorize a search, 2) the affidavit in support of the search warrant did not provide sufficient evidence to justify a search without notice of intent or authority, and 3) the defendant's incriminating statements and actions were not attenuated from the illegal

search. (R. 57-75). On July 27, 2002, the court ordered the State to file an addendum to their response explaining “this is a very close case” since the affidavit for the search warrant might lack independent corroboration besides the confidential informant (R. 146 at 3).

On August 22, 2001, the hearing for the motion to suppress the search warrant was held before the Honorable Guy R. Burningham (R. 95, 147). At the hearing, the judge denied the motion to suppress, finding that “the affidavit does set sufficient facts in the affidavit to establish that this is probably a reliable confidential informant” (R. 147 at 10, 22).

On September 26, 2001, the case was set for Entry of Plea before the Honorable Guy R. Burningham (R. 98). The next day, September 27, 2001, defense entered a Request for Clarification of Ruling on Defendant’s Motion to Suppress, arguing that the Court’s file “does not include the Affidavit, Warrant, and Return of Service, with inventory” as required by Utah Code Annotated § 77-23-209, Utah Code (R. 100-101). On October 12, 2001, the court filed the Search Warrant as requested in defendant’s Request (R. 102-103).

On October 17, 2001, Barney entered into a no-contest “Sery Plea” to the charge of unlawful production of a controlled substance, a third degree felony conditioned on his “right to appeal in order to present his challenge to the issuance of the search warrant” (R. 115-125).

On November 11, 2001, Barney was sentenced to 35 days in the Utah County Jail, ordered to pay a fine of \$925, and was placed on probation for 36 months. (R. 130-133).

STATEMENT OF RELEVANT FACTS

On 22 June, 2000, officer Robert Welcker, presented an affidavit in support of a search warrant to the Honorable Fred D. Howard sitting as a magistrate seeking a search warrant to enter the premises Robert Barney (R. 74). “The Affidavit set forth in ten paragraphs the reasons for requesting authority to search” (R.74).

“The reasons set forth in the Affidavit to justify a search of the targeted residence come exclusively from one confidential informant” (R. 71). The sole confidential informant “was working off charges by working for the police and therefore was not a private citizen” (R. 88). The affiant (Officer Welcker) stated that the confidential informant had “hundreds of experiences with marijuana and knows the substance well,” and that the informant saw the defendant sell and grow marijuana in and around the residence (R. 109). The confidential informant also asserted being at the residence “several times in the past three months when individuals arriving and leaving the residence in vehicles were transporting marijuana and paraphernalia and that individuals at the residence have marijuana and paraphernalia secreted on their persons ” (R. 109).

After receiving this information from the confidential informant, “neither officer Welcker (the affiant) nor any other police officer provided the magistrate with additional evidence to support the search, such as surveillance of the residence, evidence of unusually high traffic, a garbage can search, a controlled buy, information from named or known neighbors, etc.” (R. 71).

Thereafter, on the same date, the magistrate executed a search warrant granting a search of the described premises (R. 74). The search warrant authorized a search “during the night time hours” and “without notice of prior intent or authority” (R. 74).

The described premises were searched by various officers from various Utah County police departments and the Utah County Major Crimes Task Force, with entry being achieved at approximately 9:00 p.m. on 23 June, 2000 (R. 74). As a result of the search, various items of personal property were seized (R. 74, 105-106). Barney seeks suppression of such tangible evidence as well as any of his statements made to police executing the warrant by way of his Motion to Suppress (R. 73).

The state submitted to the defendant's recitation of the facts (R. 92).

SUMMARY OF ARGUMENT

The trial court erred in denying Barney's motion to suppress evidence seized during the execution of a search warrant of his premises. The affidavit in support of a search warrant contained no evidence that any officer independently corroborated the confidential informant's tip. The magistrate authorized a search of Barney's residence solely on the assertions of a confidential informant's who happened to be working off charges for the police and whose only qualification was having hundreds of past experiences with marijuana.

Utah has adopted a totality of the circumstances test to determine whether a fair probability exists that drugs will be obtained pursuant to a search. When the reliability of a confidential informant has been questioned, all relevant Utah case law has provided that some form of independent police corroboration was a significant factor in the magistrate's proper grant of a search warrant. There is no relevant Utah case law finding a magistrate properly granted a search warrant without independent police corroboration.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN ITS CONCLUSION THAT THE MAGISTRATE HAD SUFFICIENT PROBABLE CAUSE TO ISSUE A SEARCH WARRANT

The trial court's denial of Barney's motion to suppress should be reversed because the magistrate lacked the substantial basis to conclude that the affidavit adequately established probable cause for the issuance of a search warrant. The confidential informant was on the low end of the reliability scale and the informant's assertions were not corroborated in any manner.

For a magistrate to determine there is a fair probability that evidence of a crime will be found in a particular place, he must look at "all the circumstances set forth in the affidavit, including the veracity and basis of knowledge" of the informant. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The court pays great deference to a judicial determination of probable cause. *State v. Hansen*, 732 P.2d 127, 129 (Utah 1987).

When an affidavit for a search warrant relies solely on a confidential informant, additional corroboration of the informant's assertions are essential to establish sufficient probability for a magistrate to execute a search warrant. *See Gates*, 462 U.S. 213 (1983) [sufficient probability based on anonymous informant and officer corroboration]; *State v. Hansen*, 732 P.2d 127 (Utah 1987) [sufficient probability based on reliable informant and officer's personal knowledge that suspect was involved in drug violations]; *Kaysville City v. Mulcahy*, 943 P.2d 231, *cert. denied*, 953 P.2d 449 (Utah 1997) [reliable citizen-informant and corroboration by officer]; *State v. Valenzuela*, 2001 UT App 332, 37 P.3d 260 [officers are expected to make significant corroborative efforts to verify informant tips].

A. The Confidential Informant's Reliability

The reliability of the informant one of the factors a magistrate is to consider when determining whether there is a fair probability that evidence sought actually exists. *Gates*, 462 U.S. at 238. The Utah Supreme Court has devised a three part test to determine the reliability of an informant's assertions. *Kaysville City v. Mulcahy*, 943 P.2d 231, (Utah App. 1997)

In *Mulcahy*, the court adopted "three factors to consider in determining the reliability and sufficiency of [an] informant's report." *Mulcahy*, 943 P.2d at 235. The first factor focuses on the type of tip or informant involved. *Id.* The court stated that an informant identified as a "citizen-informant" is high on the reliability scale. *Id.* Anonymous tips are toward the low-end of the reliability scale. *Id.* A police informant "would obviously be lower on the reliability scale than a citizen-informant" since he gains information through involvement in criminal activity or he is motivated by gain. *Mulcahy*, 943 P.2d at note 2.

The second factor is "whether the informant gave enough detail about the observed activity to support a stop." *Mulcahy*, 943 P.2d at 236. The court stated that a tip is more reliable if the informant observed the details personally and there is no hint of fabrication. *Id.*

The final factor is "whether the police officer's personal observations confirm the dispatcher's report of the informant's tip." *Id.* The court stated that "corroboration by the police officer means, in light of the circumstances, he confirms enough facts so that he may reasonably conclude that the information provided is reliable and a detention is justified." *Id.*

Although the test in *Mulcahy* was adopted to determine an officer's reasonable sufficiency of information to make a stop, the test reasonably extends to a magistrate's determination of the validity of an affidavit for a search warrant when an affidavit and a magistrate's finding of probable cause is based entirely on observations made by a single confidential informant. In *Mulcahy*, the court stated that "although the necessary degree of suspicion is lower than that necessary for probable cause to arrest, the same totality of facts and circumstances approach is used to determine if there are sufficient and articulable facts to support reasonable suspicion." 943 P.2d at 234. And in *State v. Valenzuela*, 2001 UT App 332, ¶¶ 16-17, 37 P.3d 260 (Utah App. 2001), the court reasoned:

The *Mulcahy* factors were formulated to assist in determining whether an officer had the necessary reasonable articulable suspicion to justify a traffic stop, we see nothing to prohibit extending the use of these factors to determinations of probable cause in the context of information supplied by an informant. *Mulcahy*, 943 P.2d at 234; *see also Gates*, 462 U.S. at 241-46 (finding probable cause existed to arrest the defendant after examining the reliability of the informant, the content of the tip, and the corroborative efforts of the agent); *Draper v. United States*, 358 U.S. 307, 313-14 (1959).

The *Mulcahy* factors clearly focus on examining the totality of the circumstances in these situations and will provide trial courts and trial counsel assistance when faced with similar probable cause determinations in the future."

In *State v. Hansen*, 732 P.2d 127 (Utah 1987), the court stated that an informant that had supplied the police "with information in the past that had resulted in several felony arrests and convictions" was a sufficient indication of the informants reliability and veracity. *Id.* at 130. But in the affidavit for the search warrant, the officer corroborated the informant's tips. *Id.* at 131.

Because the confidential informant in the case at bar "was working off charges by working for the police" (R. 88), his motivation for informing was for personal gain and

not “out of concern for the community.” *Malcahy*, 943 P.2d at 235. Thus, his reliability is at the low end of the scale under the *Malcahy* standard. Even though Officer Welcker asserted in the affidavit that the informant “has provided reliable information in the past” (R. 110), the informant’s reliability must still be corroborated independently.

B. Corroboration by Police

Under the “totality of the circumstances” test, the reliability of the informant is but one of the factors a magistrate is to consider when determining whether there is a fair probability that evidence sought actually exists. Even if the court finds that the magistrate could conclude that the confidential informant was a reliable source, Barney asserts that the magistrate still needed additional corroboration of the informant’s assertions to support the determination that a fair probability existed that evidence of a crime would be at Barney’s residence.

“An officer’s statement that affiants have received reliable information from a credible person and believe that [drugs are] stored in a home is likewise inadequate” to establish a substantial basis that evidence exists. *Gates*, 462 U.S. at 239. “Absent a risk to public safety, we expect police officers to make significant independent corroborative efforts to confirm information from a tip.” *State v. Valenzuela*, 2001 UT App 332 at note 8. “The magistrate must not merely ratify the bare conclusions of others.” *State v. Purser*, 828 P.2d 515, 517 (Utah App. 1992)

In *Illinois v. Gates*, 462 U.S. 213 (1983), an Illinois police department received an anonymous letter including statements that a husband and wife were heavily involved in drug trade. *Id.* at 225. The letter stated that the wife would drive a car to Florida to be loaded with drugs while the husband would fly down and drive the car back. *Id.* Acting

on this information, arrangements for surveillance of the defendant's flight were made by the DEA. *Gates*, 462 U.S. at 225. The surveillance disclosed "that the husband took the flight, stayed overnight in a motel room registered in the wife's name, and left the following morning with a woman in a car bearing an Illinois license plate issued to the husband, heading north on an interstate highway used by travelers to the Bloomingdale area." *Id.* at 213. With this information, a search warrant was obtained. *Id.* at 226.

The Court stated that the anonymous letter alone would not provide the basis for a magistrate to issue the search warrant. *Gates*, 462 U.S. at 227. The Court adopted a "totality of the circumstances" test to determine if a magistrate properly found probable cause to issue a search warrant. *Id.* at 230-231. Explaining this test, the Court stated:

The task of the issuing magistrate is simply to 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.* at 238.

The Court in dicta also explained the "limits beyond which a magistrate may not venture when issuing a search warrant." *Gates*, 462 U.S. at 239. "An officer's statement that affiants have received reliable information from a credible person and believe that [drugs are] stored in a home is likewise inadequate." *Id.* The Court expounded on the importance of corroborating evidence when applying the totality of circumstances test. *Id.* at 241. The Court cited *Draper v. United States*, 358 U.S. 307 (1959), where an officer received an informant's detailed account and description of the suspect, which included the name, detailed description of the clothes the defendant would be wearing on the date of his arrival, and the defendant's travel plans, including the date and time of the defendant's arrival. *Gates*, 462 U.S. at 242. The officer went to the station on the appointed morning and saw the defendant who matched the exact physical

attributes and wearing the same clothes as identified by the informant. *Id.* The Court in *Draper* concluded that the officer had sufficient information to justify further investigation. *Id.*

The Court in *Gates* held that the magistrate could rely upon the anonymous informant's tip since it was corroborated by the DEA. *Gates*, 462 U.S. at 243.

In *State v. Hansen*, 732 P.2d 127, 129 (Utah 1987), the defendants appealed their convictions of possession of marijuana with the intent to distribute. The affidavit for the search warrant stated that the informant had "supplied the police with information in the past which has resulted in several felony arrests and convictions." *Id.* The affidavit also stated that the confidential informant was at the defendant's apartment (five days previous to the execution of the search warrant) and "saw a large quantity of marijuana which was being sold in smaller quantities." *Id.* The affidavit further stipulated that the affiant was acquainted with the defendant as the defendant had previously been arrested for drug violations. *Id.*

The trial court denied the defense's motion to suppress, and the Utah Supreme Court affirmed, holding that:

Search warrant affidavits are to be construed in a common-sense, reasonable manner. Excessive technical dissection of an informant's tip or of the nontechnical language in the officer's affidavit is ill-suited to this task. In *Illinois v. Gates*, 462 U.S. 213 (1983), the Supreme Court emphasized that an informant's "reliability" and "basis of knowledge" are but two relevant considerations, among others, in determining the existence of probable cause under "a totality-of-the-circumstances." They are not strict, independent requirements to be "rigidly exacted" in every case. A weakness in one or the other is not fatal to the warrant so long as in the totality there is a substantial basis to find probable cause. The indicia of veracity, reliability, and basis of knowledge are nonexclusive elements to be evaluated in reaching the practical, common-sense decision whether, given all the circumstances, there is a fair probability that the contraband will be found in the place described.

Hansen, 732 P.2d at 130.

The Court in *Hansen* found that an affidavit for a search warrant based upon reliable, personal information from a confidential informant and an officer's personal knowledge that the suspect was involved in drug violations established sufficient probability for a magistrate to conclude some quantity of drug would be found in a search. *Id.* at 131.

The facts and holding in *State v. Vigh*, 871 P.2d 1030 (Utah App. 1994), add additional strength to the general rule that independent corroboration of an informant's testimony is needed. Here, a confidential informant voluntarily provided detailed information to the officer about the suspect. *Id.* at 1032. The informant received nothing in exchange for the information. *Id.* The officer verified the informant's information and then obtained a search warrant based on the informant's information and the officer's verification of that information. *Id.* The court held that "because the confidential informant here received nothing in exchange for information about Vigh's illegal activities, the magistrate properly assumed that the informant was reliable.... and because the police independently corroborated those details, the magistrate properly determined the confidential informant was reliable.... and the magistrate had a substantial basis for finding probable cause and issuing the search warrant." *Vigh*, 871 P.2d at 1034.

The facts in *State v. Purser*, 828 P.2d 515 (Utah App. 1992), are similar to *Vigh*. Here, the officer received a voluntary tip from a confidential informant. *Purser*, 828 P.2d at 516. The officer personally verified the significant facts of the tip and then obtained a search warrant.. *Id.* at 518. The court concluded, based on the totality of the circumstances, that the affidavit established probable cause that drugs would be found at defendant's residence. *Id.*

In *Kaysville City v. Mulcahy*, 943 P.2d 231 (Utah App. 1997), a citizen called the police informing them a “drunk individual” had left his front door and is driving in a “white Toyota Celica, maybe.” *Id.* at 233. The caller informed the police in what direction the defendant was headed and what road he was on. *Id.* The informant left his name and address with the police. *Id.* A dispatcher in turn radioed an officer; the officer saw the white car heading in the direction described by the informant and stopped the car even though the officer observed no traffic violations. *Id.* After smelling alcohol on the defendant’s breath and conducting a field sobriety test, the officer arrested the defendant. *Id.* The defendant filed a motion to suppress arguing the officer did not have reasonable suspicion to support the stop and the trial court granted the motion. *Id.*

The court reversed the motion to suppress, finding that the caller, as a citizen-informant, was high on the reliability scale, that the informant supplied sufficient detail to support a stop, and that the officer satisfactorily corroborated the informant’s report. *Mulcahy*, 943 P.2d at 238. The court stated that the officer had identified a similar make of the car on the same road and direction that the informant reported within a few minutes of the report. *Id.*

In *State v. Valenzuela*, 2001 UT App 332 at ¶2, the Salt Lake County Sheriff’s Office received a report from an unidentified informant of a forgery in progress at a bank. The informant identified the suspect as Hispanic male and identified the clothes he was wearing. *Id.* at ¶ 2. A deputy arrived at the bank and immediately noticed Valenzuela as the person described in the report. *Id.* A bank teller also pointed the deputy in the direction of Valenzuela. *Id.* The deputy believed Valenzuela to be the suspect and approached him and placed him in custody for “safety reasons.” *Id.* at ¶ 3. The deputy then searched Valenzuela and found him in possession of methamphetamine. *Id.*

The court found that the officer's failed to investigate further to determine whether any criminal activity occurred. *Valenzuela*, 2001 UT App 332 at ¶ 30. The court stated, "absent a risk to public safety, we expect police officers to make significant independent corroborative efforts to confirm information from a tip prior to detaining a suspect." *Id.* at note 8. The court reversed the conviction concluding that under the totality of the circumstances, there was not probable cause to detain Valenzuela because the informant was on the low end of the reliability scale, the informant gave little information, and the officer failed to investigate finding that the deputy lacked sufficient information to support an independent judgment of probable cause to place Valenzuela in custody. *Id.* at ¶ 31-32.

The above cases establish that where an affidavit for a search warrant relies upon one single informant, additional independent corroboration other than a reliable informant's testimony is essential to establish sufficient probability to execute a search warrant. The reliability is but one of the factors a magistrate is to consider under the "totality of the circumstances." In the case at bar, the affidavit for the search warrant relied solely on a single confidential informant's testimony regarding the informant's personal presence at Barney's residence where marijuana was allegedly present (R. 107-110). The affiant did not provide any additional corroboration to the informant's testimony (R. 71, 107-110). Thus, the magistrate made the decision to issue a search warrant solely on the testimony of a confidential informant who was "working of charges by working for the police and therefore was not a private citizen" (R. 88). Moreover, the only qualification possessed by the informant was his knowledge of marijuana based on "hundreds" of experiences with it. In all of the above cited cases, officers had to provide some sort of corroborating evidence before a finding of sufficient probable cause.

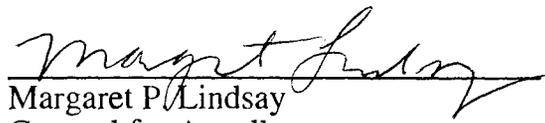
See also State v. Anderson, 701 P.2d 1099, 1102 (Utah 1985) [officer verified significant facts of informant's tip].

Accordingly, Barney asserts that this Court should reverse the denial of his motion to suppress because, given the totality of the circumstances—namely the inherent unreliability of the confidential informant and a lack of police corroboration—the magistrate lacked a substantial basis to conclude that the affidavit adequately established probable cause of illegal activity for the issuance of a search warrant. Barney further asserts that any evidence obtained as a result of the warrant must be excluded as fruits of the poisonous tree.

CONCLUSION AND PRECISE RELIEF SOUGHT

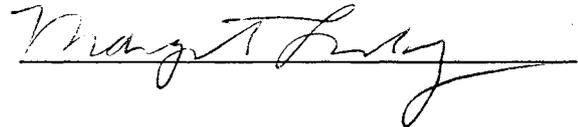
For the foregoing reasons, Barney asks that this Court reverse the trial court's erroneous denial of his motion to suppress and asks that the matter be remanded to the Fourth District Court with instructions that his plea should be withdrawn and the information dismissed.

RESPECTFULLY SUBMITTED this 17th day of June, 2002.


Margaret P. Lindsay
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I delivered two (2) true and correct copies of the foregoing Brief Of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 17th day of June, 2002.

A handwritten signature in cursive script, appearing to read "Margaret L. King", is written over a horizontal line.

ADDENDA

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01/07/10 PM 5:07
KOP

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,)	CASE NUMBER: 001403161
)	
Plaintiff,)	
)	
vs.)	MOTION TO SUPPRESS
)	and MEMORANDUM IN
)	SUPPORT THEREOF
ROBERT BARNEY,)	
)	
Defendant.)	Hon. Guy R. Burningham

MOTION

COMES NOW, Defendant, ROBERT BARNEY, by and through his attorney of record, Thomas H. Means, and pursuant to Rule 12 of the Utah Rules of Criminal Procedure, who hereby moves for this Court's Order suppressing all evidence seized as a result of the execution of a search warrant on or about 23 June, 2000, at 1136 South State Road #198, Payson, Utah. Support for this Motion is more particularly set forth in the accompanying Memorandum of points and authorities.

MEMORANDUM

Defendant respectfully submits the following points and authorities in support of his Motion to Suppress:

Facts Relevant to this Motion

On 22 June, 2000, officer Robert Welker, in an action entitled STATE OF UTAH v NARCOTICS INVESTIGATION 1136 South State Road #198 Payson, Utah, presented an AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT to the Honorable Fred D. Howard sitting as a magistrate seeking a search warrant to enter the premises at that address. [A copy of such Affidavit is attached hereto as an exhibit.] The Affidavit set forth in ten (10) paragraphs the reasons for requesting authority to search. Thereafter, on the same date, the magistrate executed a SEARCH WARRANT allowing for a search of the described premises. The SEARCH WARRANT authorized a search "during the night time hours" and "without notice of prior intent or authority". [A copy of said SEARCH WARRANT is likewise attached hereto.]

The described premises were searched by various officers from various Utah County police departments and the Utah County Major Crimes Task Force, with entry being achieved at approximately 9:00 p.m. on 23 June, 2000. As a result of the search, various items of personal property were seized. Defendant seeks suppression of such tangible evidence as well as any of his

statements made to police executing the warrant by way of his Motion to Suppress.

Questions Presented

1) Were the factual assertions set forth in the Affidavit sufficient for the magistrate to have independently concluded that there was a fair probability contraband would be found in the targeted Premises?

2) Was There Legal Authority for the Search Warrant to authorize a search of the targeted premises without notice of prior intent or authority?

3) Were Defendant's statements attenuated from the effects of the illegal search?

Standard of Review

The United States Supreme Court has adopted a "totality of the circumstances" test to determine if a magistrate properly found probable cause to issue a search warrant.¹ In so holding the Court directed that "[a] magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'"² "'A grudging or negative attitude by reviewing courts toward warrants,' is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant;

¹Illinois v. Gates, 462 U.S. 213 (1983).

²Gates, above, citing Spinelli v. United States, 393 U.S. 410 (1969).

'courts should not invalidate warrant[s] by interpreting affidavit[s] in a hyper technical, rather than a common sense, manner.'"³

While the United States Supreme Court has required that an affidavit provide only a "substantial basis for ... concluding that a search warrant would uncover evidence of wrongdoing", and that "[t]he task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, ... there is a fair probability that contraband or evidence of a crime will be found in a particular place[,]" the Court also stressed that "[i]n order to ensure that ... an abdication of a magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued."⁴

The Fourth Amendment exclusionary rule was made applicable to the states through the Fourteenth Amendment.⁵ The Utah Supreme Court has recognized this review-of-warrants test articulated by the United States Supreme Court.⁶

³Gates, above, citing United States v. Ventresca, 380 U.S. 102 (1965).

⁴Gates, above.

⁵Mapp v. Ohio, 367 U.S. 643 (1961).

⁶State v. Anderton, 668 P.2d 1258 (Utah 1983); State v. Anderson, 701 P.2d 1099 (Utah 1985); State v. Babbell, 770 P.2d 987 (1989); State v. Thurman, 846 P.2d 1256.

Argument

As a preface to substantive argument, Defendant asserts that the evidence seized as a result of execution of the above-noted Search Warrant should be suppressed unless the original Affidavit, Search Warrant, and Return of Service are made a part of this file.

1. The affidavit did not sufficiently establish the credibility of the single confidential informant.

In this case the reasons set forth in the Affidavit to justify a search of the targeted residence come exclusively from one confidential informant. Neither officer Welker (the affiant) nor any other police officer provided the magistrate with additional evidence to support a search, such as surveillance of the residence, evidence of unusually high traffic, a garbage can search, a controlled buy, information from named or known neighbors, etc. Consequently, the information in the Affidavit is only as good as the credibility of the informant.

Defendant is aware that in Gates⁷ the United State Supreme Court specifically retreated from the hyper-technical two-pronged Aguilar/Spenelli⁸ test in favor of the "totality of the circumstances" test for assessing the reliability of information supplied by informants used in support of requests for search

⁷Supra.

⁸Aguilar v Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969).

warrants. However, neither the United States Supreme Court nor the appellate courts of Utah have held that the reliability and accuracy of confidential informants is unimportant, nor have any of these courts abandoned inquiry into the credibility of confidential informants.

First, the Gates court, itself, indicated that the totality of the circumstances test "includ[es] the 'veracity' and 'basis of knowledge' of persons supplying hearsay information,"⁹ Also, our Utah Supreme Court, in cases decided after Gates and the several Utah cases which specifically recognized and adopted the Gates test¹⁰, has held:

"even under [the Gates] standard, compliance with the Aguilar-Spinelli guidelines may be necessary to make a sufficient basis for probable cause. Depending on the circumstances, a showing of the basis of knowledge and veracity or reliability of the person providing the information for a warrant may well be necessary to establish with a 'fair probability' that the evidence sought actually exists and can be found where the informant states. In other cases, however, a less strong showing of the basis of the affiant's knowledge, veracity, and reliability may be required, if the circumstances as a whole indicate that the informant's report is truthful"¹¹

Similarly, the Utah Court of Appeals has held that "[the Aguilar-Spinelli guidelines] are useful even under the totality of

⁹Gates, supra.

¹⁰See footnote 6, above.

¹¹State v Bailey, 675 P.2d 1203 (Utah, 1984); accord State v Anderson, 701 P.2d 1099 (Utah, 1985).

circumstances test for determining whether the facts establish probable cause."¹²

From these federal and state cases dealing with informants it is clear that in situations such as the case at bar, where no other evidence bolsters or corroborates the informant, the credibility and basis of knowledge of the informant is extremely critical to an assessment of the sufficiency of the affidavit. When viewed in this light, the Affidavit here fails in its attempt to establish the credibility of the sole informant.

At first blush, from the Affidavit, it would appear that the informant had considerable knowledge of happenings within the targeted residence. The informant claimed to have been "at" the residence within 72 hours of presentment of the Affidavit, he observed marijuana there, he knows marijuana was in the house as well as a shed near the house, he knows that Defendant and Annette Petro were distributing marijuana from the residence, he observed Defendant sell ½ ounce of marijuana for approximately \$120.00, Defendant told him he was growing marijuana, and he knows that Defendant and Annette Petro live at the residence [Affidavit, paragraph #3]. The informant further claims to have been "inside" the residence within 30 days of presentment of the Affidavit and that Defendant told him he was growing marijuana in

¹²State v Brown, 798 P.2d 284 (Ut. Ct. App., 1990); see also Salt Lake City v Trujillo, 854 P.2d 603 (Ut. Ct. App., 1993), State v Singleton, 854 P.2d 1017 (Ut. Ct. App., 1993), State v Lee, 863 P.2d 49 (Ut. Ct. App., 1993).

the house and in a barn to the rear of the house, that Defendant also told him he grows "a lot" of marijuana and usually gets \$60.00 per 1/8 ounce, he observed wet and fresh marijuana, and Defendant tried to sell him some marijuana [Affidavit, paragraph #4]. Additionally, the informant claims to have been at the residence "several times in the past three months" and observed individuals arriving there carrying marijuana and paraphernalia "secreted on their persons" [Affidavit, paragraph #5]. Lastly, the informant told Officer Welker that the "subjects" living in a trailer next to the residence "are party to the subjects living in the residence" [Affidavit, paragraph #6].

From this wealth of "inside" information provided by the informant one might assume that the informant has a solid basis of knowledge for the information he provided to Officer Welker. But this assumption is valid only if one can also be assured that the informant is truthful in his assertions; after all, such assertions should be taken as true and accurate only if the informant is established as truthful and accurate.

As evidence of the informant's credibility, Officer Welker swore to the magistrate that the informant "has supplied officers of the Utah County Major Crimes Task Force with information for the past year", "that this informant has been responsible for the recovery of narcotics in several cases", that the information from this informant "has always proven true through independent

investigations by myself and other detectives of the Major Crimes Task Force", "that this informant has provided information which has proven to be reliable in the past", "that this informant has never provided information that has been wrong or misleading", and "that this informant is not a party to this investigation" [Affidavit, paragraph #2], "that this informant has provided information which has proven reliable in the past", "that this informant has never provided information that has been wrong or misleading", and "that this informant is not a party to this investigation [Affidavit, paragraph #8].

Most of this vouching for the credibility of the informant is stock language that appears in most (if not all) of the Affidavits prepared by the Utah County Major Crimes Task Force and other police agencies in Utah County. None of these statements give a magistrate any facts from which the magistrate can, *independently*, determine, for himself or herself, that the informant is reliable. All of the statements are conclusory rather than factual. They do not set forth information to be weighed by the magistrate; rather, they are unsupported testimonials. Without specific facts, the magistrate is left only to defer to the opinion and conclusions of the affiant. By accepting such assertions as evidence of reliability the magistrate abandoned neutrality and impermissibly "rubber-

stamped" the affiant's conclusions. As the Utah Supreme Court stated in State v Babbell, 770 P.2d 987 (Utah, 1989),

"[t]he fourth amendment requires that when a search warrant is issued on the basis of an affidavit, that affidavit must contain *specific facts* sufficient to support a determination by a neutral magistrate that probable cause exists (emphasis added) (citing to State v Nielsen, 727 P.2d 188,190 (Utah, 1986)). The affiant must articulate particularized facts and circumstances leading to a conclusion that probable cause exists. Mere conclusory statements will not suffice (citing to Gates, supra)".¹³

It might be argued that the following facts provided by Officer Welker substantiated the informant's credibility: "that the informant has had hundreds of experiences with marijuana and knows the substance well", that the informant had claimed to have observed the occupants of the residence distributing marijuana, specifically a sale of ½ ounce for \$120.00, that Defendant admitted to the informant that he (Defendant) was growing marijuana on the premises [Affidavit, paragraph #3], that Defendant told the informant his "usual" price per 1/8 ounce, that the informant observed "very wet and fresh" marijuana in the premises, that the Defendant attempted to sell marijuana to the informant [Affidavit, paragraph #4], that the informant was at the house "several times in the past three months when individuals arriving to and leaving the residence in vehicles

¹³See also State v Droneburg, 781 P.2d 1303 (Ut. Ct. App., 1989; State v Brown, 798 P.2d 284 (Ut. Ct. App., 1990; State v Rowe, 806 P. 2d 730 (Ut. Ct. App., 1991.

were transporting marijuana and paraphernalia and that individuals at the residence have marijuana and paraphernalia secreted on their persons [Affidavit, paragraph #5], and that the informant was aware that the subjects living in a trailer on the premises were parties to the subjects living in the residence [Affidavit, paragraph #6].

But, as noted above, the mere recital of multiple assertions does not necessarily indicate the informant is truthful or accurate in his claims. In fact, instead of indicating credibility in the informant, the number and nature of these claims should raise a red flag to any magistrate.

Having had "hundreds of experiences with marijuana" this informant is very likely a felon (Section 58-37-8(2)(e) designates a third possession of marijuana to be a third degree felony). Has this informant's ability to perceive, remember, or relate facts been effected by drug use? From the informant's reports of hundreds of drug experiences as well as exposure to other's drug sales and use as well as incriminating admissions by the Defendant, it is obvious that this informant is, himself, deeply involved in the drug culture to the point that others are supposedly willing to commit criminal acts openly in his presence (one doesn't normally and repeatedly stumble into the types of situations described by this informant). This informant may have been "earning" a plea bargain or avoiding prosecution

himself; if so, this added motivation should have been known by and considered by the magistrate. It is unlikely that a person as openly involved in criminal activity as this informant claims to be was providing information to the police out of a sense of civic mindedness. Because this informant is not of the class of informants for whom the magistrate might assume reliability and truthfulness¹⁴ some indicia of motivation should be included in the Affidavit. Yet, the Affidavit provides no reason for the informant's cooperation with the police.

Admittedly Gates directs that reviewing magistrates are not to take a hyper-critical approach to requests for search warrants. But, neither are magistrates expected to abandon all critical thought or common sense or neutrality when reviewing such requests. Where, as here, the total basis for the request for a search warrant originates in a confidential informant, the

¹⁴Utah appellate court have, on several occasions, recognized that "citizen" informants used in affidavits for search warrants can be presumed reliable. A review of these holdings indicates that there is no bright-line definition of "citizen" in this context. However, dicta from these cases is informative. Generally, a citizen informant is one who receives nothing in exchange for information, reveals his/her name or identity through the affiant to the magistrate or is a neighbor or a family member or in some other way is identifiable, has no criminal record that would suggest unreliability, participates in controlled buys, or whose information is strongly corroborated in all of its critical detail. The magistrate in this case did not have the benefit of any of this type of information in the Affidavit presented to him. See, for example State v Harris, 671 P.2d 175 (Utah, 1983); State v Treadway 499 P.2d 846 (Utah, 1972); State v Miller, 740 P.2d 1363 (Ut. Ct. App., 1987); State v Stromberg, 783 P.2d 54 (Ut. Ct. App., 1989); State v Brown, 798 P.2d 284 (Ut. Ct. App., 1990); State v Purser, 828 P.2d 515 (Ut. Ct. App., 1992); State v White, 851 P.2d 1195 (Ut. Ct. App., 1993); State v Blaha, 851 P.2d 1205 (Ut. Ct. App., 1993); State v Bailey, 675 P.2d 1203 (Utah, 1984); State v Potter, supra; State v Vigh, supra; State v Yoder, 935 P.2d 534 (Ut. Ct. App., 1997).

magistrate should expect to be presented with specific articulated facts assuring him of the informant's credibility, basis of knowledge, and reliability free from ulterior motivation. And, where, as here, factual evidence of the informant's reliability is insufficient, the magistrate is not being hyper-critical by refusing to grant the warrant. Because the Affidavit in this case does not adequately support the reliability and credibility of the informant upon whom the information asserted rests, the warrant was improvidently issued and should be suppressed by this Court.

2. The Affidavit did not provide evidence sufficient to justify a search without notice of intent or authority.

Utah Code Section 77-23-210(2) allows a magistrate to authorize a no-knock entry "only upon proof, under oath, that the object of the search may be quickly destroyed, disposed of, or secreted, or that physical harm may result to any person if notice were given." The affiant lists five reasons why authority to execute the warrant without notice was sought: 1) certain persons lived in a trailer on the target property who might alert the occupants of the house to the officers' presence, 2) two schools are situated directly across the street [Affidavit, paragraph #6] 3) the sought-after contraband might be destroyed, 4) the suspected illegal activity occurred mostly during evening hours, and, 5) in the affiant's experience persons involved with distribution of narcotics "often" have weapons and surveillance

equipment [Affidavit, paragraph #7]. None of these five cited reasons justified no-knock authority.

Besides stating that "subjects" live in a trailer next to the target residence and that they are "party" to the occupants of the house, the Affidavit does not explain how such "subjects" could or would give an alert that would be any different than an alert given by the searching officers' knocking and announcing their authority and purpose to search. Despite the informant's supposed extensive contact with the occupants of the target residence, the informant gives no detail about how those who were in the trailer were "party" to those in the house such as their identities, the extent of their observed conduct, anyone's statements, or even whether the people from the trailer had ever been seen in the house, etc. It is unclear what is meant by the label of "party" beyond mere casual acquaintance or possibly tenant. It is thus unproved that the people from the trailer were motivated to alert the occupants of the house to an attempt to serve a warrant. It is also unclear, assuming the people from the trailer were inclined to interfere with the police's service of the warrant, how it is suspected they would do so. No information is given regarding the positioning of the trailer in respect to the anticipated approach of the officers to the house, lines of sight from the trailer, etc. Without these necessary facts the

magistrate could only assume interference from the people in the trailer.

Service of the warrant was achieved on 22 June, 2000. Nothing in the warrant indicated that school was in session on that date as opposed to being on Summer hiatus. Service at night was sought and authorized. Service was actually achieved at 9:00 p.m., well after normal school hours or when children might be expected to be on the school grounds. Nothing about the timing of the search or the location of the schools justified entry without notice. In fact, as the facts indicate, there was a reasonable alternative to no-knock authority, i.e. simply to time execution of the warrant when children aren't expected to be present.

If the informant is to be believed, the affiant expected to find growing marijuana plants in the residence as well as around the residence, in a shed near the house, and in a barn to the rear of the house. Neither the informant nor the affiant explained to the magistrate how this contraband could be "easily secreted, destroyed, damaged, or otherwise altered" as asserted in paragraph #7. It appears the affiant merely parroted the statutory language in the request for no-knock authority without detailing or explaining how the suspected contraband might be destroyed.

While the affiant asserts that "[t]he informant observed the illegal activity occurring mostly during the evening hours" in

paragraph #7, the paragraphs setting forth the informant's specific observations [#3,#4,#5,#6] do not indicate the time of any alleged illegal activity. Additionally, it is hard to understand how the suspected growing of marijuana can occur "mostly in the evening hours".

Lastly, the affiant's personal experience that other persons involved with narcotics "often" have weapons and surveillance equipment is an unscientific sampling that can't be taken as probative of the actions of all narcotics users, generally, or of this Defendant, specifically. Does "often" mean 2% or 98%; the magistrate can only guess from this statement. Moreover, such apocryphal information is irrelevant here as, if the informant is to be believed, even after his claimed extensive exposure in, to, and around the residence, its occupants, the people from the adjacent trailer, and many visitors, the informant makes no mention of any weapons or surveillance equipment. In this counsel's experience, this is another example of "stock" language that often appears in search warrant affidavits filed in this District which appears to be used to justify searches and night time or no-knock authority when case specific facts don't otherwise exist.

The Affidavit did not justify the searching officers to vary from the requirement that they give notice of their authority and purpose and wait to be admitted with reasonable promptness,

spelled out in Section 77-23-210 (1). Accordingly, the evidence seized pursuant to service of this Search Warrant should be suppressed even if the Affidavit set forth probable cause to suspect contraband was on the premises.

3. Defendant's incriminating statements and actions were not attenuated from the illegal search.

From the police incident reports provided to Defendant it is anticipated that testimony would establish that Defendant made voluntary statements to certain police officers and also voluntarily pointed out the existence of contraband in the house after service of the Search Warrant. Should this Court determine that the Affidavit lacked probable cause or was wrongfully served without notice of authority and intent, evidence of Defendant's incriminating statements and actions should nevertheless be suppressed, even though voluntary, because they were not attenuated from the preceding police illegality.

"[A] defendant's consent to a search following illegal police activity is valid under the Fourth Amendment only if both of the following tests are met: (i) The consent was given voluntarily, and (ii) the consent was not obtained by police exploitation of the prior illegality."¹⁵ As the Utah Supreme Court explained in Arroyo, this need for attenuation of consent from antecedent police illegality has its roots in the "fruit of

¹⁵State v Arroyo, 796 P.2d 684, 688 (Utah, 1990); State v Thurman, 846 P.2d 1256, 1262 (Utah, 1993).

the poisonous tree doctrine" of Wong Sun v United States, 371 U.S. (1963). Attenuation occurs only when circumstances remove any taint of the police illegality from the consent. The Utah Supreme Court has explained that the test for determining that a consent has been sufficiently attenuated from a prior police illegality is 1) the purpose and flagrancy of the wrong, 2) temporal proximity of the wrong and the consent, and 3) intervening factors.¹⁶

In this case the first factor probably weighs in favor of the State as the police were neither blatant nor abusive in their wrongfulness. However, the second two factors weigh for the Defendant because the Defendant's consent occurred while many police remained in his house, while Defendant was detained (if not in custody), moments after entry into his home, without the existence of intervening factors such as consultation with an attorney. Defendant's incriminating statements and actions were not removed from the taint of the illegal entry into his home. Consequently, the fruits of such statements and actions should be suppressed.

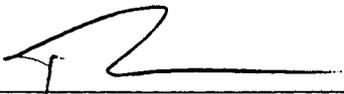
Conclusions.

The Affidavit seeking a Search Warrant in this case lacked probable cause because the sole confidential informant upon whom the Affidavit was primarily based was not proved believable.

¹⁶Thurman, supra.

There was not evidence sufficient to justify no-knock entry into Defendant's residence. Defendant's incriminating statements and actions were fruit of the police illegality. All evidence derived as a direct or indirect result of the service of the subject Search Warrant should therefore be suppressed and ruled inadmissible at the trial of this matter.

Respectfully submitted this 10th day of July, 2001.

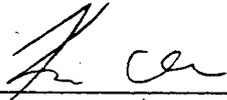


Thomas H. Means
Attorney for
Robert Barney

CERTIFICATE OF DELIVERY/MAILING

I hereby certify that on the 10 day of July, 2001, I hand-delivered or mailed with postage pre-paid a copy of the foregoing to the following:

Carlyle K. Bryson
Utah County Attorney
100 East Center
Suite 2100
Provo, Utah, 84601



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

For Official Purposes Only
Released By The County Attorney To
Michael Esplin

OCT 18 2000

FOURTH CIRCUIT COURT, STATE OF UTAH
UTAH COUNTY

STATE OF UTAH :

Plaintiff, :

-vs- :

NARCOTICS INVESTIGATION :
1136 South State Road 198
Payson, Utah 84651 :

Defendants :

AFFIDAVIT IN SUPPORT OF
A SEARCH WARRANT

Criminal No.

FOR OFFICIAL PURPOSES ONLY
Released by the County Attorney to
PUBLIC DEFENDER
MAR 23 2001

DISCOVERY SENT TO
DEFENSE ATTORNEY
DEC 15 2000

STATE OF UTAH)
:ss.
COUNTY OF UTAH)

Comes now Robert Welcker, having been duly sworn, who deposes and states as follows:

1. I am a police officer for the city of American Fork, I have been a peace officer since 1994. That I am a graduate of the Utah Police Academy (POST) and have received specialized training for law enforcement work including training specific to narcotics work. I am currently assigned to the Utah County Major Crime Task I have been investigating narcotics since 1998. I am certified as a clandestine lab first responder. I have work several hundred narcotic cases and I have worked with dozens of confidential informants.
2. That within the past 72 hours your affiant has received information from a reliable confidential informant who has provided reliable information in the past. That this reliable confidential informant has supplied officers with the Utah County Major Crimes Task Force with information for the past year. That this informant has been responsible for the recovery of narcotics in several cases. That this information supplied by this informant has always been proven true through independent investigations by myself and other

detectives of the Major Crimes Task Force. That this informant has provided information which has proven to be reliable in the past. That this informant has never provided information that has been wrong or misleading. That this informant is not party to this investigation.

DISCOVERY SENT TO
DEFENSE ATTORNEY

3. That this reliable confidential informant told your affiant that within the past 72 hours the informant was at the residence located at 1136 South State Road #198 Payson, Utah. That while at the residence the informant did observe a substance known to the informant as marijuana inside the residence. That the informant has had hundreds of experiences with marijuana and knows the substance well. That the marijuana was located in the residence and in a shed near the house. That the informant did tell your affiant that the owners of the residence, Robert Barney and Annette Petro are distributing marijuana from the residence. That within the past 72 hours the informant did observe Robert Barney sell a quantity of approximately $\frac{1}{2}$ ounce to an individual for approximately 120 dollars. That Robert Barney did tell the informant that he is growing his own marijuana in and around the residence. That this informant knows Robert Barney and Annette Petro to live in the residence at 1136 South SR #198.

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Michael Esplin OCT 18 2000

4. That within the past 30 days the reliable confidential informant was inside the residence with Annette Petro and Robert Barney. That while in the house Robert Barney did tell your informant that he is growing marijuana in his house and in a barn to the rear of the house. That Robert Barney did tell your informant that he sells a lot of marijuana and that he usually gets \$60.00 per $\frac{1}{8}$ ounce sold. That your informant did observe marijuana in the residence and that it was very wet and fresh. That Robert Barney did attempt to sell a quantity of marijuana to the confidential informant.
5. That this informant stated that the informant has been at the residence several times in the past three months when individuals arriving to and leaving the residence in vehicles were transporting marijuana and paraphernalia and that individuals at the residence have marijuana and paraphernalia secreted on their persons. That failure to search persons at and arriving to the residence during the execution of this warrant as well as vehicles associated with people present or arriving to the address of 20 north 100 west #6 American Fork, Utah will result in officers missing valuable evidence pertinent to this investigation.

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PUBLIC DEFENDER

6. That the informant told your affiant that the subjects living in a

trailer next to the residence are party to the subjects living in the residence at 1136 south SR #198 . That if notice of intent is given that officers safety will be at risk due to the subjects living in the trailer next to the residence may alert the persons living at 1136 south SR#198. That the residence is located across the street from Two separate schools located directly east of the residence located at 1136 south SR #198. That serving this warrant in the nighttime hours will afford a safer environment for children in the area attending these schools or frequenting the school playgrounds. Therefore your affiant respectfully request permission to serve this warrant during the nighttime hours and without intent or authority to allow a window of safety for officers and for children in the area.

DISCOVERY SENT TO
DEFENSE ATTORNEY
DEC 15 2000

7. That the amount of narcotics observed in the residence is an amount large enough for distribution but small enough to be easily secreted, destroyed, damaged or otherwise altered if notice of intent or authority is given. That the amount of narcotics observed can also be secreted, destroyed, damaged or otherwise altered if notice of intent or authority is given. That the informant observed the illegal activity occurring mostly during the evening hours. That it is your affiants experience that persons involved with the distribution of narcotics often have weapons and surveillance equipment to protect themselves from police and other persons selling drugs in competition with themselves.

8. That this informant has provided information which has proven to be reliable in the past. That this informant has never provided information that has been wrong or misleading. That this informant is not party to this investigation.

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Michael Espin OCT 18 2000

9. Your affiant believes that failure to search the residence, outbuilding, curtilage, and persons and vehicles of individuals present and arriving to the residence of 1136 south SR# 198 Payson, Utah will result in officers missing valuable evidence pertinent to this investigation. Your affiant expects to locate the following items, marijuana, paraphernalia, buy-owe sheets, cash, packaging material, scales, items used for the ingestion or cultivation of the above mentioned narcotics and other items associated with the use/distribution of controlled substances and related paraphernalia.

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PUBLIC DEFENDER

MAR 23 2001

10. The residence is more particularly described as single family dwelling facing to the east and is on the west side of State Road

#198. That the residence is grayish green in color and the outside of the house is made of a slat tile. The house is the second house south of 1070 south on the west side of SR #198. That there is a brown and creme trailer parked to the rear of the house near the south , west corner. The house number 1136 is displayed on the front porch on a awning support pole and the numbers are made of wood, white in color.

Wherefore, your affiant requests that a warrant be issued by this court authorizing a search of the residence, together with the curtilage, outbuildings, and persons and vehicles of individuals present and arriving to the residence of 1136 South SR#198 Payson, Utah for the following items, narcotics, marijuana, paraphernalia, buy-owe sheets, electronic equipment, cash, packaging material, scales, items used for the ingestion or the cultivation of the above mentioned narcotics and other items associated with the use/distribution of controlled substances and related paraphernalia.

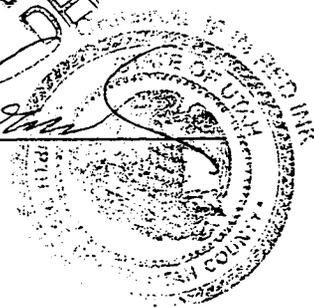
Dated this 22nd day of June 2000 ^{8:27} P.M.


AFFIANT-ROBERT WELCKER

Subscribed and sworn before me on the 22nd day of
June 2000, 8:27 P.M.


MAGISTRATE

DISCOVERY SENT TO
DEFENSE ATTORNEY
DEC 15 2000



For Official Purposes Only
Released By The County Attorney To
Michael Espin OCT 18 2000

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Released by the County Attorney to
PUBLIC DEFENDER

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

FOR OFFICIAL PURPOSES ONLY
Released by the County Attorney to
PUBLIC DEFENDER

MAY 23 2001

FOURTH CIRCUIT COURT, STATE OF UTAH
UTAH COUNTY

STATE OF UTAH,
Plaintiff,

vs.

SEARCH WARRANT

NARCOTICS INVESTIGATION
1136 South State Road 198
Payson, Utah 84651

Criminal No.

Defendants

DISCOVERY SENT TO
DEFENSE ATTORNEY
DEC 15 2000

For Official Purposes Only
Released By The County Attorney To
Michael Espin OCT 13 2000

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
22nd day of June 2000, that there is probable
cause to believe the following:

BA

1. The property described below:

was unlawfully acquired or unlawfully possessed;

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

is evidence of illegal conduct.
2. The property described below is most probably located at
the premises also set forth below.
3. The person or entity in possession of the property is a
party to the alleged illegal conduct.
4. That this warrant may be served without notice of prior
intent or authority due to the fact that items sought
may be easily secreted, disposed of, destroyed or
otherwise altered if notice of intent or authority is
given. That execution of this warrant without notice of
intent or authority will afford officers a window of

BA

BA

BA

safety while securing the residence.

NOW, THEREFORE, YOU AND EACH OF YOU, are hereby directed to search the residence as more particularly described as single family dwelling facing to the east and is on the west side of State Road #198. That the residence is grayish green in color and the outside of the house is made of a slat tile. The house is the second house south of 1070 south on the west side of SR #198. That there is a brown and creme trailer parked to the rear of the house near the south , west corner. The house number 1136 is displayed on the front porch on a awning support pole and the numbers are made of wood, white in color.

That you are also hereby directed to search the residence together with the curtilage, outbuildings, and persons and vehicles of individuals present and arriving to the residence of 1136 South SR #198 Payson, Utah for the following items, narcotics, marijuana, paraphernalia, buy-owe sheets, electronic equipment, cash, packaging material, scales, items used for the ingestion and cultivation of the above mentioned narcotics and other items associated with the use/distribution of controlled substances and related paraphernalia.

FOR OFFICIAL PURPOSES ONLY
Released by the County Attorney to
PUBLIC DEFENDER

MAR 28 2001

For Official Purposes Only
Released By The County Attorney To
MICHAEL ESCOFF
OCT 18 2000

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.

[Signature]

THIS WARRANT MAY BE SERVED DURING THE NIGHT TIME HOURS.

[Signature]

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

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

DATED this 22nd day of June 2000, 8:27 P.M.

MAGISTRATE



DEC 15 2000

DISCOVERY SENT TO
DEFENSE ATTORNEY