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State of Utah v. Rebecca Champneys : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH	:	
Plaintiff/Appellee,	:	Case No. 20020123-CA
v.	:	
REBECCA CHAMPNEYS,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

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APPEAL FROM A CONVICTION OF ATTEMPTED TAMPERING WITH EVIDENCE IN VIOLATION OF UTAH CODE ANNOTATED §§ 76-8-510 AND 76-4-101 (1999), A THIRD DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE TIMOTHY R. HANSON, PRESIDING

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STATE OF UTAH	:	
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v.	:	
REBECCA CHAMPNEYS,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDING

This is an appeal from a conviction of attempted tampering with evidence in violation of Utah Code Annotated §§ 76-8-510 and 76-4-101 (1999), a third degree felony, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Timothy R. Hanson, presiding. This Court has jurisdiction under Utah Code Annotated § 78-2a-3(2)(e) (Supp. 2001).

STATEMENT OF THE ISSUE ON APPEAL AND STANDARD OF APPELLATE REVIEW

Did the trial court properly deny defendant's motion to suppress evidence found during a warrantless search when detectives, responding to a tip that defendant and her companion were involved in illegal drug activity, observed defendant's companion conceal what appeared to be a crack pipe and watched both occupants engaging in other suspicious behavior?

Factual findings underlying the trial court's decision to grant or deny a motion to

suppress evidence are reviewed for clear error. *State v. Galvan*, 2001 UT App 329, ¶ 5, 37 P.3d 1197 (quotation marks and citation omitted). However, the trial court's conclusions of law based on these facts are reviewed under a correctness standard. *State v. McArthur*, 2000 UT App 23, ¶ 12, 996 P.2d 555 (quoting *State v. Brown*, 853 P.2d 851, 854-55 (Utah 1992)).

CONSTITUTIONAL PROVISION AND STATUTES

The following constitutional provisions and statutes, relevant to the disposition of this case, are attached at Addendum A:

Fourth Amendment to the United States Constitution;
Utah Code Ann. § 76-2-202 (1999);
Utah Code Ann. § 77-7-2 (1999);
Utah Code Ann. § 77-7-8 (1999).

STATEMENT OF THE CASE

Defendant was charged with tampering with evidence, a third degree felony in violation of Utah Code Annotated § 76-8-510 (1999), unlawful possession of a controlled substance, a third degree felony in violation of Utah Code Annotated § 58-37-8(2)(a)(i) (1999), and unlawful possession of drug paraphernalia, a third degree felony in violation of Utah Code Annotated § 58-37a-5 (1999) (R. 2-5).

Before trial, defendant moved to suppress evidence obtained during a search of her person and motel room (R. 34). The trial court denied the motion (R. 93; 116:24-26). Thereafter, defendant pleaded guilty to attempted tampering with evidence and attempted forgery, a charge stemming from unrelated events, reserving her right to appeal the attempted tampering with evidence conviction (R. 81-87; 117:13-14). The court sentenced defendant

to a statutory term, not to exceed five years in prison, but suspended the sentence and placed defendant on probation (R. 95-96). Defendant timely appealed (R. 98).[1]

STATEMENT OF THE FACTS[2]

On March 13, 2001, Detectives Troy Anderson and Tracy Ita of the Salt Lake City Police Department investigated a report that a Lisa Corwell and defendant might be "using and/or selling narcotics" at a motel (R. 116:2-3, 91).[3] The informant specifically directed the detectives to room number 236 at the Motel 6, located at 1990 West North Temple Street in Salt Lake City (R. 116:2-3).[4]

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[1] The caption and jurisdictional statement of defendant's opening brief states that her appeal is from convictions of attempted tampering with evidence and attempted forgery. Aplt. Br at cover and 1. However, defendant's appeal is only from the attempted tampering conviction, as defendant's change of plea statement, the plea colloquy, the judgment, and the notice of appeal make clear (R. 81, 95, 98, 117:2-3).

[2] The facts are recited in a light most favorable to the trial court's findings from the suppression hearing. *State v. Delaney*, 869 P.2d 4, 5 (Utah App. 1994).

[3] The trial court's ruling on the motion to suppress was based largely on Detective Anderson's testimony at the suppression hearing (Findings of Fact and Conclusions of Law, "Ruling," R. 91-93, attached at Addendum B). However, it was also based on the parties' memoranda and Detective Anderson's testimony at the preliminary hearing, a copy of which was attached to defendant's memorandum in support of his motion to suppress (R. 26-32, 34-56). At the preliminary hearing, Detective Anderson asserted that the informant said both Corwell *and* defendant were involved with illegal drugs (R. 40).

[4] The trial court treated the informant as "anonymous," although the evidence was various on this point (R. 116:24). At the preliminary hearing, Detective Anderson stated that information concerning Corwell's illegal drug activity came from Corwell's husband (R. 48). Also, in his supporting memorandum, defendant stated that the detectives "knew nothing about the tip except the person stated he was [the co-defendant's] husband" (R. 36). However, at the suppression hearing, Detective Anderson stated that he did not recall if the informant had identified himself (R.116:3, 9). According to Detective Anderson, Detective Ita, who did not testify, received the informant's call (R. 116:2).

Based on this information, the detectives went to the motel room and knocked on the door -- "a knock and talk" (116:3). Detective Ita identified himself as "Tracy" and, after defendant expressed some confusion, Ita responded that he was "Tracy with the Salt Lake City Police Department" (R. 116:4). Also, in response to defendant's request, Detective Ita displayed his badge through the peep hole in the door, and Detective Anderson displayed his badge through an adjoining window (R. 116:4). Detective Anderson testified that there was a "six to twelve" inch gap between the curtain and the door through which he could see into the room (R. 116:4). When the officers asked defendant if Corwell was also in the room, defendant responded negatively (R. 116:5). However, after Anderson observed another woman in the room, defendant admitted to him that the other woman was, in fact, Lisa Corwell (R. 116:5).

After the detectives displayed their badges and asked defendant to open the door, defendant unsuccessfully tried to close the gap in the curtains (R. 116:6). At that point, from about five to ten feet, Detective Anderson saw Corwell put what he thought was a crack pipe into a purse and then put it behind the bed (R. 116:4, 15). Anderson testified that he "initially thought it was a crack pipe. It was a metallic object that looked the size and shape of a crack pipe" (R. 116:6). On cross examination, Anderson firmly asserted several times that he "thought it was a crack pipe," consistent with his preliminary hearing testimony (R. 41, 49-50; 116:12). When Detective Anderson later searched the purse, he found only a spoon (R. 116:12).

Detective Anderson then observed "a lot of movement in the room" - - "[both women]

running around the room . . . both [going] into the bathroom [at least three times each] . . . putting stuff behind the bed . . . under the bed" (R. 116:4, 7). Defendant's and Corwell's trips to the bathroom were significant to Detective Anderson because, in his experience, people in hotels often try to flush narcotics down the toilet (R. 116:7).

The detectives repeatedly asked defendant to open the door (R. 116:3, 6, 8). Because she refused, Detective Ita obtained a key from the motel manager, who directed the detectives to evict the women if they were involved in illegal drug activity (R. 116:7-8). Even with the key the detectives were unable to enter the room because the women had engaged the dead-bolt (R. 116:8). When defendant repeatedly refused to open the door, Detective Ita kicked it open (R. 116:8).

Once inside the room, Detective Anderson applied a twist lock to defendant, arrested her, and put her in flexible plastic handcuffs (R. 43). Corwell was placed in custody by other officers (R. 43). In defendant's right rear pocket, Detective Anderson found a metallic pipe, which defendant admitted she used to smoke cocaine (R. 43). Defendant became extremely hostile, demanding to be searched by a female officer (R. 43). When Detective Anderson learned that a female officer was en route to the scene, he stopped searching defendant (R. 43).

When Officer Patty Roberts arrived, she search both defendant and Corwell (R. 44). At that point, defendant admitted that she had cocaine on her person (R. 44). Officer Roberts searched defendant, finding in her bra a twist or baggie and a contact case containing substances which tested positively for cocaine (R. 44). Officer Roberts also found kleenex

and a burnt brillo pad in defendant's pants (R. 44). She also found cocaine and drug paraphernalia on Corwell (R. 53).

While being searched in the bathroom, defendant grabbed some of the cocaine from the counter, attempting to flush it down the drain (R. 45). A brief struggled ensued (R. 45). When Officer Roberts asked defendant what had happened to the twist, defendant asserted that it had fallen down the drain (R. 46). Officer Roberts found the twist in defendant's hand (R. 46).

SUMMARY OF THE ARGUMENT

The trial court properly upheld a warrantless search of defendant's motel room because the detectives performing the search had probable cause that defendant was involved in illegal drug activity and exigent circumstances justified an immediate entry. In addition to the reliability and content of the tip that directed the detectives to the motel room, probable cause was established when one of the detectives observed defendant's companion try to hide what reasonably appeared to be a crack pipe, followed by defendant's and her companion's apparent efforts to hide evidence and bar the detectives from entering.

Additionally, exigent circumstances justified a warrantless search of the motel room. Defendant and her companion were engaging in behavior that led the officers to reasonably believe that evidence was being destroyed, precluding their obtaining a warrant in time to preserve the evidence.

ARGUMENT

THE TRIAL COURT CORRECTLY DENIED DEFENDANT'S MOTION TO SUPPRESS EVIDENCE FOUND BY DETECTIVES DURING A SEARCH OF DEFENDANT'S MOTEL ROOM BECAUSE THE SEARCH WAS SUPPORTED BY BOTH PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES

Defendant claims that the police violated her right to be free from unreasonable searches and seizures because they lacked both probable cause and exigent circumstances to search her hotel room. Br. Aplt. 10-16. Contrary to defendant's claim, the search conducted by the detectives was supported by probable cause and exigent circumstances, and the trial court properly denied defendant's motion to suppress evidence found as a result of that search.

"[P]robable cause alone is never enough to search . . . and seize without a warrant." *State v. Harris*, 671 P.2d 175, 179 (Utah 1983). "However, '[a] warrantless search of a residence is constitutionally permissible where probable cause and exigent circumstances are proven." *State v. Yoder*, 935 P.2d 534, 540 (Utah App. 1997) (citations omitted).

A. The search was supported by probable cause that defendant and her companion were engaged in illegal activity.

Probable cause exists where "'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense is being committed.'" *State v. Comer*, 2002 UT App 219, at ¶ 21, __ P.3d __ (quoting *State v. Dorsey*, 731 P.2d 1085, 1088 (Utah 1986)) (internal quotations and citations omitted) (alterations in

original). "The probable cause determination is based on the 'totality of the circumstances.'" *Yoder*, 935 P.2d at 540 (citing *State v. Nguyen*, 878 P.2d 1183, 1187 (Utah App. 1994)). The appellate court reviews the trial court's underlying findings of fact for clear error; it reviews the trial court's determination of probable cause for correctness, "giving the trial court a measure of discretion 'to apply the standard to the particular set of facts in the case.'" *Id.* (quoting *Nguyen*, at 1186).

1. Based only on their observations of defendant's participation in patently criminal conduct, the detectives had probable cause to search the motel room.

Defendant argues that the detectives lacked probable cause to enter and search the premises, based on this Court's analytic framework in *State v. Mulcahy*, 943 P.2d 231 (Utah App. 1997) (reasonable suspicion), and *State v. Valenzuela*, 2001 UT App 332, 37 P.3d 260, which applies that framework to the determination of probable cause. Aplt. Br. at 11-14. *See Mulcahy*, 943 P.2d at 235-36 (identifying three determinative factors for probable cause when police are relying on an informant's tip: 1) the "type of tip or informant involved," 2) "whether the informant gave enough detail about the observed criminal activity to support a stop," and 3) "whether the police officer's personal observations confirm the dispatcher's report on the informants tip."). That framework, which places a premium on the "tip" which initiates an official investigation, is inapposite to this case. Here, probable cause was not based primarily on the tip, but rather on the detectives' observations of defendant's criminal conduct from a lawful position outside the motel room.

In *Valenzuela*, this Court stated:

> Here, because the State ***predicates*** its probable cause argument upon information received from an informant, "we must examine the 'totality of the circumstances' to determine whether the informant's tip, together with police observations, provided probable cause to arrest" Valenzuela. [Emphasis added.]

Id. at ¶11(quoting *State* v. *Anderson*, 910 P.2d 1229, 1233 (Utah 1996) (quoting *Gates v. Illinois*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983))). "Predicate" means "to affirm or base upon facts, arguments, conditions, etc." Webster's New World Dictionary 1149 (Coll. ed. 1957). The record shows that probable cause was hardly ***based*** on the tip.

Detectives Anderson and Ita proceeded to the Motel 6 based on a tip that Corwell and another woman, later determined to be defendant, might be using and/or selling narcotics (R. 116:2-3, 91). The trial court gave short shrift to the tip, discussing it in only the first of its thirteen findings of fact (Ruling, R. 91-93; bench ruling, 116:24-26, attached at Addendum C). As such, the court implicitly recognized that the tip only initiated the detectives' investigation. *See State v. Folkes*, 565 P.2d 1125, 1127 (Utah 1977) (officer's overhearing and viewing suspicious behavior relating to illegal drug use gave rise to duty to investigate). *See Mulcahy*, 943 P.2d at 235-36 (holding that police must corroborate anonymous tip). The court specifically observed, "Had the officers not been able to see into the room then of course they would not have had the right to enter the room. They couldn't have gotten a warrant. But what they saw was evidence or what at least Officer Anderson saw, was evidence of the commission of a crime" (R. 116:25). Thus, the trial court upheld the entry into the motel room and ensuing search because they were justified by probable cause based not primarily on the tip, but on the detectives' observations of Corwell's and defendant's

actions in plain view . *See State v. O'Brien*, 959 P.2d 647, 649 (Utah App. 1998) ("A seizure is valid under the plain view doctrine if (1) the officer is lawfully present, (2) the item is in plain view, and (3) the item is clearly incriminating.") (citation omitted).

Defendant does not claim that Detectives Anderson and Ita violated her rights by merely speaking with her from outside the closed door of her motel room during a "knock and talk," nor did they (R. 49, 116:3). *See United States v. Hammett,* 236 F.3d 1054, 1059-60 (9th Cir.), *cert. denied*, 122 S. Ct. 152 (2001) (" Law enforcement officers may encroach upon the curtilage of a home for the purpose of asking questions of the occupants."); *United States v. Davis*, 327 F.2d 301, 303 (9th Cir. 1964) ("Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant thereof--whether the questioner be a pollster, a salesman, or an officer of the law.") The trial court found that a tip that drugs were being dealt from a motel room "certainly gives the officers the right to go over and knock on the door and talk with people if the people want to talk with them," a finding defendant does not dispute (R. 116:24).

Further, defendant does not dispute that the crack pipe Detective Anderson saw and defendant's highly suspicious conduct was in his plain view and, therefore, the fruit of an legal search. "It is well established law that a government official does not engage in a search within the meaning of the Fourth Amendment if he observes incriminating evidence from a

place where he has a right to be." *State v. Harris*, 671 P.2d 175, 179 (Utah 1983) (finding lawful right to observe "extends to . . . front doors and other open areas accessible to the public at large."); *United States v. Garcia,* 997 F.2d 1273, 1279 (9th Cir. 1993) ("We have held that officers walking up to the front door of a house can look inside through a partially draped open window without conducting a Fourth Amendment search."); *United States v. Hersh*, 464 F.2d 228, 230 (9th Cir.) (viewing inculpatory evidence of illegal drug activity in plain view through partially curtained windows of residence not an illegal "search" within purview of Fourth Amendment), *cert. denied*, 409 U.S. 1008, 1059-60, 93 S. Ct. 442 (1972). Consequently, defendant does not dispute the well-established rule that, assuming exigent circumstances, police may seize incriminating evidence observed in plain view.

Rather, defendant challenges the trial court's findings and conclusions, arguing that what the detectives observed was not incriminating -- that it did not constitute probable cause to break into the motel room and to search. Aplt. Br. at 14. That argument runs counter to the trial court's unchallenged findings of fact and sound conclusions of law.

Detective Anderson consistently testified, both at the preliminary hearing and at the hearing on the motion to suppress, that he saw Lisa Corwell try to conceal what he believed was a crack pipe (R. 27, 35, 41; 116:4, 6, 11-12). The trial court correctly recognized that although Detective Anderson was apparently wrong about actually seeing a "crack pipe," the error was immaterial because his belief was reasonable:

> It turned out he was wrong as to this spoon that turned out to be a spoon when he thought it was a crack pipe[,] but I don't find anything inherently unreasonable about that observation or that conclusion that he reached, even

> though it was wrong. Whether it's right or wrong is not important. It's what he reasonably thought it was at the time . . . and I'm satisfied that Officer Anderson, by what he saw, thought that he observed a [sic] drug paraphernalia.

(R. 116:25).[5] *See* 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 3.2 (e), at 37 (3d ed. 1996) noting probable cause may be supported by a reasonable mistake) (citing *Maryland v. Garrison*, 480 U.S. 79, 87, 107 S. Ct. 1013, 1018 (1987) (recognizing "the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests")); *United States v. Gonzales*, 969 F.2d 999, 1004 (11th Cir. 1992) (holding that officer's identification of the defendant's wife acting suspiciously "was ultimately found to be mistaken does not detract from the contribution this impression -- *if his mistake was objectively reasonable* --made at the time to the totality of the circumstances leading to probable cause"); *State v. Keitz*, 856 P.2d 685, 691 (Utah App. 1993) (plain view test for "clearly incriminating" evidence requires "an officer must only have a reasonable belief 'that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such belief be correct'") (citations omitted), *abrogated on other grounds*, *State v. Montoya*, 887 P.2d 857 (Utah 1994).

It is a class B misdemeanor for a person to "use, or to possess with intent to use, drug paraphernalia to . . . ingest, inhale or otherwise introduce a controlled substance into the human body." Utah Code Ann. §58-37a-5 (1999). When Detective Anderson saw Corwell

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[5] The State does not concede that Detective Anderson was mistaken. Although only a spoon was found in the purse, a crack pipe was found in defendant's pocket (R. 43; 116:12).

attempt to hide the "crack pipe," he saw her engaged in illegal activity. At that point, the detectives were justified in arresting and searching Corwell. *See* Utah Code Ann. § 77-7-2 (1999) ("A peace officer may . . ., without warrant, arrest a person: (1) for any public offense committed or attempted in the presence of any peace officer;" or (3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may . . . (b) destroy or conceal evidence of the commission of the offense).

Defendant's actions also justified the detectives in arresting her as a party to Corwell's illegal activity and searching her.[6] *See State v. Spurgeon*, 904 P.2d 220, 227-28 (Utah App. 1995) (finding probable cause to arrest and search incident to arrest for possession of marijuana upon the defendant's evasive conduct and attempt to hide something and experienced officer's detecting odor of marijuana, which defendant denied smoking).

The trial court findings, undisputed by defendant, are that at essentially the same time that Corwell put the "crack pipe" into her purse, "***[b]oth*** defendants were running around the room, putting items into bags and under the bed and making several trips to the bathroom" (R. 92). From the bench, the court observed,

> Then, when I add to [Detective Anderson's belief that he saw a crack pipe] the fact that when they . . . identified themselves as police officers, the activity starts in the room that is consistent, may be consistent with cleaning

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[6] *See* Utah Code Ann. § 76-2-202 (1999) ("Every person, acting with the mental state required for the commission of the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.")

> up the room[,] but that doesn't make sense. It's much more consistent under the circumstances, and at that point in time, with disposing of controlled substances. The officer testified that in his opinion, and it doesn't take a rocket scientist to know that, because controlled substances are disposable by flushing them down the toilet. There's a lot of activity, moving things about, going back and forth. All of that gives probable cause to enter the room and it also, because of the nature of the conduct, provides the sufficient exigent circumstances to kick in the door.

(R. 25-26). The trial court also found that defendant refused to open the door and applied a deadbolt even after the detectives told her that they would force it open (R. 92). In sum, the detectives' direct observations of defendant's criminal conduct sufficiently support the trial court's conclusion that there was probable cause to believe defendant was involved in illegal drug activity. Applying the *Mulcahy/Valenzuela* analysis only strengthens that conclusion.

2. The informant's tip, taken with Officer Anderson's observations, amply established probable cause enter and search the motel room.

As noted above, this Court in *Valenzuela* applied its analysis of reasonable suspicion to justify a traffic stop in *Mulcahy,* to determine probable cause when the police rely on an informant's tip: 1) the "type of tip or informant involved," 2) "whether the informant gave enough detail about the observed criminal activity to support a stop," and 3) "whether the police officer's personal observations confirm the dispatcher's report on the informants tip." *Valenzuela* 2001 UT App 332, at ¶15. at 235, 236. This Court found its approach in weighing these factors, "consistent with the recent Utah Supreme Court decision embracing the 'totality of the circumstances' analysis articulated in *Gates.*" *Id.* at ¶17 (citing *State v. Anderson*, 910 P.2d 1229,1233 (Utah 1996)). *See State v. Deluna*, 2001 UT App 401, ¶21,

40 P.3d 1136 (holding that minimal corroboration of the informant's tip was sufficient because the reliability of the information was high); *Valenzuela*, 2001 UT App 332, at ¶31 (finding under the totality of the circumstances that a police officer did not have probable cause to arrest the defendant because information supplied by the informant was insufficient by itself and the officer had not corroborated the report).

In this case, the strength of probable cause grows with consideration of each successive factor, until, as argued at Point I.A.1, above, the detectives' direct observations fully and independently confirm the tip, that defendant and her companion were engaged in illegal activity involving narcotics. *See Mulcahy*, 943 P.2d at 236 ("The officer may corroborate the tip . . . by observing the illegal activity[.]") (citation omitted).

The first Mulcahy factor - the informant's identity

Mulcahy first looks at the identity of the informant. *Mulcahy*, 943 P.2d at 235. In *Mulcahy*, the police informant was an ordinary citizen who identified himself to police dispatch. *Id.* at 233. This Court held that an "ordinary citizen-informant needs no independent proof of reliability or veracity. *Id.* at 235 (quotations and citations omitted). This is because a citizen informant volunteers information, not for personal benefit, but out of concern for the community and because an identified citizen informant is exposed to liability if the information is false. *Id.*

In this case, the classification of the informant is unclear. While Detective Anderson clearly testified at the preliminary hearing that the tip came from Corwell's husband, he was unable at the suppression hearing to recall whom the tip came from (R. 48; 116:3, 9). The

trial court treated the tip an "anonymous" (R. 91; 116:24). Although an anonymous tip is "toward the lower end of the reliability scale," it may still support a finding of probable cause in when balanced with the other circumstances. Anonymous tips have an important place in Fourth Amendment jurisprudence. "[S]uch tips, particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes.'" *Gates*, 462 U.S. at 237-38, 103 S. Ct. at 2334-36 (finding probable caused where anonymous tip was detailed and substantially corroborated by police investigation). Here, like the citizen informant in *Mulcahy*, there is no evidence that the informant stood to gain by supplying the police with information. Moreover the reliability of the anonymous tip was augmented by its detail and ultimate corroboration.

The second Mulcahy factor - the level of detail supplied by the informant

The second factor in the *Mulcahy* analysis is the level of detail given by the informant. *Mulcahy*, 943 P.2d at 236. In *Mulcahy*, the informant told the police that a drunk individual, possibly named "Joe," had been at the informant's front door and had driven away in a white car, "maybe" a Toyota Celica. *Id.* at 233. He also told the dispatcher the direction the car was headed and supplied, what he believed was, "Joe's" phone number. *Id.* This Court found that the informant "supplied sufficient detail to support a stop and detention," even though the officer observed no traffic violations or signs of intoxication. *Id.* at 234, 238.

In a pre-*Mulcahy* case, the Utah Supreme Court found probable cause for a roadside arrest and vehicle search on details given in a tip comparable to those in *Mulcahy*. *See Anderson*, 910 P.2d at 1233. In that case, the defendant's girlfriend reported to the police

that the defendant had gone to Las Vegas to purchase methamphetamine. *Id.* at 1230. She also told police that the defendant and a companion would be returning to Millard County the following afternoon, in the defendant's Cadillac, via highway 257. *Id.* She then indicated that the defendant might be armed. *Id.* The following day, a second, confidential informant, confirmed the information the defendant's girlfriend had given the police. *Id.* The court found that the reliability of the girlfriend's statement was high because she supplied a substantial amount of detail. *Id.* at 1233. Additionally, her statement was verified in almost every aspect by the second informant. *Id.*

The detail supplied by the informant in this case is comparable to that in *Mulcahy* and *Anderson*. In this case, Lisa Corwell's husband told dispatch that "Lisa and Rebecca[, defendant,] were in room 236" of the Motel 6 located at 1990 North Temple in Salt Lake (R. 40; 116:2-3). The informant told the police that these women were "engaging in illegal activity - either using or selling narcotics" (R. 34; 116:2). Like the officers in both *Mulcahy* and *Anderson*, the detectives were told the identity of the alleged perpetrators, the number of possible suspects engaged in the illegal activity, the precise location of crime and the suspects, and the type of criminal behavior those suspects were engaging in. Although, the informant did not state his basis of knowledge concerning the information, the detectives would reasonably have relied on a family member's report presumably based on first-hand observation. *See Deluna*, 2001 UT App 401, at ¶19 (family member's tip concerning the defendant's use of a methamphetamine lab significant because it based on personal observation); *Mulcahy*, 943 P.2d at 238 (crediting informant's tip about drunk driver because

it was evidently based on first hand observations). In sum, the informant's tip was sufficiently detailed to support a finding of probable cause when supplemented with the detectives' corroborating observations.

The third Mulcahy factor - the police officer's confirmation of the tip

"The officer may corroborate the tip either by observing the illegal activity or by finding the person, the vehicle and the location substantially as described by the informant." *Mulcahy*, 943 P.2d at 236 (citation omitted). In *Mulcahy*, the tip alerted police to an alleged drunken driver, but the investigating officer did not observe signs of intoxication in the defendant's driving pattern. *Id.* at 233. Consequently, this Court focused on the second means of corroboration, the confirmation of the "innocent details" to establish the tip's reliability. *Id.* at 236 (citing *State v. Melanson*, 665 A.2d 338, 340 (N.H. 1995)). Since criminals naturally tend to hide their illegal activity, Utah courts have regularly taken the tack used in *Mulcahy*. *See Anderson*, 910 P.2d at 1233 (concluding that because "officers had personally verified every aspect of the informants' reports ***except*** whether [the defendants] were actually transporting methamphetamine . . ., the police could justifiably conclude that the rest of the reports would also be true"); *DeLuna*, 2001 UT App 401, at ¶20 (recognizing difficulty of confirming tip about family member's methamphetamine lab where police could not observe the alleged illegal activity or the facts provided by informants without entering the defendant's apartment); *State v. Purser*, 828 P.2d 515, 516, 518 (Utah App. 1992) (upholding probable cause to support search warrant where police confirmed all information supplied by informant except that pertaining to physical evidence of drug use and

manufacture).

Lacking direct observations of illegal conduct, this Court has held that "[c]orroboration by the police officer means, in light of the circumstances, [that] he confirms enough facts so that he may reasonably conclude that the information provided is reliable." *Mulcahy*, 943 P.2d at 236 (quoting *State v. Sailo*, 910 S.W.2d 184, 189 (Tex. App. 1995)) (internal quotations omitted). Accordingly, Utah's appellate courts have found official corroboration of a tip sufficient on far slimmer facts than in this case. *See Anderson*, 910 P.2d at 1233 (the defendant's name, vehicle make, route, destination, date and time of departure and arrival); *Mulcahy*, 943 P.2d at 237-38 (vehicle color, route, direction of travel, time of departure); *Purser*, 828 P.2d at 518 (the defendant's address, vehicle registration, police record, foot traffic to and from the defendant's house).

In contradistinction to those cases referenced above, the detectives in this case corroborated the reliability of the tip not only by confirming all of the innocent details, but also by observing defendant's illegal conduct. The tip informed Detectives Anderson and Ita that defendant and Lisa Corwell were involved in illegal drug activity in room 236 at the Motel 6 at 1990 North Temple in Salt Lake City (R. 40; 116:2-3). The detectives went to the motel room identified by the informant and confirmed that two females were in the motel room and that one of those women was Corwell (R. 116:3-5). In accord with the trial court's findings, the State acknowledges that at this point the detectives lacked probable cause to search (R. 116:25). However, Detective Anderson contemporaneously observed defendant and Corwell involved in plainly illegal drug-related activity, hiding drug paraphernalia. *See*

Aple. Br. at Pt. I.A.1, above. In sum, the totality of the detectives' observations amply confirmed the reliability of the tip and supported probable cause to both arrest and search defendant and Corwell.

B. Defendant's behavior created exigent circumstances, justifying the warrantless search of the motel room.

The Fourth Amendment adopts a "strong preference for searches conducted pursuant to a warrant." *Illinois v. Gates*, 462 U.S. 213, 236, 103 S. Ct. 2317, 2331 (1983). Thus, "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980); *City of Orem v. Henri*, 868 P.2d 1384, 1387 (Utah App. 1994). However, "[police entry into a house without a warrant is not [ ] always unreasonable." *Murdoch v. Stout*, 54 F.3d 1437, 1440 (9th Cir. 1995).

One exception to the warrant requirement is the exigent circumstances exception. *New York v. Quarles*, 467 U.S. 649, 653 n.3, 104 S. Ct. 2626, 2630 n.3 (1984). Under this exception, a warrant is not required if the circumstances "involve[ ] a plausible claim of specially pressing or urgent law enforcement need, i.e., 'exigent circumstances.'" *Illinois v. McArthur*, 531 U.S. 326, 331, 121 S. Ct. 946, 950 (2001). In these circumstances, "'the exigencies of the situation' make the need of law enforcement so compelling that the warrantless search is objectively reasonable." *Mincey v. Arizona*, 437 U.S. 385, 393-94, 98 S. Ct. 2408, 2414 (1978) (*quoting McDonald v. United States*, 335 U.S. 451, 456, 69 S. Ct. 191, 193 (1948)). "Exigent circumstances exist 'only when the inevitable delay incident to

obtaining a warrant must give way to an urgent need for *immediate action.*'" *State v. Wells*, 928 P.2d 386, 389 (Utah App. 1996) (quoting *United States v. Satterfield,* 743 F.2d 827, 844 (11th Cir.1984)), *aff'd* 939 P.2d 1204 (Utah 1997).

"'While "exigent circumstances" have multiple characteristics, the guiding principle is reasonableness, and each case must be examined in the light of facts known to officers at the time they acted.'" *Henrie*, 868 P.2d at 1391 (*quoting State v. Hert*, 220 Neb. 447, 370 N.W.2d 166, 170 (Neb. 1985)); *see also Henrie*, 868 P.2d at 1388 (holding that "[t]he determination of exigency is based on the totality of the circumstances").

"Numerous cases have sustained warrantless entries where the circumstances indicated that evidence might be destroyed or removed if entry was delayed until a warrant could be obtained." *State v. Ashe*, 745 P.2d 1255, 1258, 1259 n.10, (Utah 1987) (citations omitted). *See also* Utah Code Ann. § 77-7-8 (1999) (authorizing a police officer to break the door or window of a building to arrest a person reasonably suspected of committing any public offense "where there is reason to believe evidence will be secreted or destroyed"). In *Ashe*, the Utah Supreme Court upheld a warrantless search of a suspected drug dealer's house based on probable cause and exigent circumstances that contraband would be destroyed if the police did not act immediately and before a warrant could be obtained. *Id.* at 1258-59. The evidence in support of exigent circumstances in this case is even weightier than in *Ashe.*

In *Ashe*, officers arrested at a parking lot two codefendants, suspected of being defendant's middlemen, after an undercover officer made a small, initial purchase of cocaine in what was intended to be a still larger drug deal. *Ashe*, 745 P.2d at 1257. Based on their

surveillance and voluntary statements of the middleman, officers knew that the defendant's residence was only two to five minutes from the parking lot and that he expected his middlemen to "quickly" return to expedite another, larger, purchase. *Ashe*, 745 P.2d at 1257. Consequently, the officers were concerned that the defendant would become suspicious and destroy the remaining cocaine when his accomplices did not return. *Id.* When officers arrived at Ashe's home, one of them saw Ashe look out an upstairs window and then move away. *Id.* After knocking and identifying themselves, and briefly waiting for a response, the officers kicked open the front door. *Id.* Upon entering the residence, the officers heard a toilet flush and saw two bags containing white residue in the wastebasket near the toilet. *Id.* The court found that the "urgency of the situation escalated" with each of the subsequent events and there was "no realistic opportunity to seek a search warrant before the exigencies of the matter made it necessary to enter the dwelling." *Id.* at 1259, 1260. The court added that the officers did not have to eliminate all innocent explanations for the behavior they observed, "so long as the explanation advanced by the . . . agents to support the search appear[ed] in all probability to be correct." *Id.* at 1261 (quoting *U.S. v. Delguyd*, 542 F.2d 346, 351 (6th Cir. 1972)) (first alteration in original).

In this case, Detectives Anderson and Ita arrived at the motel room on a tip that Corwell and defendant were involved in illegal drug activity (R. 116:2-3). At the motel room door they knocked and identified themselves (R. 116:3-4). At the same time, Detective Anderson observed Corwell attempt to hide what appeared to be a crack pipe (R. 116:4). Also, immediately after the detectives identified themselves, Detective Anderson observed

defendant and Corwell "running in the room, putting stuff behind the bed and running to and from the bathroom" (R. 116:6). He saw the women go to the bathroom "at least three times" (R. 116:7). Defendant's hurried activity was particularly significant to Detective Anderson because, in his experience, suspects, especially in hotel rooms, will try to flush narcotics down the toilet to destroy them (R. 116:7).

The foregoing record established probable cause and exigent circumstances for the detectives to enter the motel room without a warrant. *See* Aplt. Br. at Pt. I.A.1. As the trial court correctly concluded, there was reason for the detectives to believe that defendants were in the act of destroying controlled substances (R. 93; 116:26). Indeed, the detectives' sense of the exigency was more reasonable than those of officers in *Ashe*. In *Ashe*, the defendant's apparent attempt to destroy incriminating evidence could only be reasonably assumed, *Ashe*, 745 P.2d at 1265, whereas in this case those attempts were actually observed.

In sum, the trial court correctly denied defendant's motion to suppress evidence.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests that this Court affirm defendant's conviction.

RESPECTFULLY SUBMITTED this 7th day of August, 2002.

MARK L. SHURTLEFF
Attorney General

KENNETH A. BRONSTON
Assistant Attorney General

CERTIFICATE OF HAND DELIVERY

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were hand delivered to Kent R. Hart and David V. Finlayson, Salt Lake Legal Defender Assoc., attorneys for appellant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 9th day of August, 2002.

Kenneth A. Bronston

ADDENDA

ADDENDUM A

AMENDMENT IV

[Unreasonable searches and seizures.]

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

UTAH CRIMINAL CODE

76-2-202. Criminal responsibility for direct commission of offense or for conduct of another.

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) for any public offense committed or attempted in the presence of any peace officer; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when he has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person.

77-7-8. Doors and windows may be broken, when.

To make an arrest, a private person, if the offense is a felony, and in all cases, a peace officer, may break the door or window of the building in which the person to be arrested is, or in which there are reasonable grounds for believing him to be. Before making the break, the person shall demand admission and explain the purpose for which admission is desired. Demand and explanation need not be given before breaking under the exceptions in Section 77-7-6 or where there is reason to believe evidence will be secreted or destroyed.

ADDENDUM B

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

SALT LAKE DEPARTMENT, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -v.- REBECCA CHAMPNEYS, Defendant.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Case No. 011905093 Hon. Timothy R. Hanson

This matter came on for a Motion to Suppress hearing on September 19, 2001, before the Court, the Honorable Timothy R. Hanson, District Court Judge, presiding. The State was represented by Deputy District Attorney Lana Taylor. The Defendant was present and represented by David Finlayson. Evidence was presented in the form of testimony from Detective Troy Anderson. The Court, based upon the evidence and argument presented at the hearings, the memorandums of law submitted by counsel, and for good cause shown, makes and enters the following:

FINDINGS OF FACT

1. On March 13, 2001, Salt Lake City Detective Troy Anderson and other officers investigated a report that Defendant Corwell was involved in using or selling illegal drugs in a motel room, located at 1990 West North Temple, in Salt Lake County.

a1

2. The officers knocked on the door of the motel room and asked if defendant Corwell was present.

3. Defendant Champneys spoke to the officers through the door and said that Corwell was not there.

4. Detective Anderson could see into the room through the window and saw both Defendants Champneys and Corwell.

5. Defendant Corwell then told the officers that she was in the room.

6. The officers identified themselves and asked if they could enter the room.

7. Through the window, Detective Anderson saw Defendant Corwell put what appeared to be a black crack pipe into a purse, which was on the bed. Corwell then put the purse behind the bed. Both defendants were running around the room, putting items into bags and under the bed and making several trips to the bathroom.

8. The officers asked the defendants to open the door, and the defendants refused.

9. The officer told the defendants that if they did not open the door, they would have to force the door open and the defendants again refused to open the door.

10. One of the officers received a key to the room from the manager of the motel, who said that he wanted the defendants "kicked out."

11. The officers tried to use the key to enter the room, but the door was dead-bolted.

12. The officers kicked the door in and arrested the defendants for interfering with a police investigation.

13. Defendants Champneys and Corwell were searched and officers found the evidence in this case, which consisted of cocaine and drug paraphernalia.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The officers had probable cause to believe that drug activity was occurring in the room as a result of the information they were provided and the facts, which confirmed that information.

2. The officers had exigent circumstances to justify a warrantless entry into the motel room as a result of the defendants' actions, which indicated that they were concealing and destroying evidence.

3. The evidence in this case was lawfully seized pursuant to the probable cause and exigent circumstances exception to the warrant requirement of the Fourth Amendment.

DATED this 7 day of Dec, 2001.

BY THE COURT

DISTRICT JUDGE

Approved as to Form:

David Finlayson
Attorney for the Defendant

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

SALT LAKE DEPARTMENT, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -v.- REBECCA CHAMPNEYS, Defendant.	ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE Case No. 011905093 Hon. Timothy R. Hanson

IT IS HEREBY ORDERED that the Defendant's Motion to Suppress Evidence is denied.

DATED this ____ day of _____, 2001.

BY THE COURT

_____
DISTRICT JUDGE

Approved as to Form:

_____
David Finlayson
Attorney for the Defendant

ADDENDUM C

information that drug activity is going on, they see things that confirm that, probable cause that there's drug activity in that room and the exigent circumstances are created when these individuals in the room start hiding things. Hiding things in purses, hiding purses behind beds, running back to the bathroom. In their experience as narcotics officers, that is very consistent with things they've seen in the past destroying evidence.

THE COURT: All right. Thank you.

Submit the matter?

MR. ANDERSON: Yes, Your Honor.

MR. FINLAYSON: Yes, Your Honor.

THE COURT: I think I'm ready to rule on this one. Like most of these matters, what happens in the information, whether it's corroborated or it comes from an anonymous source, builds as the time goes along. So that's why I'm required to look at the totality of the circumstances.

Here we have an anonymous tip that there's drug dealing going on in this room where apparently the defendant, - I'll get everybody's name right here - Lisa Corewell is in the room. That certainly gives the officers the right to go over and knock on the door and talk with people if the people want to talk to them and they did that and they also confirmed, which gives support to the anonymous tip, is that Lisa Corewell, ultimately, she was in the room and so therefore, we

haven't just got somebody making a phone call. We've got somebody making a phone call with some information that appears to be at least as far as that's concerned, correct.

Had the officers not been able to see into the room then of course they would not have had the right to enter the room. They couldn't have got a warrant. But what they saw was evidence or what at least Officer Anderson saw, was evidence of the commission of a crime. It turned out he was wrong as to this spoon that turned out to be a spoon when he thought it was a crack pipe but I don't find anything inherently unreasonable about that observation or that conclusion that he reached, even though it was wrong. Whether it's right or wrong, is not important. It's what he reasonably thought it was at the time. That would be like saying, Well, they didn't know there were drugs but they found them, therefore, it's okay. We don't accept that either. So, it's not the product of the search that's important or what's actually found, but what is reasonably in the minds of the person at the time and I'm satisfied that Officer Anderson, by what he saw, thought that he observed a drug paraphernalia.

Then, when I add to that the fact that when they identified them as police officers, identified themselves as police officers, the activity starts in the room that is consistent, may be consistent with cleaning up the room but that doesn't make sense. It's much more consistent under the

circumstances, and at that point in time, with disposing of controlled substances. The officer testified that in his opinion, and it doesn't take a rocket scientist to know that, because controlled substances are disposable by flushing them down the toilet. There's a lot of activity, moving things about, going back and forth. All of that gives probable cause to enter the room and it also, because of the nature of the conduct, provides the sufficient exigent circumstances to kick in the door.

If the exigent circumstances weren't there, they would have had to get a warrant. I'm satisfied there was enough to get a warrant based on what was expressed to that point in time and what was observed. The exigent circumstances give them the right to kick in the door when it's bolted even though they - have the key makes no difference. Who gave them the key makes no difference, but not being able to get in even with the key, they had the right to kick down the door because I think it's reasonable to believe that they thought that there were controlled substances being destroyed. And so, therefore, the motion is denied. There's probable cause and I believe there's exigent circumstances. So let's set the matter for trial.

MS. TAYLOR: Your Honor, would you like the State to prepare findings, conclusions in an order?

THE COURT: Please.