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7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9	THE STATE OF NEVADA)	
10	Plaintiff,)	CASE NO. C114390
11	v.)	DEPT. NO. XII
12	CURTIS LUNDY DOWNING,)	Date of Hearing: 5-17-95
13	Defendant.)	Time of Hearing: 9:00 A.M.

14 MOTION TO SUPPRESS

15 COMES NOW the Defendant, CURTIS LUNDY DOWNING, by and
16 through his attorney, Deputy Public Defender Kevin V. Williams,
17 and files this motion to suppress.

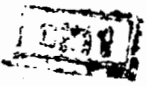
18 This Motion is based upon NRS 171.1232, the attached
19 Memorandum of Points and Authorities, and upon the arguments of
20 counsel at the time set for hearing on this motion.

21 DATED this 2nd day of May, 1995.

22 CLARK COUNTY PUBLIC DEFENDER

23
24 By *[Signature]*
25 KEVIN V. WILLIAMS #3845
DEPUTY PUBLIC DEFENDER

(EXHIBIT "G")



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 The victim in this case, Ms. Kristie Childs, was
4 sexually assaulted in her apartment. Ms. Childs' attacker was
5 described as a black male adult 6 3" tall with a medium build.
6 The perpetrator in this action allegedly performed this act in the
7 following manner:

8 1. The perpetrator was armed with a blue steel
9 revolver.

10 2. The perpetrator used tape that was probably white
11 and wider than Scotch tape.

12 3. The perpetrator used rope similar to water skiing
13 rope, maybe polyester fiber, to tie up the victim.

14 4. The perpetrator wore a three-hole ski mask.

15 5. The perpetrator wore gloves that were similar to a
16 knit top with a leather palm.

17 6. The perpetrator wore sweat clothes of an unknown
18 color/nature.

19 As a result of the investigation in this action several
20 latent fingerprints were recovered. One of the partial palm
21 prints recovered was identified as belonging to Curtis Downing.

22 The Las Vegas Metropolitan Police Department
23 subsequently obtained a warrant to search Mr. Downing's place of
24 residence. The warrant was to look for the following items:

25 1 A hand gun described as a "blue steel revolver";

26 2. Tape that's probably white and wider than "scotch"
27 tape;

28 3. Rope similar to water skiing rope, may be

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polyester;

4. A three-hole ski mask;
5. Gloves that are similar to a "knit top" with leather palm;
6. Clothing consisting of "sweat clothes";
7. Limited items of personal property which would show the identity of persons in control of said premises, which items of property would consist in part of, but not limited to, rent receipts, addressed envelopes and mail, photographs, leases and utility bills.

As a result of said warrant the following items were recovered:

1. UMC billing addressed to Curtis Downing at 3883 Silver Dollar #6.
2. Canyon Warehouse delivery slip to: Curtis Downing at 3883 Silver Dollar #6.
3. One pair of soft leather gloves.
4. Two knit ski caps.
5. Two sweat shirts.
6. One sweat pants.
7. One roll of duct tape.
8. Misc. papers.

After the discovery of these items, Mr. Downing is being held as the prime suspect in this case.

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1 ARGUMENT

2 I

3 THE SEARCH WARRANT IN QUESTION
4 FAILED TO STATE A SUFFICIENT BASIS
5 FOR PROBABLE CAUSE TO SUPPORT THE
6 ISSUANCE OF SAID WARRANT.

7 According to NRS 179.045 a search warrant may issue only
8 on an affidavit or affidavits sworn before the magistrate and
9 establishing the grounds for the issuance of the warrant.

10 The grounds for the issuance of a warrant must establish
11 that probable cause exists to search the location for the items
12 sought in the warrant.

13 Probable cause exists when known facts and circumstances
14 are sufficient to warrant a man of reasonable prudence in the
15 belief that an offense has been or is being committed. U.S. v.
16 Davis, 458 F.2d 819 (D.C. Cir. 1972). The facts in question must
17 be reviewed under the totality of the circumstances approach.
18 Illinois v. Gates, 103 S.Ct. 2317 (1983).

19 In this particular case a man of reasonable prudence
20 could not, after reviewing the totality of the circumstances,
21 conclude that a search warrant should have been issued for Mr.
22 Downing's residence.

23 In their application to support their search warrant,
24 the police expressed the following factors:

- 25 1. That a Ms. Kristie Childs was raped.
- 26 2. That several latent prints were found at the crime
27 scene.
- 28 3. That one of the prints came back as a matching
print of Mr. Downing.

1 4. That Mr. Downing matched the general description of
2 Ms. Childs' attacker. (Black male, approximate body size).
3 The above-mentioned factors viewed individually or taken as a
4 whole do not constitute sufficient probable cause to issue a
5 search warrant.

6 Factor #1 merely states that a crime occurred. However,
7 it does not identify the perpetrator at all.

8 Factor #2 merely states that several prints were found
9 at the crime scene. (Thus several suspects were possible).

10 Factor #3 simply states that Mr. Downing's prints were
11 found at the scene. (Note this factor is not entirely true and is
12 very misleading).

13 Factor #4 claims that Mr. Downing "matched" the general
14 description of how Ms. Childs described her attacker. The
15 description recited in the affidavit is so vague one cannot even
16 guess how tall Ms. Childs' attacker was, or how closely Mr.
17 Downing "matched" Ms. Childs' description. In fact, the
18 description is so vague one of several million individuals could
19 match it.

20 The above-mentioned factors when viewed collectively do not
21 amount to a sufficient basis for the issuance of a search warrant
22 either.

23 Factors #2 and #3 merely state that several latent
24 prints which also included Mr. Downing's print was found in the
25 apartment. Factor #2 makes no mention of whether the other latent
26 prints that were recovered were processed to identify and/or
27 exclude them as belonging to another individual who matches the
28 description of Ms. Childs' attacker. Factor #3 does not explain

1 that it was unusual for Mr. Downing's print to be found in the
2 apartment at all.

3 Factor #4 is still too vague to have any impact on
4 identifying Mr. Downing as the perpetrator of this assault.

5 In light of the foregoing assessment, the State in their
6 search warrant failed to articulate a reasonable basis that would
7 allow for the issuance of a search warrant. Therefore, the State
8 lacked probable cause to seize the items in question. Thus, all
9 items procured through this warrant should be suppressed. The
10 warrant also must be suppressed because it was facially invalid.

11 II

12 THE SEARCH WARRANT IN THIS ACTION
13 IS FACIALLY INVALID.

14 NRS 179.045 governs the contents a warrant must have for
15 it to be facially valid. NRS 179.045, in essence, requires that:

16 1. A warrant be issued on an oral or written
17 affidavit.

18 2. The warrant must be signed by the magistrate or by
19 someone else the magistrate authorizes to sign his name.

20 3. The warrant must state the grounds for probable
21 cause.

22 4. It must state the names of persons whose affidavits
23 have been taken in support thereof.

24 5. It must specify the person or property to be
25 seized.

26 6. It must direct that it be served between 7:00 a.m.
27 and 7:00 p.m. unless otherwise ordered by the magistrate.

28 7. The warrant must designate the magistrate to whom

1 it is to be returned.

2 In this particular case the search warrant does not
3 specify the time it is to be served. (A copy of the warrant is
4 attached as part of Exhibit A). The warrant also does not specify
5 which magistrate it is to be returned. In this regard, the
6 warrant is clearly insufficient on it's face as to time of
7 service. Likewise, the warrant was not timely executed.

8 III

9 THE WARRANT IN THIS CASE WAS NOT
10 TIMELY EXECUTED.

11 The warrant in this case was not executed in a timely
12 manner under NRS 179.045.

13 NRS 179.045(5) requires that a warrant be served
14 forthwith. The warrant in this case is dated June 30, 1992. The
15 application for the warrant is dated June 30, 1993. According to
16 these dates, it is impossible to tell if the warrant was served
17 forthwith as required in NRS 179.045(5). In light of this breach
18 of time in the warrant, the evidence seized pursuant to the
19 warrant must be suppressed.

20 IV

21 THE APPLICATION FOR THE WARRANT TO
22 SEARCH MR. DOWNING'S HOUSE IS
23 FACTUALLY FALSE AND ALL ITEMS
24 SEIZED PURSUANT TO SAID WARRANT
25 MUST BE SUPPRESSED.

- 26 1. THE STATE MADE SEVERAL FALSE
27 STATEMENTS IN IT'S APPLICATION
28 FOR A SEARCH WARRANT.

In Franks v. Delaware, 98 S.Ct. 2674, the U.S. Supreme
Court held that an accused individual may challenge the accuracy
and veracity of an affiant's statements contained in an

1 application for a search warrant.

2 The Court in Franks further noted that a false statement
3 which was made knowingly and intentionally, or in a reckless
4 disregard for the truth about a material fact, would invalidate
5 the warrant.

6 In this particular case, the affiant made several false
7 statements in the warrant. These false statements were about
8 material facts.

9 The first false statement made by the affiant in the
10 application for the search warrant was that Curtis Downing left
11 fingerprints at the crime scene. Fingerprints left at the crime
12 scene are definitely a material fact.

13 Several latent fingerprints were recovered from Ms.
14 Childs' apartment. However, only one print was identified as
15 possibly matching Mr. Downing.

16 The print in question was a partial palm print and not
17 a fingerprint. The nature and quality of the print was never
18 revealed in the search warrant. The other prints were never
19 examined/identified. The failure of the State to explain the true
20 nature of the print clearly makes this allegation false.

21 The second false statement made by the affiant was that
22 Mr. Downing fit the description given by Ms. Childs. A
23 description of Ms. Childs' attacker clearly is material to this
24 case.

25 According to the affidavit, Ms. Childs described her
26 attacker as male, black, and his (Mr. Downing's) approximate body
27 size. See Exhibit A.

28 This description by the affiant is so vague that one is

1 forced to "guess" as to Mr. Downing's appearance. The vagueness
2 of this description clearly makes this assertion false in regards
3 to supporting the search warrant. This vagueness on behalf of the
4 affiant in support of the warrant also under the law invalidates
5 the warrant.

6 2. THE STATE'S OMISSIONS OF KEY
7 FACTS IN THE WARRANT WERE
8 MISLEADING AND CAUSES THE
9 WARRANT TO BE INVALID.

10 As stated previously the U.S. Supreme Court in Franks v.
11 Delaware, 98 S.Ct. 2674 (1978) held that an intentional or
12 reckless material misrepresentation by an affiant in a search
13 warrant would cause the search warrant to fail if the material
14 misrepresentations voided probable cause. The omission of key
15 facts in a warrant is also extremely detrimental to the validity
16 of the affidavit supporting the search warrant in this case.

17 Instructive in this regard is People v. Kurland, 28
18 Cal.3d 376 (1980). In Kurland, the court, in regards to
19 "omissions" in a search warrant affidavit, stated that:

20 We conclude ... that facts are "material" and
21 hence must be disclosed if their omission
22 would make the affidavit substantially
23 misleading. On review ..., facts must be
24 deemed material for this purpose if, because
25 of their inherent probative force, there is a
26 substantial possibility they would have
27 altered a reasonable magistrate's probable
28 cause determination.

29 In this case, the State claimed that Mr. Downing's print
30 along with several other prints was found at the crime scene. The
31 nature quality and location of Mr. Downing's print, the nature
32 quality and location of the other prints found in the apartment
33 are missing from the affiant's statement. In fact, no mention is

1 made as to whether any of the prints had been processed at all.

2 The omission of the nature and quality of the print
3 (i.e. that it was a partial palm print) and the fact that the
4 other prints had not been processed for a "match" clearly would
5 have a substantial possibility of altering a reasonable
6 magistrate's probable cause determination.

7 Likewise the affiant's assertion that Mr. Downing
8 matched the vague physical description given by Ms. Childs of her
9 attacker is clearly misleading because it omits key facts. The
10 affiant in the search warrant failed to articulate how Mr. Downing
11 matched the description of Ms, Childs' attacker. (e.g. height,
12 weight, color, etc.). This derth of information clearly forced
13 the magistrate to speculate about Mr. Downing's true appearance
14 which is a material fact.

15 Given these problems, the affiant clearly omitted key
16 facts in his application for the search warrant. Thus, the
17 material obtained from the search warrant should be suppressed due
18 to the affiant's intentional and reckless disregard for material
19 facts and said affiant's failure to disclose those material facts.

20 V

21 THE PROPERTY SEIZED PURSUANT TO THE
22 SEARCH WARRANT MUST BE SUPPRESSED
23 AND RETURNED BECAUSE IT BEARS NO
24 RESEMBLANCE TO THE PROPERTY SOUGHT,
THE DESCRIPTION OF THE ITEMS WAS
VAGUE AND THE ITEMS ARE IRRELEVANT.

25 1. THE ITEMS SEIZED WERE NOT THE
26 ITEMS DESCRIBED IN THE SEARCH
WARRANT.

27 Defendant Downing is seeking the return and the
28 suppression of his property seized from his residence located at

1 3883 Silver Dollar #6, Las Vegas Nevada 89102, which occurred on
2 or about the 30th day of June, 1993.

3 Downing seeks the return of his property pursuant to NRS
4 179.0851(b)(c)(d), 2, 3, which provides in part:

- 5 1. A person aggrieved by an unlawful search
6 and seizure may move the court having
7 jurisdiction where the property was
8 seized for the return of the property
9 and to suppress for use as evidence
10 anything so obtained on the ground that:
 - 11 b. The warrant is insufficient on its face,
 - 12 c. There was not probable cause for
13 believing the existence of the grounds
14 on which the warrant was issued; or
 - 15 d. The warrant was illegally executed.

16 The judge shall receive evidence on any issue
17 of fact necessary to the decision of the
18 motion.

19 2. If the motion is granted the property
20 shall be restored unless otherwise subject to
21 lawful detention and it shall not be
22 admissible evidence at any hearing or trial.

23 3. The motion to suppress evidence may also
24 be made in the court where the trial is to be
25 had. The motion shall be made before trial
26 or hearing unless opportunity therefore did
27 not exist or the defendant was not aware of
28 the grounds for the motion, but the Court in
its discretion may entertain the motion at
trial or hearing.

Downing's motion is also made pursuant to NRS 179.105
which provides in part:

NRS 179.105. Retention of property taken on
warrant by officer subject to court order;
restoration of property to person from whom
it was taken; technical irregularities will
not quash warrant. All property or things
taken on a warrant must be retained by an
officer in his custody, subject to the order
of the court to which he is required to
return the proceedings before him, or of any
other court in which the offense in respect

1 to which the property or things are taken is
2 triable. If it appears that the property
3 taken is not the same as that described in
4 the warrant, or that there is no probable
5 cause for believing the existence of the
6 grounds on which the warrant was issued, the
7 magistrate shall cause it to be restored to
8 the person from whom it was taken. However,
9 no search warrant shall be quashed by any
10 magistrate or judge within this state nor
11 shall any evidence based upon a search
12 warrant be suppressed in any criminal action
13 or proceeding because of mere technical
14 irregularities which do not affect the
15 substantial rights of the accused.

16 It is clear that the substantial rights of the accused
17 are indeed affected. It is also clear that none of the items
18 seized from Mr. Downing's residence has any resemblance to or has
19 anything to do with the State's case in chief.

20 As made clear by the search warrant return, (See Exhibit
21 A), the state sought the following items:

- 22 1. A hand gun described as a "blue steel revolver";
- 23 2. Tape that's probably white and wider than "scotch"
24 tape;
- 25 3. Rope similar to water skiing rope, may be
26 polyester;
- 27 4. A three-hole ski mask;
- 28 5. Gloves that are similar to a "knit top" with
leather palm;
6. Clothing consisting of "sweat clothes";
7. Limited items of personal property which would
show the identity of persons in control of said
premises, which items of property would consist in
part of, but not limited to, rent receipts,
addressed envelopes and mail, photographs, leases

1 and utility bills.

2 As a result of said warrant the following items were recovered:

- 3 1. UMC billing addressed to Curtis Downing at 3883
- 4 Silver Dollar #6.
- 5 2. Canyon Warehouse delivery slip to: Curtis Downing
- 6 at 3883 Silver Dollar #6.
- 7 3. One pair of soft leather gloves.
- 8 4. Two knit ski caps.
- 9 5. Two sweat shirts.
- 10 6. One sweat pants.
- 11 7. One roll of duct tape.
- 12 8. Misc. papers.

13 None of the items seized in the execution of the warrant
14 except for the sweat clothes bear any resemblance to the items
15 sought in the application for the search warrant. The knit caps
16 are not identified as being three hole ski masks. The tape is not
17 identified as being a whitish type tape which was supposedly used
18 by the attacker. The only items mentioned in the search warrant
19 application and its return which are somewhat similar are the
20 sweat clothes. However, these items do not truly match the items
21 requested in the search warrant. Thus, the property must be
22 returned under NRS 179.105.

23 2. THE DESCRIPTION OF THE
24 PROPERTY WAS TOO VAGUE IN
REGARDS TO THE SWEAT CLOTHES.

25 The search warrant asks for the ability to search and
26 seize sweat clothes. The search warrant, however, fails to
27 articulate the nature, quality or color of the sweat clothes that
28 are to be seized. This vagueness does not establish a nexus

1 between the clothes and the crime. This vagueness in the search
2 warrant also left it up to the officer's discretion as to what
3 sweat clothes were to be seized. This vagueness also warrants the
4 suppression of the clothes.

5 According the U.S Supreme Court in Steele v. U.S., 267
6 U.S. 498, 503 (1925), a warrant should describe places to be
7 searched and objects to be seized with sufficient particularity to
8 leave "nothing ... to the discretion of the officer executing the
9 warrant".

10 It is a given fact that sweat clothes are such a common
11 item that they can be found in most households throughout the
12 country. The officer executing the warrant was clearly left to
13 his discretion to obtain items, i.e. sweat pants, shirts, etc.
14 because items in the warrant were not described sufficiently.
15 This failure to describe the sweat clothes sufficiently makes them
16 irrelevant and inadmissible.

17 Thus without a description the nexus between the seized
18 clothes and the crime is too remote to make them relevant to this
19 case. This failure to link the items that were seized from
20 Downing's residence to the case in chief is fatal to the seizure
21 of those items.

22 3. THE ITEMS SEIZED PURSUANT TO
23 THE WARRANT ARE IRRELEVANT AND
24 INADMISSIBLE UNDER NRS
48.0145.

25 Under the law only relevant evidence may be admitted at
26 trial. Relevant evidence is defined under NRS 48.0145, as

27 NRS 48.015. "Relevant evidence" defined. As
28 used in this chapter, "relevant evidence"
means evidence having any tendency to make
the existence of any fact that is of

1 consequence to the determination of the
2 action more or less probable than it would
without the evidence.

3 Since none of the items seized pursuant to the search
4 warrant fit the description of the items sought except in a most
5 vague and general manner, none of these items are relevant to the
6 case in chief. These items would, therefore, only serve to
7 confuse a jury if they were allowed to consider this evidence as
8 proving a nexus between Mr. Downing and the crime in question.
9 Therefore, said items are inadmissible for that purpose.

10 VI

11 THE INVALIDITY OF THE SEARCH
12 WARRANT AND THE SUPPRESSION OF ALL
13 EVIDENCE SEIZED PURSUANT TO THE
14 WARRANT RESULTS IN A LACK OF
PROBABLE CAUSE TO ARREST MR.
DOWNING AND NECESSITATES DISMISSAL
OF THE CHARGES AGAINST HIM.

15 The foregoing arguments concerning the search warrant
16 clearly document the necessity for suppressing the evidence in
17 this case. The suppression of evidence in this case destroys the
18 existence or probable cause against Mr. Downing and requires that
19 these charges be dismissed.

20 CONCLUSION

21 Wherefore, Defendant Downing, with the foregoing
22 reasons, prays that this Honorable Court will issue an order for

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the return of said property, as well as the suppression of said evidence.

DATED this 2nd day of May, 1995.

CLARK COUNTY PUBLIC DEFENDER

By 
KEVIN V. WILLIAMS #3845
DEPUTY PUBLIC DEFENDER

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion for Return of Property and Suppression will be heard on May 17, 1995, at 9:00 A.M. in Department No. XII of the District Court.

DATED this 2nd day of May, 1995.

CLARK COUNTY PUBLIC DEFENDER

By *[Signature]*
KEVIN V. WILLIAMS #3845
DEPUTY PUBLIC DEFENDER

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this 3rd day of May, 1995.

CLARK COUNTY DISTRICT ATTORNEY

By *Pat Hoan*

(Mot\Curtis)

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