

1994

Utah v. Edenfield : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 940368-CA
v.	:	
LINDA EDENFIELD,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION FOR POSSESSION OF A
CONTROLLED SUBSTANCE, A SECOND DEGREE FELONY,
IN VIOLATION OF UTAH CODE ANN. §§ 58-37-
8(2)(a)(i) AND 58-37-8(5)(a) (1994), IN THE
FOURTH JUDICIAL DISTRICT COURT, IN AND FOR
UTAH COUNTY, STATE OF UTAH, THE HONORABLE
BOYD L. PARK, PRESIDING.

UTAH COURT OF APPEALS
BRIEF

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, : Case No. 940368-CA
v. :
LINDA EDENFIELD, : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLEE
- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction for possession of a controlled substance (methamphetamine) in a drug free zone, a second degree felony, in violation of Utah Code Ann. §§ 58-37-8(2)(a)(i) and 58-37-8(5)(a) (1994).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (1994).

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

1. Was defendant's detention supported by reasonable suspicion of her involvement in a drug trafficking scheme.

A trial court's determination of whether an investigative stop or detention was supported by reasonable suspicion is a conclusion of law that is reviewed for correctness. State v. Pena, 869 P.2d 932, 939 (Utah 1994). The trial court's ruling should not, however, be subjected to "a close de novo review." Id. Rather, some deference is accorded the trial court because the reasonable suspicion standard itself "conveys a measure of discretion to the trial judge[s]" so that they can "grapple with the multitude of fact patterns that may

constitute a reasonable-suspicion determination." Id. at 939-40. In contrast, the trial court's findings of purely factual issues that underlie its reasonable suspicion determination, such as witness credibility and historical facts, are subject to reversal only if clearly erroneous. Id. at 939 n.4.

2. Was the warrant authorizing the search of defendant's person supported by probable cause?

When a search warrant is challenged as having been issued without probable cause, the reviewing court does not conduct a de novo review of the magistrate's determination of probable cause; rather, to uphold the warrant, the reviewing court must simply conclude that the magistrate had a "substantial basis" for determining that probable cause existed. State v. Babbell, 770 P.2d 987, 991 (Utah 1989); State v. Ayala, 762 P.2d 1107, 1110 (Utah App.), cert. denied, 773 P.2d 45 (Utah 1989). In conducting its examination, the reviewing court "should consider a search warrant affidavit 'in its entirety and in a common-sense fashion.'" Babbell, 770 P.2d at 991 (quoting State v. Anderson, 701 P.2d 1099, 1102 (Utah 1985)); State v. Purser, 828 P.2d 515, 517 (Utah App. 1992). "Finally, the reviewing court should pay 'great deference' to the magistrate's decision." Babbell, 770 P.2d at 991 (quoting Illinois v. Gates, 462 U.S. 213, 236 (1983)).

3. Assuming the search warrant affidavit was for some reason technically deficient, did the trial court properly admit

the evidence seized from defendant's person on the basis that the officers who conducted the search acted in good faith?

This Court reviews *de novo* the question of whether an officer acted in good faith reliance on a search warrant. State v. Horton, 848 P.2d 708, 711 (Utah App.), cert. denied, 857 P.2d 948 (Utah 1993).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Const. Amend IV:

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.

STATEMENT OF THE CASE

Defendant was charged with two controlled substance violations in a drug free zone, under Utah Code Ann. §§ 58-37-8(2)(a)(i) and 58-37-8(5)(a) (1994): possession of methamphetamine, a second degree felony and possession of marijuana, a class A misdemeanor. Additionally, defendant was charged with possession of paraphernalia in a drug free zone, a class A misdemeanor, in violation of Utah Code Ann. §§ 58-37a-5(1) and 58-37-8(5)(a) (1994) (R. 3-2).¹

Defendant filed a motion to suppress evidence seized during a warrant-supported search of her person, alleging that the evidence was seized in violation of her federal and state

¹ The record is numbered in reverse chronological order.

constitutional rights (R. 20, 33-34). Following a hearing on the matter, the trial court denied defendant's motion (R. 42-37 (Memorandum Decision), 49-44 (Findings of Fact and Conclusions of Law)).

Thereafter, defendant entered a conditional guilty plea to possession of methamphetamine in a drug free zone, a second degree felony (R. 76, 74-69). The remaining counts were dismissed (R. 76). The trial court sentenced defendant to an indeterminate term of one to 15 years (R. 80-79). The court suspended execution of the prison term and placed defendant on a 36 month probationary term. Id.

STATEMENT OF THE FACTS

A. Search Warrant Affidavit

The critical facts are set forth in the search warrant affidavit.² The affidavit was submitted by Sergeant Mike Blackhurst of the Pleasant Grove Police Department, an experienced narcotics investigator (BR. 12-11) (see Addendum A), and had been reviewed by a county attorney (BR. 14) (see Addendum A).

Sergeant Blackhurst sought a warrant to search defendant's and codefendant Blomquist's persons', defendant's Corvette, and Blomquist's residence for "controlled substances, paraphernalia, . . . buy/owe sheets, scales, and all other

² The search warrant, affidavit and return are located in the companion record of State v. Blomquist, Case No. 940369-CA at (BR. 15-8) (copies are attached as Addendum A).

contraband associated with controlled substances" (BR. 13) (see Addendum A).

The affidavit in support of the search warrant set forth information gleaned over an approximate eight month period, from September 1992 to March 11, 1993, when the search warrant was issued. Information was obtained from fellow officers, confidential and anonymous informants, court records and surveillance of Blomquist's residence.

1. Confidential and Anonymous Informants

In September 1992, Detective Leavitt received information from a confidential informant that Blomquist was involved in the distribution of controlled substances (BR. 11) (see Addendum A). Detective Leavitt believed the information to be reliable because the informant had supplied reliable information concerning drug distribution on four previous occasions. Id.

Five months later, on January 28, 1993, Sergeant Blackhurst received additional information from an anonymous informant who reported that defendant "was driving to the Las Vegas area in a [t]an and [b]rown Chevrolete [sic] Corvette

to pick up controlled substances to be delivered back to [Blomquist]" (BR. 11) (see Addendum A). According to the anonymous informant, the "trips occur[red] approximately every two weeks, and [defendant] carrie[d] a gun concealed in a compartment behind her seat." Id.

On March 4, 1993, Sergeant Blackhurst received information from another anonymous informant who reported that he/she had overheard Blomquist speaking on the telephone and that Blomquist had stated that defendant "would be delivering a load within the next five to six days" (BR. 11) (see Addendum A).

2. Investigation and Surveillance

Police confirmed that a 1981 Chevrolet Corvette with a Nevada State license plate was registered to defendant (BR. 9) (see Addendum A). Police then began a periodic surveillance of Blomquist's residence on March 4, 1993 (BR. 10) (see Addendum A). Defendant's Corvette was not observed at Blomquist's residence on that date; however, the Corvette was observed at Blomquist's residence on March 11, 1994, within 24 hours of her estimated time of arrival. Id.

Additionally, during the period of surveillance a vehicle registered to Linda Iorg was observed at Blomquist's residence (BR. 10) (see Addendum A). Sergeant Fox recalled that he had previously executed a search warrant at the Iorg residence in 1989 and that Iorg's son had been charged with several counts of distribution of controlled substances as a result of that search. Id.

3. Corroborative Criminal Histories

The affidavit also set forth the defendants' criminal histories. Defendant's criminal history revealed that she had been charged but not convicted for controlled substances violations in 1988 and 1989 (BR. 10) (see Addendum A).

Blomquist's criminal history revealed a drug related conviction in March 1984. Further, there was a misdemeanor warrant for Blomquist's arrest out of Pleasant Grove City Court. Id.

B. Pre-warrant Stop and Detention

On the basis of the foregoing, Sergeant Blackhurst sought a search warrant on the morning of March 11, 1993 (BR. 14-13) (see Addendum A). Prior to the warrant's issuance, at approximately 9:00 a.m., police began surveillance of Blomquist's house which was to continue up until Sergeant Blackhurst returned with the signed search warrant (Tr. Aug. 26, 1993 at 37, 50).³ While police were watching the house, at approximately 10:30 a.m., defendants were observed leaving the house and driving off in Blomquist's pickup truck (Tr. 6).

When notified of the defendants' activity, Sergeant Blackhurst told the surveilling officers to stop them (Tr. 50). He further instructed that no action should be taken with regard to defendant until the search warrant was signed (Tr. 37). Accordingly, a marked patrol car stopped Blomquist's pickup shortly after it left a nearby convenience store (Tr. 7).

Blomquist, who was driving the pickup, was immediately asked to step out of the pickup and was arrested on the outstanding misdemeanor warrant (Tr. 8). Defendant was similarly requested to exit the pickup and was detained approximately five minutes until police confirmed that the search warrant had been

³ The transcript is internally paginated and also stamped with record page numbers; citation to the transcript will be to the internal page numbers.

signed (Tr. 8, 15). Because they were awaiting the search warrant at the time of the stop, several officers responded to assist (Tr. 13). Three police vehicles were present, the marked car effecting the stop and two unmarked cars. No guns were drawn during the course of the stop (Tr. 14).

Moments after the initial stop, Sergeant Blackhurst notified Officer Cullimore, who assisted in the stop, that the search warrant had been signed (Tr. 8, 16, 38).⁴ He further instructed Officer Cullimore that defendants should be transported to the jail and searched (Tr. 8). Sergeant Blackhurst then proceeded directly to Blomquist's house with the search warrant where he arrived in the next 10-15 minutes (Tr. 39, 41, 51). Officer Harris, who was waiting at the house, noted that they had the search warrant in hand, at Blomquist's house, by 11:39 a.m. (Tr. 29-30).

C. Search Results

In the meantime, defendants' were transported and searched at the jail. No evidence was seized directly from either defendant's person; however, a search of defendant's purse revealed methamphetamine (Tr. 18). The search of Blomquist's

⁴ On signing the search warrant, Judge Dimick noted the time as 11:30 a.m. (BR. 8) (see Addendum A). Sergeant Blackhurst did not note the exact time the warrant was signed, but based on his memory of the sequence of events, believed the judge was mistaken in his notation of the time (Tr. 41). In any event, Sergeant Blackhurst did not advise Officer Cullimore to take defendant in for questioning until after the search warrant had been signed (Tr. 43). Officer Cullimore noted that Sergeant Blackhurst contacted and notified him that the warrant had been signed prior to 11:00 a.m. (Tr. 16).

residence turned up numerous items of drug paraphernalia, pills, leafy and seed marijuana and cocaine crystals and residue. Drug paraphernalia was similarly seized from defendant's Corvette (BR. 15) (see Addendum A).

D. Motion to Suppress

Defendants moved to suppress the evidence seized on the ground that the search warrant lacked probable cause in violation of federal and state constitutional provisions (R. 20, 33-34). In a supporting memorandum, defendants asserted that the affidavit failed to demonstrate the reliability of one confidential and two anonymous informants; that the information was stale; and that the criminal histories of the defendants were irrelevant (R. 27-23). In argument before the trial court, defense counsel focused primarily on the legality of the officer's detention of defendant (Tr. 61-63).

E. Denial of Motion to Suppress

The trial court denied defendants' motion on September 15, 1993 (R. 42-37 (Memorandum Decision)). Findings of Fact and Conclusions of Law were filed on October 14, 1993 (R. 49-44).

FINDINGS OF FACT

1. In September of 1992, a detective of the Narcotics Enforcement Team received information from a trusted and reliable confidential informant that Defendant Roger Blomquist was involved in the distribution and use of controlled substances.
2. In January of 1993, a separate anonymous informant provided information that Linda Edenfield, the girlfriend of Roger Blomquist, was driving to Las Vegas in a tan and brown Chevrolet Corvette to obtain controlled

substances to deliver back to Roger Blomquist.

3. The anonymous informant said the trips occurred every two weeks and that Edenfield carried a gun concealed in a compartment behind her seat.

4. In March of 1993, officers received information from a third informant who claimed to have overheard a telephone conversation in which Blomquist stated that Edenfield would be delivering a load within the next five to six days.

5. After receiving the information on March 4, 1993, officers began surveillance of the residence of Blomquist and discovered that the tan and brown Corvette was not at the residence.

6. Periodic surveillance was continued until March 10, 1993. During the period of surveillance a vehicle registered to Linda Iorg was seen parked at the home.

7. Iorg was arrested on several counts of controlled substances in 1989.⁵ Roger Blomquist was also found to have had a criminal record involving controlled substances with a conviction in March 1984.

8. Officers determined that an active warrant for the arrest of Roger Blomquist existed out of the Pleasant Grove City Court.

9. The name Linda Edenfield was also checked and it was determined that there were several narcotics related convictions appearing on the record.⁶

⁵ The Court's finding is inaccurate. Linda Iorg's home was the subject of a search warrant in 1989. Following the search, Linda Iorg's son was arrested on several drug related charges (BR. 10) (see Addendum A).

⁶ The Court's finding is inaccurate. The affidavit makes clear that codefendant had several controlled substance related arrests, but no convictions (BR. 10) (see Addendum A).

10. A Chevrolet Corvette bearing Nevada license number 693EPS was registered to Linda Edenfield.

11. On March 11, 1993, all of the information obtained by the officers was put together in an affidavit and taken to Judge Dimick of the Orem Circuit Court who executed a search warrant authorizing [a] search of the Blomquist residence, a 1981 Corvette registered to Linda Edenfield, the person of Linda Edenfield, and the person of Roger Blomquist. A copy of the search warrant and affidavit are attached hereto and incorporated by reference.

12. On March 11, 1993, officers commenced surveillance of the Blomquist residence. Officer Blackhurst was in the process of acquiring the search warrant described above. While the Blomquist residence was under surveillance the [d]efendants, Linda Edenfield and Roger Blomquist, left the residence and entered a vehicle owned by [d]efendant Blomquist.

13. The Blomquist vehicle was stopped sometime around 10:30 a.m. Blomquist was arrested on the warrant and Edenfield was detained briefly until officers received information that the search warrant had been signed.

14. Edenfield and Blomquist were then transported to the Pleasant Grove Police Department where Edenfield was searched pursuant to the warrant.

15. Neither the Blomquist residence nor the Edenfield vehicle were searched until the search warrant was appropriately executed by Judge Dimick.

16. The purse of Defendant Edenfield was with her when the vehicle was stopped and taken with her to the police station. The purse was part of her person and appropriately searched pursuant to the search warrant.

17. The stop of Roger Blomquist and the execution of the arrest warrant and execution

of the search warrant were essentially contemporaneous.

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

CONCLUSIONS OF LAW

1. Under the totality of the circumstances analysis the facts as established in the affidavit in support of the search warrant established adequate probable cause to support the search warrant issued. Information from separate sources was corroborative and consistent providing a sufficient basis for the magistrate to conclude that there was fair probability that the evidence sought would be found in the car, in the house, or on the person of the individuals described.
2. The stop of the Blomquist vehicle and the temporary detention of the [d]efendants prior to the physical arrival of the search warrant was appropriate because of the mobility of the [d]efendants and the likelihood that they may have had evidence upon their person.
3. All officers involved in this operation acted in a good faith attempt to comply with the Rules of Evidence and Constitution of the United States. Officers acted reasonably and prudently to prevent the loss or destruction of expected evidence without inappropriate intrusion upon the privacy of the suspects.
4. The initial seizure of the person of Linda Edenfield was lawful under the exigent circumstances exception to the warrant requirement.
5. The method employed by the officers was reasonable and employed in a reasonable manner in that the officers had an obvious and legitimate concern when the suspects left the home and entered a vehicle that evidence would leave with them. The immediate stop and detention without further search until they had received information that the search warrant being sought at the present time was executed was appropriate. No lesser intrusion would have preserved the evidence.

No more intrusive action was undertaken until the fact that the warrant had been signed was confirmed.

6. Police officers had received a valid search warrant based upon evidence independent of the stop and detention of Edenfield. Even if the search took place before the warrant was obtained the fact that a warrant was obtained made discovery of the evidence inevitable and the evidence should not be suppressed even if it were to be determined by this Court that the search took place before execution of the warrant.

Id. (a copy is attached as Addendum B).

Defendants filed objections to the court's findings essentially re-arguing the basis of their motion to suppress (R. 61-56), and filed a Motion for Reconsideration of Ruling (R. 61.7-61.1), based on State v. Potter, 860 P.2d 952 (Utah App. 1993). The trial court denied defendants' motion on November 2, 1993, on the ground that Potter had not altered existing law regarding the issuance of search warrants (R. 64) (a copy is attached as Addendum C).

SUMMARY OF THE ARGUMENT

Defendant's brief detention after police stopped the pickup truck in which she was riding as a passenger was based on at least a reasonable suspicion of her involvement in a drug trafficking scheme. Therefore, her detention was constitutionally justified. Further, defendant's approximate five minute detention facilitated the well recognized judicial preference for warrant-supported searches by allowing police to maintain the status quo and to preserve the suspected contraband

while awaiting confirmation that a search warrant for defendant's person had in fact been issued.

Considering the totality of the circumstances, Sergeant Blackhurst's affidavit set forth a substantial basis for the magistrate to determine that there was current probable cause to search defendant's person for evidence of drug trafficking. Illinois v. Gates, 462 U.S. 213, 236 (1983). Three independent informants implicated defendant and Blomquist in a drug trafficking scheme involving defendant's transportation of controlled substances from Nevada to Utah in her Corvette. This information was corroborated by independent police investigation including police observation of defendant's suspected delivery of controlled substances in her Corvette to Blomquist's residence on the very day the search warrant was sought and obtained.

Notwithstanding, should the Court conclude that probable cause to search defendant's person and Corvette was not clearly articulated, any defect in the affidavit is not so obvious that the police "had no reasonable grounds for believing that the warrant was properly issued." United States v. Leon, 468 U.S. 897, 923 (1984). None of the facial deficiencies that negate objective good faith exist here. Nor is this a case wherein the issuing magistrate was misled by knowingly or recklessly false information. Accordingly, police reliance on the warrant issued was objectively reasonable, and the deterrent purpose of the exclusionary rule would not be served by excluding the challenged evidence.

ARGUMENT

POINT I

DEFENDANT'S BRIEF, PRE-WARRANT DETENTION WAS REASONABLE AND PROPER UNDER THE CIRCUMSTANCES

A. Propriety of Vehicle Stop and Defendant's Allegation of a Warrantless Search Are Not Properly Before the Court

At the outset of the State's analysis it is necessary to clarify which issues are properly before the Court. In Point II of her brief, defendant's primary challenge is to the propriety of her brief detention while police awaited confirmation that a search warrant for her person⁷ had been obtained. Br. of App. at 25. The heading of defendant's Point II appears to also challenge the validity of the initial stop of codefendant's truck in which defendant was riding as a passenger. Br. of App. at 25. However, codefendant Blomquist conceded the validity of the stop as applied to him in his brief on appeal, recognizing that the outstanding warrant for his arrest constituted at least one proper ground for the stop. Br. of Blomquist at 27. Defense counsel, who represents both codefendant and defendant, has filed identical briefs in each defendant's appeal, compare Br. of App. at 27 with Br. of Blomquist at 27, and has not developed a separate argument alleging that the initial stop was nonetheless improper as

⁷ Although contraband was also seized from defendant's Corvette, criminal charges based on that seizure were dismissed pursuant to the plea bargain agreement (R. 76).

applied to defendant. Id. Accordingly, the State's analysis assumes the validity of the initial stop.

As for defendant's further contention both in the heading and body of her Point II, that her person was searched prior to the warrant's issuance, Br. of App. at 26, it is contrary to the trial court's written findings and is also improperly before the Court. The trial court found that defendant "was detained briefly until officers received information that the search warrant had been signed," and that defendant "was searched pursuant to the warrant" (R. 47) (see Addendum B). Defendant has not challenged the court's findings as clearly erroneous. State v. Moosman, 794 P.2d 474, 475-76 (Utah 1990). Specifically, defendant has neither marshalled the evidence in support of the trial court's findings, nor demonstrated how it is insufficient. Id.; State v. Drobek, 815 P.2d 724, 734 (Utah App.) ("An appellant raising issues of fact on appeal must, under Utah R.Civ.P. 52(a), marshal all the evidence supporting the trial court's findings, and then show that evidence to be insufficient."), cert. denied, 836 P.2d 1383 (Utah 1991). Accordingly, this Court must reject defendant's attempt to characterize the search of her person as a warrantless search and must instead assume the correctness of the trial court's historical findings. State v. Larsen, 828 P.2d 487, 490 (Utah App.), cert. granted, 836 P.2d 1383 (Utah 1992), aff'd, 865 P.2d 1355 (Utah 1993). The State's analysis of the warrant-

supported search of defendant's person is found in Points II-III, infra.

Turning to the merits of the detention issue, defendant cites State v. Johnson, 805 P.2d 761 (Utah 1991) for the proposition that police lacked reasonable suspicion to detain her, a passenger in the stopped vehicle, beyond their apparent purpose in arresting codefendant, the driver. Br. of App. at 27. Defendant's reliance on Johnson is misplaced and overlooks the officers' reasonable suspicion of both defendant's and Blomquist's involvement in a drug trafficking scheme.

B. State v. Johnson Distinguished

Although the defendant in Johnson was also a passenger in a stopped vehicle, the similarity between the two cases ends there. Unlike the present case, Johnson dealt with a vehicle stop based upon the officer's observation of faulty brake lights, a traffic violation. 805 P.2d at 762. Under that circumstance, the supreme court held that an officer "'may briefly detain the vehicle and its occupants while he examines the vehicle registration and the driver's license.'" Id. at 763 (quoting State v. Schlosser, 774 P.2d 1132, 1135 (Utah 1989)). The supreme court further reiterated that the "length and scope of the detention must be "'strictly tied to and justified by'" the circumstances which rendered its initiation permissible.'" Id. (quoting Terry v. Ohio, 392 U.S. 1 (1968)). Ultimately, the supreme court determined that Johnson was improperly detained because the officer developed no reasonable suspicion of her

criminality during the course of the traffic stop. Specifically, the supreme court held that Johnson's detention "was beyond what was reasonably related in scope to the traffic stop" and was also "not justified by an articulable suspicion that [Johnson] had committed a crime." Id. at 764. See State v. Robinson, 797 P.2d 431, 435 (Utah App. 1990) ("Any further temporary detention for investigative questioning after the fulfillment of the purpose for the initial traffic stop is justified under the fourth amendment only if the detaining officer has a reasonable suspicion of serious criminal activity.").

In contrast, the initial stop of Blomquist's truck was based, in part, on at least a reasonable suspicion of both Blomquist's and defendant's involvement in a drug trafficking scheme. See Statement of The Facts, pp. 5-7 supra. See also State v. Higgins, 837 P.2d 9, 11 (Utah App. 1992) ("[The stopping of an automobile is constitutionally justified if the stop is based upon a reasonable and articulable suspicion that an occupant of the vehicle has committed or is about to commit a crime."), cert. granted, 857 P.2d 948 (Utah 1993), aff'd, State v. Higgins, No. 920494 (Utah November 10, 1994). Indeed, based on information available to police at the time of the stop, Sergeant Blackhurst ultimately obtained a search warrant for both defendants' persons, Blomquist's house and defendant's Corvette. See Statement of The Facts, pp. 7-8 supra. Accordingly, police were justified in detaining defendant, even apart from any

purpose they may have had in arresting Blomquist on the unrelated misdemeanor warrant. Higgins, 837 P.2d at 11.

C. Detention Reasonable and Appropriate

Further, the scope of defendant's brief detention was reasonable and consistent with principles of fourth amendment law, particularly the strong preference for warrant-supported searches, which was facilitated here. Illinois v. Gates, 462 U.S. 213, 236 (1983). As recognized by the United States Supreme Court, some

seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have an articulable basis for suspecting criminal activity.

Michigan v. Summers, 452 U.S. 692, 699 (1981).

The Summers Court held that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. 452 U.S. at 705. Accord State v. Banks, 720 P.2d 1380, 1383 (Utah 1986) (approving suspects' restraint by handcuffing during execution of search warrant "to prevent [suspect] from secreting contraband and to preserve the premises during the search."). It follows that it was similarly reasonable and appropriate, under the circumstances here, to briefly detain defendant pending confirmation that the search warrant had been signed. Cf. State v. South, Case No. 930362-CA, slip op. at 7 (Utah App. November 1, 1994)

(affirmatively noting that police can secure a home while a search warrant is obtained). See also United States v. Van Leeuwen, 397 U.S. 249 (1970) (29 hour detention of mailed packages for purposes of obtaining a search warrant held prudent and reasonable under the fourth amendment).⁸

Moreover, given the officers' reasonable suspicion that defendant had just delivered a load of controlled substances to Blomquist's residence, there was substantial law enforcement interest in preventing either defendant from returning to Blomquist's residence prior to the warrant's issuance and the trial court so ruled (R. 46) (see Addendum B). Specifically, police had a substantial interest in maintaining the status quo and in preserving contraband they anticipated finding on defendants' persons, and on the premises. See Adams v. Williams, 407 U.S. 143, 146 (1972) ("A brief stop of a suspicious individual, in order to determine his identity or to *maintain the status quo momentarily while obtaining more information*, may be most reasonable in light of the facts known to the officer at the time." (emphasis added)). See also State v. Folkes, 565 P.2d 1125, 1127 (Utah 1977) ("When a police officer sees or hears conduct which gives rise to suspicion of crime, he has not only the right but the duty to make observations and investigations to

⁸ But see Rawlings v. Kentucky, 448 U.S. 98, 110 (1980) (noting that legality of temporarily detaining a person at the scene of suspected drug activity to secure a search warrant may be an open question and then assuming for purposes of analysis that the suspect's 45 minute detention while police obtained a search warrant was error, but error did not constitute either flagrant or purposeful misconduct).

determine whether the law is being violated; and if so, to take such measures as are necessary in the enforcement of the law." (emphasis added)), cert. denied, 434 U.S. 971 (1977). The brevity of defendant's pre-warrant detention further illustrates the reasonable and even exemplary police conduct in this case. State v. Figueroa-Solorio, 830 P.2d 276, 280 (Utah App. 1992) (fact that entire pre-arrest detention lasted less than three minutes held a further indication of reasonableness).

POINT II

THE SEARCH WARRANT AFFIDAVIT ESTABLISHED A SUBSTANTIAL BASIS FOR THE MAGISTRATE'S PROBABLE CAUSE DETERMINATION

The magistrate had a substantial basis for determining that probable cause existed for the issuance of the search warrant for defendant's person and Corvette. The affidavit was not rendered inadequate due to allegedly unreliable and stale information.⁹ Quite the contrary, the affidavit set forth

⁹ Defendant broadly asserts that the instant warrant was an "anticipatory warrant." Br. of App. at 18-19, relying primarily on United States v. Garcia, 882 F.2d 699 (2nd Cir. 1989), cert. denied, 493 U.S. 943 (1989). Garcia defines an anticipatory warrant as "a warrant that has been issued before the necessary events have occurred which will allow a constitutional search of the premises; if those events do not transpire, the warrant is void." 882 F.2d at 702. Cf. State v. Slowe, 728 P.2d 110, 111-12 (Utah 1985) (discussing propriety of a preprepared affidavit). However, the present facts do not support defendant's claim; rather, all of the events set forth in Sergeant Blackhurst's affidavit occurred prior to the affidavit's presentation to Judge Erick (BR. 15-8) (see addendum A). Consequently, defendant has not and cannot show that the instant warrant was in any way an "anticipatory warrant." Accordingly, the State responds solely to defendant's allegations concerning the adequacy of probable cause.

mutually reinforcing allegations obtained from one confidential informant and two anonymous informants, as well as corroborative information gained through independent police investigation.

A. Informant Reliability

An informant's veracity, reliability and basis of knowledge are factors to be considered in determining whether, under the totality of the circumstances, probable cause exists. State v. Purser, 828 P.2d 515, 517 (Utah App. 1992). See Illinois v. Gates, 462 U.S. 213, 233 (1983). However, "[t]hey are not strict, independent requirements to be 'rigidly extracted' in every case." State v. Hansen, 732 P.2d 127, 130 (Utah 1987) (quoting Gates, 462 U.S. at 230). Rather, their significance varies under the circumstances of each case. Purser, 828 P.2d at 517 (citing State v. Bailey, 675 P.2d 1203, 1205 (Utah 1984)). For example, "if the circumstances as a whole demonstrate the truthfulness of the informant's report, a less strong showing is required." Purser, 828 P.2d at 517. Such a circumstance is found when corroborative information is provided by multiple confidential informants. Even if an individual informant's information is inadequate by itself to establish probable cause, it may nonetheless help to establish probable cause when corroborated by additional independent sources. State v. Singleton, 854 P.2d 1017, 1020 (Utah App. 1993).

1. Three Independent and Corroborative Sources

Accordingly, it is significant that three separate informants supplied information appearing in the present

affidavit and that the information was mutually reinforcing and corroborative. Jones v. United States, 362 U.S. 257, 271 (1960) ("Corroboration through other sources of information reduce[s] the chances of a reckless or prevaricating tale"),¹⁰ overruled on other grounds, 448 U.S. 83 (1980). Specifically, while the confidential informant simply reported that Blomquist was involved in drug trafficking, the anonymous informants corroborated that information with details implicating defendant in the scheme. The first anonymous informant reported that defendant made biweekly drug runs to Las Vegas in her Corvette and the second anonymous informant reported the approximate date of defendant's delivery of the next "load" of controlled substances (BR. 11) (see Addendum A). Due to the interlocking nature of the tips, the issuing magistrate reasonably relied upon all three reports in his probable cause determination. Id.

2. Informant's Provided Nothing in Exchange for Information

Notwithstanding corroboration between the three reports, the reliability and/or basis of knowledge of the informants is otherwise demonstrated. For example, the informants did not receive anything in exchange for their

¹⁰ See also United States v. Laws, 808 F.2d 92, 103 (D.C. Cir. 1986) ("fact that two apparently unassociated persons make the same assertion increases the probability that it is true"); United States v. Landis, 726 F.2d 540, 543 (9th Cir. 1984) ("Interlocking tips from different confidential informants enhance the credibility of each."), cert. denied, 467 U.S. 1230 (1984); United States v. Hyde, 574 F.2d 856, 863 (5th Cir. 1978) ("When three unreliable but unconnected persons all report the same fact, it is probable that the fact is true.")

information. This Court has previously recognized that when a confidential informant receives nothing in exchange for his/her information, the magistrate properly assumes the information is reliable. State v. Vigh, 871 P.2d 1030, 1034 (Utah App. 1994). Cf. Purser, 828 P.2d at 517 ("reliability and veracity are generally assumed when the informant is a citizen who receives nothing from the police in exchange for the information").

3. Confidential Informant Previously Reliable

Referring particularly to the reliability of the confidential informant, his/her reliability is established by the fact that he\she had provided reliable information on four previous occasions. Hansen, 732 P.2d at 130; State v. Anderton, 668 P.2d 1258, 1260 (Utah 1983) (indicating an informant has previously provided truthful information is an accepted method for establishing veracity).

4. Anonymous Informants Provided Insider Details

Additionally, the reliability of the anonymous informants is enhanced by the insider nature of their information. The first anonymous informant was able to supply details of the drug trafficking scheme including a description of defendant's Corvette, the frequency and purpose of her drug runs to Las Vegas, and her ultimate delivery of the controlled substances to Blomquist's residence (BR. 11) (see Addendum A). The informant's knowledge of defendant's travel habits reasonably suggests that the information was obtained either from defendant

or from someone defendant trusted and was therefore reliable.¹¹
Gates, 462 U.S. at 245; Purser, 828 P.2d at 517.

The same can be said for information reported by the second anonymous informant who personally overheard Blomquist state when he expected defendant to deliver the next "load." Purser, 828 P.2d at 517 (informant's personal observation of criminality is adequate to establish basis of knowledge).

**B. Independent Verification and
Corroboration of Significant Facts**

1. Police Investigation and Surveillance

Informant reliability is also enhanced by independent police investigation and corroboration of significant facts. Bailey, 675 P.2d at 1206; Purser, 828 P.2d at 517. In the present case, police verified that the described Corvette was in fact registered to defendant (BR. 9) (see Addendum A). Police also observed the Corvette at Blomquist's residence within 24 hours of its estimated arrival time (BR. 10) (see Addendum A). Gates, 462 U.S. at 244 (because an informant is shown to be right about some things, he is probably right about other facts that he

¹¹ Indeed, at the suppression hearing, Sergeant Blackhurst testified that he later found out that the first anonymous informant was defendant's ex-boyfriend (Tr. 46-47). He explained that this information was not included in the affidavit because it was not known at that time the affidavit was prepared. Id.

On appeal, defendant repeatedly suggests that the ex-boyfriend's tip was unreliable because it was motivated by anger, hostility or revenge. Br. of App. at 21-22. Defendant's assertions lack record support and/or legal analysis and should not be considered here. See State v. Cook, 714 P.2d 296, 297 (Utah 1986) (assertions of error that are unsupported by the record or relevant authority not ordinarily considered on appeal); State v. Bingham, 684 P.2d 43, 46 (Utah 1984) ("This Court cannot rule on matters outside the trial court record").

has alleged including the claim that the object of the tip is engaged in criminal activity).

Further, approximately nine days prior to the warrant's issuance, police observed a vehicle at Blomquist's residence belonging to Linda Iorg (BR. 10) (see Addendum A). Iorg's house had been the subject of a search warrant for drugs in 1989, which search lead to the arrest of Iorg's son on several charges of drug distribution. Id.

2. Criminal History

The defendants' criminal histories provided additional, independent corroboration of the informants' allegations. A check of defendant's criminal history revealed a a history of drug related arrests in 1988-89 (BR. 11) (see Addendum A). Blomquist's criminal history revealed a prior drug related conviction in 1984. Id.

In United States v. Harris, the United States Supreme Court considered the corroborative purposes of a suspect's criminal reputation in a search warrant affidavit. 403 U.S. 573, 581-83 (1971). The Court made clear that while a suspect's "reputation, *standing alone*, was insufficient" to establish probable cause; reputation was relevant to the probable cause determination "when supported by other information." Id. at 583. Accordingly, the Court declined to interpret its prior cases as prohibiting the use of such "probative information." Id. Rather, the Court concluded that it was entirely proper for a

magistrate to rely upon the affiant's knowledge of a suspect's reputation in assessing probable cause. Id.

We cannot conclude that a policeman's knowledge of a suspect's reputation - something that policemen frequently know and a factor that impressed such a "legal technician" as Mr. Justice Frankfurter - is not a "practical consideration of everyday life" upon which an officer (or a magistrate) may properly rely in assessing the reliability of an informant's tip.

Id. See Jones, 362 U.S. at 271 (discussed in Harris, wherein Frankfurter, J., writing for the majority, held that information "that [Jones] was a known user of narcotics made the charge (drug trafficking) against him much less subject to sceptism than would be such a charge against one without such a history")). Utah's appellate court's have similarly held. See e.g. Bailey, 675 P.2d at 1204, 1206 (police verification of Bailey's prior convictions for burglary and auto theft enhanced reliability of confidential informant's allegation that Bailey was involved in current burglary and theft); State v. Lee, 863 P.2d 49, 56 (Utah App. 1993) (confidential informant's allegations of suspects' involvement in drug trafficking found to "mesh" with affiant officer's knowledge of suspects' history of narcotic related convictions and arrests); State v. Buford, 820 P.2d 1381, 1385 (1991) (affidavit held to sufficiently establish named informant's reliability where informant accurately detailed Buford's prior criminal history of illegal drug use and sale).¹²

¹² Accord Commonwealth v. Spano, 605 N.E.2d 1241, 1243, 45-46 (Mass. 1993) (defendant's 1978 narcotic conviction held corroborative of informant's tip concerning defendant's

But Cf. Vigh, 871 P.2d at 1031; State v. Potter, 860 P.2d 952, 956 (Utah App. 1993); State v. Brooks, 849 P.2d 640, 644 (Utah App.), cert. denied, 860 P.2d 943 (Utah 1993) (all overlooking corroborative nature of suspect's criminal history and holding criminal history not properly part of probable cause determination).

C. Current Probable Cause

Defendant disputes that the foregoing information supports a finding of current probable cause. She complains both about the seven months between the initial incriminating tip and the issuance of a search warrant, and about the relevance of her prior drug related arrests. Due, however, to the significant fact that the search warrant was sought and executed on the very day defendant was suspected to have delivered a load of controlled substances to Blomquist's residence, defendant's staleness challenge must fail.

As recognized by the Utah Supreme Court,

Staleness issues usually arise when a significant lapse of time occurs between the discovery of information suggesting that

involvement in drug trafficking scheme); Malcolm v. State, 550 A.2d 670, 671, 675 (Md. 1988) (suspect's 1980 narcotic conviction held to corroborate informant's allegations of drug trafficking); State v. Amerman 581 A.2d 19, 30-31 (Md. App. 1990) (threefold purpose for including suspect's criminal history in search warrant affidavit is to: 1) demonstrate suspect's tendency to engage in related criminality; 2) independently corroborate informant's allegations of suspect's involvement in related offense; 3) demonstrate ongoing nature of suspect's involvement in continuous criminal enterprise); People v. Keller, 505 N.Y.S.2d 802, 806-07 (N.Y.Co.Ct. 1986) (arson suspect's prior arson arrests deemed relevant consideration in determining probable cause for issuance of a search warrant).

evidence of the crime can be found at a particular locale and the magistrate's finding of probable cause or the execution of the warrant. The concern is whether so much time has passed that there is no longer probable cause to believe that the evidence is still at the targeted locale.

State v. Thurman, 846 P.2d 1256, 1260 (Utah 1993) (citations omitted). Defendant fails to demonstrate any such significant lapse of time in this case.

Police first began receiving reports of Blomquist's involvement in drug trafficking in September 1992 (BR. 11) (see Addendum A). Five months later, an anonymous informant provided additional details incriminating defendant, including her ongoing and biweekly trips to Nevada to purchase controlled substances. Id. On March 3, 1993, approximately nine days before the warrant was sought, police observed the Iorg vehicle (persons known to be involved in controlled substances), at Blomquist's residence (BR. 10) (see Addendum A). One day later, on March 4, 1993, Sergeant Blackhurst heard from yet another anonymous informant who reported that Blomquist expected defendant to deliver the next "load" on or about March 10, 1993 (BR. 11) (see Addendum A). Then, on March 11, 1993, police observed defendant's Corvette at Blomquist's residence (BR. 10) (see Addendum A). With the foregoing information set forth in an affidavit, Sergeant Blackhurst sought a search warrant that very morning (BR. 13) see Addendum A). Because defendant cannot show a significant lapse of time between the observation of her Corvette at Blomquist's residence and the warrant's issuance, defendant's staleness

challenge fails. Thurman, 846 P.2d at 1260. See also Singleton, 854 P.2d at 1017-18, 1021 (approving search warrant obtained approximately 5 weeks after receipt of most recent incriminating evidence).¹³

Further, the affidavit alleges more than just an isolated incident of criminality. United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972) ("where the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant" to the determination of current probable cause). Rather, the affidavit sets forth an ongoing pattern of criminal activity; particularly, defendant's biweekly drug runs to Las Vegas. As acknowledged by this Court, drug trafficking is widely recognized as a protracted and ongoing type of criminal enterprise. Singleton, 854 P.2d at 1021 (citing, United States v. Feola, 651 F.Supp. 1068, 1090 (S.D.N.Y. 1987) (noting that drug distribution schemes "are the very paradigm of the continuing enterprises for which courts have relaxed the temporal

¹³ Accord United States v. Rowell, 903 F.2d 899, 903 (2nd Cir. 1990) (continuous nature of narcotics conspiracies precludes staleness challenge to affidavit based on approximate 18 month delay between procuring informant's statements and obtaining search warrant); United States v. Moscatiello, 771 F.2d 589, 597 (1st Cir. 1985) (approving affidavit alleging defendants' involvement in marijuana distribution one year earlier), vacated on other grounds, 476 U.S. 1138 (1986); Gardner v. State, 567 A.2d 404, 410-411 (Del. 1989) (rejecting staleness challenge to affidavit based on 10 month hiatus between anonymous tip alleging defendant's drug activity and date search warrant was issued), cert. denied, 494 U.S. 1067 (1990); State v. Grimshaw, 515 A.2d 1201, 1204 (N.H. 1986) (affirming probable cause determination based on informant's allegation of defendant's drug possession approximately seven months prior to affidavit).

requirements of non-staleness"), aff'd, 875 F.2d 857 (2d. Cir.), cert. denied, Marin v. United States, 493 U.S. 834 (1989)).

Accordingly, in addition to its corroborative purposes, see Part B, supra, defendant's prior drug related arrests and Blomquist's prior drug related conviction were properly used to demonstrate that their involvement with controlled substances has been continuous over the years and was likely ongoing at the time of the warrant's execution. State v. Stromberg, 783 P.2d 54, 55-57 (Utah App. 1989) (approximately eight year old conviction for unlawful possession held to support determination that Stromberg was involved in an ongoing pattern of marijuana use), cert. denied, 795 P.2d 1138 (Utah 1990).

Considering the totality of the circumstances, a common sense reading of Sergeant Blackhurst's affidavit suggests that there was probable cause to search defendant's person and Corvette. The trial court thus properly applied the highly deferential standards of review in examining the magistrate's determination of probable cause. It correctly rejected defendant's arguments that the information received from three independent informants was not reliable and was also stale in favor of the conclusion that the magistrate had a substantial basis for determining that there was a fair probability that evidence of the defendants' drug distribution scheme would be found on her person and inside her Corvette. Given the "Fourth Amendment's strong preference for searches conducted pursuant to a warrant," Gates, 462 U.S. at 236, this Court should similarly

conclude that the magistrate had sufficient foundation for determining that probable cause existed.

POINT III

EVEN IF THE SEARCH WARRANT AFFIDAVIT WAS
DEFECTIVE, POLICE EXERCISED GOOD FAITH
RELIANCE ON THE SEARCH WARRANT

Even if this Court were to conclude that Sergeant Blackhurst's affidavit was for some reason inadequate, the evidence seized would still be admissible under the good faith exception to the exclusionary rule set forth in United States v. Leon, 468 U.S. 897 (1984), and the trial court so ruled (R. 46), see Addendum B.¹⁴

Leon avoids suppression of evidence seized pursuant to a subsequently-invalidated search warrant, provided that officers conducting the search believed in good faith the warrant was valid. Further, the Leon exception to suppression requires that reliance on the defective warrant be objectively reasonable. Only then is the seized evidence admissible:

In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in

¹⁴ Defendant did not develop a state constitutional analysis of the good faith issue in the trial court, nor has she done so on appeal. Therefore, in the event the Court deems it necessary to reach this issue, the Court's analysis "must proceed solely under federal constitutional law." State v. Horton, 848 P.2d 708, 711 (Utah App. 1993), cert. denied, 857 P.2d 948 (Utah 1993). See State v. Collard, 810 P.2d 884, 885 n.2 (Utah App.) (Utah appellate courts "will not engage in a state constitutional analysis unless a party briefs a different analysis under the state constitution than that which flows from the federal constitution."), cert. denied, 817 P.2d 327 (Utah 1991).

preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.

Id. at 926.

Although defendant has not expressly challenged the good faith of the officers relying on the warrant, she does attempt to analogize the instant affidavit to that in State v. Droneburg, 781 P.2d 1303 (Utah App. 1989). The Droneburg affidavit relied solely on information obtained from one confidential informant. Id. at 1303. Although the informant had previously provided reliable information, his/her assertion was vague and conclusory, consisting of the bare allegation that controlled substances would be delivered to a residence in Panguitch, Utah, between the hours of 2:00 and 4:00 a.m.. Id. The affidavit was devoid of any corroborative information. Id. Because the Droneburg affidavit was "so lacking in indicia of probable cause" the State conceded "it was unreasonable for the officer who prepared the affidavit to rely on a warrant issued on the strength of it." Id. at 1305.

The instant affidavit is distinguishable from the ill-fated Droneburg affidavit. Sergeant Blackhurst's affidavit set forth mutually reinforcing and corroborating information gleaned from three different informants, as well as significant corroborative information obtained through independent police investigation. See Point II(B), supra. Even if Sergeant Blackhurst's affidavit failed in some way to clearly articulate probable cause, it was not so inadequate that police could not

have acted in objectively reasonable reliance on the search warrant that was issued by a neutral and detached magistrate. None of the facial deficiencies that negate objective good faith exist here. Leon, 468 U.S. at 923, 926. Nor is this a case wherein the issuing magistrate was misled by knowingly or recklessly false information, or otherwise failed to perform his neutral and detached function. Id.; State v. Horton, 848 P.2d 708, 711 (Utah App.), cert. denied, 857 P.2d 948 (Utah 1993). Consequently, any defect in the affidavit is not so obvious that police "had no reasonable grounds for believing that the warrant was properly issued." Leon, 468 U.S. at 923. Therefore, police reliance on the warrant issued was objectively reasonable and the deterrent purpose of the exclusionary rule would not be served by excluding the challenged evidence.

CONCLUSION

Based on the foregoing, the Court should affirm the denial of the motion to suppress and affirm defendant's convictions.

RESPECTFULLY SUBMITTED this 14th day of November, 1994.

JAN GRAHAM
Attorney General


MARIAN DECKER
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to SHELDEN R. CARTER, CARTER, PHILLIPS & WILKINSON, attorney for appellant, 3325 N. University Ave., Suite 200, Jamestown Square, Clocktower Bldg., Provo, Utah 84604, this 14th day of November, 1994.

Marian Becker

ADDENDA

ADDENDUM A

SEARCH WARRANT RETURN

STATE OF UTAH)
) ss
COUNTY OF UTAH)

CLERK OF DISTRICT COURT
MARCH 16 2 15 PM '93

931-289

Linda

INVENTORY OF PROPERTY TAKEN FROM THE RESIDENCE OF ROGER BLOMQUIST, 126 South Main, Pleasant Grove, Utah, on March 11, 1993, by authority of within SEARCH WARRANT issued by JUDGE DIMMICK, Circuit Court Judge, County of Utah, 1993.

1. Small metal can with rolling papers, 2 baggies containing marijuana, cigarette lighter and scissors.
2. Razor blade, glass tube with white crystals, glass pipe, rolled up in a white towel.
3. Pill in cigarette cellophane.
4. Cigarette cellophane with 3 brown pills.
5. Scales, hemostats, pipe, wire, 3 plastic funnels and marijuana seeds.
6. Hemostat.
7. Round red tin can containing wooden pipe, white pills in cellophane.
8. 2 straws in Corvette passenger seat.
9. Marijuana roach, in Corvette passenger seat.
10. 2 cigarette cellophane packages with marijuana seeds.
11. Brown vial with white residue.

I, SGT. MIKE BLACKHURST, the police officer by whom this warrant was executed, do swear that I have served the warrant and the above inventory contains a true and detailed statement of all property taken by me on the said warrant.

SUBSCRIBED and sworn to before me this 16 day of March, 1993.

John

CARLYLE K. BRYSON, #0473
Utah County Attorney
JAMES R. TAYLOR, #3199
Deputy County Attorney
100 East Center, Suite 2100
Provo, Utah 84611
Telephone 801-370-8026
Attorney for Plaintiff

IN THE FOURTH CIRCUIT COURT, STATE OF UTAH
COUNTY OF UTAH, AMERICAN FORK DEPARTMENT

STATE OF UTAH, EX PARTE :

IN THE MATTER OF :
SEARCH WARRANT
A NARCOTICS INVESTIGATION :

THE STATE OF UTAH TO ANY POLICE OFFICER OF THE STATE OF UTAH:

Magistrate's Endorsement It has been established by oath or affirmation made or submitted to me this 11th day of March, 1993, that there is probable cause to believe the following:

1. The property described below:

has been used or is possessed for the purpose of being used to commit or conceal the commission of an offense or is evidence of illegal conduct.

2. The property described below is most probably located upon the person or at the premises also set forth below.

3. The person or entity in possession of the property is a party to the alleged illegal conduct.

NOW THEREFORE, YOU AND EACH OF YOU, are hereby directed to conduct a search of the following described premises and persons:

The persons of Roger Blomquist and Linda Edinfield. The residence of the suspect(s), located at 126 South main Pleasant Grove and surrounding curtleage and outbuildings. The residence is more specifically described as a white stucco single family dwelling on the West side of main street in Pleasant Grove facing East. The residence has a dirt driveway of the North side and is the first residence south of the intersection of 100 North main street. There is a white brick unattached garage behind the residence on the West side.

The suspects vehicle that is described as a 1981 Chevrolet Corvette bearing Nevada License plate #693 EPS. The vehicle is registered to Linda Edinfield.

You are directed to search for the presence of controlled substances, paraphernalia used in the unlawful distribution or use of controlled substances, buy/owe sheets, scales, and all other contraband associated with controlled substances.

THIS WARRANT MAY BE SERVED:

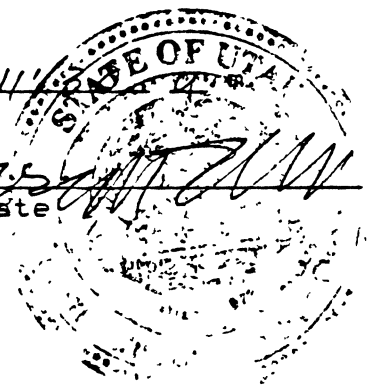
 IN THE DAYTIME

IF YOU FIND THE DESCRIBED PROPERTY, you are directed to bring the property forthwith before me at the above court or to hold the same in your possession pending further order of this court. You are instructed to leave a receipt for the property with the person in whose possession the property is found or at the premises where the property was located. After execution of the warrant you shall promptly make a verified return of the warrant to me together with a written inventory of any seized evidence, identifying the place where the property is being held.

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

Dated this 11 day of March, 1992 at 11:28 AM


Magistrate



CIRCUIT COURT, PROVO DEPARTMENT

UTAH COUNTY, STATE OF UTAH

)	PROBABLE CAUSE AFFIDAVIT
)	IN SUPPORT OF AND MOTION
STATE OF UTAH,)	FOR A SEARCH WARRANT
)	
-VS-)	
)	Case No. _____
IN THE MATTER OF A)	
NARCOTICS INVESTIGATION)	

STATE OF UTAH,)
 : SS.
COUNTY OF UTAH)

1. MIKE BLACKHURST , Being first duly sworn on oath,
deposes and says:

2. That I am a police officer for the Pleasant Grove
Police Department, Pleasant Grove, Utah County, Utah.

3. That I have been employed as a Policeman for the past
twenty four years and that I am currently assigned to the Utah
County Narcotics Task force. I have received training from the Utah
State Police Officers Standards and Training Academy, the Utah Drug
academy, and the DEA drug academy. This training covered all
aspects of drug enforcement and included substance identification,
confidential informants, undercover operations, controlled buys,
undercover drug buys, drafting search warrants, executing search
warrants, and all other areas of drug enforcement.

I have had experience in making undercover drug buys, writing and

their information, and conducting surveillance.

4. That in September of 1992, Detective Aundre Leavitt recieved information from a confidential informant that Roger Blomquist's was involved in the distribution and use of controlled substances.

5. That this same confidential informant has supplied information on as many as four individuals who were involved in the distribution of controlled substances and that this information has been proven to be reliable through other investigative methods.

6. That on January 28th, 1993, your affiant received information from an anonymous informant who said that that Linda Edinfield, the girlfriend of Roger Blomquist, was driving to the Las Vegas area in a Tan and Brown Chevrolete Corvette. The anonymous informant stated that the reason for these trips was to pick up controlled substances to be delivered back to Roger Blomquist. These trips occur approximately every two weeks, and that Linda carries a gun concealed in a compartment behind her seat.

7. That on March 4th, 1993, your affiant received information from a different anonymous informant who stated that a telephone conversation had been overheard in which Roger Blomquist stated that Linda Edinfield would be delivering a load within the next five to six days.

8. That with the above information on March 4th, 1993, surveillance was conducted at the residence of Roger Blomquist and it was discovered that the Tan and Brown Corvette was not at the residence. Periodic surveillance was conducted to watch for the arrival of the Corvette and it did arrive on March 11th, 1993.

9. That during the periodic surveillance Sergeant Lee Fox observed a vehicle parked at the Blomquist residence on March 3rd, 1993. This vehicle was bearing Utah License plate #942 BHN, and was registered to Linda Iorg. Sergeant Fox recalled that he had conducted a search warrant on the Iorg residence in 1989 wherein the son of Linda Iorg was arrested on several counts of distribution of controlled substance.

10. That a records check was conducted on both Roger Blomquist and his girlfriend Linda Edinfield. It was found that Roger Blomquist has a criminal record involving controlled substances with a conviction in March of 1984. It was also discovered that there was a misdemeanor warrant for his arrest out of the Pleasant Grove City Court.

11. That the records check of Linda Edinfield revealed that she has a criminal history indicating that she has been charged but never convicted with two counts of possession of cocaine in 1988, and two counts of possession of controlled substance in 1989.

12. That the vehicle Linda Edinfield is driving is more specifically described as a 1981 Chevrolet Corvette bearing Nevada License plate #693 EPS. The vehicle is registered to Linda Edinfield.

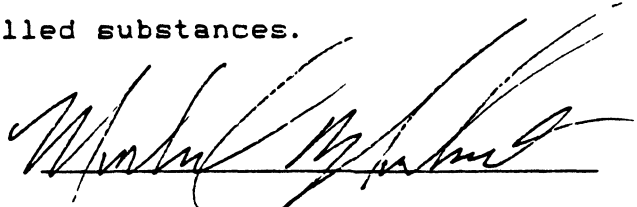
13. That the residence of Roger Blomquist is located at 126 South Main in Pleasant Grove and is more specifically described as a white stucco single family dwelling on the West side of main street in Pleasant Grove facing East. The residence has a dirt driveway of the North side and is the first residence south of the intersection of 100 North main street. There is a white brick unattached garage behind the residence on the West side.

14. That it is your affiants experience that subjects who deal in controlled substance wil commonly keep other items associated with their drug business in their possession. These items include drug paraphernalia, buy/owe sheets, scales, drug money, or any other items that would facilitate their drug deals.

15. That it is your affiants experience that those who deal in controlled substance will often conceal their drugs outside of their residence upon the curttledge of their property.

16. That the materials sought by this application for a search and seizure warrant are being held in violation of the Utah Controlled Substances Act and are evidence of felonious drug crime,

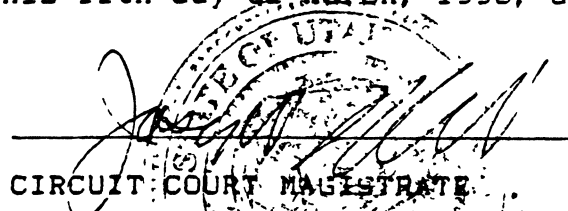
wherefore, your affiant respectfully requests that the Court issue its warrant for the search at any time of the day of the residence described above, and the person of the suspects, Roger Blomquist and Linda Edinfield, for the presence therein of controlled substances, paraphernalia used in the unlawful distribution or use of controlled substances, buy/owe sheets, scales, and all other contraband associated with controlled substances.



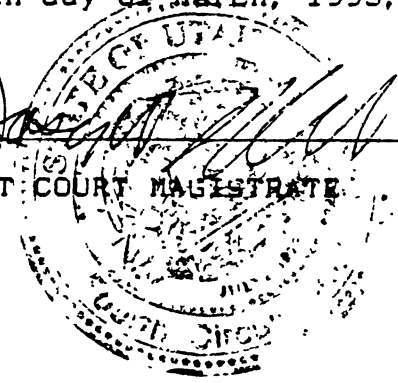
MIKE BLACKHURST

AFFIANT

Subscribed and sworn to before me this 11th day of March, 1993, at
11:30 hrs.



CIRCUIT COURT MAGISTRATE



ADDENDUM B

KAY BRYSON #0473
Utah County Attorney
JAMES R. TAYLOR #3199
Deputy Utah County Attorney
100 East Center, Suite 2100
Provo, Utah 84606
(801) 370-8026

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
10-14-93 Deputy

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

STATE OF UTAH,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
	:	
vs.	:	
	:	
ROGER A. BLOMQUIST, and	:	Case No. 931400386 FS
LINDA ANN EDENFIELD,	:	Case No. 931000385 FS
	:	
Defendant(s).	:	Judge Boyd L. Park

This matter came before the Court, the Honorable Boyd L. Park presiding on the 26th day of August, 1993. The Defendants were present in person and represented by Attorney Sheldon R. Carter. The Plaintiff was represented by Deputy Utah County Attorney, James R. Taylor. The Court having heard the evidence in this matter and issued a Memorandum Decision does make and enter the following:

FINDINGS OF FACT

1. In September of 1992, a detective of the Narcotics Enforcement Team received information from a trusted and reliable confidential informant that Defendant Roger Blomquist was involved in the distribution and use of controlled substances.

2. In January of 1993, a separate anonymous informant provided information that Linda Edenfield, the girlfriend of Roger

Blomquist, was driving to Las Vegas in a tan and brown Chevrolet Corvette to obtain controlled substances to deliver back to Roger Blomquist.

3. The anonymous informant said the trips occurred every two weeks and that Edenfield carried a gun concealed in a compartment behind her seat.

4. In March of 1993, officers received information from a third informant who claimed to have overheard a telephone conversation in which Blomquist stated that Edenfield would be delivering a load within the next five to six days.

5. After receiving the information on March 4, 1993, officers began surveillance of the residence of Blomquist and discovered that the tan and brown Corvette was not at the residence.

6. Periodic surveillance was continued until March 10, 1993. During the period of surveillance a vehicle registered to Linda Iorg was seen parked at the home.

7. Iorg was arrested on several counts of controlled substances in 1989. Roger Blomquist was also found to have had a criminal record involving controlled substances with a conviction in March of 1984.

8. Officers determined that an active warrant for the arrest of Roger Blomquist existed out of the Pleasant Grove City Court.

9. The name Linda Edenfield was also checked and it was determined that there were several narcotics related convictions

appearing on the record.

10. A Chevrolet Corvette bearing Nevada license number 693EPS was registered to Linda Edenfield.

11. On March 11, 1993, all of the information obtained by the officers was put together in an affidavit and taken to Judge Dimick of the Orem Circuit Court who executed a search warrant authorizing search of the Blomquist residence, a 1981 Corvette registered to Linda Edenfield, the person of Linda Edenfield, and the person of Roger Blomquist. A copy of the search warrant and affidavit are attached hereto and incorporated by reference.

12. On March 11, 1993, officers commenced surveillance of the Blomquist residence. Officer Blackhurst was in the process of acquiring the search warrant described above. While the Blomquist residence was under surveillance the Defendants, Linda Edenfield and Roger Blomquist, left the residence and entered a vehicle owned by Defendant Blomquist.

13. The Blomquist vehicle was stopped sometime around 10:30 a.m. Blomquist was arrested on the warrant and Edenfield was detained briefly until officers received information that the search warrant had been signed.

14. Edenfield and Blomquist were then transported to the Pleasant Grove Police Department where Edenfield was searched pursuant to the warrant.

15. Neither the Blomquist residence nor the Edenfield vehicle

were searched until the search warrant was appropriately executed by Judge Dimick.

16. The purse of Defendant Edenfield was with her when the vehicle was stopped and taken with her to the police station. The purse was part of her person and appropriately searched pursuant to the search warrant.

17. The stop of Roger Blomquist and the execution of the arrest warrant and execution of the search warrant were essentially contemporaneous.

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

CONCLUSIONS OF LAW

1. Under the totality of the circumstances analysis the facts as established in the affidavit in support of the search warrant established adequate probable cause to support the search warrant issued. Information from separate sources was corroborative and consistent providing a sufficient basis for the Magistrate to conclude that there was fair probability that the evidence sought would be found in the car, in the house, or on the person of the individuals described.

2. The stop of the Blomquist vehicle and the temporary detention of the Defendants prior to the physical arrival of the search warrant was appropriate because of the mobility of the

Defendants and the likelihood that they may have had evidence upon their person.

3. All officers involved in this operation acted in a good faith attempt to comply with the Rules of Evidence and Constitution of the United States. Officers acted reasonably and prudently to prevent the loss or destruction of expected evidence without inappropriate intrusion upon the privacy of the suspects.

4. The initial seizure of the person of Linda Edenfield was lawful under the exigent circumstances exception to the warrant requirement.

5. The method employed by the officers was reasonable and employed in a reasonable manner in that the officers had an obvious and legitimate concern when the suspects left the home and entered a vehicle that evidence would leave with them. The immediate stop and detention without further search until they had received information that the search warrant being sought at the present time was executed was appropriate. No lesser intrusion would have preserved the evidence. No more intrusive action was undertaken until the fact that the warrant had been signed was confirmed.

6. Police officers had received a valid search warrant based upon evidence independent of the stop and detention of Edenfield. Even if the search took place before the warrant was obtained the fact that a warrant was obtained made discovery of the evidence inevitable and the evidence should not be suppressed even if it were to be determined by this Court that the search took place

before execution of the warrant.

DATED this 14 day of October, 1993.

BY THE COURT:

BOYD L. PARK
DISTRICT JUDGE

APPROVED AS TO FORM:

SHELDEN R. CARTER
ATTORNEY FOR DEFENDANTS

ADDENDUM C

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

Nov 2 6 09 AM '93

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

STATE OF UTAH	Plaintiff,	RULING
vs.		CASE NO. 931400385 & 386
LINDA ANN EDENFIELD and ROGER A. BLOMQUIST	Defendants.	DATE: November 2, 1993
		BOYD L. PARK, JUDGE
		CLERK: LHH

This matter came before the Court Defendants' Motion for Reconsideration of Ruling.

Defendants contend the case of State v. Potter, 221 Ut. Adv. Reports 29, compels this court to rule differently regarding Defendants' Motion to Suppress. This court issued its Memorandum Decision on Defendants' Motion to Suppress on September 15, 1993.

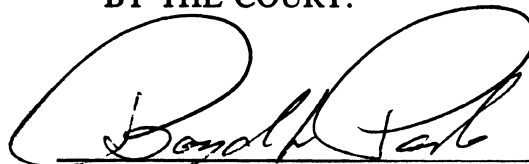
The court having read the Defendants' Motion for Reconsideration and Plaintiff's Memorandum in Response and the case of State v. Potter, and being fully advised in the premises now makes the following:

RULING

(1) Defendants' Motion for Reconsideration of Ruling is denied. This court does not believe *Potter* alters the existing law in this state regarding search warrants.

Dated this 2nd day of November, 1993.

BY THE COURT:



BOYD L. PARK, JUDGE

cc: Utah County Attorney
Shelden Carter, Esq.

OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

FILED
Utah Court of Appeals

NOV 15 1994

Marilyn M. Branch
Clerk of the Court

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Director of Public Policy & Communications

November 15, 1994

Marilyn Branch
Clerk of the Court
Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102

**Re: State v. Edenfield, Case No. 940368-CA,
and State v. Blomquist, Case No. 940369-CA.**

Dear Ms. Branch:

Since the filing of the State's responsive briefs in these matters, pertinent and significant authority has come to my attention concerning the issue set out in the State's Edenfield brief at Point II(B)(2), pp. 26-28, and in the State's Blomquist brief at Point I(B)(2), pp. 19-21. The State cites as supplemental authority, State v. Miller, 740 P.2d 1363, 1365-66 (Utah App. 1987).

This supplemental authority is submitted pursuant to rule 24(i), Utah Rules of Appellate Procedure.

Sincerely,

Marian Decker

Marian Decker
Assistant Attorney General

cc: Sheldon R. Carter