2005

State of Utah v. Robert M. Curry : Brief of Appellee

Utah Court of Appeals

Marea A. Doherty; Attorneys for Appellant.
Clark B. Allred; Clark A. McClellan; Allred & McClellan, P.C.; Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

[redacted] UTAH and/or
ROOSEVELT CITY CORPORATION,

[redacted]intiff/Appellee,

vs

[redacted]NIE M CURRY,

Case No. 20050465-CA

[redacted]efendant/Appellant.

BRIEF OF APPELLEE

Appeal From the Order of the Eighth Judicial
District Court of Duchesne County
Honorable John R. Anderson

[redacted]torneys for Appellant
[redacted]a A. Doherty #7379
P. O. Box 399
Duchesne, Utah 84021-0399
Telephone: (435) 901-0408
Fax: [redacted]435) 655-3949

Attorneys for Appellee
Clark B Allred #0055
Clark A. McClellan #6113
ALLRED & McCLELLAN, P.C.
72 N. 300 E. (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928
Fax: (435) 722-3920

IN THE UTAH COURT OF APPEALS

STATE OF UTAH and/or ROOSEVELT CITY CORPORATION, Plaintiff/Appellee, vs. RONNIE M CURRY, Defendant/Appellant.	)	Case No. 20050465-CA

BRIEF OF APPELLEE

Appeal From the Order of the Eighth Judicial
District Court of Duchesne County
Honorable John R. Anderson

Attorneys for Appellant
Marea A. Doherty #7379
P. O. Box 399
Duchesne, Utah 84021-0399
Telephone:(435) 901-0408
Fax: (435) 655-3949

Attorneys for Appellee
Clark B Allred #0055
Clark A. McClellan #6113
ALLRED & McCLELLAN, P.C.
72 N. 300 E. (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928
Fax: (435) 722-3920

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Cases

Statutes

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction in this case pursuant to Utah Code § 78-2a-3(2)(e).

ISSUES PRESENTED FOR REVIEW

I. Should the Court uphold the trial court's ruling on the motion to suppress, even though Defendant's counsel failed to appear for the hearing, when the Defendant through counsel submitted his position in writing which position failed as a matter of law to provide a basis to suppress the evidence?

II. Should the Court affirm the trial court's denial of Defendant's motion to suppress where the probation officer properly entered a home where a probationer was residing and, after seeing and smelling marijuana in the residence, obtained a search warrant and, based on the search authorized by the warrant, located marijuana in the home?

III. Was there probable cause supporting the warrant based on the officers' smelling marijuana in the home and viewing in plain sight a substance believed to be marijuana, and the probationer's admission of drug use in the home?

IV. Does the absence of the original search warrant in the *record negate the warrant, where it is undisputed that the trial* court issued the warrant?

STANDARDS OF REVIEW

"Constitutional issues . . . are questions of law that [the Court] review[s] for correctness." Chen v. Stewart, 100 P.3d 1177, 1185 (Utah 2004).

"[The Court] review[s] . . . findings of fact supporting a trial court's decision on a motion to suppress under a clearly erroneous standard," State v. Bobo, 803 P.2d 1268, 1271 (Utah Ct. App. 1990), and "in assessing the trial court's legal conclusions . . . afford[s] it no deference but appl[ies] a 'correction of error' standard.'" State v. Johnson, 771 P.2d 326, 327 (Utah Ct. App. 1989) (citation omitted).

For issues "not properly objected to" before the trial court, the appellant must demonstrate plain error - that is, an "obvious" error that "is harmful." State v. Dunn, 850 P.2d 1201, 1208 (Utah 1993).

APPLICABLE CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV. See Addendum A.

U.S. Const. amend. VI. See Addendum B.

STATEMENT OF THE CASE

Proceedings Below

Defendant, Ronnie Curry, received a citation for possession of a controlled substance and possession of paraphernalia on February 18, 2004, R. 1. Defendant's counsel, Victor Gordon, filed a motion to suppress on April 23, 2004, setting forth the Defendant's

alleged facts and argument. R. 19-23. Roosevelt City (the City) responded on May 5, 2004. R. 33-42. On July 27, 2004, the trial court held a hearing to rule on the motion to suppress. Defendant was present but his counsel did not appear. At the hearing on that motion, the trial court stated that, "[the court was] prepared to rule" based on the memoranda submitted by counsel. R. 121:9:18. Following a brief discussion, the court ruled based on the arguments advanced by Defendant in his memorandum, finding those arguments insufficient to sustain his motion to suppress and denied the motion. R. 47-48; 121:9-13. The trial court then held several status hearings trying to set a trial date. R. 52-53, R. 56-57, and R. 63-64. On January 20, 2005, the court appointed Defendant's current counsel. R. 67-69. On March 31, 2005, Defendant entered conditional pleas of guilty to the charges, reserving the right to appeal the ruling on the motion to suppress. R. 89-90. The trial court sentenced Defendant on August 18, 2005, staying the sentence until the resolution of this appeal R. 122-125.

Facts

Rory Curry, the brother of Defendant Ronnie Curry, was on probation with Adult Probation & Parole (AP &P). R. 33. Under the probation agreement, Rory consented to visits at "[his] place of residence, [his] employment, or elsewhere by officers of [AP & P] for the purpose of ensuring compliance with the conditions of the Probation Agreement." R. 33. On February 17th, Agent Shawn Lewis,

a probation officer, attempted to conduct a field visit at the address that Rory had provided to AP&P. R. 34.

Agent Lewis, however, did not find him at the address. R. 34. Officers from Roosevelt City, who accompanied agent Lewis, informed him that Rory may have moved in with his brother, Defendant. R. 34. This was a violation of Rory's probation agreement, R. 36, and based upon that information, Agent Lewis, accompanied by Ammon Manning, of the Roosevelt City Police Department, arrived at Defendant's residence at approximately 10:15 p.m. R. 34. Defendant responded to the knock at the door, and swung the door wide open. R. 34. Immediately upon Defendant's opening the door, Agent Lewis stated that he was looking for Rory, and at the same time, Agent Lewis saw Rory in the living room of the single-wide trailer home. R. 34.

Agent Lewis requested that Rory speak with him about his residence and problems with his compliance with the terms of probation. R. 34. Rory consented to speak with Agent Lewis. R. 34. Agent Lewis asked Rory if he was living at the residence, to which Rory replied affirmatively. R. 34. Agent Lewis then asked if they could speak privately. R. 34. Rory led Agent Lewis to a bedroom toward the back of the trailer. R. 34. While speaking with Rory in the bedroom, Agent Lewis noticed that Rory's eyes were very bloodshot and watery and his pupils were dilated. R. 34. During that conversation, Rory admitted that he had smoked marijuana at

that residence earlier in the day. R. 34. Agent Lewis also detected the smell of raw marijuana in the room in which they were speaking. R. 34. Agent Lewis did not conduct a search at that time, but arrested Rory Curry for probation violations. R. 34.

Meanwhile, Officer Manning, who accompanied Agent Lewis into the home, remained in the living room with Defendant and his sister, Rayma Curry. R. 34. While waiting for Agent Lewis, Officer Manning observed a white paper plate on a countertop between the living room and kitchen. R. 35. Atop the plate appeared to be fragments of marijuana. R. 35. Based on Rory's admission of smoking marijuana earlier in the day at the home, the odor of marijuana in the bedroom, and Officer Manning's observation of the substance on the paper plate, Officer Manning believed there was probable cause to obtain a search warrant to inspect the home. R. 35.

Officer Manning went to obtain the warrant, while other Roosevelt City officers stayed at the residence with Defendant Rayma. R. 35. Defendant and Rayma were not in custody, or under arrest, R. 35, but stayed in the home and watched television until the warrant was secured. R. 35. Upon searching the residence, the officers located marijuana and paraphernalia in the residence and Defendant and Rayma were arrested for possession of a controlled substance, and paraphernalia. R. 35.

SUMMARY OF ARGUMENT

Defendant suffered no prejudice as a result of his counsel's absence from the suppression hearing. Mr. Gordon submitted a motion containing substantial factual and legal argument, and the City responded. At the hearing, the trial court ruled based upon the submissions of the parties. The court concluded that further evidence or argument was unnecessary, and that the argument and facts alleged by the Defendant were not sufficient to sustain a motion to suppress and, therefore, denied the motion.

The trial court properly denied the motion to suppress. The probation officers had a right to detain and talk to Rory Curry. They were invited into the home and while in the home observed facts providing probable cause to obtain a warrant. The warrant was obtained, and the search of the home after receipt of the warrant resulted in the discovery of evidence of drug possession by Defendant.

The absence of the original affidavit supporting the warrant and the warrant in the file is not a basis for reversal. When items are missing from the record, the Court invokes the presumption that the proceedings below were in order.

ARGUMENT

I. THE HOLDING OF THE SUPPRESSION HEARING IN THE ABSENCE OF DEFENSE COUNSEL DID NOT HARM DEFENDANT, AS THE TRIAL COURT RULED ON THE SUBMISSIONS BY DEFENDANT'S COUNSEL FINDING THEM INSUFFICIENT TO SUPPORT THE MOTION.

"As a general matter, a defendant alleging a Sixth Amendment violation [of the right to counsel] must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Mickens v. Taylor, 535 U.S. 162, 166 (2002). "[T]here is an exception to this general rule." Id. "[The Supreme Court] ha[s] spared the defendant the need of showing probable effect upon the outcome and ha[s] simply presumed such effect, where the assistance of counsel has been denied entirely or during a critical stage of the proceeding." Id.; see also Wagstaff v. Barnes, 802 P.2d 774, 776 (Utah Ct. App. 1990) (quoting United States v. Cronic, 466 U.S. 648, 659 n.25 (1984))("'The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding.'").

In Woodward v. State, the court noted the policies underpinning Cronic which inform its interpretation, observing:

> In our evaluation . . ., we begin by recognizing that the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. *Absent some effect of the challenged conduct on the reliability of the trial process*, the Sixth Amendment guarantee is generally not implicated . . . . Thus, *we do not view counsel's performance in the abstract*, but rather the impact of counsel's performance upon "what after all, is [the accused's], not counsel's trial."

996 S.W.2d 925, 927 (Tex. App. Houston [1st Dist.] 1999, pet.

ref'd, cert. denied, 529 U.S. 1092 2000) (quoting Cronic, 466 U.S. at 658, n.22) (emphasis added by Woodward Court).

That Court further stated "[W]e are not to judge the record in the abstract. Rather, we are to determine whether the *particular circumstance* involved here was 'so likely to prejudice' appellant that constitutional error occurred." Id. at 928 (emphasis in original). Accordingly, the court found that, "the reading back to the jury of testimony [during counsel's absence] . . . was not prejudicial to [the] appellant, and was not a 'critical stage' of that proceeding." Id.

Other courts, have likewise applied a harmless error analysis in the wake of Cronic. In People v. Carracedo, for instance, the Court of Appeals of the State of New York, confronted with an "overnight ban on consultation between defendant and his attorney [which] occurred during the course of . . . [a] suppression hearing," 89 N.Y.2d 1059, 1061 (1997), opined that it "[could] not conclude that the pretrial violation . . . was 'so serious that [it] operate[d] to deny defendant's fundamental right to a fair *trial*,' thereby obviating the need to conduct a prejudice analysis." Id. at 1062 (emphasis in original). In part relying upon Carracedo, another New York court, "conclude[d] that the deprivation of a defendant's right to counsel at a pretrial suppression hearing is subject to constitutional harmless error analysis," People v. Wardlaw, 794 N.Y.S.2d 524, VI (N.Y. App. Div.

2005), *lv granted* 5 N.Y.3d 771 [2005]), noting "[a]s an obvious illustration of the principle, . . . a situation in which a defendant was improperly permitted to proceed pro se but nevertheless succeeded in obtaining suppression of the evidence in question." Id.

The court in Wilson v. State, 764 So. 2d 813, 817 (Fla. Dist. Ct. App. 2000, *cert. denied* 534 U.S. 859 2001), reached a similar result "hold[ing] that the in-court discussion in response to . . . [a] jury's note . . . was in violation of Wilson's constitutional right to counsel." Nevertheless, the court opined that "[t]he absence of counsel during a critical stage is not always a structural defect automatically requiring a reviewing court to bypass harmless error analysis." Id. at 818. In explanation, the court referred to Satterwhite v. Texas, 486 U.S. 249 (1988), asserting that "the Supreme Court clarified in . . . [that case that] absence or deprivation of counsel does not entitle a defendant to an automatic reversal; instead, reversal is only automatic when such deprivation of counsel 'affected - and contaminated - the entire criminal proceeding.'" Wilson, 764 So. 2d at 818 (quoting Satterwhite, 486 U.S. at 257). Thus, the court did not reverse when "[t]he [trial] court did nothing that could have influenced the jury's verdict; [and] there was no contact with the jury that might have been altered by input from defense counsel." Wilson, 764 So. 2d at 819.

In short, these courts consider harmless error either because the stage is not considered critical or because, even if critical, the lack of counsel did not "contaminate . . . the proceeding." Id. at 818 (quoting Satterwhite, 486 U.S. at 257). In other words, the analysis "turns on an assessment of the usefulness of counsel to the accused at that particular proceeding." Woodward, 996 S.W.2d (O'Connor, J., dissenting).

In the case at hand, Defendant was not prejudiced by counsel's absence, because the trial court was prepared to rule on and deny the motion based upon the memorandum filed by Defendant. R. at 121:9:17-18. The trial court, having read and considered the factual and legal contentions of the Defendant, denied the motion without the need of testimony or argument. It is true that the court allowed the City to proffer, R. at 121:9:17-18, but the proffer set forth essentially the same facts as in the City's motion, and there is no indication that it had any effect on the court's decision. Accordingly, counsel's presence would not have had an impact. Therefore, Defendant was not prejudiced by the absence of counsel, and this Court need not disturb the trial court's action.

II. THE TRIAL COURT'S DENIAL OF THE MOTION TO SUPPRESS WAS APPROPRIATE, AS THE OFFICERS ACTED LAWFULLY IN SEEKING A PROBATIONER WHO WAS IN VIOLATION OF HIS PROBATION AND A RESIDENT IN DEFENDANT'S HOME, AND IN CONDUCTING A SEARCH PURSUANT TO A WARRANT.

The trial court concluded that the allegations of Defendant in his motion (which is essentially a motion combined with a memorandum as it recites numerous factual allegations and cites legal authority to buttress his arguments) did not warrant suppression or further inquiry as the court announced an intention to rule on the motions without further evidence or argument. R. 121:9:17-18. "The key," according to the court, "[wa]s that Rory was on probation." R. 121:12:17-18.

Rory Curry, was residing with the Defendant. Rory Curry was at the residence and admitted he was residing there when confronted by the probation agent. The terms of Rory Curry's probation allowed Agent Lewis to visit him anywhere, and having seen him in plain sight through an open doorway, Agent Lewis could conduct a visit with him about his probation. Rory's probation status makes an enormous difference, because "[i]t is abundantly clear that probationers 'do not enjoy the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special . . . restrictions.'" State v. Martinez, 811 P.2d 205, 209 (Utah Ct. App. 1991) (quoting Griffin v. Wisconsin, 436 U.S. 868, 874 (1987)) (further citations omitted). Consequently, in the case of probationers, a search of the probationer's residence is authorized if "the [probation] officer has a reasonable suspicion that the probationer has committed a probation violation or crime, and [if] . . . the search

is reasonably related to the probation officer's duty.'" State v. Davis, 965 P.2d 525, 529 (Utah Ct. App. 1998) (quoting State v. Johnson, 748 P.2d 1069, 1072 (Utah 1987)). "'[S]earches have generally been upheld where the p[robation] officer's suspicion is based only on a tip by an anonymous informer, the police, or other sources,'" Martinez, 811 P.2d at 209, and the probation officer may search the residence even if the probationer is absent. Id. Moreover,

> by accepting the terms of . . . probation, [a probationer] consent[s] to searches of any areas of the residence over which he [or she] ha[s] common authority . . ., and . . . officers c[an] premise their search of these areas on reasonable suspicion that [the probationer] ha[s] violated a condition of his [or her] probation. This [i]s a risk [a co-resident] assume[s] by living with . . . a probationer.

Davis, 965 P.2d at 532.

In the instant circumstances, Agent Lewis had a reasonable suspicion that Rory was violating his probation. Rory was not at the address provided to Adult Probation and Parole, and Agent Lewis received a tip from the police that Rory may have moved to the home of Defendant. R. 34. He followed up on the tip and found that indeed Rory Curry was residing at Defendant's home. R. 34.

Even if Agent Lewis had been mistaken about Rory residing in the home, he was justified in entering the home based upon the reasonable belief that it was Rory's residence. "It is settled that where probation officers . . . are justified in conducting a warrantless search of a probationer's residence, they may search a

residence reasonably believed to be the probationer's." People v. Palmquist, 123 Cal.App.3d 1, 11 (1981).

In People v. Kanos, for example, the police obtained "information from a confidential informant . . . that [the] defendant was again living at [an address]," 14 Cal.App.3d 642, 646 (1971), and "Special Parole Agent Chris Brett . . . received information from the Los Angeles Police Department that a reliable source had told them that [the] defendant would be at . . . [the address]." Id. The "[d]efendant and his brother testified that . . . [the] defendant had [in fact] lived continuously with his mother at [another address] . . . ." Id. at 647. Nonetheless, the court found that "[t]he search of the apartment as that of [the] defendant was permissible," id. at 648, because "[t]he agents reasonably believed . . . [it] was [the] defendant's residence." Id.[1]

Significantly, although the officers were entitled to search the home they reasonably believed to be Rory's residence, they did not proceed with a search until acquiring a warrant, R. at 35, and officers properly waited with Defendant and his sister as Officer

---

[1] Although Utah courts do not appear to have announced this rule in such clear terms, in Martinez, the probation "[o]fficer . . . went to an apartment located at 8070 West 3500 South, number 23, where he believed Martinez lived," 811 P.2d at 207, although the "probation agreement . . . listed [Martinez's] address as 8076 West 3500 South, #23," id. n.1, because "he had been to the apartment complex before and found that the only apartment 23 was located at 8070 West, not 8076 West." Id.

Manning went to secure the warrant. R. at 35. Indeed, the Supreme Court, in Illinois v. McArthur, noted that "[the Court] ha[d] found no case in which th[e] Court . . . held unlawful a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police obtained a warrant in a reasonable period of time." 531 U.S. 326, 334 (2001).

The officers acted appropriately, and the trial court had ample reason to deny the motion to suppress.

III. THE ISSUE OF INSUFFICIENT PROBABLE CAUSE SUPPORTING THE WARRANT IS NOT PROPERLY BEFORE THE COURT AS IT IS FIRST RAISED ON APPEAL, AND, IN ANY CASE, THE WARRANT WAS SUPPORTED BY PROBABLE CAUSE GLEANED FROM THE OFFICERS' OWN SENSES AND THE WORDS OF THE PROBATIONER.

Defendant challenges the probable cause supporting the warrant, and concedes that this issue was not raised before the trial court. Br. of Appellant at 43. "[M]atters not placed in issue at trial cannot be raised for the first time on appeal." State v. Jackson, 873 P.2d 1166, 1167 n.1 (Utah Ct. App. 1994).

What is more, the warrant was supported by probable cause. "'In general, probable cause means a fair probability that contraband or evidence of a crime will be found.'" State v. Alvarez, 111 P.3d 808, 814 (Utah Ct. App. 2005) (quoting State v. Yoder, 935 P.2d 534, 540 (Utah Ct. App. 1997)). In the instant case, the basis for the warrant was derived from the officers' own experiences, not that of others. The officers' saw and smelled the marijuana. Additionally, Rory admitted using marijuana in the

residence earlier that day. Based on the these facts, there was certainly "'a fair probability that contraband . . . w[ould] be found,'" id., and the judge properly issued the warrant.

To defeat this result, Defendant contends that the affidavit supporting the warrant was misleading because Officer Manning did not disclose that the officers were in the home "illegally," Br. of Appellant at 42 (emphasis removed), and because "[it] misrepresents that the alleged field visit was to the probationer' [sic] address." Br. of Appellant at 40. Obviously, the officers, in securing the warrant, did not state that they were in the home illegally, because they were not. Agent Lewis was entitled to enter a residence reasonably believed to be Rory's home due to Rory's probation status, and, in any case, the officers entered to speak with Rory only after observing him through an open doorway, asking to speak with him and being invited in. R. at 34. Additionally, although the officers believed it was Rory's address, the affidavit does not affirmatively state such, but says only that "th[e] affiant and Agent Shawn Lewis went to the residence to do a field visit with Rory Curry." Aff. and Order for Search Warrant ¶ 5. Agent Lewis was entitled to attempt visits not only at Rory's home, but at any location. In sum, the affidavit was both truthful and supported by probable cause.

IV. DEFENDANT DOES NOT DEMONSTRATE HOW COUNSEL'S ALLEGED IMPERFECT PERFORMANCE INJURED DEFENDANT, WHICH DEFENDANT MUST ESTABLISH TO PREVAIL ON HIS CLAIM.

Defendant's fourth and fifth points are a repetition of the first. Thus, the City would respectfully request that the Court refer to the prior arguments. To the extent that Defendant believes that Defendant's right to counsel was violated other than at the suppression hearing, it is not clear how his right to counsel was denied or how he was prejudiced. After all, Defendant's own statement of the facts illustrates that Defendant was represented by Victor Gordon up until the time that current counsel was appointed, that the court repeatedly accommodated Mr. Gordon, and, in any event, that nothing of consequence occurred between the suppression hearing and Ms. Doherty's appointment as counsel. Br. of Appellant at 23-25, 47-48. "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error ha[s] no effect on the judgment." Strickland v. Washington, 446 U.S. 668, 691 (1984). "Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." Id. at 692.

V. THE LACK OF THE AFFIDAVIT SUPPORTING THE WARRANT AND THE WARRANT IN THE RECORD DOES NOT NULLIFY THOSE DOCUMENTS, DUE TO THE PRESUMPTION IN FAVOR OF THE TRIAL COURT'S DISPOSITION IN THE FACE OF AN INCOMPLETE RECORD AND BECAUSE THE WARRANT'S EXISTENCE IS NOT IN QUESTION.

Defendant's final argument is that the lack of the warrant in the record "invalidates" it. Br. of Appellant at 48. As stated by this Court in State v. Rawlings, however, "[i]n the absence of an

adequate record on appeal, [the Court] cannot address the issues raised and . . . presume[s] the correctness of the disposition made by the trial court." 829 P.2d 150, 152-153 (1992).

Furthermore, under somewhat similar circumstances, in United States v. Santarelli, 778 F.2d 609, 614 n.8 (11th Cir. 1985), "[t]he original warrant and supporting affidavit authorizing the search of [the] appellant's residence . . . [were] not contained in the record . . . ." "Apparently, these documents were lost prior to the suppression hearing." Id. Nevertheless, the court upheld the warrant. Id. at 616. Likewise, in the case at hand, there is no need to cast the warrant aside. There is no doubt that it existed. Indeed, the trial court actually issued the warrant. R. at 121:11:4-12.

CONCLUSION

For the foregoing reasons, Plaintiff, Roosevelt City, respectfully requests that the Court affirm the trial court's decision on Defendant's motion to suppress.

DATED this 6 day of April, 2006.

ALLRED & McCLELLAN, P.C.
Attorneys for Appellee

By: _____
Clark A. McClellan

By: _____
Clark B Allred

ADDENDA

A. U.S. Const. amend. IV.
B. U.S. Const. amend. VI.

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.

AMENDMENT VI

[Rights of accused.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

MAILING CERTIFICATE

I, Angie Bacon, am employed by the office of ALLRED & McCLELLAN, P. C., attorneys for Roosevelt City, and hereby certify that I served the attached BRIEF OF APPELLEE on counsel for Respondent/Appellee by placing a true and correct copy thereof in an envelope addressed to:

MAREA A. DOHERTY
P. O. BOX 399
DUCHESNE, UTAH 84021-0399

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Vernal, Utah, on the 7th day of April, 2006.

Angie Bacon
Angie Bacon