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March 27, 2003

Nevada Senate Judiciary, Room 2149

Re: SB 316

Testimony for Juanita Cox, representing—Citizens In Action, People Organized for the Next Generation.

Chairman and members of the Judiciary, I am Juanita Cox and today I am representing Citizens In Action and People Organized for the Next Generation.

"Misdemeanor" Search Warrant

I am here today because Nevada law is not clear about it's Search Warrants. I am asking what is the intent of this legislative body in regards to a "Misdemeanor" Search Warrant?

I had never heard of one before the year 2000 but at that time I saw two and with further research I found many. See my examples attached. I sent three requests to the Washoe County District Attorney asking what was a MISDEMEANOR Search Warrant? I never received a reply. I asked the Honorable Supreme Court Justice Rose and he had never heard of one. My investigation found there were FELONY Search Warrants and ADMINISTRATIVE Search Warrants but never a MISDEMEANOR Search Warrant.

I found a Nevada Attorney General Opinion (No. 79-2) which stated that the *district court* has jurisdiction to issue warrants in other than criminal cases and such warrants must be directed to and executed by the sheriff. But...these "MISDEMEANOR" search warrants were directed to non-peace officers as defined under who is and who is not a peace officer—NRS 169.125.

NRS 179.045, subsection 5(a), provides that a criminal search warrant must be directed to a peace officer. Therefore, warrants issued pursuant to NRS 179.015—179.115 in criminal proceedings must be directed to and executed by a peace officer and not the department or its inspectors as shown in my examples. These "MISDEMEANOR" search warrants were used like an administrative search warrant but were issued from a Justice of the Peace and not from a District Court as directed.

Does this legislative body believe a misdemeanor is such an awful "CRIME" in Nevada that should have Search Warrant power equal to a FELONY? Or...should a misdemeanor "CRIME" believed to be a problem by inspectional agencies use the ADMINISTRATIVE process as directed by law?

The absence of legislation governing the procedure surrounding the issuance of these search warrants in other than criminal felony cases necessarily makes Nevada law and the courts that issue such warrants somewhat speculative as to who should appropriately execute them if "criminal" or "crime" is not defined.

The issuance of search warrants is governed by the strictures of the Fourth Amendment and is also subject to whatever statutory control exists. **My suggested amendment to this bill is to define a crime in this section, as to those crimes defined as a felony.** This will make clear to all, that Nevada will conform to the rest of the U.S.A.

"Probable cause"

It is also disturbing to see the language of "probable cause" (see definition below) stricken (see the former (a)) and the lesser language "offenses alleged to have been committed" inserted. Why? What is wrong with the stronger language of probable cause?

Thank you for taking my recommendations. I would be happy to take any questions.

Probable cause. Reasonable cause; having more evidence for than against. A reasonable ground for belief in certain alleged facts. A set of probabilities grounded in the factual and practical considerations which govern the decisions of reasonable and prudent persons and is more than mere suspicion but less than the quantum of evidence required for conviction. *U.S. v. Riemer, D.C. Ohio*, 392 F.Supp. 1291, 1294. An apparent state of facts found to exist upon reasonable inquiry (that is, such inquiry as the given case renders convenient and proper), which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or, in a civil case, that a cause of action existed. *Cook v. Singer Sewing Mach. Co.*, 138 Cal.App. 418, 32 P.2d 430, 431.

Arrest, search and seizure. Reasonable grounds for belief that a person should be arrested or searched. The evidentiary criterion necessary to sustain an arrest or the issuance of an arrest or search warrant. "Probable cause" to arrest exists where facts and circumstances within officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed; it is not necessary that the officer possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required. *State v Phillips*, 67 Hawaii 535, 696 P.2d 346, 350. Probable cause is the existence of circumstances which would lead a reasonably prudent man to believe in guilt of arrested party; mere suspicion or belief, unsupported by facts or circumstances, is insufficient. *State v Jones*, 248 Or. 428, 435 P.2d 317, 319. It permits an officer to arrest one for a felony without a warrant. Probable cause justifying officer's arrest without warrant has been defined as situation where officer has more evidence favoring suspicion that person is guilty of crime than evidence against such suspicion, but there is some room for doubt. *Nugent v. Superior Court for San Mateo County*, 254 C.A.2d 420, 62 Cal. Rptr. 217, 221.

Black's Law Dictionary, 6th Ed.

§ 29. Classification of misdemeanors and petty offenses

At common law two classes of misdemeanors were recognized; those of a heinous nature, which might be punished corporally, and those not heinous.³⁶ The terms "gross misdemeanor," "high misdemeanor," and the like, are of statutory origin, invented to permit a like distinction between petty offenses and those of a more serious nature.³⁷ However, the distinction between high and low misdemeanors is not uniformly observed.³⁸

Minor offenses triable summarily by a magistrate without a jury have been deemed to be distinct from misdemeanors³⁹ and to constitute a separate class of offenses, below the grade of misdemeanor.⁴⁰ In some jurisdictions such petty misdemeanors are not even deemed criminal offenses.⁴¹

Federal law terms certain types of misdemeanors and infractions to be petty offenses.⁴²

E. PARTICULAR ACTS OR OMISSIONS AS PUNISHABLE OFFENSES [§§ 30-33]

Research References

ALR Digest: Criminal Law § 1

ALR Index: Alcoholics and Alcoholism; Character and Reputation; Criminal Law; Omissions; Status

West Digest Key Numbers: Criminal Law ⇐ 26

§ 30. Generally; acts based on reputation or association with others

Generally speaking, the state may not punish a person on the basis of his or her reputation.⁴³ Statutes making criminal the accused's reputation in connection with certain kinds of activities or violations are generally held to be invalid as a deprivation of liberty without due process of law in violation of federal and state constitutional guarantees.⁴⁴ Likewise, statutes punishing a person's mere

imprisonment either in a county jail or in a state prison is called a "wobbler," in which case the characterization of the crime is dependent upon the actual punishment imposed; when the defendant is sentenced to state prison, the offense is a felony, and when the defendant is sentenced to county jail, the offense is a "misdemeanor".

See also *State v. Shlionsky*, 184 Ariz. 631, 911 P.2d 637 (Ct. App. Div. 2 1996) (involving a statute permitting the court to defer characterization of some offenses as felonies or misdemeanors until the defendant's term of probation following conviction therefor has ended).

36. *State v. Kelly*, 218 Minn. 247, 15 N.W.2d 554, 162 A.L.R. 477 (1944).

37. *State v. Kelly*, 218 Minn. 247, 15 N.W.2d 554, 162 A.L.R. 477 (1944).

38. *Ex parte Westenberg*, 167 Cal. 309, 139 P. 674 (1914).

39. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273, 86 A.L.R. 1266 (1932) (disorderly conduct, breach of the peace, etc.).

40. *People ex rel. Cooley v. Wilder*, 234 A.D. 256, 255 N.Y.S. 218 (4th Dep't 1932).

41. *State v. Aanerud*, 374 N.W.2d 491 (Minn. Ct. App. 1985).

42. 18 U.S.C. § 19.

43. *Spilotro v. State, ex rel. Nevada Gaming Com'n*, 99 Nev. 187, 661 P.2d 467 (1983).

The government cannot convict someone of being a bad person. *U.S. v. Waechter*, 771 F.2d 974 (6th Cir. 1985).

44. *People v. Belcastro*, 356 Ill. 144, 190 N.E. 301, 92 A.L.R. 1223 (1934) (a statute making subject to conviction as vagabonds all persons reputed to be habitual violators of the criminal laws of the state or United States or habitually

association with
been held un

§ 31. Acts based on reputation or association

Despite the certain atypical times been d than in terms the law seem should be hel violative of t punishment i an act.⁴⁵

◆ Obse would p precede ing addi tion hav ish the has fail becomir

§ 32. Criminal acts based on reputation or association

to carry specif rates, compani reputed to be laws operates liberty without the federal and

45. *Ex parte* (1896) (associa tion of being agree to com low v. Chris (1917) (male reputed prost

46. § 4.

47. As to t offense, see 7

48. *Steffan* Rep. 32, 69 (D.C. Cir. 1 criminal pun ties or status,

Status also tute a crime, an offense in offense is in victed only f Profit v. City App. 1980).

49. *Ande* Cir. 1995).

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 SEARCH WARRANT

8 THE STATE OF NEVADA, TO ANY PEACE OFFICER IN THE COUNTY OF
9 WASHOE:

10 Proof by Affidavit having been made this date before me
11 by Rebecca Tackett, of the WASHOE COUNTY CODE
12 ENFORCEMENT, Washoe County, Nevada, that there is
13 probable cause to believe that the crime(s) of OUTDOOR STORAGE/
14 DISPLAY, OCCUPATION OF RECREATIONAL VEHICLE, INDUSTRIAL USE OF
15 LAND IN VIOLATION OF ZONING STORAGE OF UNREGISTERED MOTOR VEHICLES, IMPROPER
16 STORAGE OF SOLID WASTE felony violations of NRS 110.306.35, 110.310.35, 110.304.30(j), 050.17250
17 WMSD. WCC 040.005 has/have been committed by ROBERT L SONDERMAN,

18 and that evidence of the crime(s) photograph the land, open
19 metal containers for determination of waste storage, look inside
20 the R.V., trailers & unregistered cars for purpose of illegal occupancy.

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22
23 is/are presently located, concealed and/or hidden on or within
24 (Y) parcel of land that could house a residence and its surrounding premises and curtilage
25 including sheds, outbuildings and areas appurtenant thereto,
26 described as 2355 Piute Rd. Reno, NV.

1 _____ in Washoe County, Nevada;
2 () a vehicle, described as _____
3 _____ which is presently located at
4 _____ in Washoe County, Nevada;
5 () a container, described as _____
6 _____
7 which is/are presently located at _____
8 _____ in Washoe County, Nevada.

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

16 (✓) Serve this Warrant between the hours of 7:00 a.m.
17 and 7:00 p.m.

18 () Good cause appearing, serve this Warrant at any
19 time.

20 DATED this 20th day of April, 2000.

21 BK J. J. J.
22 JUSTICE OF THE PEACE
23 4/25/2000
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R E T U R N

I HEREBY CERTIFY and return that I received the annexed
Search Warrant on the 27th day of April, 2000;

that I executed the same by making said search of the premises
commonly designated as 2355 Piute Creek Road
Washoe County, NV

Washoe County, Nevada; that upon said search I seized the
following item(s): multiple photos taken of
the property

described in the annexed Search Warrant.

DATED this 27th day of April, 2000.

Rebecca A. Tackett
Peace Officer

Code Enforcement Officer

I-6

FILED

'99 OCT 13 A8:28

IN THE JUSTICE COURT OF

Sparks

SPARKS JUSTICE COURT
TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA.

DEPUTY CLERK

IN THE MATTER OF THE APPLICATION
FOR A SEARCH WARRANT.

DUPLICATE ORIGINAL
SEARCH WARRANT

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

Proof by Affidavit having been made this date before
me by Mike McCullough, of the WC Bldg & Safety Office

, Washoe County, Nevada, that there
is probable cause to believe that the crime(s) of no permits,

tax assessments, health violations, bldg code violations, zoning violations

MISDEMEANOR

felony violations of NRS

WCC 110.306.10 - 110.306.35 inclusive
WCC 120.020 - Sewer
WCC 120.451 et seq. - Tax assessments
WCC 100.280 - ABATEMENT OF DANGEROUS BLDGS.
WCC 100.010 ADOPTS UNIFORM BLDG CODE

has/have been committed by

DARRAL PERKINS

and that evidence of the crime(s), to wit, videotape of the

prop., still photography, inspection of bldgs. and property for

evidence of environmental, hazardous or toxic waste, bldg. code violations,

zoning viols.

health viols., indicia of ownership, indicia of occupancy, inspection

of permits that may be present for property, tax assessment violations

is/are presently located, concealed and/or hidden on or within

(✓) a residence, and its surrounding premises and curtilage

including sheds, outbuildings and areas appurtenant thereto.

///

I-7

described as 5400 Pony Springs, Assessor's Parcel # 077-
170-18), Palomino Valley in Washoe County, Nevada;

() a vehicle, described as _____
_____ which is presently located at _____
_____ in Washoe County, Nevada;

() a container, described as _____
_____ which is/are presently located at _____
_____ in Washoe County, Nevada;

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

(☒) Serve this Warrant between the hours of 7:00 a.m. and
7:00 p.m. ON OCTOBER 11, 1999

() Good cause appearing, serve this Warrant at any time.

DATED this 8th day of October, 1999.

DATE: October 8th, 1999

TIME: 4:05

Larima Volk
JUSTICE OF THE PEACE
Muriel M. Walsh
PEACE OFFICER BLVD Inspector
Gemma Greene Waldron
WITNESS

This Search Warrant having been issued based upon an oral statement given under oath, this duplicated original Warrant is hereby endorsed this _____ day of _____, 19____.

JUSTICE OF THE PEACE

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APR 4 8 17 - 12 - 18

_____, Washoe County, Nevada; that upon said search I seized the following items:

No items seized.

DATED this 11 day of October, 1999.

I-10

Michael M. Allright
Peace Officer

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

* * *

IN THE MATTER OF THE APPLICATION
FOR A SEARCH WARRANT.

SEARCH WARRANT

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

Proof by Affidavit having been made this date before me
by Officer Rebecca Tackett, of the Washoe County Community
Development Zoning Division, Washoe County, Nevada, that there is
probable cause to believe that the crime(s) of Grading without a
Permit, Building Constructed without a Permit, Living in a Recreational
Vehicle without a Permit
~~felony~~ ^{violation} violations of ~~NRS~~ ^{NRS} 100.010, 110.310.35

has/have been committed by Susan Seidl

and that evidence of the crime(s) videotape of the property and
structures, photographs of the property and structures, indicia of ownership
and occupancy, permits for building structures

is/are presently located, concealed and/or hidden on or within
a parcel of land that could house a
(X) a residence and its surrounding premises and curtilage
including sheds, outbuildings and areas appurtenant thereto,
described as 2400 Pinta Creek Road, Reno

1 _____ in Washoe County, Nevada;
2 () a vehicle, described as _____
3 _____ which is presently located at
4 _____ in Washoe County, Nevada;
5 () a container, described as _____
6 _____
7 which is/are presently located at _____
8 _____ in Washoe County, Nevada.

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

16 (X) Serve this Warrant between the hours of 7:00 a.m.
17 and 7:00 p.m.

18 () Good cause appearing, serve this Warrant at any
19 time.

20 DATED this 17th day of May, 2000.

21 Edmund J. Dawson
22 JUSTICE OF THE PEACE
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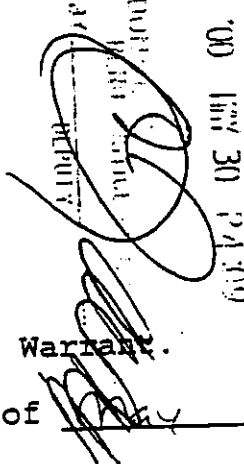
R E T U R N

I HEREBY CERTIFY and return that I received the annexed Search Warrant on the 22nd day of May, 2000; that I executed the same by making said search of the premises commonly designated as 2400 Piute Creek Rd, Reno, NV

Washoe County, Nevada; that upon said search I seized the following item(s):. lock ~~to~~ at entrance gate was cut to gain access to property. Multiple photos taken.

described in the annexed Search Warrant.

DATED this 22nd day of May, 2000.


Rebecca A. Tackett
Peace Officer
Code Enforcement