

2003

Utah v. Santiago Diaz Crespo : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	Case No. 20030332-CA
v.	:	
SANTIAGO DIAZ CRESPO,	:	
	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS ON TWO COUNTS OF
UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE,
THIRD DEGREE FELONIES, IN VIOLATION OF UTAH CODE
ANN. § 58-37-8(2)(a)(i) (2002), IN THE THIRD JUDICIAL DISTRICT
COURT, STATE OF UTAH, THE HONORABLE WILLIAM W.
BARRETT, PRESIDING.

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FILED
Utah Court of Appeals

OCT 27 2003

Paulette Stagg

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Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions on two counts of unlawful possession of a controlled substance, both third degree felonies. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(e) (Supp. 2002).

ISSUE ON APPEAL AND STANDARD OF REVIEW

Should this Court reject defendant's unpreserved discovery claims alleging that the trial court erred in denying his mistrial motion where defendant cannot show that the evidence should have been produced under either *Brady* or rule 16, Utah Rules of Criminal Procedure?

This Court “review[s] rulings on motions for a mistrial based on prosecutorial misconduct [i.e. discovery violations] for abuse of discretion.” *State v. Martinez*, 2002 UT App 126, ¶ 16, 47 P.3d 115 (alterations in original) (citation omitted); *see also State v. Menzies*, 889 P.2d 393, 401 (Utah 1994). However, where defendant's discovery claims were not preserved below, they may only be reviewed for plain error. To establish

plain error, defendant must show that (1) the trial court erred; (2) the error should have been obvious; and (3) the error was prejudicial. *See State v. Dunn*, 850 P.2d 1201, 1208-09 (Utah 1993).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following relevant constitutional provisions and rules of criminal procedure are attached at Addendum A:

United States Const. Amend. XIV, § 1;
Utah Const. art. I, § 7;
Utah R. Crim. P. 16.

STATEMENT OF THE CASE

On September 27, 2002, defendant was charged with two counts of unlawful possession of a controlled substance, both third degree felonies (R. 2-3). Defendant's jury trial was held on February 11, 2003 (R. 134). After the State's case-in-chief, defendant moved for a mistrial, claiming that the State had failed to provide him with a police report in a related but separate case (R. 134:69-71). The trial court denied defendant's motion (R. 134:72). Defendant was subsequently convicted as charged (R. 96-97, 109-110; R. 134:101). He was then sentenced to concurrent terms of zero-to-five years on his convictions (R. 109-110). Defendant timely appealed (R. 114).

STATEMENT OF THE FACTS

The crime. On September 19, 2002, a concerned citizen called the Salt Lake City Police Department to complain about suspicious activity at a downtown apartment

complex (R. 134:20-21). Sergeant Michael Ross, Detective Nicholas Schneider, and one other officer responded (R. 134:21).

After knocking at the door and briefly talking with the renter named Lucero, the three officers entered the apartment (R. 134:21-22). Sergeant Ross was the first to follow Lucero into the apartment (R. 134:21-22). Lucero stood to the right of the door in the living room (R. 134:23-24). Ross saw several other people also in the living room (R. 134:22-23). Ross then saw defendant standing alone in the kitchen area, which was separated from the living room by a small island (R.134:22-23).

As Sergeant Ross entered the apartment, defendant put his hands into his pants pockets (R. 134:26). Concerned for his and his fellow officers' safety, Ross told defendant to keep his hands out where they could be seen (R. 134:26). Defendant pulled his hands out of his pockets and swung them down (R. 134:26). As he did so, Sergeant Ross "saw the two plastic twist[s] fall out of his hand" (R. 134:26, 30, 35, 46, 52). Defendant was immediately arrested (R. 134:57). The officers then field tested the two twists (R. 134:31; St. Exh. 5). One tested positive for cocaine; the other tested positive for heroin (R. 134:31; St. Exh. 5).

Preliminary hearing testimony. At defendant's preliminary hearing, Detective Schneider testified that he and two other officers went to a Salt Lake apartment on September 19, 2002 in response to a citizen's complaint alleging possible drug activity (R. 137:4). When Sergeant Ross knocked on the door, a man named Lucero opened the door and explained that he was the renter (R. 137:4). After a brief conversation, Lucero

let the officers into his small apartment (R. 137:4-5). Once inside, Detective Schneider noticed numerous people sitting in the living room and defendant standing in the kitchen (R. 137:5). Sergeant Ross then asked defendant to take his hands out of his pocket (R. 137:5). As defendant did, Sergeant Ross saw two twists fall onto the floor out of defendant's pocket (R. 137:5). One twist field-tested positive for heroine; the other field-tested positive for cocaine (R. 137:7).

On cross-examination, Detective Schneider testified that Sergeant Ross had filed a report in the case (R. 137:7). He also testified that the third officer present at the scene took the twists into evidence (R. 137:8). Defendant did not ask Schneider whether he or any other officer had identified or talked with the other people in the living room (R.137:7-9). He only asked the prosecutor for a copy of Ross's report (R. 137:7). The prosecutor indicated that he wasn't sure he had a copy of the report but that he would check (R. 137:7-8). The prosecutor provided defendant with a copy of Ross's report a week later (R. 24).

***The trial.** Defendant's opening statement.* In his opening statement at trial, defense counsel noted that there were numerous other people in the apartment when defendant was arrested, including Lucero and a man named Pollock¹ (R. 134:16). However, counsel continued, the State would produce no evidence from them concerning the twists or who owned them (R. 134:16). The reason, counsel argued, was because the officers never asked Lucero or Pollock about them (R. 134:16-17). Nor, according to

¹In the transcript, this man is initially identified as Pullet (R. 134:16). This person is identified later in the transcript as Pollock (R. 134:70).

defense counsel, could the officers tell the jurors the other persons' names because they never asked (R. 134:16-17).

Defense counsel then told the jury to pay careful attention to Sergeant Ross's testimony because he was the only person to see defendant drop the twists (R. 134:19). Given all the people in the apartment and what they might be doing, counsel asked, "[d]id [Sergeant Ross] see this man drop this or does he think he saw him drop it?" (R. 134:19).

Trial testimony. Sergeant Ross was the first person to testify at defendant's trial (R. 134:19). Ross explained his entry into Lucero's apartment, where the different people were situated in the apartment, and the circumstances under which he saw defendant drop the drugs (R. 134:21-26, 30, 32). Ross testified that before dropping the drugs, defendant had "a deer-in-a-headlight look, very surprised to see me walk in the door" (R. 134:51). Moreover, although there were several people in the apartment living room at the time, no one else was in the kitchen area when defendant dropped the twists (R. 134:40).

Ross then testified that he noticed a lot of narcotic paraphernalia located around the house, including where the other people were in the living room (R. 134:32, 42). In fact, two of the people in the living room were subsequently charged with paraphernalia violations (R. 134:43). According to Ross, Detective Schneider would have gotten their names, as well as the names of the other people who were in the apartment living room at the time (R. 134:51).

Detective Schneider testified that, although he did not see defendant drop the twists, he took custody of defendant at Ross's instruction (R. 134:55, 57). At the time,

defendant was the only person in the kitchen, everyone else was in the living room area several feet away (R. 134:54, 56). No one was in any other room in the apartment, including the bathroom (R. 134:39, 63).

On cross-examination, Schneider reiterated that at least two other people in the apartment—Lucero and Pollock—were arrested during the incident on paraphernalia charges (R. 134:64). Their names, as well as the names of the other people in the living room, were recorded in a police report filed in connection with the paraphernalia cases (R. 134:65-66).

On re-direct, Schneider explained that the paraphernalia cases were separated from defendant's because it is easier to file charges on each individual when there are separate incidents of drug possession or paraphernalia possession (R. 134:69).

Defendant's mistrial motion. After Schneider's testimony, the State rested (R. 134:69). The trial court then excused the jury, and defendant moved "either for a mistrial or dismissal" because he had not received a copy of the report Schneider had filed in the paraphernalia cases and, although defendant was aware of Lucero and Pollock, "it sounds like there's some potential witnesses that could be out there, some names of people that I don't know who they are" (R. 134:69-70).

The trial court noted that because defense counsel knew that others had been arrested at the scene and that at least five people were present at the time, she could have obtained the names of those people (R. 134:70). When defense counsel intimated that she had been misled during the preliminary hearing because Schneider had testified that he

had never obtained the other persons' names, the prosecutor correctly noted that no questions concerning those other persons' identities were asked during the preliminary hearing (R. 134:71). The prosecutor then argued that he was unaware of the paraphernalia report, which had not become part of his file because it was not part of this case (R. 134:72).

The trial court ruled:

Well, the testimony so far was that [defendant] was somewhat isolated because of the counter top and everyone was at least somewhere between two to five feet away. I don't see how it would be relevant to his defense [and] I don't think he's prejudiced by it. I'm going to deny the motion.

(R. 134:72).

Defendant's testimony. In his defense, defendant testified that he was at Lucero's apartment only to pick up a friend, Maria (R. 134:74, 78). When Maria indicated that she would not be ready for a few minutes, defendant sat down and drank a beer another person in the apartment had brought him (R. 134:74, 79). When defendant finished the beer, he was told he could go into the kitchen to get another (R. 134:74). Another person was initially in the kitchen with defendant, but that person then went into the bathroom (R. 134:79).

While defendant was still in the kitchen, the officers arrived (R. 134:74). Defendant had one hand on his beer and the other in his pocket when they arrived (R. 134:76). When the officers told him to remove his hand from his pocket, he put his beer on the counter and took his hand out (R. 134:76). He did not toss any twists at that time

(R. 134:77). In fact, he was not even aware of them until one of the officers said that he had found them on the floor and that they belonged to defendant (R. 134:77).

Defendant testified that he had been in the apartment for only three to five minutes when the police arrived (R. 134:75).

SUMMARY OF THE ARGUMENT

Defendant claims that the prosecution committed a discovery violation under both *Brady v. Maryland* and rule 16, Utah Rules of Criminal Procedure, when it did not disclose the existence of the police report Detective Schneider filed in the paraphernalia cases. Defendant claims that this discovery violation prejudiced him because the report contained the names of the other people who were in Lucero's apartment when defendant was arrested, and those people might have had "potentially exculpatory evidence." Thus, defendant claims, the trial court abused its discretion in not granting his motion for mistrial or dismissal based on the alleged violation.

Before this Court will consider a claim on appeal, defendant must show that the claim was preserved below. Otherwise, the claim will be considered only if defendant establishes that plain error or exceptional circumstances justify its review. Here, defendant did not preserve his discovery claims below. Moreover, he does not argue plain error or exceptional circumstances on appeal. Consequently, this Court should not consider defendant's claims.

Even if this Court reaches defendant's claims, they may be reviewed only for plain error. To establish plain error, defendant must show (1) that an error occurred; (2) that

the error should have been obvious to the trial court; and (3) that the error was prejudicial to him. Here, defendant cannot establish plain error on either of his claims.

To establish a *Brady* claim, defendant must show both that he could not have obtained the information through his own diligence and that the omitted information was material and exculpatory. Defendant cannot make either showing here. First, where defendant personally knew at least one of the people, Maria, who was in the apartment at the time he was arrested, and also knew the names both of the apartment renter and the other person who was arrested on paraphernalia charges that day, defendant cannot show that the information he claims should have been disclosed—i.e., the names of the other persons present in the apartment when he was arrested—was unavailable to him through other sources. Second, where defendant has not included either a copy of the police report or any information concerning what testimony, if any, the witnesses named therein had to offer concerning the drug twists, defendant cannot show that the undisclosed evidence was material and exculpatory. Consequently, defendant's *Brady* claim fails.

To establish a discovery violation under rule 16, defendant must show that he did not know of the existence of the item that the prosecutor failed to disclose, that the discovery request he submitted to the prosecutor encompassed the undisclosed item, and that the failure to disclose the item prejudiced him. Again, defendant cannot make those showings here. First, defendant has not shown why, when he knew at least three of the five other people in the apartment when he was arrested, he could not have obtained the names of the other two without the omitted police report. Second, defendant has not

shown why, based on the discovery request he made in this case, the prosecutor was required to provide him with either the names of those people or a copy of the police report that allegedly contained them. Finally, where defendant could have sought the witnesses' names on his own and where defendant has placed nothing in the record indicating those witnesses would have helped his case, defendant has not shown he was prejudiced by the alleged nondisclosure. Defendant's rule 16 claim, therefore, also fails.

ARGUMENT

THIS COURT SHOULD REJECT DEFENDANT'S UNPRESERVED DISCOVERY CLAIMS WHERE DEFENDANT DOES NOT ARGUE PLAIN ERROR ON APPEAL AND CANNOT SHOW ERROR IN ANY CASE

Defendant claims that the prosecution committed a discovery violation under both *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and rule 16, Utah Rules of Criminal Procedure, when it did not disclose the existence of the police report that Detective Schneider filed in the paraphernalia cases. Aplt. Br. at 9-19. Defendant claims this discovery violation prejudiced him because it withheld from him the names of the other people who were in the apartment when he was arrested and thus "den[ied] him knowledge of potentially exculpatory witnesses in his case." Aplt. Br. at 15. Defendant concludes that the trial court abused its discretion in not granting his motion for mistrial or dismissal based on this alleged discovery violation. *See* Aplt. Br. at 17-18.

This Court should reject defendant's claims because they were not preserved below and defendant does not argue plain error or exceptional circumstances on appeal. Alternatively, defendant's claims fail on their merits.

A. Defendant's claims fail because he did not raise them below and does not argue plain error or exceptional circumstances on appeal.

The general rule in criminal cases is that ““a contemporaneous objection or some form of *specific* preservation of claims of error must be made a part of the trial court record before an appellate court will review such claim[s] on appeal.”” *State v. Johnson*, 774 P.2d 1141, 1144 (Utah 1989) (quoting *State v. Tillman*, 750 P.2d 546, 551 (Utah 1987)); *see also State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346. The objection at trial must ““be specific enough to give the trial court notice of the very error”” of which defendant now complains so that the court ““might have an opportunity to correct [it] if [the court] deems it proper.”” *Tolman v. Winchester Hills Water Co., Inc.*, 912 P.2d 457, 460 (Utah App. 1996) (citations omitted).

This preservation rule “applies to every claim . . . unless a defendant can demonstrate that ‘exceptional circumstances’ exist or ‘plain error’ occurred.” *Holgate*, 2000 UT 74, at ¶ 11. Where defendant “does not argue that ‘exceptional circumstances’ or ‘plain error’ justifies a review of the issue, [this Court will] decline to consider it on appeal.” *State v. Pledger*, 896 P.2d 1226, 1229 n.5 (Utah 1995) (citation omitted); *see also State v. Jennings*, 875 P.2d 566, 570 (Utah App. 1994).

In this case, defendant moved for a mistrial or dismissal after the State’s case-in-chief based on surprise, not a discovery violation, arguing that “[a]pparently there’s another [police] report out there . . . and it sounds like there’s some potential witnesses that could be out there, some names of people that I don’t know who they are” (R.

134:69-70; Addendum B). Defendant never mentioned the state or federal due process clauses or rule 16 in support of his motion, let alone argued that the prosecutor's failure to provide the report violated those provisions (R. 134:69-72; Addendum B). Consequently, defendant's claims were not preserved below.

Thus, defendant's claims can only be reached on appeal if he demonstrates plain error or exceptional circumstances. *Holgate*, 2000 UT 74, at ¶ 11; *Pledger*, 896 P.2d at 1229; *Jennings*, 875 P.2d at 570. Because he has alleged neither, his claims fail.

Should this Court nevertheless decide to reach defendant's unpreserved claims, it should only review them for plain error. To demonstrate plain error, defendant must show (1) that an error occurred; (2) that the error should have been obvious to the trial court; and (3) that the error was prejudicial to him. *State v. Dunn*, 850 P.2d 1201, 1208-09 (Utah 1993).

B. Defendant's *Brady* claim fails because he cannot show that the names of those present in the apartment were unavailable to him through other sources or that those names were exculpatory.

Defendant claims that the State violated his constitutional rights to due process by failing to provide him with a copy of a police report filed in a different case which contained the names of persons who were in the same apartment as defendant when he was arrested. *See* Aplt. Br. at 9-15.

Under both the state and federal due process clauses, the "prosecutor has a constitutional duty to volunteer obviously exculpatory evidence and evidence that is 'so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to

produce.’” *State v. Jarrell*, 608 P.2d 218, 224 (Utah 1980) (quoting *United States v. Agurs*, 427 U.S. 97, 107 (1976)). The prosecutor has this duty whether or not defendant actually requests such evidence. See *State v. Bisner*, 2001 UT 99, ¶ 32, 37 P.3d 1073.

A defendant can show that the prosecutor violated this constitutional duty—i.e., committed a *Brady* violation under *Brady v. Maryland*, 373 U.S. 83, 87 (1963)—only if he can establish that:

the state suppress[ed] information that (1) remain[ed] unknown to the defense both before and throughout trial and (2) is material and exculpatory, meaning its disclosure would have created a “reasonable probability” that “the result of the proceeding would have been different.”

Bisner, 2001 UT 99, ¶ 33 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

However, “[w]hen . . . a defendant has enough information to be able to ascertain the supposed *Brady* material on his own, there is no suppression by the government.” *Id.*, 2001 UT 99, ¶ 44 n.1 (quoting *United States v. Aichele*, 941 F.2d 761, 764 (9th Cir. 1991)).

1. Defendant’s claim fails where he had enough information to ascertain the alleged *Brady* material on his own.

A defendant cannot establish a *Brady* violation “where the evidence at issue is known to the defense prior to or during trial, where the defendant reasonably should have known of the evidence, or where the defense had the opportunity to use the evidence to its advantage during trial but failed to do so.” *Bisner*, 2001 UT 99, ¶ 33. Thus, “[w]hen . . . a defendant has enough information to be able to ascertain the supposed *Brady* material on his own, there is no suppression by the government.” *Id.*, 2001 UT 99, ¶ 44 n. 1

(quoting *United States v. Aichele*, 941 F.2d 761, 764 (9th Cir. 1991)). “[E]vidence is not improperly withheld if the defense has knowledge of that evidence and defense counsel simply fails to request it.” *State v. Jarrell*, 608 P.2d 218, 225 (Utah 1980).

Here, defendant claims that the prosecutor committed a *Brady* violation when he did not disclose the police report Detective Schneider filed in the paraphernalia cases because that report contained the names of the other people who were in the apartment when defendant was arrested and those people might have been able to help defendant’s case. *See* Aplt. Br. at 9, 11. Because defendant had sufficient information to, with reasonable diligence, obtain that information on his own, he has not shown the first prong of a *Brady* violation.

According to Sergeant Ross, there were only six people other than police officers in the apartment when defendant was arrested; two of those six people were defendant and Lucero, the leaseholder (R. 134:22, 25, 36, 39, 40). According to Detective Schneider, there were only five other people present, including Lucero and defendant (R. 134:54, 63). Although defendant testified that yet another person was in the bathroom when the police arrived (R. 134:79), defendant’s self-serving testimony was contradicted by both Sergeant Ross and Detective Schneider (R. 134:39-40, 63). Thus, at most, defendant was looking for the names of five people, other than himself, who were present in the apartment when he was arrested.

However, prior to trial, defendant already knew the names of at least three of those people. Defendant’s own trial testimony indicates that one of those people was his friend,

Maria (R. 134:74). Then, from his preliminary hearing, defendant learned that another person present—the one who rented the apartment—was named Lucero (R. 137:4; R. 134:16, 70); *see also* Aplt. Br. at 7 (“Only the report filed in Mr. Crespo’s case was provided to the defense counsel, and it contained the names of only two of the witnesses interviewed by police at the crime scene.”) (citing R. 134 at 70 (defense counsel acknowledging prior knowledge of Lucero and Pollock)). Finally, as evidenced by his opening statement, defendant also knew by the time of trial that a third person present was named Pollock (134:17, 70); *see* Aplt. Br. at 7.²

Thus, by the time of his trial, defendant was at most still looking only for the names of two of the people who were present in the apartment when he was arrested. Since Maria was his friend (R. 134:74), defendant could have sought those names from her. Nothing in the record indicates that defendant asked Maria for those last two names or that Maria lacked that information.

Alternatively, defendant could have tried to obtain the information from Lucero. From the preliminary hearing, defendant knew that Lucero was the person who was renting the apartment in which defendant was arrested (R. 137:4). Since Lucero was the apartment’s renter, Lucero would presumably know the people he let into his apartment. Moreover, since defendant had gotten to the apartment on his own free will that day (R.

²In fact, Detective Ross’s police report, which was provided to defendant, *see* Aplt. Br. at 7, not only identified Lucero and Pollock as being in the apartment at the time, but also specifically identified them as the two people who were arrested on the paraphernalia charges and provided the case number assigned to those charges. *See* Police Report at Addendum C.

134:73-74), he apparently knew where he could locate Lucero. Yet, nothing in the record indicates that defendant asked Lucero for the names of the two unidentified people or that Lucero lacked that information.

A third avenue open to defendant was to attempt to locate and talk with Pollock. Defendant could have sought Pollock's contact information from Maria or Lucero. Again, nothing in the record indicates that defendant pursued this avenue or that it would have been futile if pursued.

Finally, since the record indicates that defendant apparently knew about the paraphernalia cases prior to his trial and that Lucero and Pollock were the persons arrested in those cases (R. 134:16-17, 43, 64-65, 70); *see also* Aplt. Br. at 7 (referring to police report in which paraphernalia arrests were listed), defendant could have sought any police reports generated in those cases to determine whether those reports contained the names of those two other people. Defendant did not take this route either (R. 134:69-72).

Based on this record, defendant had "enough information to be able to ascertain the supposed *Brady* material on his own." *Bisner*, 2001 UT 99, ¶ 44. Therefore, defendant cannot now base a *Brady* claim on his failure to obtain it. *See Jarrell*, 608 P.2d at 225; *see also Bisner*, 2001 UT 99, ¶¶ 33, 44.

Consequently, defendant's *Brady* claim fails.

2. Defendant's claim fails because he cannot show that the evidence was material and exculpatory.

"Contrary to appellant's claims, the State is not constitutionally compelled to disclose any and all information which may assist [a] defendant in preparing for trial."

State v. Workman, 635 P.2d 49, 52 (Utah 1981) (citation and internal quotation marks omitted). Rather, as explained above, to establish a *Brady* violation, defendant must show that the undisclosed evidence was both constitutionally “material” and “exculpatory . . . to the defense.” *Bisner*, 2001 UT 99, ¶ 32; *see also Workman*, 635 P.2d at 52 (“[F]or undisclosed evidence to be considered as coming within the purview of [*Brady*], it must be exculpatory in nature.”).

“Evidence is constitutionally material ‘if there is a reasonable probability’ that the ‘result of the proceeding would have been different had the evidence been disclosed to the defense.’” *State v. Bakalov*, 1999 UT 45, ¶ 31, 979 P.2d 799 (quoting *Bagley*, 473 U.S. at 682). It is exculpatory only if it is “favorable” to the defendant. *Bisner*, 2001 UT 99, ¶ 32; *see also State v. Perez*, 2002 UT App 211, ¶ 34, 52 P.3d 451 (holding that where evidence is inculpatory rather than exculpatory, no *Brady* claim exists).

Finally, “the ‘mere possibility’ that undisclosed evidence might favor a defendant cannot establish a *Brady* violation.” *Bakalov*, 1999 UT 45, ¶ 49 (quoting *State v. Shaffer*, 725 P.2d 1301, 1305-06 (Utah 1986)); *see also United States v. Agurs*, 427 U.S. 97, 109-10 (1976) (“The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.”); *id.*, 427 U.S. at 112 n.20 (rejecting argument that “standard” for materiality “should focus on the impact of the undisclosed evidence on the defendant’s ability to prepare for trial” because inculpatory as well as exculpatory evidence may affect preparation); *Codianna v. Morris*, 660 P.2d 1101, 1106 (Utah 1983).

If the “evidence is so speculative that it is impossible to see how it could have affected the outcome of the trial,” the *Brady* claim must fail. *State v. Shabata*, 678 P.2d 785, 788 (Utah 1984).

Here, defendant claims that the State committed a *Brady* violation by failing to provide him with a copy of the report Detective Schneider filed in the paraphernalia cases. *See* Aplt. Br. at 9-14. No copy of Detective Schneider’s report appears in the record. *See State v. Wetzel*, 868 P.2d 64, 67 (Utah 1993) (“Parties claiming error below and seeking appellate review have the duty and responsibility to support their allegations with an adequate record.”); *see also State v. Pritchett*, 2003 UT 24, ¶ 13, 69 P.3d 1278 (“When crucial matters are not included in the record, the missing portions are presumed to support the action of the trial court.” (citations and internal quotation marks omitted)); *State v. Penman*, 964 P.2d 1157, 1162 (Utah App. 1998).

Thus, the only non-speculative fact we know about the report is that it contains the names of other individuals who were in the apartment when defendant was arrested (R. 134:66, 69-70). As stated, three of those names were already known to defendant. *See* pp. 14-15 *supra*. Because defendant did not call any of those three people as witnesses at his trial, the presumption is those witnesses did not have material, exculpatory evidence. In any case, because defendant knew the names of these people, the nondisclosure of their names cannot support defendant’s *Brady* claim.

Only two of the people named in the report, therefore, could support defendant’s claim. Because those people—like Maria, Lucero and Pollock—may know nothing about

defendant's crime or may only have information that inculcates defendant, their names alone are not material and exculpatory in the constitutional sense. Defendant simply cannot show that "'there is a reasonable probability' that the 'result of [defendant's trial] would have been different'" had defendant known those names. *Bakalov*, 1999 UT 45, ¶ 31 (quoting *Bagley*); 473 U.S. at 682). Indeed, we do not even know whether defendant would have called these two witnesses if he had known their names. Thus, whether those witnesses would have provided exculpatory evidence "is so speculative that it is impossible to see how it could have affected the outcome of the trial." *Shabata*, 678 P.2d at 788; *see also Perez*, 2002 UT App 211, ¶ 34.

Defendant attempts to overcome this record deficiency by claiming that "when the prosecutor withholds the names of witnesses, it is not necessary for the defense to prove that their testimonies are exculpatory" but only that "they are potentially exculpatory." Aplt. Br. at 11 (citing *Bisner*, 2001 UT 99, ¶ 33). Defendant reasons that unknown testimony automatically qualifies as *Brady* material because it is "potentially exculpatory." *See* Aplt. Br. at 11 ("So, the fact that the defense counsel in this case was unable to provide the trial court with summaries of the witnesses' testimonies does not justify the prosecutor's failure to provide the names and other known information about them.").

No authority supports defendant's argument. Indeed, his claim is directly contrary to the case law cited above. *See Agurs*, 427 U.S. 109-110; *Bakalov*, 1999 UT 45, ¶ 49, *Shaffer*, 725 P.2d at 1305-06, *Shabata*, 678 P.2d at 788, *Codianna*, 660 P.2d at 1106.

Bisner, the sole case upon which he relies, *see* Aplt. Br. at 11, also does not support this argument. The term “potentially exculpatory” appears only once in *Bisner*, and then only as a direct quote from a 6th Circuit Court of Appeals case. *See Bisner*, 2001 UT 99, ¶ 33 (quoting *United States v. Mullins*, 22 F.3d 1365, 1371 (6th Cir. 1994) (additional citations omitted)). It appears almost immediately after the court confirms that *Brady* applies “both to substantively exculpatory evidence and to that which may be used for impeachment.” *Id.*, 2001 UT 99, ¶ 32. And it appears almost immediately before the court confirms that “a *Brady* violation occurs only where the state suppresses information that . . . is material and exculpatory, meaning its disclosure *would have* created a ‘reasonable probability’ that ‘the result of the proceeding would have been different.’” *Id.*, 2001 UT 99, ¶ 33 (emphasis added).

In this context, there are only two possible interpretations of “potentially exculpatory.” The first merely recognizes that all exculpatory evidence is only potentially exculpatory until the jury accepts it as fact. The second, possible where *Bisner* involved impeachment rather than direct exculpatory evidence, merely recognizes that *Brady* reaches not only evidence with an obvious exculpatory value, but also impeachment evidence, which, because it is not directly favorable to a defendant, is not strictly-speaking exculpatory, but only potentially so.

In short, nothing in either *Bisner* or the case from which the “potentially exculpatory” language is quoted supports defendant’s contention that *Brady* applies to all undisclosed information so long as its unknown nature holds out the possibility that it

might be exculpatory. *See Bisner*, 2001 UT 99, ¶¶ 31-40; *see also Mullins*, 22 F.3d at 1370-73; *Thigpen v. State*, 825 So.2d 241, 245 (Ala. Crim. App. 2001) (rejecting *Brady* claim where defendant “did not identify any exculpatory evidence that Timothy Worsham, the witness whose name allegedly was not disclosed, could have provided”) (footnote omitted), *cert. denied* (Ala. Jan. 25, 2002). To the contrary, as explained above, the clear import of *Brady* and its progeny, including *Bisner*, is that the “mere possibility” that undisclosed evidence might be exculpatory can *never* establish a *Brady* violation. *See Agurs*, 427 U.S. 109-110; *Bisner*, 2001 UT 99, ¶¶ 31-40; *Bakalov*, 1999 UT 45, ¶ 49, *Shaffer*, 725 P.2d at 1305-06, *Shabata*, 678 P.2d at 788, *Codianna*, 660 P.2d at 1106.

Significantly, defendant was not without a means by which to place that evidence on the record. For instance, instead of requesting the drastic remedies of mistrial or dismissal, defendant could have sought a continuance to obtain a copy of the report, investigate any potential witnesses identified therein, and then call them at trial or at least proffer their testimony in support of his discovery claim. *See, e.g., State v. Christofferson*, 793 P.2d 944, 948 (Utah App. 1990) (suggesting there is hierarchy of remedies for discovery violations; holding that trial court does not abuse its discretion in rejecting dismissal remedy when defendant has failed to seek “other, less harsh remedies”). Alternatively, defendant could have sought the undisclosed information after trial and then filed a motion for new trial and requested an evidentiary hearing thereon. Finally, defendant could on appeal have alleged ineffective assistance of his trial counsel

and requested a remand under rule 23B to develop a factual record in support of his claim³

Because defendant pursued none of these options, this Court is left with mere speculation as to whether the two missing witnesses may have helped defendant's case. As already stated, "the 'mere possibility' that undisclosed evidence might favor a defendant cannot establish a *Brady* violation." *Bakalov*, 1999 UT 45, ¶ 49 (citation omitted).

Consequently, defendant's *Brady* claim fails.

- C. Defendant's rule 16 claim fails because defendant should have been aware of the police report and the names it contained before trial; because such information was not encompassed within his discovery request; and because, in any case, he has not made the necessary showing of prejudice to support his claim.**

Defendant alternatively claims that the State's failure to provide him with a copy of Detective Schneider's report in the paraphernalia cases "violated the Discovery Rule,

³Perhaps because of the need to have the disputed evidence in the record, all the discovery cases in Utah found by the State address situations in which the specific nature of the disputed evidence was either placed on the record at trial or was placed on the record through another method, usually a post-trial motion. *See, e.g., State v Hopkins*, 1999 UT 98, ¶ 21, 989 P.2d 1065 (evidence presented at trial); *State v Whittle*, 1999 UT 96, ¶ 23, 989 P.2d 52 (evidence disclosed at trial); *State v Menzies*, 889 P.2d 393, 400 (Utah 1994) (evidence presented during trial); *State v Knight*, 734 P.2d 913, 916 (Utah 1987) (evidence presented during trial); *State v Fierst*, 692 P.2d 751, 752 (Utah 1984) (unclear how evidence became part of record but substance of disputed evidence clearly established), *State v Perez*, 2002 UT App 211, ¶ 37, 52 P.3d 451 (evidence presented at trial), *State v Martinez*, 2002 UT App 126, ¶¶ 12-13, 47 P.3d 115 (evidence presented at trial), *State v Rugebregt*, 965 P.2d 518, 522 (Utah App. 1998) (evidence presented at trial), *State v Christofferson*, 793 P.2d 944, 946 (Utah App. 1990) (evidence presented during trial), *State v Grueber*, 776 P.2d 70, 73 (Utah App. 1989) (evidence presented during trial).

Rule 16 of the Utah Rules of Criminal Procedure.” Aplt. Br. at 15. Specifically, defendant claims that, because he “made a formal discovery request pursuant to Rule 16” and “asked for ‘[a]ny evidence which tends to negate . . . or mitigate’ his guilt, a list of all witnesses the State intended to call for trial, along with their personal contact information, and any reports involved in the prosecution or investigation of this case,” the police report “containing the names of witnesses should have been provided to him.” Aplt. Br. at 15. Defendant’s alternative claim also lacks merits.

Rule 16, Utah Rules of Criminal Procedure, provides:

- (a) Except as otherwise provided, the prosecutor shall disclose to the defense *upon request* the following material or information of which he has knowledge:
 - (1) relevant written or recorded statements of the defendant or codefendants;
 - (2) the criminal record of the defendant;
 - (3) physical evidence seized from the defendant or codefendant;
 - (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and
 - (5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.
- (b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

Utah R. Crim. P. 16 (emphasis added).

Thus, while *Brady* or due process requires a prosecutor to disclose material exculpatory evidence whether or not the defense requests it, *see State v. Bisner*, 2001 UT 99, ¶ 32, 37 P.3d 1073, rule 16 requires a prosecutor to make disclosures only upon request, *see Utah R. Crim. P. 16(a)*.

To make out a discovery claim under rule 16, defendant must first show that “the scope of his request encompassed the omitted items and that the State undertook an unqualified obligation to provide them.” *State v. Hopkins*, 1999 UT 98, ¶ 20, 989 P.2d 1065. He must then “make a credible argument that the prosecutor’s errors have impaired the defense.” *State v. Knight*, 734 P.2d 913, 921 (Utah 1987).

However, as with a *Brady* claim, a “prosecutor cannot be cited for a discovery violation [under rule 16] where the defendant had knowledge of the existence of the item that the State failed to disclose.” *State v. Whittle*, 1999 UT 96, ¶ 25, 989 P.2d 52 (quoting approvingly *State v. White*, 931 S.W.2d 825, 832-33 (Mo. Ct. App. 1996)).

1. Defendant’s claim fails because he knew or should have known about the police report before trial and could have sought it on his own.

“The prosecution has a duty to make a correct and complete disclosure, but defense counsel also has an affirmative duty to make a reasonable investigation.” *State v. Kallin*, 877 P.2d 138, 143 (Utah 1994). Thus, a “prosecutor cannot be cited for a discovery violation where the defendant had knowledge of the existence of the item that the State failed to disclose.” *Whittle*, 1999 UT 96, ¶ 25 (citation omitted).

As previously discussed, defendant had sufficient information before trial to seek the information he now claims should have been provided *See pp 15-16 supra*. Consequently, defendant's rule 16 discovery claim fails.

2. Defendant's claim fails because his discovery request did not encompass a police report filed in a different case.

As previously discussed, rule 16 requires a prosecutor to make disclosures only upon request *See Utah R. Crim. P. 16(a)*. “Where . . . material [requested in discovery] is not covered by the detailed descriptions in subsections (a)(1) through (a)(4), which mandate disclosure upon request, subsection (a)(5), the catch-all provision, applies. It requires disclosure of the material sought only to the extent ordered by the trial court.” *State v. Hopkins*, 1999 UT 98, ¶ 18, 989 P.2d 1065 (quoting *State v. Knight*, 734 P.2d 913, 916 (Utah 1987)). “However, where no court order has been imposed and the prosecutor undertakes to voluntarily respond to a discovery request, the prosecutor ‘must produce all of the material requested or must identify explicitly those portions of the request with respect to which no responsive material will be provided.’” *Id.* (quoting *Knight*, 734 P.2d at 916-17).

To make out a rule 16 violation “[u]nder the principles outlined in *Knight*, [defendant] must demonstrate that the scope of his request encompassed the omitted items and that the State undertook an unqualified obligation to provide them.” *Hopkins*, 1999 UT 98, ¶ 20.

In this case, the record does not clearly indicate whether the State voluntarily responded to defendant's discovery request or whether the State qualified its response in

any way. Thus, the State does not concede on this record that it “undertook an unqualified obligation to provide [defendant with his requested information].” *Hopkins*, 1999 UT 98, ¶ 20.

Even assuming, arguendo, that the prosecutor did undertake such a duty, however, defendant must still show “that the scope of his request encompassed the omitted items.” *Hopkins*, 1999 UT 98, ¶ 20. Defendant has not made that showing here.

Defendant cites the following parts of his discovery request, *see* Aplt. Br. at 15, as supporting his discovery claim:

1. Any evidence which tends to negate the guilt of the defendant, or mitigate the guilt of the defendant or mitigate the degree of the offense that has been discovered by any member of the agencies involved in the investigation or prosecution of the above-entitled case.
2. A list of all the witnesses that the State intends to call for trial in the above-entitled matter, their addresses, telephone numbers and the adult and juvenile criminal records.
3. Any recordings, reports, transcripts or reports [sic] about statements in possession of any member or group involved in the prosecution of the investigation of the above-entitled case taken from any of the witnesses listed in number 2.
- ...
8. Any police or investigative reports excluding the Salt Lake District Attorney’s work product, made during the course of the investigation or prosecution of this case.

(R. 16-18). None of these requests “encompass[] the omitted item[].” *Hopkins*, 1999 UT 98, ¶ 20. First, as previously discussed, no copy of the omitted police report appears in

the record, and all that is known about it is that it contains the names of other people who were in the apartment when defendant was arrested. *See* p. 18 *supra*. Thus, defendant cannot show that the omitted report should have been provided because it “tend[ed] to negate the guilt of the defendant, or mitigate the guilt of the defendant or mitigate the degree of the offense that has been discovered by any member of the agencies involved in the investigation or prosecution of the above-entitled case” (R. 16). *See* pp. 16-21 *supra*.

Second, nothing in the record indicates that the State intended to call any of the people listed in that report as witnesses at defendant’s trial. Thus, defendant cannot show that the State failed to provide defendant with “[a] list of all the witnesses that the State intend[ed] to call for trial” or “[a]ny recordings, reports, [or] transcripts . . . about statements . . . taken from any of the witnesses listed in number 2”(R. 16).

Finally, everything in the record indicates that the officers involved in this case believed that their investigation of the crime involving defendant was essentially complete upon defendant’s arrest and was separate from the crimes involving the people in the living room (R. 134:25, 40 (Sergeant Ross testifying that defendant was only person in kitchen); R. 134:46 (Ross testifying that he did not include defendant’s exculpatory statement in police report because “I watched it. I saw it happen. There was no doubt in my mind whatsoever what he did.”); R. 134:46-47 (Ross testifying that report in defendant’s case was only report he wrote); R. 134:50 (Ross testifying that he did not see need to have defendant tested for drugs where “It had nothing to do with this case in my opinion. I saw him throw dope on the ground.”); R. 134:52 (Ross explaining that no

one else was charged with possession because defendant “was the individual I observed throw the narcotics to the ground.”); R. 134:43-45, 52 (Ross explaining that he did not read defendant his rights because he did not intend to interview defendant); R. 134:55, 61-62 (Detective Schneider indicating he was told by Ross to hold onto defendant and that Ross explained by “point[ing] out” the plastic twists on the ground); R. 134:56 (Schneider explaining relative positions of people in apartment); R. 134:57 (Schneider explaining that he “just took custody of the defendant and just pretty much held him and the evidence there”); R. 134:57 (Schneider testifying that a different detective took the information concerning the other people in the apartment); R. 134:58-59 (Schneider identifying paraphernalia found in living room and on kitchen counter and testifying that defendant was not charged with possession of those items); R. 134:63 (Schneider testifying that defendant was only person in kitchen area); R. 134:65-66 (Schneider testifying that he got the names of the individuals present in the living room but that he included them in report for paraphernalia cases); R. 134:68 (Schneider distinguishing between evidence in defendant’s case and evidence in paraphernalia cases filed under different case number); R. 134:69 (Schneider explaining: “It’s easier to file charges with the courts when there are separate incidents in regard to the possession or the paraphernalia when it’s different individuals. Each individual for the most part gets their own case.”)).

Where defendant was seen in possession of cocaine and heroine in the kitchen of an apartment and two separate individuals were found in possession of drug paraphernalia

in a different room, defendant cannot show that the officers were incorrect in treating the crimes as distinct and separate. Thus, defendant cannot show that a police report filed in the paraphernalia cases should have been provided because it was a “police or investigative report[] . . . made during the course of the investigation or prosecution of *this case*” (R. 17) (emphasis added).

Because defendant has not “demonstrate[d] that the scope of his request encompassed the omitted item,” his discovery claim fails. *Hopkins*, 1999 UT 98, ¶ 20.

3. Defendant’s claim fails because he has not made a credible showing that his defense was impaired.

Even if defendant’s claim were otherwise viable, it would still fail because he has not “ma[d]e a credible argument that the prosecutor’s errors have impaired the defense.” *State v. Knight*, 734 P.2d 913, 921 (Utah 1987).

In *Knight*, the supreme court outlined what a defendant must show to establish reversible error based on a discovery violation. Where, as here, a defendant claims that a discovery violation impeded his ability to present a defense, defendant must not only show that the State failed to provide him with requested information but he must also “present[] a credible argument that his defense was impaired.” *Id.* Only then does the burden shift to the State “to persuade the court that there is no reasonable likelihood that absent the error, the outcome of trial would have been more favorable for the defendant.” *Id.*⁴

⁴*Knight* addresses prejudice from a discovery violation in the context of undisclosed inculpatory evidence that was used against the defendant at trial. *See Knight*,

In this case, defendant cannot show that his defense was impaired. As previously discussed, defendant had all the information necessary to identify and conduct his own investigation of the other people in the apartment when he was arrested. *See* pp. 15-16 *supra*. Absent some indication that nondisclosure of the police report obstructed that investigation, defendant cannot show that nondisclosure impeded his defense. *See Knight*, 734 P.2d at 921.

As also previously discussed, the record does not contain either the undisclosed report nor any indication of the testimony the witnesses named therein would have given. *See* pp. 18-22 *supra*. Absent some record establishing that the undisclosed police report would have led to relevant evidence helpful to his case, defendant cannot make any “credible argument that the prosecutor’s errors . . . impaired the defense.” *Knight*, 734 P.2d at 921.

Consequently, defendant’s rule 16 claim fails.

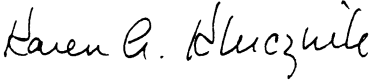
734 P.2d at 921; *see also State v. Arellano*, 964 P.2d 1167, 1171 (Utah App. 1998) (applying *Knight* where State failed to provide statutory notice of expert witness allowed to testify at trial). Thus, it is unclear whether *Knight*’s burden-shifting prejudice analysis applies where the evidence was *not* used against the defendant at trial *and* there is no indication that the evidence was exculpatory, inculpatory, or indifferent. However, because defendant has not even met the lesser preliminary burden under *Knight*, this Court need not decide whether defendant had to also meet the greater prejudice burden traditionally placed on defendants who allege harmful error. *Cf. State v. Bell*, 770 P.2d 100, 106 (Utah 1988) (“Ordinarily, . . . the accused [has] the burden of persuading this Court that . . . there is a reasonable likelihood that the trial result would have been more favorable absent the error.”).

CONCLUSION

Based on the foregoing, the State asks this Court to affirm defendant's convictions and sentences.

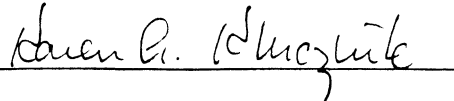
RESPECTFULLY SUBMITTED 27 October 2003.

MARK L. SHURTLEFF
Utah Attorney General


KAREN A. KLUCZNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on 27 October 2003, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this **BRIEF OF APPELLEE** to Heather Johnson and Nisa J. Sisneros, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, Utah, 84111, Attorney for Appellant.



Addenda

Addendum A

United States Const. Amend. XVI, § 1

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Const. art. I, § 7

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896

Utah R. Crim. P. 16

Rule 16. Discovery.

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge:

(a)(1) relevant written or recorded statements of the defendant or codefendants;

(a)(2) the criminal record of the defendant;

(a)(3) physical evidence seized from the defendant or codefendant;

(a)(4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

(a)(5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least ten days before trial or as soon as practicable. He has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

- (h) Subject to constitutional limitations, the accused may be required to:
- (h)(1) appear in a lineup;
 - (h)(2) speak for identification;
 - (h)(3) submit to fingerprinting or the making of other bodily impressions;
 - (h)(4) pose for photographs not involving reenactment of the crime;
 - (h)(5) try on articles of clothing or other items of disguise;
 - (h)(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;
 - (h)(7) provide specimens of handwriting;
 - (h)(8) submit to reasonable physical or medical inspection of his body; and
 - (h)(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and his counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

(Amended effective November 1, 2001.)

ADDENDUM B

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 021911370FS
	:	
Plaintiff,	:	
v	:	
	:	
SANTIAGO DIAZ CRESPO,	:	
	:	
Defendant.	:	

JURY TRIAL FEBRUARY 11, 2003

BEFORE

THE HONORABLE WILLIAM W. BARRETT

FILED DISTRICT COURT
Third Judicial District

MAY 19 2003

By *BL* SALT LAKE COUNTY
Deputy Clerk

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

FILED
Utah Court of Appeals
MAY 21 2003
Paulette Stagg
Clerk of the Court

ORIGINAL

1 separate case from the others?

2 A It's easier to file charges with the courts when
3 there are separate incidents in regard to the possession or the
4 paraphernalia when it's different individuals. Each individual
5 for the most part gets their own case.

6 MR. PLATT: Thank you. Nothing further.

7 THE COURT: Anything else?

8 MS. SISNEROS: No, that's all, Your Honor.

9 THE COURT: You can step down. Thank you Mr.
10 Schneider.

11 THE WITNESS: Thank you.

12 MR. PLATT: And that is the State's final witness.

13 THE COURT: State rests?

14 MR. PLATT: Yes.

15 THE COURT: Want to call you witness?

16 MS. SISNEROS: Could I make a motion first, Your
17 Honor?

18 THE COURT: Uh-huh (affirmative). We'll take a brief
19 recess.

20 (Whereupon the jury left the courtroom).

21 THE COURT: Okay, Ms. Sisneros.

22 MS. SISNEROS: Given this last testimony by the
23 officer, I would make a motion either for a mistrial or
24 dismissal. Apparently there's another report out there and
25 (inaudible) at the last preliminary hearing because there was

1 also a report that hadn't been given to me and I made note of
2 that and I told Mr. Platt that there was a report that I did
3 not have. That was Sargent Ross's report. I did receive that.
4 I do have that but apparently there's another report and it
5 sounds like there's some potential witnesses that could be out
6 there, some names of people that I don't know who they are. I
7 was never told who they were. I was never given that
8 information. Those are potential witnesses for my client and I
9 was not given the names of those individuals. I was given the
10 names of Mr. Lucero and Mr. Pollock and that is it. And we had
11 specific testimony about the report at the preliminary hearing
12 that apparently the officer doesn't remember being at but - and
13 I was told, and I told him, there's another report out there
14 could I please have that.

15 THE COURT: Well, now wait a minute. Did you ask for
16 a report specific to this case or specific to another case?
17 Because the testimony was, they filed some paraphernalia
18 charges and reports went with those charges, not with Mr.
19 Crespo and you knew that there were at least five people in the
20 room as reported, right? So you could have found out those
21 other names, couldn't you?

22 MS. SISNEROS: Well, the testimony from the
23 preliminary hearing was that these were the only names that
24 they got. These were the only names that were listed along in
25 any report, in the list of any of the other people. There are

1 no other witnesses listed. Normally they'll have a list of the
2 other names of the people. My understanding, and understanding
3 from the evidence at the preliminary hearing was that they
4 never asked them their names, they never questioned them.

5 THE COURT: Do you have proof of that?

6 MS. SISNEROS: Well, I've got the transcript. I
7 assume you've got the same police reports that I do and
8 they're-

9 THE COURT: But if you asked the question at the
10 preliminary hearing and they responded there were no other
11 names, that's a little bit different. But if you didn't ask
12 the question then it didn't become an issue.

13 I'm assuming, Mr. Platt, that they got all the
14 reports that are relevant to this case?

15 MR. PLATT: Yes, all of the reports that pertain to
16 the possession case. The only point that I would make is
17 certainly preliminary hearings are a discovery process for
18 defense counsel. I'm looking through the preliminary hearing
19 transcript. I don't note anywhere that there was a great
20 number of people there or those kinds of questioning or these
21 questions about paraphernalia charges and I think it's
22 perfectly reasonable - and this happens in most cases. You
23 have charges that are going to these defendants and then you
24 have charges going to this defendant for completely separate
25 behaviors and officers proceed and they track those separately

1 and they don't become part of this file because they are not
2 part of this case and had they been discovered during the
3 preliminary hearing, certainly counsel may have made a request
4 for that separate case number but it would require that or have
5 knowledge of it, at least (inaudible) prosecution. But in
6 terms of relevance, well, it certainly would be relevant if
7 we'd known about it. We just don't and we have completely
8 separate case numbers here. So I don't see that there's any
9 prejudicial effect when a preliminary hearing was held where at
10 discovery could have - this kind of discovery could have been
11 revealed through the process of (inaudible) and certainly the
12 State would be held to limited questioning for purpose of a
13 bind over (inaudible) submits to additional questions
14 (inaudible) discovery. (inaudible).

15 THE COURT: Well, the testimony so far was that Mr.
16 Crespo was somewhat isolated because of the counter top and
17 everyone was at least somewhere between two to five feet away.
18 I don't see how it would be relevant to his defense. I don't
19 think he's prejudiced by it. I'm going to deny the motion.

20 Are you ready to go?

21 MS. SISNEROS: Yes Your Honor.

22 (Whereupon the jury returns to the courtroom)

23 THE COURT: Do you want to call your witness?

24 MS. SISNEROS: Defense calls Mr. Santiago Crespo.

25 Your Honor, can we just for the record make it clear that Mr.

ADDENDUM C

e: 1
. DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

General Offense Information

Operational status : OPEN/ACTIVE

Reported on Sep-19-2002 (Thu.) 2331

Occurred on Sep-19-2002 (Thu.) 2240

Report submitted by K34 - Schneider, Nicholas

Org unit : SLC Narcotics Squad

Located at 16 - 155 S 400 E

Municipality : Salt Lake City Proper County : Cncl Dist 4

District : A Beat : A12 Grid : CEC

Offenses (Completed/Attempted)

Offense : #1 3532 - 0 DRUG-COCAINE POSSESS - COMPLETED

Location : Apartment

Suspect used : Not Applicable

Criminal activity : Possessing/Concealing

Offense : #2 3512 - 0 DRUG-HEROIN POSSESS - COMPLETED

Location : Apartment

Suspect used : Not Applicable

Criminal activity : Possessing/Concealing

General Offense Information (cont'd)

Bias : None (no bias)

Family violence : NO

IBR Clearance status : Not Applicable

Property Segment

Description	Type	Value	Date Recovered	Value Recovered
Drugs/Narcotics	Seized			
Drugs/Narcotics	Seized			

Drug Information

Recovered/Stolen/etc. : Seized

Drug type : Cocaine-All Forms Except Crack

Estimated quantity : 0.200

Drug measure : Gram

Recovered/Stolen/etc. : Seized

Drug type : Heroin

Estimated quantity : 0.100

Drug measure : Gram

Continued ...

Page: 2
For: DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Fri, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

Related Event(s)

CP 2002-173133
AB 2002-11563

COMPLAINT INFORMATION

Incident Location

Address : 16 - 155 S 400 E
District : A Beat : A12 Grid : CEC

General Information

Case type : DRUG - COCAINE POSSESS Priority : 9
Clrd : 23:31:18
How call received : TELEPHONE

Clearance Information

Report expected : NO Founded : YES
Cleared by : NOT FOR OFFICER USE(CITY ONLY)
Reporting Officer1 : K34 - Schneider, Nicholas

Related Person(s)

Case Specific : Arrestee - 01 CRESPO, SANTIAGO
Caucasian/White MALE
Born on Jun-01-1959
Residing at PO BOX 550 , SALT LAKE CITY , Utah 84634-

Reference Master Name Index

CRESPO, SANTIAGO DIAZ
Caucasian/White MALE Born on Jun-01-1959
Aliases : DIETZ, SANTINO
: DIAZ, SANTIAGO CRESPO
: CRESPO, SANTIAGO D
: CERSPO, SANTIAGO DIAZ
: CRESPO, SANTIAGO D
: SANTIAGO, DIAZ J.
: DIETZ, SANTINO J.
: CRESPO, SANTIAGO DIAZ
: DIAZ, SANTIAGO
: DIAZ, SANTIAGO JR

Continued ...

re: 3
: DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

: SANTIAGO, DIAZ JR
: CERSPO, SANTIG
: CRESPO, SANTIAGO
: CRESPO, SANTIAG
: CRESPO, SANTIAGO DIAZ
: DIZA, SANTIAGO

Linkage factors

Resident status : Resident
Offense : 3532 - 0 DRUG-COCAINE POSSESS - COMPLETED
Arrest date : Sep-20-2002 (Fri.)
Arrest type : Arrest/Booked-Chg Only

Charge Summary

Charge # 48

Charge Information

Offense : POSS CNTRLD SUBST/COCAINE
Offense date : Sep-19-2002 (Thu.) 2301
Charge class : FE Statute : 58.37.8.1B.I.32
General Offense : SL 2002-173133

Charge Summary

Charge # 49

Charge Information

Offense : Poss Cntld Subst/Heroin
Offense date : Sep-19-2002 (Thu.) 2301
Charge class : FE Statute : 58.37.8.1b.i.12
SHO points : 1
General Offense : SL 2002-173133

Continued ...

Fri, Sep 20 2002

3532 - 0 DRUG-COCAINE POSSESS

Related text page(s)

Document **PROB CAUSE**

Author **K34 - Schneider, Nicholas**

Subject **SANTIAGO CRESPO**

Related date/time: **Sep-19-02 2301**

A/P HAD IN HIS POSESSION ONE SMALL TWIST OF WHAT APPEARED TO BE A BLACK TAR SUBSTANCE COMMONLY KNOW AS (BLACK TAR HEROIN). A/P ALSO HAD IN HIS POSESSION A SMALL TWIST OF WHAT APPEARED TO BE A WHITE POWERDY SUBSTANCE COMMONLY KNOWN AS (COCAINE) A/P WAS OBSERVED BY UNDERCOVER NARCOTICS OFFICERS IN POSESSION OF THESE SUBSTANCES DURING AN UNDERCOVER OPERATION

Document **INITIAL R/O FIELD**

Author **K34 - Schneider, Nicholas**

Subject: **Knock and talk**

Related date/time: **Sep-19-02 2350**

Case #02-173120 and 02-173133 are related to each other. Two a/p's, Pollock and Lucero, were issued misdemeanor citation under this case number 02-173120. A/p Crespo was taken to jail under case 02-173133, for possession.

Sgt Ross received information from a concerned citizen in regards to an apartment in her complex, 155 S 400 E #16, that might be possibly selling or using drugs. Det Boelter and I responded, along with Sgt Ross, to this location upon where we did a knock and talk.

Sgt Ross knocked on the apt and Adolph Lucero (the owner of the apt) opened the door. Sgt Ross asked if the apt was his and he stated that it was. He was then asked if we could come in and he stated yes.

As soon as we walked inside Sgt Ross observed a/p Crespo attempt to put his hands down his pants. He was asked to keep his hands where we could see them, and once he removed his hands from his pants Sgt Ross observed a/p Crespo drop two small baggies which were later discovered to be black tar heroin and powder cocaine. Also in plain sight was numerous drug paraphernalia. See Sgt Ross's supp.

As I was watching a/p Crespo I observed a/p Pollock pass one of the other individuals in the apartment something, which appeared to be a pack of matches. Once the item/s was in her hand I saw something fall onto the ground and then the female attempted to kick it under the bed. As I looked closer the item/s passed was a small crack pipe (brown in color and aprx 3 inches long) and a book of matches. I observed the whole transaction and I observed no items in the females hand as a/p Pollock gave her the item/s.

All the paraphernalia was booked into evidence under case number 02-173120 by Det Boelter. Det Boelter booked the cocaine and heroin under case 02-173133. A/p Crespo was booked into jail for possession of heroin and cocaine under case 02-173133. NFD

Document **ASSTG FIELD SUPP**

Continued

e 5
DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

Author. K03 - Emery, John
Subject: A/P TRANSPORT
lated date/time: Sep-20-02 0451

I was requested to assist city narcotics officers with the transport of
is a/p Santiago Crespo to jail. This a/p was transported and booked on
e related charges with out incident.

1.

inued ...

Page: 6
For: DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Fri, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

Follow Up Report(s)

Follow Up # 1

Assignment Information

Assigned to J14 - DeSpain, Amy Rank : Detective
Org unit : SLC Narcotics Squad
Capacity : Investigate/Case Manager
Assigned on Sep-20-2002 (Fri.) 0823 by J14 - DeSpain, Amy
Report due on Nov-19-2002 (Tue.)

Submission Information

Follow Up completed : NO

Continued ...

e 7
DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

ated Property Report

Report Information

Report Number : 02173133
Property case status : SEIZED
Submitted on Sep-20-2002 (Fri.) by Boelter, Tyler
Authority for disposal : Gibson, Stanley D Org unit : Evidence
Offense : GO SL 2002-173133
Location : 155 S 400 E Apartment : 16
Municipality : Salt Lake City Proper County : Cncl Dist 4
District : A Beat : A12 Grid : CEC
Insurance letter received : NO
General remarks : KNOCK AND TALK
Related items : 2

js - Evidence

n # TB1
us: SEIZED
#: 02173133-1 Name: Cocaine-All Forms Except Crack
n: Powder Quantity: 0.20
.: GM Value:
ription: WHITE POWDERY SUBSTANCE F.T.P COCAINE
overed Date: Recovered Value:
js: x *e

js - Evidence

n # TB2
us: SEIZED
#: 02173133-2 Name: Heroin
n: Powder Quantity: 0.10
GM Value:
ription: BROWN POWDERY SUBSTANCE F.T.P. HEROIN
overed Date: Recovered Value:
s x *e

st Information

Status . CHARGED
Type of arrest : Arrest/Booked-Chg Only
Reason for arrest : Other
Arrest date : Sep-19-2002 (Thu.) 2301
inued ...

Page: 8
For: DA1043

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Fri, Sep. 20 2002

3532 - 0 DRUG-COCAINE POSSESS

Arresting officers : K34 - Schneider, Nicholas Arrest agency : S.L.C.PD
: -

Summary of facts : CG-POSS COCAINE, POSS HEROIN

Arrest Location

Civic address : 155 S 400 E

Municipality : Salt Lake City Proper County : Cncl Dist
District : A Beat : A12 Grid : CEC

Arrest Identification

File number : 13666037 Arrest number : 11563

Arrestee Information

Case screened : NO Notify Victim on release: NO Juvenile : NO
Diversion recommended : NO
Interpreter needed : NO
Rights given : NO
Mental exam required : NO
Statement taken : NO
Fingerprinted : YES Photo taken : YES CD updated : YES
Family notified : NO
Lawyer called : NO Meal given : NO Coffee given : NO Arrestee's occupati
Detained : NO

Related General Offense

GOSL 2002-173133

Related People

Arrestee CRESPO, SANTIAGO DIAZ
Born on Jun-01-1959

** END OF HARDCOPY REPORT **

DAVID E. YOCOM
District Attorney for Salt Lake County
CHAD L. PLATT, Bar No. 8475
Deputy District Attorney
231 East 400 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

SANTIAGO CRESPO,

Defendant.

NOTICE OF SUPPLEMENTAL
DISCOVERY RESPONSE

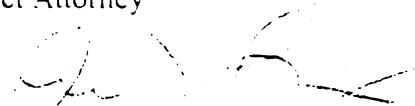
Case No. 021911370 FS

Hon. William W. Barrett

Plaintiff State of Utah, by and through its attorneys, David E. Yocom, District Attorney for Salt Lake County, and Chad L. Platt, Deputy District Attorney, hereby provides notice that the following additional discovery was provided on this 16th day of December, 2002:

1. Salt Lake Police Department Report 2002-173133, with supplemental narrative by Sgt. Mike Ross (counsel for both parties having become aware of said narrative during preliminary hearing).

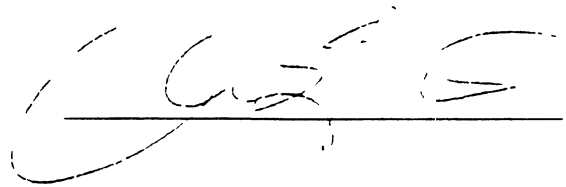
DATED this 16 day of December, 2002.

DAVID E. YOCOM
District Attorney
By: 

CHAD L. PLATT
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the foregoing Notice of Supplemental Discovery Response, was placed in the office's outgoing mailbox for delivery to Nisa Sisneros, attorney for Santiago Crespo, at 424 East 500 South, Suite 300, Salt Lake City, Utah 84111 on the _____ day of December, 2002.

A handwritten signature in black ink, appearing to be "C. S. S.", is written over a horizontal line.

e 1
SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

, Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

General Offense Information

Operational status : CLOSED/ARREST
Reported on Sep-19-2002 (Thu.) 2331
Occurred on Sep-19-2002 (Thu.) 2240
Approved on Oct-22-2002 (Tue.) by J14 - DeSpain, Amy
Report submitted by K34 - Schneider, Nicholas
Org unit : SLC Narcotics Squad
Located at 16 - 155 S 400 E
Municipality : Salt Lake City Proper County : Cncl Dist 4
District : A Beat : A12 Grid : CEC

Offenses (Completed/Attempted)

Offense : #1 3532 - 0 DRUG-COCAINE POSSESS - COMPLETED
Location : Apartment
Suspect used : Not Applicable
Criminal activity : Possessing/Concealing

Offense : #2 3512 - 0 DRUG-HEROIN POSSESS - COMPLETED
Location : Apartment
Suspect used : Not Applicable
Criminal activity : Possessing/Concealing

General Offense Information (cont'd)

Bias : None (no bias)
Family violence : NO
IBR Clearance status : Not Applicable

R Property Segment

Description	Type	Value	Date Recovered	Value Recovered
Drugs/Narcotics	Seized			
Drugs/Narcotics	Seized			

R Drug Information

Recovered/Stolen/etc. : Seized
Drug type : Cocaine-All Forms Except Crack
Estimated quantity : 0.200
Drug measure : Gram

Continued ...

age. 2
or: SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

ue, Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

Recovered/Stolen/etc. : **Seized**
Drug type : **Heroin**
Estimated quantity : 0.100
Drug measure : **Gram**

Related Event(s)

CP 2002-173133
AB 2002-11563

COMPLAINT INFORMATION

Incident Location

Address : 16 - 155 S 400 E
District : A Beat : A12 Grid : CEC

General Information

Case type : DRUG - COCAINE POSSESS Priority : 9
Clrd : 23:31:18
How call received : TELEPHONE

Clearance Information

Report expected : NO Founded : YES
Cleared by : NOT FOR OFFICER USE(CITY ONLY)
Reporting Officer1 : K34 - Schneider, Nicholas

Related Person(s)

Case Specific : Arrestee - 01 CRESPO, SANTIAGO
Caucasian/White MALE
Born on Jun-01-1959
Residing at PO BOX 550 , SALT LAKE CITY , Utah 84634-

Reference Master Name Index

CRESPO, SANTIAGO DIAZ
Caucasian/White MALE Born on Jun-01-1959
Aliases : DIETZ, SANTINO
: DIAZ, SANTIAGO CRESPO
: CRESPO, SANTIAGO D
: CERSPO, SANTIAGO DIAZ
: CRESPO, SANTIAGO D
: SANTIAGO, DIAZ J.

Continued ...

3
SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

: DIETZ, SANTINO J.
: CRESPO, SANTIAGO DIAZ
: DIAZ, SANTIAGO
: DIAZ, SANTIAGO JR
: SANTIAGO, DIAZ JR
: CERSPO, SANTIG
: CRESPO, SANTIGO
: CRESPO, SANTIAG
: CRESPO, SANTIGO DIAZ
: DIZA, SANTIAGO

linkage factors

Resident status : Resident

Offense : 3532 - 0 DRUG-COCAINE POSSESS - COMPLETED

Arrest date : Sep-20-2002 (Fri.)

Arrest type : Arrest/Booked-Chg Only

ge Summary

arge # 48

arge Information

Offense : POSS CNTRLD SUBST/COCAINE

Offense date : Sep-19-2002 (Thu.) 2301

Charge class : FE Statute : 58.37.8.1B.I.32

General Offense : SL 2002-173133

ge Summary

arge # 49

arge Information

Offense : Poss Cntld Subst/Heroin

Offense date : Sep-19-2002 (Thu.) 2301

Charge class : FE Statute : 58.37.8.1b.i.12

SHO points : 1

General Offense : SL 2002-173133

inued ...

Page: 4
For: SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Tue, Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

Related text page(s)

Document: **ASSTG FIELD SUPP**

Author: **I44 - Ross, Michael E**

On the listed date and time I responded with other narcotic detectives to 155 South 400 East apartment 16. I had received a call from a concerned citizen that narcotics were being sold from the apartment.

When I arrived at the apartment I knocked on the door of the apartment. The door was opened by Adolph Lucero. I informed Mr. Lucero who I was and why I was at the apartment. Mr. Lucero informed me that he rented the apartment. I then asked for his permission to enter the residence. As I entered I observed a/p Crespo standing in the small kitchen area. I observed a/p Crespo attempting to place his hand down his pants. I asked a/p Crespo if he could please keep his hands where I could see them while officers were present in the home. I then watched as he dropped two small plastic twists onto the floor of the kitchen area. The two plastic twists were later found to contain cocaine and heroin. The two plastic twists were photographed in place and placed into evidence by Salt Lake City Narcotic Detective Boelter. A/p Crespo was transported to jail by uniformed officers.

Several other pieces of paraphernalia were located throughout the residence.

Document: **PROB CAUSE**

Author: **K34 - Schneider, Nicholas**

Subject: **SANTIAGO CRESPO**

Related date/time: **Sep-19-02 2301**

A P HAD IN HIS POSSESSION ONE SMALL TWIST OF WHAT APPEARED TO BE A BLACK TAR SUBSTANCE COMMONLY KNOWN AS (BLACK TAR HEROIN). A/P ALSO HAD IN HIS POSSESSION A SMALL TWIST OF WHAT APPEARED TO BE A WHITE POWDERY SUBSTANCE COMMONLY KNOWN AS (COCAINE). A/P WAS OBSERVED BY UNDERCOVER NARCOTICS OFFICERS IN POSSESSION OF THESE SUBSTANCES DURING AN UNDERCOVER OPERATION.

Document: **INITIAL R/O FIELD**

Author: **K34 - Schneider, Nicholas**

Subject: **Knock and talk**

Related date/time: **Sep-19-02 2350**

Case #02-173120 and 02-173133 are related to each other. Two a/p's, Pollock and Lucero, were issued misdemeanor citation under this case number 02-173120. A/p Crespo was taken to jail under case 02-173133, for possession.

Sgt Ross received information from a concerned citizen in regards to an apartment in her complex, 155 S 400 E #16, that might be possibly selling or using drugs. Det Boelter and I responded, along with Sgt Ross, to this location upon where we did a knock and talk.

Sgt Ross knocked on the apt and Adolph Lucero (the owner of the apt)
Continued ...

5
SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

ened the door. Sgt Ross asked if the apt was his and he stated that it
s. He was then asked if we could come in and he stated yes.

As soon as we walked inside Sgt Ross observed a/p Crespo attempt to
his hands down his pants. He was asked to keep his hands where we could
e them, and once he removed his hands from his pants Sgt Ross observed a/p
espo drop two small baggies which were later discovered to be black tar
oin and powder cocaine. Also in plain sight was numerous drug
aphernalia. See Sgt Ross's supp.

As I was watching a/p Crespo I observed a/p Pollock pass one of the
er individuals in the apartment something, which appeared to be a pack of
ches. Once the item/s was in her hand I saw something fall onto the
ound and then the female attempted to kick it under the bed. As I looked
user the item/s passed was a small crack pipe (brown in color and aprx 3
hes long) and a book of matches. I observed the whole transaction and I
erved no items in the females hand as a/p Pollock gave her the item/s.

All the paraphernalia was booked into evidence under case number
173120 by Det Boelter. Det Boelter booked the cocaine and heroin under
e 02-173133. A/p Crespo was booked into jail for possession of heroin
cocaine under case 02-173133. NFD

ocument: **ASSTG FIELD SUPP**

Author: **K03 - Emery, John**

Subject: **A/P TRANSPORT**

ated date/time: **Sep-20-02 0451**

was requested to assist city narcotics officers with the transport of
s a/p Santiago Crespo to jail. This a/p was transported and booked on
related charges with out incident.

ocument: **INVSTGTR F/U**

Author: **J14 - DeSpain, Amy**

Subject: **F/U charges filed**

ated date/time: **Oct-02-02 1101**

facts of this case were presented to the da's office for screening. They
ued an information and a warrant #021911370. These were signed by a
ge and the warrant was activated by the court. Case closed.

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SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

Tue, Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

Follow Up Report(s)

Follow Up # 1

Assignment Information

Assigned to J14 - DeSpain, Amy Rank : Detective
Org unit : SLC Narcotics Squad
Capacity : Investigate/Case Manager
Assigned on Sep-20-2002 (Fri.) 0823 by J14 - DeSpain, Amy
Report due on Nov-19-2002 (Tue.)

Submission Information

Submitted on Oct-22-2002 (Tue.) 1215
Checked by : I44 - Ross, Michael E
Approved on Oct-24-2002 (Thu.) by I44 - Ross, Michael E
Follow Up completed : YES

Continued ...

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: SN9652

SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO SL 2002-173133

, Dec. 10 2002

3532 - 0 DRUG-COCAINE POSSESS

Conclusion Information

General Information

Agency : Salt Lake City Proper
Cleared status : Arrest and/or Charged
Cleared on Oct-22-2002 (Tue.) by J14 - DeSpain, Amy
Approved by J14 - DeSpain, Amy

Persons Involved

Adults charged: Males : 01 Females : 00
Juvenile charged: Males : 00 Females : 00
Juvenile involved: Males : 00 Females : 00

Seized Property Report

Report Information

Report Number : 02173133
Property case status : SEIZED
Submitted on Sep-20-2002 (Fri.) by Boelter, Tyler
Authority for disposal : Gibson, Stanley D Org unit : Evidence
Offense : GO SL 2002-173133
Location : 155 S 400 E Apartment : 16
Municipality : Salt Lake City Proper County : Cncl Dist 4
District : A Beat : A12 Grid : CEC
Insurance letter received : NO
General remarks : KNOCK AND TALK
Related items : 2

Items - Evidence

Item #: TB1
Status: SEIZED
#: 02173133-1 Name: Cocaine-All Forms Except Crack
Type: Powder Quantity: 0.20
Unit: GM Value:
Description: WHITE POWDERY SUBSTANCE F.T.P COCAINE
Recovery Date: Recovered Value:
Status: x *e

Items - Evidence

Item #: TB2
Status: SEIZED
#: 02173133-2 Name: Heroin
Type: Powder Quantity: 0.10
Unit: GM Value:
Continued ...

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SALT LAKE POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

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3532 - 0 DRUG-COCAINE POSSESS

Description. BROWN POWDERY SUBSTANCE F.T.P. HEROIN

Recovered Date:

Recovered Value:

Flags x *e

Arrest Information

Status : CHARGED

Type of arrest : Arrest/Booked-Chg Only

Reason for arrest : Other

Arrest date : Sep-19-2002 (Thu.) 2301

Arresting officers : K34 - Schneider, Nicholas Arrest agency : S.L.C.PD
: -

Summary of facts : CG-POSS COCAINE, POSS HEROIN

Arrest Location

Civic address : 155 S 400 E

Municipality : Salt Lake City Proper County : Cncl Dist 4

District : A Beat : A12 Grid : CEC

Arrest Identification

File number : 13666037 Arrest number : 11563

Arrestee Information

Case screened : NO Notify Victim on release: NO Juvenile : NO

Diversion recommended : NO

Interpreter needed : NO

Rights given : NO

Mental exam required : NO

Statement taken : NO

Fingerprinted : YES Photo taken : YES CD updated : YES

Family notified : NO

Lawyer called : NO Meal given : NO Coffee given : NO Arrestee's occupation

Detained : NO

Related General Offense

GOSL 2002-173133

Related People

Arrestee CRESPO, SANTIAGO DIAZ

Born on Jun-01-1959

** END OF HARDCOPY REPORT **