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**RE: SB 316-SEARCH WARRANT PROCEDURES/SAFETY
CONSIDERATIONS**

A SESSION OR TWO AGO WE ASKED THIS COMMITTEE TO ADDRESS THE ISSUE OF WHETHER OR NOT AN AFFIDAVIT SETTING FORTH THE INFORMATION NECESSARY FOR PROBABLE CAUSE WAS TO BE LEFT AT THE LOCATION OF THE SEARCH. IT WAS DEMONSTRATED TO THE SATISFACTION OF THE JUDICIARY COMMITTEE THAT IT WAS NOT NECESSARY TO LEAVE THE AFFIDAVIT WHICH IN MANY INSTANCES WOULD CREATE A SAFETY ISSUE FOR PERSONS MENTIONED IN THE AFFIDAVIT.

THE CONSTITUTION MANDATES THAT NO WARRANT SHALL ISSUE EXCEPT BASED UPON PROBABLE CAUSE. PROBABLE CAUSE IS GENERALLY PRESENTED TO A MAGISTRATE VIA A WRITTEN AND SWORN AFFIDAVIT. FROM TIME TO TIME A SWORN STATEMENT OVER A TELEPHONE TO A JUDGE MAY PROVIDE THE PROBABLE CAUSE. LATER THE ORAL STATEMENT IS REDUCED TO WRITING.

A SEARCH WARRANT MUST STATE THAT THERE IS PROBABLE CAUSE TO BELIEVE A CRIME HAS BEEN COMMITTED AND EVIDENCE OF THAT CRIME EXISTS IN A PARTICULAR PLACE AT A PARTICULAR TIME. ONCE THE JUDGE SIGNS THE WARRANT, IT IS EXECUTED BY THE POLICE. AFTER THE SEARCH IS COMPLETED THE POLICE LEAVE A COPY OF THE WARRANT AND AN INVENTORY OF WHAT WAS SEIZED AT THE LOCATION SEARCHED.

PRIOR TO THE TIME THAT THE VALIDITY OF THE SEARCH BECOMES AN ISSUE THE DEFENDANT IS ENTITLED TO A COMPLETE COPY OF ANY DOCUMENTS OR STATEMENTS RELIED UPON BY THE COURT IN DETERMINING PROBABLE CAUSE.

OUR SUPREME COURT INTERPRETED OUR PRIOR EFFORTS AS MANDATING THAT THE AFFIDAVIT BE LEFT ALONG WITH THE WARRANT AND THE INVENTORY. THIS EARLY DISCLOSURE PLACES INNOCENT CITIZENS IN HARMS WAY.

IT IS THE INTENTION OF THIS LEGISLATION TO MAKE IT CLEAR THAT THE AFFIDAVIT NEED NOT BE LEFT AT THE SCENE OF THE SEARCH. THE DEFENDANT WILL HAVE COPIES OF ALL ITEMS WELL IN ADVANCE OF ANY PRE-PRELIMINARY OR PRE-TRIAL PROCEEDINGS.

ASSEMBLY JUDICIARY

DATE: 5-07-03 ROOM 3138 EXHIBIT C

SUBMITTED BY: Kristin Erickson

C-1 of 15

1 CLIFTON: Thank you. If you could go ahead and
2 swear in Detective Kirby.

3 DANNAN: Alright. Detective do you swear to tell
4 the truth, the whole truth and nothing
5 but the truth, so help you God?

6 KIRBY: I do.

7 DANNAN: Okay, go ahead.

8 CLIFTON: Alright, I'll have him read verbatim the
9 affidavit your Honor. It's fairly
10 lengthy.

11 DANNAN: Alright.

12 CLIFTON: Thank you.

13 ***

14 (Attached Affidavit For Search Warrant read by Officer Bruce Kirby)

15 ***

16 CLIFTON: That concludes the application or the
17 affidavit for the Search Warrant Judge.
18 The actual duplicate original search
19 warrant I have in front of me is
20 requesting to search for evidence
21 namely, "any and all film, photographs
22 or other visual presentation depicting a
23 person under the age of 16 years as the
24 subject of a sexual portrayal or
25 engaging in or simulating or assisting
26 others to engage in or simulate sexual
conduct and proof of occupancy or
residency for 1430 Carlin Street, Unit
B, Reno, Nevada". That should be word
for word. The same as the affiant
listed the evidence. Secondly, we are
on the search warrant going to be
seeking to search the residence of 1430
Carlin Street, Reno, Washoe County,
Nevada, Unit B, as well as the Ford red
Aerostar Minivan with Illinois license
KND 688 which is currently in the
parking area of 1430 Carlin Street,
Reno, Washoe County, Nevada. Uh, the
crimes as uh, listed in the search
warrant your Honor are the same in the

Q-3915

1 affidavit, Possession of Pornography
2 involving minors under 16 and First
3 Degree Murder, a violation of NRS
4 200.730 and 720 Illinois statute 5/9-1
5 which is the First Degree Murder. Is
6 there anything you need re-read or any
7 other items you need addressed in the
8 affidavit your Honor?

9 DANNAN: No, Dave. Based on uh, Detective
10 Kirby's uh, uh, narrative, and reading
11 of the affidavit, I find that the search
12 warrant should be granted for the uh
13 location and the vehicle described by
14 you a couple of minutes ago and he's
15 authorized to affix my signature, date
16 the search warrant and then attach a
17 copy of the affidavit he read to me to
18 the search warrant.

19 CLIFTON: Fine. And are we also authorized to
20 sign your name to the affidavit as
21 having sworn him in?

22 DANNAN: Yes.

23 CLIFTON: Alright. I think that covers it Judge.
24 Thank you. It's...

25 DANNAN: Okay. See you guys later.

26 CLIFTON: It's about 3:10 pm. Bye bye.

DANNAN: Bye.

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C-4 of 15
3

FEB 3 2003

1 IN THE JUSTICE COURT OF Reno TOWNSHIP,
2 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA.

3 * * *

4 IN THE MATTER OF THE APPLICATION
5 FOR A SEARCH WARRANT.

6 _____
7 DUPLICATE ORIGINAL
8 SEARCH WARRANT
9 (TELEPHONIC)

10 THE STATE OF NEVADA, TO ANY PEACE OFFICER IN THE COUNTY OF
11 WASHOE:

12 Proof by Affidavit having been made this date before me
13 by Officer Kirby, of the RPD

14 _____, Washoe County, Nevada, that there
15 is probable cause to believe that the crime(s) of Possession
16 of Pornography Involving Minors Under 16 and First
17 Degree Murder

18 felony violation(s) of NRS 200.730 + Illinois Statute 5/9-1
19 has/have been committed by David McMahon

20 and that evidence of the crime(s), namely, any + all film,
21 photographs or other visual presentation depicting a
22 person under the age of 16 years as the subject of a
23 sexual portrayal or engaging in or simulating or assisting
24 others to engage in or simulate sexual conduct and
25 proof of occupancy or residency for 1430 Carlin St,
26 Unit B, Reno, NV

C-60915

1 is/are presently located, concealed and/or hidden on or within
2 a residence and its surrounding premises and curtilage
3 including sheds, outbuildings and areas appurtenant thereto,
4 described as 1430 Carlin St. Unit B, Reno

5 _____ in Washoe County, Nevada;

6 a vehicle, described as a red Ford Aerostar minivan,
7 Illinois license # KND 688 which is presently located at
8 1430 Carlin St parking area, Reno in Washoe County, Nevada;

9 a container, described as _____

10 _____

11 which is/are presently located at _____

12 _____ in Washoe County, Nevada.

13 YOU ARE THEREFORE DIRECTED to make a complete search within
14 the exterior boundaries of the location and items described
15 above, including any containers therein, whether locked or
16 unlocked, which could reasonably contain the evidence to be
17 searched for, and if the evidence is found, to seize it, make a
18 written inventory of the same, and bring the inventory forthwith
19 before me at the above Court.

20 A copy of the affidavit supporting probable cause for
21 the issuance of this Search Warrant is attached hereto and
22 incorporated by reference herein.

23 Serve this Warrant between the hours of 7:00 a.m.
24 and 7:00 p.m.

25 Good cause appearing, serve this Warrant at any
26 time.

C-7815

1 DATED this 1st day of February, 2003.

2
3 Judge Ed Danner
JUSTICE OF THE PEACE

4 DATE: 2/1/03

De B Kirby
PEACE OFFICER

5 TIME: 1510 hrs

6 David W. Clifton
WITNESS

7
8 This Search Warrant having been issued based upon an
9 oral statement given under oath, this duplicated original Warrant
10 is hereby endorsed this _____ day of FEB, 2003.

11
12
13 _____
JUSTICE OF THE PEACE

14
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C-8915

R E T U R N

I HEREBY CERTIFY and return that I received the annexed Search Warrant on the _____ day of _____, 20____; that I executed the same by making said search of the premises commonly designated as _____

Washoe County, Nevada; that upon said search I seized the following item(s):

described in the annexed Search Warrant.

DATED this _____ day of _____, 20____.

Peace Officer

C-9 of 15

1 IN THE JUSTICE COURT OF RENO TOWNSHIP,
2 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA.

3 * * *

4
5 IN THE MATTER OF THE APPLICATION
6 FOR A SEARCH WARRANT.

7 _____
8
9 AFFIDAVIT FOR SEARCH WARRANT

10
11 STATE OF NEVADA)
12 COUNTY OF WASHOE) ss.

13
14 1. I, BRUCE KIRBY #2771, having been first duly sworn, upon oath, do hereby swear
15 under penalty of perjury that the assertions of this affidavit are true.

16
17 2. Your affiant is a duly authorized and acting peace officer employed by the Reno Police
18 Department and assigned to the Patrol Division. That while acting in that capacity, I have become
19 familiar with facts and circumstances involved in the investigation of case number 01-12289(Glendale
20 Heights Police Department Case Number) 02CF 2849 (DuPage Cuntly Illinois 18th Judicial Curcuit Case
21 number) and 03-4066 (Reno City Police Department Case Number) through speaking with detectives
22 Mullany and Swartz of the Glendale Heights, Illinois police department surrounding the crime(s) of First
23 Degree Murder, a felony violation of Chapter 720 Illinois Compiled Statutes 5/9-1 that happened on
24 August 23, 2001 in Dupage County, Illinois and Possession of visual presentation depicting sexual
25 conduct of a person under 16 years of age; an unlawful Felony violation(s) of N.R.S. 200.730, which
26 occurred on or about January 31, 2003 in Reno, Washoe County, Nevada.

27
28 3. Your affiant avers that there is probable cause to believe that certain evidence of the
29 crime(s) listed above, namely, any and all film, photographs, or other visual presentation depicting a
30 person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating or
assisting others to engage in or simulate sexual conduct and any and all proof of occupancy or residency

Q10 of 15

1 for 1430 Carlin unit B; is presently located at and will be found at first floor aptment being the second
2 unit from the south on the east side of the building, more commonly known as 1430 unit B Carlin Street,
3 and a red Ford Aerostar minivan bearing Illinois License plate KND 688 located at a parking lot for use
4 by the residents of 1430 Carlin Street, Reno, Washoe County Nevada.

5
6 4. In support of this assertion, the following factual circumstances constituting probable
7 cause are offered:

8 At 9:47 a.m., 8/23/01, a 911 call was placed from the phone located at the residence of 2107
9 Brittany Ct., Glendale Heights, Tx. 630-980-1281, by David McMahon, reporting he found his wife dead
10 in the residence. Emergency personnel responded and pronounced Lisa McMahon dead at the scene.
11 Lisa McMahon was found dead in her bed with substantial trauma to her head. Various drawers and
12 jewelry chests were found to be opened and the contents therein strewn about the residence. No evidence
13 of forced entry was found.

14
15 Initial estimate of victim's time of death is some time prior to 3:47 a.m.

16
17 In a consensual interview, David McMahon related in summary that he had left the residence at
18 approximately 1:45 a.m. in his silver Park Avenue on 8/23/01 to go fishing in Wilmington, Illinois. He
19 indicated that he returned to the residence at approximately 9:30 a.m., brought the garbage can to the side
20 of the house, then entered the house, whereupon he found Lisa McMahon dead in her bed. Several
21 minutes later he made the above-referenced 911 call. He further related that he was a porn-addict and that
22 this caused tension in his relationship with Lisa McMahon.

23
24 That prior to the request for this search warrant, David McMahon gave consent to search the
25 residence of 2107 Brittany Court, Glendale Heights, DuPage County, Illinois. Therein a diary believed to
26 belong to the victim, Lisa McMahon, was recovered, wherein it is related that David McMahon had
27 rented storage space that he used to store his pornography.

28
29 Upon canvassing the neighbors, several inconsistencies were discovered. First, it was learned
30 that James P. Bilek, the McMahon's next-door neighbor at 2111 Brittany Ct., observed David
McMahon's silver Buick Park Avenue leave the driveway of 2107 Brittany Ct. at between 3:45 and 4:15

C-11915

1 a.m. on 8/23/01. Second, it was learned from the McMahon's next-door neighbor at 2105 Brittany Ct.,
2 Janet Aley, that when she was leaving for work at approximately 8:00 a.m., the garbage pick-up for the
3 cul-de-sac had already taken place and that the McMahon garbage can was not on the parkway. Third,
4 Janet Aley observed that David McMahon's silver Park Avenue was parked in the driveway at 8:00 a.m.

5
6 On 09-27-01 our department was notified by Lisa Bubak. Bubak is an employee of Metro Self-
7 Storage, located at 21W209 Lake St, Addison IL. Bubak contacted our department as she recognized a
8 subject renting a storage unit as David McMahon. Bubak recognized him as the police had previously
9 shown her a picture of him, and David McMahon had also presented his Illinois driver's license when
10 completing the rental agreement. Bubak had made contact with Sgt. Mineo and informed him that David
11 McMahon had just completed a rental agreement, and was now placing boxes into the unit.

12
13 On 10-04-01 Detective Swartz and Mullany went to Metro self storage and spoke with Bubak.
14 Bubak informed them that David McMahon did rent unit #323, and showed them the agreement.
15 McMahon had paid cash for one month's rent. Bubak also told them that once you rent a unit, you are
16 given a personal identification number (PIN) to open the gate electronically. Bubak checked her records
17 and McMahon has not returned to his storage unit since he rented it. Detective Mullany asked Bubak if
18 she observed McMahon place any objects into the unit. Bubak stated that she observed him place several
19 cardboard boxes into the unit from his car. Bubak believed that he had between 5 and 10 boxes.

20
21 On 10-04-01 Detective Mullany again met with Bubak and asked for her consent to run a dog through the
22 Metro storage property. Detective Mullany explained that the dog was a cadaver dog trained to alert on
23 the scent of human blood and human decomposition. Bubak gave consent. Ellen Ponall, President of
24 North American Search Dog Network, along with Julie Cramer and her cadaver dog, Brutus, walked the
25 property. The dog alerted at the presence of human blood and or human decomposition at the exterior
26 wall of storage locker #323. This is David McMahon's storage locker. This storage locker was
27 searched, but no evidence of the homicide of Lisa McMahon was found in the execution of that search
28 warrant (Illinois search warrant number SW011552).

29
30
In all subsequent search warrants executed in this case, none have yet produced the blunt object used to

C-12 of 15

1 murder Lisa McMahon, or the jewelry that was reportedly stolen at the time of her murder. Nothing else
2 of value was reported stolen from the residence at the time of Lisa McMahon's murder.

3
4 On 03-17-02 David McMahons 1990 Buick Lesabre Bearing Illinois License plate KND688 which had
5 been previously afixed with a court authorized global tracking devise was found abandoned in the
6 parking lot of a grocery store in Alsip Illinois, and the Illinois license plates KND688 had been removed
7 from the car by unknown persons. This was the last contact Police had with David McMahon, until
8 January 30, 2003.

9
10 On September 30th, 2002 Detective Rob Mullany of the Glendale Heights Police Department appeared
11 before the Honorable Kathryn Creswell, Curcuit Court Judge for the 18th Judicial Curcuit Court, Dupage
12 County Illinois and provided the Judge with sufficient facts for Judge Creswell to find that probable cause
13 existed to issue a complaint against David McMahon for First Degree Murder, for the killing of his wife
14 Lisa McMahon, and at that time issued a No Bond Aresst warrant for David McMahon.

15
16 On Friday January 24th 2003 Detectives Mullany and Swartz discovered through subpoenaed phone
17 records that a friend of David McMahon's in the state of Wisconsin had received two phone calls in
18 September of 2002 from a Reno Nevada phone exchange (775) 747-8441. On January 24th, Reno Police
19 Department informed us that (775) 747-8441 registered to 1430 unit B Carlin Street in Reno Nevada. On
20 Tuesday January 28th, 2003 Detective Rob Mullany contacted the Illinois Department of Revenue and
21 found that they had a record of David McMahon indicating an address of P.O.Box 6222, Reno Nevada.
22 Postal inspector Steve Hofheins was able to verify David McMahon did have a Post Office Box 6222
23 registered to him and his application for the P.O. Box listed McMahon's address as 1430 unit B, Carlin St.,
24 Reno Nevada. Inspector Hofheins drove past the address and observed a red Ford van bearing Illinois
25 license plates KND688 parked at that location. Search through Illinois records indicate David McMahon
26 never transferred his Illinos registration to any other vehicles and they have been expired since October
27 2001, and are currently illegally affixed to the red Ford van currently parked in the parking lot near 1430
28 Carlin St. unit B, Reno Nevada.

29
30 On Thursday January 30th 2003 Detectives Robert Mullany and Robert Swartz from the Glendale Heights
Illinois police department flew to Reno Nevada and met with members of both the Nevada Department of

C-13 of 15

1 Investigations and members of the Reno Police Department in an attempt to arrest David J McMahon. On
2 Thursday January 30th, 2003 during surveillance of David McMahon's apartment complex and vehicle
3 Det. Swartz observed the red Ford van bearing Illinois registration KND688 leave the apartment complex
4 parking lot and recognized the driver of the vehicle to be David J McMahon. Det. Swartz has had
5 numerous previous contacts with David J McMahon, and was able to recognize him from these contacts.
6

7 On Friday January 31st, 2003 members of the Reno Police Department, the Nevada Department of
8 Investigations, and members of the Glendale Heights Illinois Police Department went to 1430 unit B
9 Carlin St to see if David J McMahon was at his residence. Members of the Reno Police Department
10 knocked at the door of unit B, and David McMahon came out of the apartment. David McMahon was
11 asked at that time if he would allow officers in his apartment, and David McMahon refused to allow
12 officers to enter. David McMahon then voluntarily agreed to come to the Reno Police Department.
13

14 Once at the Reno Police Department David McMahon was placed under arrest and informed of the
15 Illinois arrest warrant for the murder of his wife Lisa McMahon. On January 31st, 2003 at 10:56 a.m.
16 David J McMahon signed a written Miranda waiver and agreed to speak to police officers. During
17 interviews of David McMahon on January 31st, 2003 he was asked if he would sign a consent to search
18 his home and vehicle and he refused. During further conversations David McMahon advised investigators
19 that he was the sole resident of 1430 unit B Carlin St. and the owner of the red Ford van bearing Illinois
20 registration KND688. While being questioned David McMahon stated he had fled the state of Illinois
21 after purchasing the van in Alsip Illinois, for cash, from a private owner. David McMahon told detectives
22 that he went from Illinois directly to Louisiana where he stayed at the residence of a woman he met over
23 the internet for a period of about three weeks. David McMahon said he left Louisiana and headed
24 "west". David McMahon said he drove through, Texas, New Mexico, Arizona, and California, prior to
25 arriving in Reno, Nevada and establishing his first residence since fleeing Illinois. David McMahon told
26 investigators that while traveling through Texas, New Mexico, Arizona, and California he had no
27 residences and would sleep in his van, or in hotels.
28

29 David McMahon further told us that in his apartment at 1430 unit B Carlin St he possessed a large
30 amount of pornography including photo's depicting bestiality and photographs depicting nude males and
females as young as 12 years of age which he believed in his mind constituted child pornography. After

C-14915

1 being interviewed at the Reno Police Department David McMahon was transported to the Washoe County
2 Jail where he is currently being held on the Illinois No Bond arrest warrant for First Degree Murder.

3
4 That David J McMahon's apartment at 1430 unit B Carlin St. was guarded by members of the Nevada
5 Department of Investigation from the time David McMahon was taken to the Reno Police Department
6 until approximately 6:00 p.m. During that time no one entered or exited the residence. At about 7:20
7 p.m. the Reno Police department placed evidence tape on the previously locked doors of 1430 unit B
8 Carlin St. Reno Nevada. The unbroken evidence tape remains on the locked doors of 1430 unit B Carlin
9 St. Reno Nevada as of February 1, 2003. No forced entry will be necessary as the keys to the apartment
10 and van are available to the police.

11 5. WHEREFORE, affiant requests that a Search Warrant be issued authorizing the search
12 for the aforementioned evidence at the location described herein, such search to be made

13 (X) between the hours of 7:00 a.m., and 7:00 p.m.,

14 () at any time of day or night based upon good cause therefor, as follows:

15
16
17
18 Dated this 1st day of February, 2003

19 ~~located at and may be found at~~

20 Bruce F. Kirby
21 PEACE OFFICER

22
23 Subscribed and sworn to before me this 1 day of FEB, 2003

24
25
26 Judge Dannan By
27 MAGISTRATE Off. B Kirby

28
29
30 C-15915