

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY DeARMON, et al.,)
)
 Plaintiff,)
)
vs.)
)
GARRETT BURGESS, et al.,)
)
 Defendants,)

No. 4:99CV01422 (ERW)

DEFENDANTS' RULE 26 DISCLOSURES

COMES NOW defendants pursuant to Rule 26 of the Federal Rules of Civil Procedure, and by Order of this Court, hereby make the following disclosures:

(A) The following individuals may have information relevant to the disputed facts alleged in Plaintiff's Complaint;

1. Defendant P.O. Garrett Burgess, Mobile reserve, 1200 Clark Street, St. Louis, MO 63103.
2. Defendant Sergeant Joseph Spiess, 1200 Clark Street, St. Louis, MO 63103.
3. Defendant P.O. James Joyner, 1200 Clark Street, St. Louis, MO 63103.
4. Defendant P.O. Steve Burle, 1200 Clark Street, St. Louis, MO 63103.
5. Defendant P.O. Clearance Hines, 1200 Clark Street, St. Louis, MO 63103.
6. Defendant P.O. Edward Smoote, 1200 Clark Street, St. Louis, MO 63103.
7. Defendant P.O. Troy Eaton, 1200 Clark Street, St. Louis, MO 63103.

Appendix-S

8. Defendant P.O. Joseph Crews, 1200 Clark Street, St. Louis, MO 63103.

9. Defendant P.O. William Noonan, 1200 Clark Street, St. Louis, MO 63103.

10. Defendant P.O. Thomas Whyte, 1200 Clark Street, St. Louis, MO 63103.

11. Assistant U.S. Attorney Gary M. Gaertner, 1114 Market Street, Room 401, St. Louis, MO 63101.

12. Special Agent James Green, A.T.F., 1222 Spruce Street, St. Louis, MO 63103.

13. The Honorable Michael Calvin, Presiding Circuit Court Justice St. Louis City, 10 N. Tucker, St. Louis, MO 63101.

(B) The following documents may contain relevant information relating to the facts alleged in Plaintiff's Complaint;

14. Police Report # 97072665 (Exh. A. attached).

15. Search Warrant for 1435 E. Desoto (Exh. B) (to be supplemented with legible copies of signatures).

16. Affidavit in support of Search Warrant (Exh. C) (to be supplemented with legible copy of signatures).

17. Police Department evidence log in sheet (Exh. D) (to be supplemented).

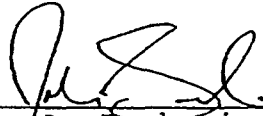
18. Prior convictions of Plaintiffs, (Exh. E) (to be supplemented upon receipt).

19. Statement of Plaintiff Albert Greer of June 6, 1997 by Special Agent James Green. (Exh. F, attached)

20. Grand Jury testimony of Albert Greer concerning the Criminal trial of William Boyd, # S1 4:97CR301SML, June 6, 1997 (Exh. G, attached, certified copy to be supplemented).

Respectfully submitted,

THOMAS J. RAY, CITY COUNSELOR



John A. Bouhasin #80490
Assistant City Counselor
Attorney for Defendants
Room 314 City Hall
St. Louis, MO 63103
(314) 622-3361
(314) 622-4956/fax

A Copy of the foregoing was sent via ordinary U.S. mail, postage pre-paid, this 14th day of February, 2000 to Ms. Tracy Diekemper, Attorney for plaintiff's, 714 Locust Street, St. Louis, MO 63101.



A

RPIR100
06/24/97ST. LOUIS METROPOLITAN POLICE DEPARTMENT
POLICE INCIDENT REPORTING SYSTEM
INCIDENT REPORT

CDLT 1 97072666

I N C I D E N T

Incident Type: 998500 EXECUTION OF A SEARCH WARRANT
Complaint / Status: ACTIVE
Orig./Supplement: ORIGINAL
Dist./Precinct/Beat: 05 511 5212
Origination Desc: ON VIEW
Day of Week: TUE
Date of Occurrence: 06/03/97 to 06/03/97
Time of Occurrence: 14:00 to 14:00
Location Name: Ngh: COLLEGE HILL
Street: 1435 DESOTO
City/State: ST. LOUIS MO
Type of Premises: SINGLE FAMILY
Invt Followup(Y/N): Y
Assignment:
Date: 06/03/97
Time: 14:00
Asgmt. Code: 580 Car No: 7140
DSN/Officer: 2713 GARRETT BURGESS
Assisted by: 4019 JAMES JOYNER

ANY WEAPONS DISCHARGED BY AN OFFICER(Y/N)? N

Summary: OFFICER JOYNER AND I, ALONG WITH OTHER MEMBERS OF THE MOBILE RESERVE UNIT, EXECUTED THE HEREIN MENTIONED SEARCH WARRANT AT 1435 DESOTO. A WEAPON WAS SEIZED AS EVIDENCE, BELIEVED TO BELONG TO SUSPECT WILLIE B. THE WEAPON WAS CONVEYED TO THE ST. LOUIS POLICE LAB TO BE PROCESSED FOR LATENT PRINTS. SEARCH WARRANT WAS EXECUTED WITHOUT INCIDENT.

V I C T I M

NAME: LAST STATE OF MISSOURI
DOMESTIC INCIDENT: NO
BIAS INCIDENT: NO

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: FIREARM
Brand: COLT

6 7 0 0 0 0 0 0

Model: LAWMAN MK3
Serial Number: 92945L
Characteristics: BLUE STEEL .357 REMINGTON
SHP970607-105105
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number: G736484079
Recovery:
Loc. recovered: 2ND FLOOR BEDROOM
Date: 06/03/97
Address:
Street: 1435 DESOTO
City/State: ST. LOUIS MO
DSN/Officer: 2713 BURGESS
Assignment Code: 580
Owner:
Name: B (SUSPECT)
WILLIE

W I T N E S S

Reporting Party: WITNESS
NAME: LAST GREER
FIRST ALBERT
Race: BLACK
Sex: MALE
Birth:
Date: 06/01/54
Location: MO
RESIDENCE ADDRESS:
Street: 1435 DESOTO
City/State: ST. LOUIS MO
Business Address:
Street: 3780 W FLORISSANT
City/State: ST. LOUIS MO
Telephone: (Bus) (314) 531-8771 Ext.
Social Security No: 499-60-8003
Rel. to Suspect: BROTHER
Marital Status: SINGLE

6 7 6 0 0 1 0 1 1

S U S P E N D

NAME: LAST BOYD
FI ST WILLIE

AGE 047 TO 047
WEIGHT 205 TO 205
HEIGHT 509 TO 509
RACE BLACK
SEX MALE
BUILD MEDIUM
COMPLEXION DARK
EYE COLOR BROWN
HAIR COLOR BLACK

Birth:

Date: 07/11/49

Location: MO

Social Security No: 490-52-6605

Marital Status: SINGLE

Occupation: UNEMPLOYED

Injury:

Description: UNKNOWN

RESIDENCE ADDRESS:

Street: 1435 DESOTO

City/State: ST. LOUIS

Telephone: (Res) (314) 531-8771 Ext.

Charge:

Charge Descr: FELON IN POSSESSION OF
A FIREARM

Crime Catgry: FELON Date: 06/01/77

Document No: CN/97-72665

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

I showed the revolver to Albert Greer, who stated the following.

"That's Willie B.'s gun, he bought that gun two years ago, he keeps it for protection. I thought he took it with him."

A computer check of the revolver revealed no theft, subsequently the revolver was entered into the Recovered Gun File by TPC Gant, DSN 3370. It is to be noted that I also requested the gun to be printed by the Lab for latent prints.

As the seizing officer, I also seized the two front door locks from the outer barred door and the inside entrance door as evidence and properly marked and packaged them and placed them in the Mobile Reserve Property Room.

I again interviewed Albert Greer and asked him if there was any money or illegal narcotics or other weapons in the residence, to which he stated the following.

"Like I said, I thought Willie took his gun with him, there's no money here and no drugs that I know of."

Due to the front door being damaged by the battering ram, Albert Greer was left with the responsibility to secure the front door.

It is to be noted that the only damage done to the residence by the involved officers was to the two front doors as mentioned.

A computer check on Albert Greer revealed prior record, no wanteds indicated.

Due to suspect Willie B. being in Federal custody, I will contact the ATF Agents involved and coordinate this investigation with theirs, involving the seizure of the weapon.

Police Officer Paul James, DSN 6445, on duty at the Command Post, was advised of the execution of this search warrant.

Any further information pertinent to this investigation will follow in Supplemental form.

20. Kenneth Bergen 2713/580
SUBMITTED BY

Sgt. Joseph Spies 3132/580
Supervisor

Watch Commander

/PIRS6084



STATE OF MISSOURI)
) SS
CITY OF SAINT LOUIS)

IN THE CIRCUIT COURT CITY OF ST. LOUIS
STATE OF MISSOURI

I, P.O. Garrett Burgess DSN 2713 , BEING DULY SWORN, DEPOSE and states upon information and belief, or personal belief that the following described (Contraband), (Property), to wit:

Crack Cocaine, Marijuana, Heroin, Weapons, U.S. Currency, Drug Transaction Records, and any other instruments of the crime.

(believed to have been used as means for committing the felony of:)

Violation of Missouri Controlled Substance Law (Sale and Possession).

(believed to be stolen:) is now being held and kept at the following place in the said City and State, to wit:

1435 Desoto, described as a two story single family apartment building of brick and wood construction, address is clearly marked. The building is located in the City of St. Louis, Missouri. That the basis of the affiant's information and belief is contained in the attached affidavits of witnesses to facts concerning the said matter which affidavits are made a part hereof and are submitted herewith as a basis upon which this court may find the existence of probable cause for the issuance of said warrant.

Wherefore complainant prays that a search warrant be issued as provided by law.

Officer

Assistant Circuit Attorney

Subscribed and sworn to before me this _____ day of _____, 19 _____

at _____ A.M./P.M.

JUDGE

JUDGE

1/9/98

Affidavit of Search Warrant received and filed.

Application for Search Warrant received and filed..

Return and Inventory of Search Warrant received
and filed.. *gib*

STATE OF MISSOURI
CITY OF ST. LOUIS

} SS. SEARCH WARRANT
1435 DESOTA

Mariano V. Favazza

~~REDACTED~~, CLERK OF THE CIRCUIT COURT, CITY OF ST. LOUIS,
within and for the City and State aforesaid (said Court being a Court of Record, having a
Clerk and official Seal), do hereby certify that the annexed and foregoing is a full, true and
complete copy of the original.

Affidavit in Support of a Search Warrant

in the cause aforesaid, as fully as the same remains among the records and files of said
Court in my office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and
affixed the seal of said Court, at office, in the City of St. Louis,

this 24th day of August, 19 99

Mariano V. Favazza

~~REDACTED~~ IN
CLERK, CIRCUIT COURT

By

J. Crews

Deputy

EXHIBIT-A

6-2-97

1435 Desoto

SEARCH WARRANT
JUDGE'S COPY

AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT

I, Police Officer Garrett Burgess DSN 2713, being duly sworn depose the following to wit:

I have been a Police Officer with the St. Louis Metropolitan Police Department since April of 1987, and I am currently assigned to the Mobile Reserve Section.

On 06-01-97 I was contacted by a confidential informant who has proven reliable in the past to other Law Enforcement Agencies. I have been informed by other Law Enforcement Agencies who have worked with the informant and have ongoing investigations which resulted the arrest and conviction of several individuals with cases still pending in the State and Federal Courts.

The informant stated that a black Female who he/she knows as Mary 160-180 pounds, 5'3" - 5'5", medium complexion is allowing illegal narcotics to be sold and stored from her residence at 1435 Desoto. The informant stated that Mary has allowed an individual named Willie Boyd to use her house to store his narcotics and monies obtained from illegal drug trafficking. It is to be noted that Willie Boyd is in custody for drug trafficking at the time of this writing. The informant stated that associates of Willie Boyd are continuing his drug trade, while he is in custody. The informant stated that in the last twenty four hours he/she had been in the residence and he/she observed two unknown black males in possession of several ounces of crack cocaine and black tar heroin. The informant stated that he saw various types of weapon's throughout the residence and on their persons.

The informant further advised that he/she observed two unknown black males package the crack cocaine into smaller packages for individual sales. The informant further advised that he/she observed the two unknown black males count and divide the black tar heroin into individual packages to be sold. The black males were observed placing the packages under the bed and dresser located in the upstairs bedroom and then place one pistol under the couch located in the livingroom of the residence.

The informant stated that the two black male subjects keeps the crack and heroin inside the residence in mention to sell in large quantities to avoid excessive foot traffic and detection by police. The black male subjects also keeps weapons in the residence for protection.

On 06-02-97, at 0800hrs. Officer James Joyner DSN 4019, and I set up a surveillance point with an unobstructed view of the front of 1435 Desoto. During the surveillance we observed several unknown black males walk up to the front door of 1435 Desoto and knock. The front door would be answered by a black male matching the description and pedigree of the two black subjects as given by the informant. A black male would then make a hand to hand transactions with each transaction lasting approximatley one to three minutes.

It should be noted that Federal Marshall's arrested Willie Boyd hiding in the residence of 1435 Desoto.

A utilities check of 1435 Desoto revealed the name of Mary Bearmon, B/F, DOB 03-12-23, SSN 494-24-8866.

1435 Desoto is a single family brick structure with the address clearly marked. This dwelling is located within the city of St. Louis.

The informant stated that he believes that 1435 Desoto is being used as a safe house by Willie Boyd and associates to store illegal drugs and weapons.

It is my firm belief that crack cocaine and heroin is being stored and distributed from this residence.

Subscribed and sworn to before me this _____ day of _____, 1997, at _____ a.m./p.m.

P.O. Garrett Burgess DSN 2713

JUDGE



UNITED STATES ATTORNEY
EASTERN DISTRICT OF MISSOURI

1114 Market • Room 401 • St. Louis, MO 63101 • 539-2200 • 539-2309 (FAX)

FAX TRANSMITTAL

DATE: 12-22-99

TO: Albert L. Green

FROM: Gary Gaertner

PAGES: 2 (Excluding Cover)

MESSAGE: Here's another
interview of Albert L. Green

622-4956

PLEASE DELIVER IMMEDIATELY

745519 97 0012

REPORT OF INTERVIEW

With Albert Lee Greer, 1435 East DeSoto, St. Louis, Missouri, made on June 6, 1997, by Special Agent James Green, Bureau of Alcohol, Tobacco & Firearms (ATF).

On June 6, 1997, at 4:31 p.m., Special Agent (SA) Randy Bodenschatz and SA James Green contacted Albert Lee Greer at his residence, 1435 East DeSoto, St. Louis, Missouri, relative to the ongoing federal investigation of Willie E. BOYD for the violation of federal firearms and narcotics laws.

SA Bodenschatz and SA Green responded to the address on DeSoto to serve a federal Grand Jury subpoena for Greer relative to the investigation. SA Green had been advised by the Deputy U.S. Marshal (DUSM) Luke J. Adler that he had just spoken with Greer and that Greer indicated that he was going to leave town for Kansas City. DUSM Adler stated that Greer advised him that Sharon Troupe (Willie Boyd's fiancée) had contacted Greer relative to the recovery of a firearm from the residence on DeSoto by St. Louis Metropolitan Police Department Mobile Reserve Officers.

Subsequent to the recovery of the firearms by the officers, Greer made an allegation to the Internal Affairs Division (IAD) of the St. Louis Metropolitan Police Department concerning the loss of \$3,500 in U.S. currency during the search warrant execution by the Mobile Reserve Officers.

Upon arrival at 1435 East DeSoto, SA Green handed Greer his copy of the federal Grand Jury subpoena requiring his testimony on June 11, 1997, at 11:00 a.m. at the United States Court and Custom House, 1114 Market Street, St. Louis, Missouri. SA Green advised Greer that he was under federal subpoena and his appearance would be required on that date and time. SA Green advised Greer that any questions regarding the subpoena could be directed to Assistant United States Attorney (AUSA) Gary M. Gaertner, Jr. who is handling the prosecution of the BOYD case. Greer indicated that he understood the subpoena and would be at the courthouse on that date.

SA Green advised Greer that the subpoena was in reference to the recovery of the firearm at 1435 East DeSoto. Greer stated that a neighbor had contacted him at the shop (3780 W. Florissant) and told him that the police were at his house. Greer stated that he came to the house and talked to the police on the front porch. Greer stated that he told the police that if there is something in the house, I don't know nothing about it. Greer stated that the firearm recovered by the police was not his gun. Greer stated that he told the police to check it for fingerprints, my prints aren't on it. Greer stated that he does not recall telling the police that the gun belonged to Willie (BOYD).

745519 97 0012

-2-

Greer stated that he had maybe \$1,200 to \$1,500 in cash in the house, but was not sure. Greer stated that the house was owned by Mary DeArmond. Greer stated that he was trying to find out if his cousin, Stanley Boyd, took the money. Greer stated that, "I don't believe the police took the money." Greer further stated that the cousin (Stanley Boyd) "might have taken the money to smoke some crack." Greer stated that Stanley is a crack cocaine user and that he had been up and down the street to see if his cousin had been buying any crack cocaine.

Greer stated that he and Sharon Troupe went to the Police Department IAD together. Greer stated that Sharon Troupe picked him up from work to take him to IAD. Greer stated that Troupe told him to "ride with me" and she asked about what was missing from the house. Greer stated that he told her that baseball cards were missing from the house. At that point of the interview, Greer stated, "I am scared to death." Greer stated that Willie (BOYD) didn't tell him to claim the money was missing. Greer stated that Sharon had told him to ride with her and that she estimated that \$3,500 was missing and told him that the police probably took it since he couldn't find it. Greer again stated regarding the missing money, "I don't think the police had anything to do with it, since I dug into it." Greer stated that he had last saw the money a week or so prior to the search warrant execution.

Greer stated that this is the second incident regarding missing money. Greer stated, "I bet Stanley took it." Greer stated that on a prior occasion, another brother had taken money from his wallet. Greer stated that he found the baseball cards and StarWars cards that he thought were missing from the residence.

The foregoing report of interview was reduced to writing following the interview by the undersigned agent.



SA James Green, ATF



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

GARY M. GAERTNER, JR.
Assistant United States Attorney

U.S. Court and Custom House
1114 Market Street, Room 401
St. Louis, Missouri 63101

Direct Line (314) 539-6856
Office (314) 539-2200
Fax (314) 539-2309

December 16, 1999

VIA FAX NUMBER 622-4956
Mr. John A. Bouhasin
Assistant City Counselor

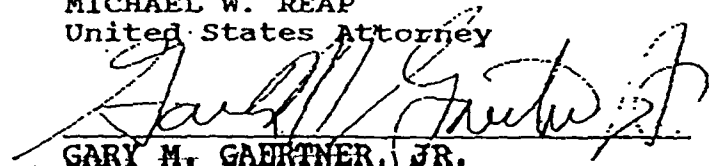
RE: Albert Greer Grand Jury Testimony

Dear John:

Please find enclosed a copy of Albert Greer's Grand Jury testimony. If you have any further questions, please call me.

Respectfully,

MICHAEL W. REAP
United States Attorney


GARY M. GAERTNER, JR.
Assistant United States Attorney

ALBERT GREER

being first duly sworn, testified as follows:

QUESTIONS BY MR. GAERTNER:

Q Would you please state your name, sir.

A Albert Greer.

Q And how do you spell your last name?

A G-r-e-e-r.

Q What is your date of birth?

A 6/1/54.

Q Do you know your Social Security number?

A 499-60-8003.

Q Okay. And you've been informed that this is a federal grand jury, correct, sir?

A Yes.

Q That this is a group of citizens of the community that have come to listen to facts concerning crimes, correct?

A Yes, sir.

Q And that you swore an oath to tell the truth, right?

A Yes, sir.

Q And that if you lie, you'll be charged with lying, a perjury charge, and that carries up to about a five year imprisonment. You're aware of that fact, correct?

ALBERT GREER

1

2

A Yes, I am.

3

Q We went through that, correct?

4

A Yes.

5

Q With regard to -- you live over on 1435

6

DeSoto, correct?

7

A Yes, sir.

8

Q And who owns that house?

9

A Miss Mary DeArmon.

10

Q And who is that?

11

A That's Willie mother.

12

Q Willie Boyd's mother, right?

13

A Yes.

14

Q And Willie Boyd used to stay over on 1435

15

DeSoto sometimes, correct?

16

A Off and on.

17

Q He'd come and stay one or two nights, and

18

then leave?

19

A Something like that, yeah.

20

Q He'd sleep there sometimes?

21

A Yes.

22

Q And Mohammed Mateen would stay there

23

sometimes?

24

A Not as often. He'd come spend a night or

25

two every now and then.

ALBERT GREER

1

2

Q So Willie would come and stay certain
nights, right?

3

4

A Yes.

5

6

Q And prior to -- Mr. Boyd was arrested in
February 1997. You're aware of that?

7

A Yes, I am.

8

9

10

11

Q And prior to that, he would sometimes stay
like come and stay, right, immediately prior to
February? He wouldn't say every night, but he'd
stay a couple nights?

12

13

A He'd pass through like girlfriends, you
know, something like that. That's about it.

14

15

Q So you work over at Boyd's A-One Auto
Repair, correct?

16

A Yes. Part time.

17

18

Q And Mr. Willie Boyd works there too
sometimes, correct?

19

A That's a long time ago.

20

21

Q But he -- that's owned by Willie Boyd's
brother, right?

22

A Right.

23

Q Kenneth Boyd?

24

A Kenneth, yes.

25

Q And you were contacted when you were

ALBERT GREER

working over there on Tuesday, June 3rd at about 2:00, weren't you?

A Yes.

Q And you were contacted because the police were at the -- at your house at 1435 DeSoto?

A Yes.

Q And they were in the house, correct?

A Yes, sir.

Q And at that time they had pulled a pistol out of the house; isn't that correct?

A Yes, it is.

Q And you talked to the police about that pistol, right?

A They asked me was it mine.

Q And it wasn't your pistol, was it?

A No.

Q And is that a pistol that Mr. Willie Boyd kept over there sometimes when he'd go there for protection?

A I've never seen that pistol. Never seen it.

Q Did you tell the police that sometimes Willie would keep a gun over there?

A A long time ago. I would have knew it was

ALBERT GREER

1

2

there.

3

4

Q Did you tell the police that sometimes Willie kept the gun in the house?

5

A As I said, a long time ago.

6

Q Like how long ago?

7

8

A I guess it wasn't quite a year, you know, before he got arrested.

9

10

Q Before he got arrested he'd keep a gun over there.

11

12

A You know what I'm saying. I didn't know he kept it there, I'm saying like that.

13

Q But he would have a gun there?

14

15

A You know what I'm saying? That's what I think. I just go by what I think.

16

17

18

19

Q Well, I'm saying before he got arrested, you know, like six months before he got arrested, or a year before he got arrested, sometimes there would be a gun over there for him, right?

20

A I don't say it's his.

21

22

Q Did he have a gun over there for his protection sometimes?

23

24

A I had a suspicion but I never seen it is what I'm saying.

25

Q Did he ever tell you that?

ALBERT GREER

1

2

A No.

3

Q Did you ever see a gun over there?

4

A Long time ago.

5

Q Did you see a gun in the room where Willie

6

would stay sometimes?

7

A No. I didn't go in there.

8

Q Whose gun was it?

9

A I say I don't even go in there.

10

Q Well, whose gun was it?

11

A I said I never seen one there.

12

Q You said sometimes there was a gun over

13

there you said.

14

A I'm talking about a found gun can be gone

15

now.

16

Q Because the police took it?

17

A Yes. A long time ago.

18

Q Whose guns were those?

19

A I don't know. Wasn't mine.

20

Q So after -- when the police came in there,

21

you did tell them that sometimes -- the gun that

22

was in there was Willie's that he kept in there

23

for protection, right?

24

A I did not say that.

25

Q Okay. After the police left, Sharon

ALBERT GREER

1
2 Troupe called you, correct, or came by your work,
3 correct?

4 A Yes. I was thinking it was the same day.

5 Q And what did she ask you to do?

6 A She asked did I lose anything during the
7 search, and I said I really didn't have a chance
8 to look around. And so I said I was missing some
9 baseball cards, you know, a big set of baseball
10 cards. They worth about \$1,500, something like
11 that. And I had some cash in the house and that
12 was it.

13 Q So did she drive you down to Internal
14 Affairs at the police department?

15 A Um-hmm.

16 Q And did you report to the police
17 department that the police officers that came in
18 there stole money?

19 A Well, I said I missed it. Like I say,
20 when I started cleaning my room up good, I found
21 the cards up under a bunch of clothes. I cleaned
22 my closet out and I found the cards up under
23 there, and then I found everything.

24 Q You found the cards. You found
25 everything.

ALBERT GREER

1

2

A Yes, sir.

3

4

Q But you had reported that the police had
stolen --

5

6

A I just couldn't find it. That's what it
is.

7

8

Q But Sharon wanted you to go down there to
report that it was stolen?

9

10

A Well, I was more or less rushed to do
that. I don't think I'd have did it on my own.

11

12

Q But the police didn't steal any money from
you?

13

A No.

14

Q They didn't steal any cards from you?

15

A No. I found them.

16

Q Nothing was missing from your house?

17

A Nothing was missing.

18

19

Q They didn't threaten you or beat you, did
they?

20

A No.

21

Q There were nice to you?

22

A Yeah.

23

24

Q And Sharon Troupe talked to you about that
pistol that was discovered, right?

25

A She asked me what did they get out the

1 ALBERT GREER

2 house, and I said only thing was in there was a
3 pistol and that was it.

4 Q What did she tell you to tell them about
5 that pistol, sir?

6 A She didn't tell me to tell them. She
7 didn't know it was there.

8 MR. GAERTNER: Any further questions of Mr.
9 Greer?

10 Q When you talked to ATF Agent Jim Green,
11 did you tell him that you were very fearful, very
12 scared?

13 A That's natural. Yeah.

14 Q And you know Willie Boyd well, don't you?

15 A Pretty well.

16 MR. GAERTNER: I have no further questions.
17 Any further questions? Thank you, Mr. Greer.

18 THE FOREPERSON: I do. Are you fearful --
19 would that fear stop you from telling the truth?

20 THE WITNESS: No.

21 THE FOREPERSON: Or cause you to change --

22 THE WITNESS: I have no reason to lie,
23 because I don't -- I have never sold drugs in my
24 life, never shot a pistol in my life, I never did
25 nothing like that.

1 ALBERT GREER

2 THE FOREPERSON: But would that fear stop
3 you from telling something that you may know about
4 someone else?

5 THE WITNESS: It's pretty strong.

6 Q Willie Boyd has sold drugs in the past
7 that you know of?

8 A Years ago.

9 Q Years ago?

10 A Um-hmm.

11 Q Has he sold drugs recently that you know
12 of?

13 A Not that I know of.

14 Q Do you --

15 A I don't discuss anything, nothing. We
16 don't transact anything, we don't discuss
17 anything. I'm just the handyman. That's all I
18 do. I wouldn't have it. I'm not a strong enough
19 person for that. I'm not.

20 MR. GAERTNER: No further questions.

21 (The witness was excused).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY DEARMON, et al.,

Plaintiffs,

vs.

GARRETT BURGESS, et al.,

Defendants.

No. 4:99CV1422 ERW

ANSWERS AND OBJECTIONS TO
PLAINTIFFS' SECOND SET OF INTERROGATORIES
DIRECTED TO DEFENDANT GARRETT BURGESS

COME NOW Plaintiffs and request that, pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant Garrett Burgess respond within thirty (30) days to Plaintiffs' Second Set of Interrogatories as follows.

DEFINITIONS

A. "Documents" or "documentation" shall mean the original, all copies and drafts of writings of any kind, including, without limiting the generality of the foregoing, correspondence, memoranda, reports, minutes, pamphlets, notes, letters, telegrams, messages (including reports, notes and memoranda of telephone conversations and conferences), calendar and diary entries, receipts, contracts, research articles, treatises, records, data, and compilations, e-mail, computer disks, tapes, files and hard drives. Designated documents are to be taken to include all attachments, enclosures and other documents that are attached to, relate to or refer to such designated documents.

B. "Identify" or "identity" with respect to documents shall mean state the author, addressee, persons copied, date, subject matter and document character (e.g.,

i) the mode of communication;

ANSWER: i. Telephone conversation.

ii) witnesses to the conversation;

ANSWER: ii. None.

iii) the length of the conversation; and

ANSWER: iii. I do not recall.

iv) any documentation of the communication, other than the affidavit in support of the search warrant.

ANSWER: iv. None.

9. Identify and describe in detail any communication you had with any person outside of the Police Department, including persons from the U.S. Attorney's office, relating to conducting a search at 1435 E. DeSoto prior to the search on June 3, 1997

and/or relating to providing evidence, testimony or other information after the search was concluded.

ANSWER: In June of 1997, I worked closely with several Federal agencies concerning weapons, drugs, and convicted felons. I believe that I spoke with ATF agent James Green subsequent to the search of 6/3/97, relative to the Federal Government obtaining the door knobs and locks seized at 1435 E. DeSoto. Further, I recall speaking with Assistant United States Attorney Gary Gaertner regarding this matter subsequent to the search of 6/3/97.

10. Identify each person whom you are planning to call as an expert witness at the trial of this action. With respect to each expert(s) identified in your Answer to this Interrogatory, please state:

- a. The subject matter on which each expert may be expected to testify;
- b. The substance of all facts about which each such expert may be expected to testify;
- c. The substance of the opinions to which each such expert may be expected to testify;
- d. The summary of the grounds for each opinion of each listed expert;
and
- e. Identify any reports prepared by any of the experts identified in this interrogatory.

ANSWER: None at this time.

Garrett Burgess
Garrett Burgess

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this 21st day of June, 2000, before me appeared Garrett Burgess, who being first duly sworn upon his oath did state that the foregoing Answers to Interrogatories are true and correct to the best of his knowledge, information and belief.

Susan I. Miller
Notary Public

My commission expires:

12-15-2003

SUSAN I MILLER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS CITY
MY COMMISSION EXP. DEC. 15, 2003

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY DEARMON, et al.,)	
)	
Plaintiffs,)	
)	Cause No. 4:99CV1142 ERW
VS.)	1422
)	
GARRETT BURGESS, et al.,)	
)	
Defendants.)	

DEPOSITION OF GARRETT BURGESS
TAKEN ON BEHALF OF THE PLAINTIFF

August 17, 2000

COPY

Reported by: Vicki Lueders
VENEZIA REPORTING & VIDEO SERVICES
2611 South Big Bend Blvd.
St. Louis, Missouri 63143
(314) 721-1617

Appendix-U

SERVING MISSOURI & ILLINOIS

1 investigation?

2 A. You're talking about -- we notified the C.I. in
3 reference to the ongoing drug trafficking.

4 Q. What does that mean?

5 A. The C.I. called me on several occasions. I can't
6 remember exactly how many, but prior to the search warrant.
7 At which time we went over to do surveillance on the house.
8 Corroborated what he had. That's when I believe I called Jim
9 Green. And I believe Jim Green said he was reliable, they
10 used him in the past. And I can't -- that's all I can
11 remember.

12 Q. Okay. So that was the gist of your investigation
13 prior to seeking the warrant?

14 A. Yes.

15 Q. Okay. The one other fact that I notice in there that
16 might trigger your memory. You said something about federal
17 marshals had arrested Willie Boyd at that location. Do you
18 recall how you had that information? I think that's included
19 in the affidavit.

20 A. I don't remember how I got that information.

21 Q. Related to the confidential informant, can you tell
22 me who that informant is?

23 MR. BOUHASIN: I'll object. That's specifically
24 inadmissible evidence. I'm going to instruct you not to
25 answer that at this time.

1 Q. Okay. And you go through various things that the
2 C.I. said. Are those things -- well, you said you talked to
3 him on 6/1. But are those things now, are you saying that
4 they might have been the kind of all of the things that he
5 said over the course of various conversations? Or was that
6 one conversation that you think you had that you got that
7 information from?

8 A. I don't know what you're trying -- when I originally
9 spoke with the C.I. The first C.I. through Jim Green.

10 Q. Okay.

11 A. All right. He gave me the information. He
12 corroborated the information. Okay.. He went by the house,
13 showed the house. Gave information in reference to the house
14 which started our investigation. If that's the question.

15 Q. Okay. Then at some point did you talk to another
16 C.I.?

17 A. I'd already been talking to another C.I..

18 Q. Okay. Related to the same house and information?

19 A. I obtained information in reference to other houses
20 and that house from the second C.I..

21 Q. Okay.

22 A. The second C.I. knew of the same house, is what I'm
23 trying to say.

24 Q. Was he part of the source of your decision that you
25 had a probable cause to search it?

1 A. I'm sure it helped me in my decision making.

2 Q. Okay. Why didn't you include that in your affidavit
3 to the judge?

4 A. Because I didn't need him. I had, I had a C.I. that
5 was reliable, proven reliable, and gave him the information.

6 Q. Okay. And I guess what I'm trying to get at as far
7 as what information in there. Was that information related to
8 all of your conversations with their C.I. as opposed to one
9 single conversation? Or do you recall?

10 A. I don't recall.

11 Q. Okay. I'm going to go through some of these
12 statements. So if you want to look at that it might help you.

13 A. The affidavit?

14 Q. Yes.

15 A. Okay.

16 Q. You say, the third paragraph, on 6/1/97 you were
17 contacted by a confidential informant who has proven reliable
18 in the past to other law enforcement agencies. I have been
19 informed by other law enforcement agencies who have worked
20 with this informant. When you're stating that, are you
21 referring to Jim Green?

22 A. Yes.

23 Q. Okay. Anyone else that you're referring to in those
24 statements?

25 MR. BOUHASIN: In terms of other law enforcement

1 what we talked about.

2 Q. Okay. Do you remember talking about the doorknobs at
3 all?

4 A. Yes.

5 Q. With Gary Gaertner as opposed to Agent Green?

6 A. I talked to both of them about the doorknob, I'm
7 sure. But I remember talking to Gary Gaertner about one of
8 the doorknobs.

9 Q. Okay. So, I don't know how it works. Gary Gaertner
10 worked for the U.S. attorney's office; is that correct?

11 A. Yes, he is.

12 Q. Okay. And Jim Green, did he work for ATF?

13 A. Yes, he does.

14 Q. Okay. Were you speaking to them separately on
15 separate occasions?

16 A. I saw them at the same time. I can't remember
17 exactly when the doorknob came in. I talked to them several
18 times. They were together. I don't remember exactly when it
19 happened, the conversations. I just remember talking to them.

20 Q. Okay. Were you in charge then of getting the
21 doorknobs to them?

22 A. I was asked to bring them down.

23 Q. Okay. And did you do that?

24 A. Yes, I did.

25 Q. Who did you give them to?

1 A. I remember delivering them to the U.S. attorney's
2 office. I don't remember who I gave it to.

3 Q. Were you involved at all following giving them the
4 doorknobs with the federal agents?

5 MR. BOUHASIN: I'm sorry?

6 Q. Were you involved with the federal agents? Did you
7 coordinate any other investigation or information with the
8 federal agents after you gave them the doorknobs? Was there
9 any other involvement related to this case?

10 A. Not that I can recall.

11 Q. Okay. Did you testify in a Grand Jury proceeding
12 related to this case?

13 A. No, I don't recall.

14 Q. Using that exhibit. Plaintiffs' Exhibit 6 I believe
15 is the property voucher. Can you tell me where your role ends
16 and where someone else's role begins as far as producing that
17 document?

18 A. This is -- I have nothing to do with this document.

19 Q. So, you dropped off the evidence and then --

20 A. This is department.

21 Q. -- someone else produced that?

22 A. Yes. It is departmental.

23 Q. Is there any reason why the doorknobs are not listed
24 on that document?

25 A. Because they didn't receive, St. Louis Police.

**U.S. District Court
Eastern District of Missouri (St. Louis)
CIVIL DOCKET FOR CASE #: 4:99-cv-01422-ERW**

DeArmon, et al v. Burgess, et al
Assigned to: Honorable E. Richard Webber
Demand: \$40,000,000
Case in other court: 01-03096
01-03096
01-03096
Cause: 42:1983 Civil Rights Act

Date Filed: 09/09/1999
Date Terminated: 04/06/2001
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Mary DeArmon**

represented by **Mary DeArmon**
4310 St. Ferdinand
Apartment 1413
St. Louis, MO 63113
PRO SE

Gregory G. Fenlon
ST. LOUIS LAWYERS GROUP
231 S. Bemiston Ave.
Suite 910
Clayton, MO 63105
314-854-1304
Fax: 314-854-1305
Email: ggfmooatty@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tracy Diekemper Elzemeyer
AMERICAN WATER
Central Region
727 Craig Road
St. Louis, MO 63141
314-996-2279
Fax: 314-997-2451
TERMINATED: 12/20/2001
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Albert Greer**

represented by **Albert Greer**
1435 E. DeSoto
St. Louis, MO 63107
PRO SE

Gregory G. Fenlon
(See above for address)

Appendix-V

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tracy Diekemper Elzemeyer
(See above for address)
TERMINATED: 12/20/2001
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Stanley E. Boyd

represented by **Stanley E. Boyd**
JCCC
Jefferson City Correctional Center
8200 No More Victims Road
Jefferson City, MO 65101
573-751-3224
PRO SE

Gregory G. Fenlon
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tracy Diekemper Elzemeyer
(See above for address)
TERMINATED: 12/20/2001
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Garrett Burgess

represented by **John A. Bouhasin**
BOUHASIN LAW FIRM, P. C.
5205 Hampton Ave.
St. Louis, MO 63109-3102
314-832-9600, ext. 102
Fax: 314-932-7672
Email: bouhasinlaw@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Joseph Spiess

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Clarence Hines

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Steve Berles**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Joseph Crews**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**William Noonan**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Thomas Whyte**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Edward Smoote**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Troy Eaton**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**James Joyner**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Board of Police Commissioners of the
City of St. Louis**

represented by **John A. Bouhasin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Wayman Smith, III**

represented by **John A. Bouhasin**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Edward Roth**

represented by **John A. Bouhasin**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Mark Smith**

represented by **John A. Bouhasin**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Leslie Bond, Sr.**

represented by **John A. Bouhasin**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Clarence Harmon***The Honorable Ex-Officio Mayor*

represented by **John A. Bouhasin**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/09/1999	1	COMPLAINT; # Summons Issued: 10 # Days to Respond: 2- # Counts: 3; jury demand (FCE) (Entered: 09/09/1999)
09/09/1999	2	RECEIPT # s99-009166 in the amount of \$ 150.00 for civil filing fee (FCE) (Entered: 09/09/1999)
09/09/1999	3	TRACK INFORMATION STATEMENT filed by plaintiff Mary DeArmon track 2 preferred (FCE) (Entered: 09/09/1999)
09/09/1999	4	NOTICE OF PRIVATE PROCESS SERVER ; Process Server: Special Services (FCE) (Entered: 09/09/1999)
09/17/1999	5	RETURN OF SERVICE executed upon defendant Joseph Spiess on 9/10/99 by leaving copies for police department to pick-up. (MCB) (Entered: 09/20/1999)
09/17/1999	6	RETURN OF SERVICE executed upon defendant William Noonan on 9/10/99 by leaving copies for police department to pick-up (MCB) (Entered: 09/20/1999)
09/17/1999	7	RETURN OF SERVICE executed upon defendant Garrett Burgess on 9/10/99 by leaving copies for police department to pick-up. (MCB) (Entered: 09/20/1999)
09/17/1999	8	RETURN OF SERVICE executed upon defendant Clarence Hines on 9/10/99 by leaving copies copies with Corporate Service upon desk Clerk Dominica Patania, Police Officer, DSN 3501 (MCB) (Entered: 09/20/1999)
09/17/1999	9	RETURN OF SERVICE executed upon defendant Steve Berles on 9/10/99 by leaving copies with Corporate Service, upon police officer Dominica Patania, Desk Clerk, DSN

		expenses be paid from Court's Atty Admission Fee Non-Appropriated Fund (FCE) (Entered: 07/10/2000)
07/07/2000	72	DESIGNATION NEUTRAL REPORT by plaintiff, defendant Neutral: Judge Thomas M. O'Shea date of conference: 8/15/00 time: 10:00 am location: US Courthouse (FCE) (Entered: 07/10/2000)
07/18/2000	73	RULED DOCUMENT by Honorable E. R. Webber granting motion Appointment of Pro Bono Neutral [71-1], terminating motion for order that pltf's portion of the mediation expenses be paid from Court's Atty Admission Fee Non-Appropriated Fund [71-2] (cc: all counsel) (MCB) (Entered: 07/18/2000)
07/18/2000	74	NOTICE of appointment of neutral; neutral: Thomas M. O'Shea; neutral selected by: parties (MCB) (Entered: 07/18/2000)
07/31/2000	75	MOTION by plaintiff Mary DeArmon, plaintiff Albert Greer, plaintiff Stanley Boyd, defendant Garrett Burgess, defendant Joseph Spiess, defendant Clarence Hines, defendant Steve Berles, defendant Joseph Crews, defendant William Noonan, defendant Thomas Whyte, defendant Edward Smoote, defendant Troy Eaton, defendant James Joyner, defendant Board of Police Comr, defendant Wayman Smith III, defendant Edward Roth, defendant Mark Smith, defendant Leslie Bond Sr, defendant Clarence Harmon to extend time twenty days for completion of discovery (MCB) (Entered: 08/01/2000)
08/01/2000	76	RULED DOCUMENT by Honorable E. R. Webber granting motion to extend time twenty days for completion of discovery [75-1] ; Disc completion ddl reset 8/21/00 (cc: all counsel) (FCE) (Entered: 08/01/2000)
08/01/2000	77	RETURN LETTER from Clerk to Tracy A. Diekemper re: disclosure material returned per Local Rule 3.02. (FCE) (Entered: 08/01/2000)
08/15/2000	78	ADR COMPLIANCE REPORT An ADR conference was held on 8/15/00; Neutral: Thomas O'Shea; The parties did not achieve a settlement. (FCE) (Entered: 08/16/2000)
08/31/2000	79	MOTION by plaintiff to compel (FCE) (Entered: 09/01/2000)
09/06/2000	80	ORDER by Honorable E. R. Webber re Plaintiff's Motion to Compel Defendant Burgess to Answer Questions at Oral Deposition [79-1] ; In-court hearing 9/15/00 at 9:30 (cc: all counsel) (FCE) (Entered: 09/07/2000)
09/15/2000	81	RESPONSE by all defendants to motion to compel [79-1] (FCE) (Entered: 09/15/2000)
09/15/2000	82	RULED DOCUMENT by Honorable E. R. Webber Leave to File Defts' response [81-1] to pltf's motion to compel is GRANTED. (cc: all counsel) (FCE) (Entered: 09/15/2000)
09/15/2000	83	MINUTES: before Honorable E. R. Webber re motion to compel [79-1] ; In-court hearing held Arugments of counsel heard; court orders pltf's counsel to supply the court with a list of questions for an in camera review. order to follow; court reporter: Carleen Horenkamp; proceedings started: 9:35 am - ended: 9:55 am (FCE) (Entered: 09/18/2000)
09/20/2000	84	RESPONSE to court by Tracy Diekemper, Counsel for plaintiffs re: [83-1], [83-2], providing proposed questions for the in camera interview. FILED UNDER SEAL AND PLACED IN VAULT. (GLF) Modified on 09/22/2000 (Entered: 09/22/2000)
09/20/2000	84	SEALED DOCUMENT [84-1] (GLF) (Entered: 09/22/2000)
09/27/2000	85	MOTION by defendant Garrett Burgess, defendant Joseph Spiess, defendant Clarence Hines, defendant Steve Berles, defendant Joseph Crews, defendant Thomas Whyte, defendant Troy Eaton to extend time to file completed motion package up to and including November 20, 2000 (MCB) (Entered: 09/28/2000)

09/28/2000	<u>86</u>	RULED DOCUMENT by Honorable E. R. Webber granting motion to extend time to file completed motion package up to and including November 20, 2000 [85-1] ; Notice of Motion ddl reset for 10/30/00 ; Motion Package ddl reset for 11/20/00 (cc: all counsel) (FCE) (Entered: 09/29/2000)
10/10/2000	87	Notice of Motion: Summary Judgment by defendant Garrett Burgess, defendant Joseph Spiess, defendant James Joyner, defendant Edward Smoote, defendant Clarence Hines, defendant Troy Eaton, defendant Thomas Whyte, defendant William Noonan, defendant Joseph Crews, defendant Steve Berles, defendant Board of Police Comr (FCE) (Entered: 10/11/2000)
10/10/2000	87	MOTION by defendant Garrett Burgess, defendant Joseph Spiess, defendant Clarence Hines, defendant Steve Berles, defendant Joseph Crews, defendant William Noonan, defendant Thomas Whyte, defendant Edward Smoote, defendant Troy Eaton, defendant James Joyner, defendant Board of Police Comr for summary judgment Date Motion Received: January 9, 2001 [87-1] w/attached Memorandum in Support. (GLF) Modified on 01/10/2001 (Entered: 01/10/2001)
10/10/2000	87	RESPONSE (Titled: Memorandum in Opposition) by plaintiff Mary DeArmon, plaintiff Albert Greer, plaintiff Stanley Boyd to motion for summary judgment Date Motion Received: January 9, 2001 [87-1] [87-1] w/attachments A-P. (GLF) (Entered: 01/10/2001)
10/10/2000	87	REPLY (Titled: Response to Plaintiff's Memorandum in Opposition to Motion for Summary Judgement) by defendants to response to notice of motion motion Notice of Motion: Summary Judgment [87-1], motion for summary judgment Date Motion Received: January 9, 2001 [87-1] [87-1] (GLF) (Entered: 01/10/2001)
10/30/2000	88	MOTION by plaintiff Mary DeArmon, plaintiff Albert Greer, plaintiff Stanley Boyd for order to stay ruling on defts' motion for summary judgment , and to extend time for filing the motion package and briefing the motion for summary judgment (MCB) (Entered: 10/30/2000)
10/30/2000	<u>89</u>	ORDER by Honorable E. R. Webber IT IS HEREBY ORDERED that Defendants' counsel shall make available the confidential informat on Thursday, November 2, 2000 at 11:00 a.m. Defendants' counsel, as an officer of the Court, shall confirm to the Court that the person answering the Court's questions is the confidential informant, and shall remain with the confidential informant as the court interrogates that confidential informant by telephone. The confidential informant shall be responsible for contacting the Court via telephone at this designated time. ; In-court hearing 11/2/00 at 11:00 a.m. (cc: all counsel) (MCB) (Entered: 10/30/2000)
11/08/2000	<u>90</u>	RULED DOCUMENT by Honorable E. R. Webber granting motion for order to stay ruling on defts' motion for summary judgment [88-1], granting motion to extend time for filing the motion package and briefing the motion for summary judgment [88-2]. Motion package due thirty days after the Court has ruled on the Motion to compel (cc: all counsel) (MCB) (Entered: 11/08/2000)
12/13/2000	<u>91</u>	MEMORANDUM AND ORDER: by Honorable E. R. Webber denying motion to compel [79-1] (cc: all counsel) (MCB) (Entered: 12/13/2000)
12/21/2000	92	NOTICE by plaintiff Mary DeArmon, plaintiff Albert Greer, plaintiff Stanley Boyd of change of address of atty Tracy A. Diekemper, who is now @ GREENSFELDER & HEMKER, 10 S. Broadway, Ste. 2000, St. Louis, MO 63102. (FCE) (Entered: 12/26/2000)
02/07/2001	93	MOTION by all defendants to extend pretrial compliance deadline by 30 days and to continue trial date accordingly. (FCE) Modified on 02/08/2001 (Entered: 02/08/2001)



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1222 Spruce Street, Room 6-205
St. Louis, Missouri 63103-2818
November 13, 2000

783045:

MEMORANDUM TO: Special Agent in Charge
Kansas City Field Division

FROM: St. Louis I Field Office

THRU: Group Supervisor
St. Louis II Field Office

SUBJECT: Request to locate Cooperating Individual

FILE NUMBER: 745519 97 0012

This memorandum will serve to document the efforts of Special Agent (SA).

St. Louis I Field Office, to locate a cooperating individual relative to the investigation of Willie E. Boyd. On October 31, 2000, was instructed by U.S. District Court Judge E. Richard Webber to initiate efforts to locate the subject and arrange for the judge to speak with the individual on the telephone. Judge Webber requested to speak with the individual regarding information provided to the St. Louis Metropolitan Police Department (SLMPD) that is the subject of a federal lawsuit.

CASE BACKGROUND

On February 1, 1997, the United States Marshals Service (USMS) arrested Willie Boyd, an armed career criminal, for a federal Parole Violation. Subsequent to his arrest, a Glock, 9mm caliber, semi-automatic pistol and 33 grams of cocaine was recovered from the residence. Boyd was previously convicted in U.S. District Court in the Eastern District of Missouri for Possession With Intent to Distribute Cocaine and Possession of an Unregistered Firearm in 1981. Boyd, a known narcotics trafficker in the St. Louis area, had previous arrests for homicides and at least six (6) felony convictions. The United States Attorney's Office requested ATF to assist with the prosecution of Boyd for the violation of federal firearms and narcotics laws.

On April 16, 1998, Boyd was convicted on nine (9) counts of the federal indictment following a bench trial in the matter. On October 2, 1998, U.S. District Judge Stephen Limbaugh sentenced Boyd to 276 months of incarceration and a six (6) year term of Supervised Release. Since being sentenced, Boyd has filed numerous appeals and is suing ATF, the United States Attorney's Office, United States Marshals Service and

82

-2-

the Bureau of Prisons (BOP) for Freedom of Information Act (FOIA) violations. Boyd and [redacted] are currently suing the St. Louis Metropolitan Police Department (SLMPD) in federal court alleging violation of his civil rights and property damage. This lawsuit stems from the execution of a state search warrant at 1403 E. DeSoto, St. Louis, Missouri. Assistant United States Attorney (AUSA) Gary M. Gaertner and

Boyd's narcotics trafficking was continuing during his incarceration and that narcotics, firearms and currency were being kept at the residence at 1403 E. DeSoto. [redacted] contacted Mobile Reserve Unit officers and introduced them to the cooperating individual. The officers, in turn, conducted an independent investigation that led to the issuance of a state search warrant. One (1) firearm was recovered from the aforementioned residence.

The cooperating individual

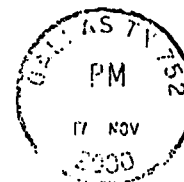
After consultation with Richard L. Poehling of the United States Attorney's Office and St. Louis City Counselor [redacted] attempted to locate the cooperating individual by utilizing the following investigative techniques:

- Ran the subject through computer indices
- Checked the subject for current employment [redacted]
- Ran the subject and [redacted] utility [redacted]
- Left a note [redacted] (no response).
- Contacted a FBI Agent and local police officer that dealt with the subject in the past to generate additional leads.

83

ms

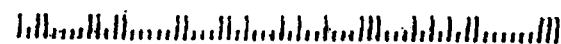
BRENDA TOSSO
1221 Riverbend, Suite 120
Dallas, TX 75247



Appendix-X

PERSONAL & CONFIDENTIAL

63033+7417



Audit Department
1221 River Bend #120
Dallas, Texas 75247

RE: \$25,000.00 Instant Cash Giveaway
MAJOR PRIZE WINNER

BRYANT TROUPE
11950 BRAMPTON HUNT RD
FLORISSANT, MO 63033

Dear BRYANT TROUPE,

An internal audit has confirmed that you or someone in your family entered our 1998 Sweepstakes or 1999 \$50,000.00 Cash Giveaway by completing an entry form (sample enclosed). As of this date our accounting department has informed us that previous notices remain unclaimed.

It is my duty to inform you we are holding a vacation, valued at \$1,250.00 including complimentary round-trip airfare for two, in your name. You and your guest will fly on a major airline to your choice of Orlando or Las Vegas and enjoy two nights accommodations! You have a full year to travel.

In addition, you were assigned a random number and entered in our \$25,000.00 Instant Cash Giveaway. Along with various consolation prizes, there are three major prizes in this promotion: \$25,000.00 Cash, Family Holiday Package, valued at \$700.00, or \$500.00 cash.

Congratulations! Your number was pulled and you are to receive one of the above mentioned Major Prizes!

Your next step is to call our appointment center immediately at 1-888-216-1967, extension 222 and arrange a time for you and your spouse to visit and claim your prizes!

Ask to speak to one of my assistants, Sandra or Kim, who are handling this marketing promotion. It is very important that you and your spouse bring this letter to the gift center and at that time your winning number, 000083322, will be matched to one of the three Major Prizes.

Sincerely,

Brenda Tosso

Brenda Tosso

P.S. One of my assistants, Sandra or Kim, will be on duty Monday through Friday, 9:00 a.m. until 8:00 p.m., and Saturday, 9:00 a.m. until 4:00 p.m. See reverse of this letter for promotional guidelines. We must ask that you bring along two forms of ID such as a major credit card and driver's license.

PLEASE CALL WITHIN 72 HOURS OF RECEIPT OF THIS LETTER. THANK YOU.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY DEARMON, et. al.,

Plaintiffs,

V.

GARRETT BURGESS, et. al.,

Defendants.

4:99CV1422 ERW

FILED

DEC 13 2000

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

ORDER AND MEMORANDUM

This matter is before the Court on Plaintiff's Motion to Compel. (Docket # 79). In this motion, Plaintiff wishes to compel the identity of a confidential informant. As explained below, the Court must deny Plaintiff's motion.

A. Background Facts

The three plaintiffs in this case have brought a § 1983 action against ten St. Louis police officers and the Board of Police Commissioners. This suit stems from a search of the Plaintiffs' residence. Plaintiffs assert that the search warrant was invalid, claiming that there was no probable cause to justify a warrant. Plaintiffs support this assertion by claiming that the warrant was based on the intentionally false statements of Defendant Burgess. A judge issued the warrant after Burgess attested in an affidavit that a confidential informant had relayed information concerning drug activities at the Plaintiffs' residence. The Plaintiffs claim this affidavit was the only foundation for the issuing of the warrant.

During the deposition of Burgess, Plaintiffs' counsel asked Burgess to name the identity of his confidential informant. Defense counsel objected, claiming this information was privileged and not admissible. It is this objection that provides the dispute for the present motion to compel. The

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Plaintiffs assert that information in the affidavit was suspect. They further assert that the affidavit contains information that was misrepresented by either Burgess or the confidential informant. They aver that it is necessary to discover the identity of the confidential informant, to challenge the allegations made within the affidavit.

On September 15, 2000, a hearing was held before this Court regarding this motion. At that hearing, the Court held that it would conduct an in camera review with the confidential informant in order to ascertain whether the disclosure of his or her identity was vital to a fair trial. The Court also ordered Plaintiffs to submit a list of proposed questions to ask the confidential informant during this interview. After a lengthy delay, the Court conducted a review with the informant. During a conversation with the confidential informant, the Court elicited information regarding the basis for this informant's knowledge concerning the Plaintiffs' residence. The Court elicited this information by asking the informant questions from Plaintiffs' list of proposed questions.

B. Movant's Burden

The case law makes it clear that a party seeking government disclosure of the identity of a confidential informant bears a heavy burden. Generally, the Government has a qualified privilege to withhold the identity of confidential informants. Rovario v. U.S., 353 U.S. 53 (1957). By preserving their anonymity, the privilege fosters the public's interest in effective law enforcement by encouraging citizens to communicate to the government information regarding the commission of crimes. United States v. Whitley, 734 F.2d 1129, 1137 (6th Cir.1984), citing Rovario, 353 U.S. at 59.

This privilege will yield, however, when the moving party "bears the burden of demonstrating the need for disclosure." United States v. Wright, 145 F.3d 972, 975 (8th Cir. 1998). See also United States v. Moore, 129 F.3d 989, 992 (8th Cir. 1997) (holding that the moving party bears the burden of

demonstrating the need for disclosure). The moving party's burden is great. In order to show a sufficient need for disclosure of a confidential informant's identity, the moving party must show that disclosure is "vital to a fair trial." Wright, 145 F.3d at 975. See also United States v. Bourbon, 819 F.2d 856, 860 (8th Cir. 1987) (holding that "disclosure of a confidential informant will not be ordered unless it is vital to a fair trial"). It is important to note that mere speculation as to why a moving party needs this disclosure fails to meet this burden. U.S. v. Chevre, 146 F.3d 622, 624 (8th Cir. 1998). See also United States v. Fairchild, 122 F.3d 605, 609 (8th Cir. 1997) (holding that "mere speculation fails to meet this burden"); U.S. v. Harrington, 951 F.2d 876, 877 (8th cir. 1991) ("In order to override the government's privilege of nondisclosure, defendants must establish beyond mere speculation that the informant's testimony will be material to the determination of the case.").

Because "there is no litmus test to determine when disclosure is justifiable," courts must consider the particular circumstances of each case. Harrington, 951 F.2d at 877, citing Roviato, 353 U.S. at 59. In making a determination on whether to compel such a disclosure, a court must balance the moving party's right to the disclosure against the government's privilege to withhold the identity of the confidential informant. Wright, 145 F.3d at 975. See also United States v. Harrington, 951 F.2d 876, 877 (8th Cir. 1991) (holding that in making this determination, "the court must weigh the defendant's right to information against the government's privilege to withhold the identity of its confidential informant"). When performing this balancing test, risk to the safety of the confidential informant is clearly a factor that the court must consider. See United States v. Sai Keung Wong, 886 F.2d 252, 256 (9th Cir. 1989) (observing that the potential for danger to the confidential informant outweighed any possible need for the disclosure of his identity). Courts must also consider the materiality of the evidence that could be provided by the confidential informant. Harrington, 951 U.S.

at 877. "A trial court abuses its discretion if it orders disclosure absent a showing of materiality." Id., citing U.S. v. Grisham, 748 F.2d 460, 463 (8th Cir. 1984).

It is important to note that the Government's privilege to withhold the identity of a confidential informant is less likely to yield in a civil case because the informant's identity is not usually essential to the preparation of civil litigation. U.S. v. One 1986 Chevrolet Van, 927 F.2d 39, 43 (1st Cir. 1991). Since the guilt or innocence of a criminal defendant may be viewed as a much more significant determination than the outcome of civil litigation, "that difference in significance is a factor to be considered when the privilege is asserted in a civil proceeding." Holman v. Cayce, 873 F.2d 944, 946 (6th Cir. 1989).

Finally, it is also important to note that the Government's privilege will almost never yield when the confidential informant is merely a "tipster," as opposed to someone who participated in the alleged crime with the defendant. See U.S. v. Sharp, 778 F.2d 1182, 1186 n. 2 (6th Cir. 1985) (holding that when "the informant has not been an 'active participant in the events underlying the defendant's potential criminal liability,' the balance weighs heavily towards nondisclosure"). Indeed, "it is well established that in 'tipster' cases, where the informant is not a necessary witness to the facts, disclosure of the informant is not required." Moore, 129 F.3d at 992. See also U.S. v. Sykes, 977 F.2d 1242, 1245-46 (8th Cir. 1992) (holding that in tipster cases, disclosure of the informant's identity is generally not material to the outcome of the case, and therefore is not required); Harrington, 951 F.2d at 878 ("In cases involving 'tipsters' who merely convey information to the government but neither witness nor participate in the offense, disclosure is generally not material to the outcome of the case and is therefore not required.").

C. Application to Plaintiffs' Motion

In the present case, the Plaintiffs have failed to meet their burden in demonstrating the need for disclosure of the confidential informant's identity. Indeed, all of the legal factors stated above mandate that Plaintiffs' motion be denied. The Plaintiffs do not point to any specific evidence demonstrating the need for this disclosure. Instead, they merely hypothesize, without any supporting evidence, that the confidential informant was untruthful in whatever information he or she gave to the police. As stated above, mere speculation that the information possessed by a confidential informant may be relevant to a case can never be the basis for disclosure of the confidential informant's identity. See, e.g., Chevre, 146 F.3d at 624. Plaintiff has failed to identify how any information possessed by the confidential informant would be "vital to a fair trial," as required by Wright, 145 F.3d at 975 and Bourbon, 819 F.2d at 860. Plaintiff has failed to demonstrate how any specific information possessed by the confidential informant would even be material to this case, as required by Harrington, 951 U.S. at 877 and Grisham, 748 F.2d at 463. In short, Plaintiff has failed to provide this Court with any evidence demonstrating a need for disclosure. The fact that the present case is a civil case, as opposed to a criminal trial, only further supports the Court's conclusion that disclosure is not warranted in this case. See One 1986 Chevrolet Van, 927 F.2d at 43.

Moreover, when conducting its in camera review with the confidential informant, that informant apprized the Court of the fact that he or she had merely provided a tip to the police concerning Plaintiff's residence. That review also revealed that the informant did not participate in any alleged wrongdoing at Plaintiff's residence. As stated above, the Government's privilege will almost never yield when the confidential informant is merely a "tipster," as opposed to someone who participated in an alleged crime with a defendant. See Moore, 129 F.3d at 992; Sykes, 977 F.2d at

1245-46. Consequently, the fact that the confidential informant merely conveyed information to the police provides further support for denial of Plaintiffs' motion.

Finally, both the police department and the confidential informant have provided the Court with credible evidence indicating confidential informant's safety would be severely jeopardized by the release of his or her name. As stated above, the potential danger imposed upon a confidential informant caused by the disclosure of that informant's identity is a significant factor this Court must weigh when determining whether to compel disclosure. See, e.g., Sai Keung Wong, 886 F.2d at 256. From its conversation with the confidential informant, the Court is convinced that this person could very likely be subjected to physical harm if his or her identity were to be publically exposed during these proceedings. The Court refuses to expose the confidential informant in the present case to the risk of severe physical danger when the Plaintiffs have completely failed to demonstrate a need for that informant's identity.


D. Conclusion

Every factor relevant to Plaintiffs' Motion to Compel the Identity of Confidential Informant demands that the confidential informant's identity not be disclosed in the present case. Therefore, the Court must deny Plaintiffs' motion.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel (Docket # 79) is **DENIED**.

So ordered this 13th day of December, 2000.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

APR 06 2001

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

MARY DeARMON, et. al.,

Plaintiffs,

v.

GARRETT BURGESS, et. al.,

Defendants

No. 4:99CV1422 ERW

MEMORANDUM AND ORDER

This matter is before the Court on the Defendants' Motion for Summary Judgment. (Docket # 87). On February 20, 2001, the Court issued an order regarding this motion, in which the Court requested the filing of supplemental briefs from both parties. (Docket # 95). On March 5, 2001, the Defendants filed their Supplemental Brief in Support of their Motion for Summary Judgment. (Docket # 96). In turn, the Plaintiffs filed their Supplemental Memorandum on March 13, 2001. (Docket # 97). For the reasons listed below, the Court grants the Defendants' motion for summary judgment on each of the Plaintiffs' claims.

A. BACKGROUND FACTS

The Plaintiffs have filed this cause of action pursuant to 42 U.S.C. § 1983. Their claims stem from the Defendants' search and seizure performed at Plaintiff Mary DeArmon's residence at 1435 DeSoto in St. Louis, Missouri. Since 1990, DeArmon has allowed her son, Plaintiff Stanley Boyd, and her cousin, Plaintiff Albert Greer, to live at this residence.

On June 2, 1997, Defendant Burgess provided a sworn affidavit to Judge Michael Calvin in which Burgess sought a warrant to search this residence. In his affidavit, Burgess attested that a confidential informant had witnessed the conducting of drug transactions at the DeSoto residence.

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According to Burgess, the confidential informant advised him that between May 31 and June 1, 1997, he had been within the residence of 1435 DeSoto, and that he believed the residence to be owned by an African-American female named "Mary." The informant also told Burgess that during this twenty-four hour period, he had observed several unknown African-American males at this residence who were in possession of cocaine base and heroine. This informant advised him that "Mary" was allowing an individual named Willie Boyd to store narcotics within the residence. While Boyd was imprisoned at this time, the confidential informant believed that Mary DeArmon was permitting associates of Boyd to continue Boyd's narcotics business at the DeSoto residence. The confidential informant also told Burgess that he had observed the packaging of drugs at this residence by two males, and that he had observed several firearms on the premises.

According to Burgess, he and Defendant Joyner set up surveillance of the DeSoto residence on June 2, 1997. During this surveillance, he and Officer Joyner witnessed what appeared to be the occurrence of hand-to-hand drug transactions with two African-American males. Burgess has testified that these two males appeared to fit the descriptions of two men provided by the confidential informant.

Subsequently, on June 2, 1997, Burgess provided a sworn affidavit to Judge Calvin. (See Defendant's Exhibit B). In this affidavit, Burgess stated that he had been "contacted by a confidential informant who has proved to be reliable in the past to other Law Enforcement Agencies." (*Id.*) Burgess also relayed the informant's description of drug transactions observed by the informant at the DeSoto residence. In this affidavit Burgess also stated that after personally engaging in surveillance of this residence, he had witnessed what appeared to be the occurrence of hand-to-hand drug transactions. In addition, Burgess also stated that "[i]t should be noted that

Federal Marshall's arrested Willie Boyd hiding in the residence of 1435 DeSoto," and that the informant believed that this residence was currently "being used as a safe house by Willie Boyd and his associates to store illegal drugs and weapons." (*Id.*) While Burgess did not state the date of this arrest, it is undisputed that Boyd was arrested at the DeSoto residence in 1982. Accordingly, on June 2, 1997, Judge Calvin issued a warrant to search the premises for weapons, drugs, drug transaction records, and any other instrumentalities of drug trafficking crime.

Afterwards, Burgess informed Defendant Joseph Spiess of the warrant and requested a police squad to aid in the effectuation of this warrant. Burgess enlisted such a squad, the members of which comprise the other defendants in this lawsuit. On the afternoon of June 3, 1997, the Defendants conducted a search of this residence. The parties dispute whether any of the Defendants ever produced a copy of a warrant to Plaintiff Albert Greer upon his request when they were searching the DeSoto residence. In his deposition, Greer testified that he arrived at the residence after the Defendants had started their search. (*See* Deposition of Albert Greer, at 16-17). Greer further claims that upon his arrival, he asked the Defendants if they had a warrant to conduct their search. (*Id.*) According to Greer's testimony, Defendant Burgess informed Greer that the police did not need a warrant to search the DeSoto house. (*Id.*)

Contrary to Greer's testimony, the Defendants all claim that a copy of the warrant was shown to Greer upon his request. There are inconsistencies, however, among the testimony of several of the Defendants concerning which particular officer showed the warrant to Greer. Burgess and Defendant William Noonan have testified that Spiess read and handed Greer a copy of the warrant. (*See* Deposition of William Noonan, at 12-14; Deposition of Garrett Burgess, at 56, 58). This testimony conflicts with the testimony of Spiess, who has stated that it was actually Burgess who

allowed Greer to view a copy of the warrant. (See Deposition of Joseph Spiess, at 17-18).

Regardless of the inconsistencies in the Defendants' testimony, it is clear that the parties dispute whether Greer was shown a copy of the warrant by any of the Defendants when Greer arrived at the DeSoto residence.

It is undisputed, however, that when conducting their search, the Defendants did not discover any illegal narcotics. While one firearm was found and seized, no criminal charges have ever been filed as a result of this search. It is also undisputed that the Defendants did leave the DeSoto residence in a certain level of disarray after their search. Two closet doors, which had previously been locked, were kicked in by the Defendants. The Defendants punched a number of holes in the walls of two closets on the second floor. Several pieces of furniture were left overturned, such as a couch in the living area of the residence. Also, dresser drawers on the second floor were left in a state of disarray. In addition, the Defendants also confiscated a photograph album, several bills, a gold neckless, and some other personal papers.

Subsequent to this search, the Plaintiffs filed their present action under 42 U.S.C. § 1983. In their Complaint, the Plaintiffs claim that the Defendants' search violated their rights under the Fourth and Fourteenth Amendments to the United States Constitution. The Plaintiffs assert that the search was unconstitutional, as they claim there is a question of fact as to whether a valid search warrant was ever issued by Judge Calvin. The Plaintiffs also claim that even if Judge Calvin issued a warrant, that warrant was unconstitutional, as there was no probable cause for the issuance of a warrant. In addition, the Plaintiffs contend that the Defendants' execution of the warrant, if it indeed existed, was also unconstitutional because the Defendants were overly destructive when conducting

their search, and because the Defendants seized items, such as jewelry and family photographs, that were outside the scope of the warrant.

With these facts in mind, the Court turns to the Defendants' Motion for Summary Judgment.

B. LEGAL STANDARDS FOR SUMMARY JUDGMENT MOTION

The standards applicable to summary judgment motions are well settled. Pursuant to Federal Rule of Civil Procedure 56(c), a court may grant a motion for summary judgment if all of the information before the court shows "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The United States Supreme Court has noted that the "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed to 'secure the just, speedy and inexpensive determination of every action.'" Id. at 327, quoting Fed. R. Civ. P. 1.

In order to obtain summary judgment, the moving party must demonstrate "an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325. Once the moving party carries this burden, the non-moving party must "do more than simply show there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party may not rest on allegations or denials in the pleadings, but must "come forward with 'specific facts showing that there is a genuine issue for trial.'" Id. at 587, quoting Fed. R. Civ. P. 56(3).

In analyzing summary judgment motions, the Court is required to view the facts in a light most favorable to the non-moving party, and must give the non-moving party the benefit of any inferences that can logically be drawn from those facts. Matsushita, 475 U.S. at 587. Moreover, this Court is

required to resolve all conflicts in favor of the non-moving party. Robert Johnson Grain Co. v. Chemical Interchange Co., 541 F.2d 207, 210 (8th Cir. 1976). The trial court may not consider the credibility of the witnesses or the weight of the evidence. White v. Pence, 961 F.2d 776, 779 (8th Cir. 1992).

C. QUALIFIED IMMUNITY

With these standards in mind, the Court turns to the Defendants' motion. The Defendants all claim that they are entitled to summary judgment as to all of Plaintiffs' search and seizure claims on the basis of qualified immunity. Under the doctrine of qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Courts employ a two-step test when determining whether a defendant is entitled to qualified immunity. Sexton v. Martin, 210 F.3d 905, 909 (8th Cir. 2000). First, the Court must ascertain whether the plaintiff has "asserted a violation of a constitutional or statutory right." Id., citing Munz v. Michael, 28 F.3d 795, 799 (8th Cir. 1994). This element is clearly met in the present case, as the Plaintiffs claim that the Defendants have violated their Fourth Amendment right to be free from unreasonable searches and seizures.

Second, the Court "must determine whether the constitutional right was clearly established at the time that the plaintiffs were discharged." Sexton, 210 F.3d at 909. Courts take "a broad view of what constitutes 'clearly established law' for the purposes of a qualified immunity inquiry." Id., quoting Boswell v. Sherburne County, 849 F.2d 1117, 1121 (8th Cir. 1988). If the law was not clearly established at the time the disputed action occurred, a qualified immunity defense will

generally succeed, as "an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." Harlow, 457 U.S. at 818. If, however, "the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." Id. at 818-19. Thus, whether an official is protected by qualified immunity depends on the "objective legal reasonableness," of his actions, Id. at 819, for if an objectively reasonable official would have known that his or her actions violate clearly established law, then the qualified immunity defense is not available. Hummel-Jones v. Strobe, 25 F.3d 647, 652 (8th Cir. 1994).

The Plaintiffs counter that the "Defendants are not entitled to qualified immunity, because the search and seizure was not supported by a valid warrant and, to the extent there was a warrant, the Officers exceeded the scope of the warrant issued." (Plaintiffs' Memorandum in Opposition, p. 3). In essence, the Plaintiffs first claim the officers are not presently entitled to qualified immunity because there is a question of fact as to whether a warrant existed to search the DeSoto residence. Second, the Plaintiffs claim that even if a warrant existed, it was invalid, as it was not supported by probable cause. Third, the Plaintiffs claim that all of the Defendants who aided Burgess in conducting the search are not entitled to qualified immunity because the underlying warrant was invalid, and their reliance of the warrant procured by Burgess was therefore unreasonable. Fourth, the Plaintiffs claim that the search performed by the Defendants exceeded the scope of the warrant. The Plaintiffs contend that all of these actions violated clearly established law, and therefore the Defendants are not entitled to qualified immunity. The Court disagrees.

1. Existence of Warrant

First, there is no genuine issue of material fact as to whether a warrant to search the DeSoto residence existed at the time of the search. The Plaintiffs claim that Burgess did not apply for or receive a search warrant in this matter. There is absolutely no evidence before the Court, however, to support such a claim. In stark contrast to the Plaintiffs' claims, the Defendants have provided a copy of an affidavit produced by the Clerk of the Circuit Court, City of St. Louis. (Defendant's Exhibit B). That affidavit is signed by Garrett Burgess, and describes both his discussions with the confidential informant and the transactions he personally observed when conducting surveillance on the DeSoto residence. (*Id.*) The Defendants have also produced a copy of a warrant signed by Judge Calvin on June 2, 1997. (*Id.*) This warrant commands the search of the DeSoto residence for drugs, weapons, drug transaction records, currency, and any other instruments of drug trafficking. (*Id.*)

The Plaintiffs' only purported proof that a warrant did not exist is their claim that they were unable to immediately obtain a copy of the warrant from the circuit clerk. However, this claim does not create a genuine issue of material fact. Even when viewing the facts in a light most favorable to the Plaintiffs, as the Court must when determining this motion, there is absolutely no evidence which would allow a reasonable juror to conclude that a warrant did not exist. Consequently, there is no genuine issue of material fact as to whether Burgess applied for and received from Judge Calvin a warrant to search the DeSoto residence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2506 (1986) (observing that a genuine issue of material fact does not exist under Fed.R.Civ.P. 56 when the evidence is such that a jury could not find for the nonmoving party); Celotex, 477 U.S. at 325 (holding that summary judgment is appropriate in those situations where the moving party demonstrates an absence of evidence to support the non-moving party's claims). Moreover, attacks on the validity of a warrant must be supported by more than conclusory

allegations. Myers v. Morris, 810 F.2d 1437, 1457 (8th Cir. 1987), abrogated on other grounds. See also Fullman v. Graddick, 739 F.2d 553, 562 (C.A. Ala. 1984). The Plaintiffs' attacks on the existence of a warrant, however, are only supported by their own conclusory allegations. Such allegations are insufficient to create a genuine issue of material fact.

The Court holds that there is no genuine issue of material fact as to the existence of a warrant. Therefore, the Defendants are entitled to qualified immunity as to Plaintiffs' claims that the Defendants searched the DeSoto residence without procuring a warrant.

2. Probable Cause

Second, the Court holds that the warrant in question was supported by probable cause. The Plaintiffs submit a number of arguments for why they believe probable cause to issue a warrant was lacking. Specifically, the Plaintiffs contend that Burgess' affidavit contained a number of false or misleading statements. The Plaintiffs point to the fact that while Burgess' affidavit states that "[i]t should be noted that Federal Marshals arrested Willie Boyd hiding in the residence of 1435 DeSoto," (See Defendants' Exhibit B), his affidavit does not inform the reader that this arrest occurred in 1982, or fifteen years before the search in question. Thus, the Plaintiffs describe this information regarding Willie Boyd's arrest as being "stale." In addition, the Plaintiffs aver that Burgess placed outright falsehoods in this affidavit. To support this argument, Plaintiffs point to Burgess' statements where he indicates that he conducted surveillance of the DeSoto residence, and that he observed what appeared to be transactions in illegal drugs. The Plaintiffs assert, however, that no such transactions occurred at the DeSoto residence during the time period in question. Thus, the Plaintiffs conclude that Burgess must have been lying in his affidavit. Furthermore, the Plaintiffs question the reliability of Burgess by pointing to his statement in the affidavit which describes a

"confidential informant who has proven reliable in the past to other Law Enforcement Agencies."

(Defendants' Exhibit B). The Plaintiffs state that subsequent to the filing of this lawsuit, Burgess answered an interrogatory question by stating that he had actually worked personally with the confidential informant in the past. Consequently, the Plaintiffs cite this inconsistency between Burgess' affidavit and his interrogatory answer as evidence that the affidavit underlying the warrant contained deliberate falsehoods.

There is no question here that the law is established as to the requirement of probable cause for the issuance of a search warrant. The question to be addressed is whether there is a genuine issue of material fact as to whether the Defendants' actions violated the law, i.e., whether the Defendants' actions were objectively reasonable under the clearly established standards concerning probable cause. If a case involves a question of probable cause for a law enforcement official's actions, the case should not proceed past the discovery stage if there is any reasonable basis to conclude that probable cause existed. Cross v. City of Des Moines, 965 F.2d 629, 632 (8th Cir.1992) (citing Hunter v. Bryant, 502 U.S. 224, 227-228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991)). "A defendant need not show that there was only one reasonable conclusion for a jury to reach on whether probable cause existed, but rather, a court should ask whether the law enforcement officials acted reasonably under settled law in the circumstances then existing, not whether another reasonable, or more reasonable interpretation of the facts can be constructed years later." Walden v. Carmack, 156 F.3d 861, 870 (8th Cir. 1998), (citing Cross, 965 F.2d at 632). See also Hunter, 502 U.S. at 228, 112 S.Ct. 534.

"To be valid, a search warrant must be based upon a finding by a neutral and detached judicial officer that there is probable cause to believe that evidence, instrumentalities or fruits of a

crime, contraband, or a person for whose arrest there is probable cause may be found in the place to be searched." Walden, 156 F.3d at 870 (citing Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967)). The standard of probable cause for the issuing judge is whether, given the totality of the circumstances, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); United States v. Johnson, 64 F.3d 1120, 1126 (8th Cir.1995). Probable cause is "a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." Gates, 462 U.S. at 232, 103 S.Ct. 2317. Applications and affidavits should be read with common sense and not in a grudging, hyper-technical fashion. United States v. Ventresca, 380 U.S. 102, 109, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965).

Most importantly in regards to the present matter, probable cause "may be found in hearsay statements from reliable persons," Walden, 156 F.3d at 870 (citing Gates, 462 U.S. at 245, 103 S.Ct. 2317). Probable cause may also be found in hearsay statements from confidential informants corroborated by independent investigation. United States v. Williams, 10 F.3d 590, 593 (8th Cir.1993) (citing Draper v. United States, 358 U.S. 307, 313, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959)). See also, United States v. Mambu Fulgham, 143 F.3d 399 (8th Cir.1998). In addition, probable cause may also be found "in observations made by trained law enforcement officers." Walden, 156 F.3d at 870 (citing McDonald v. United States, 335 U.S. 451, 454, 69 S.Ct. 191, 93 L.Ed. 153 (1948)). Moreover, once a judicial officer has issued a warrant upon a finding of probable cause, that finding deserves great deference. Gates, 462 U.S. at 236, 103 S.Ct. 2317.

In the present case, it is undisputed that Burgess was contacted by a confidential informant. The Plaintiffs have not disputed that this informant had proven reliable in the past to other law

enforcement agencies. It is undisputed that much of the information contained in Burgess' affidavit had been provided by this confidential informant. As stated above, probable cause to issue a warrant may be found when a confidential informant relays information which indicates that there is a fair probability that contraband or evidence of crime will be found in a particular place, and when that informant has a track record of supplying reliable information. See Walden, 156 F.3d 869-71. Moreover, it is well settled that an informant's reliability is established when he has proven reliable to other law enforcement agencies in the past. Id. Therefore, the Court holds that, standing by itself, the information provided by the confidential informant that was contained in the Burgess affidavit was sufficient to establish probable cause.

Furthermore, the Plaintiffs' assertions that this affidavit contained false or misleading information do not create a genuine issue of material fact as to whether probable cause existed. There exists a presumption of validity with respect to an affidavit supporting a search warrant. Franks v. Delaware, 438 U.S. 154, 171 (1978). Bare allegations of an officer's misrepresentation will not overcome this presumption, as an attack on a warrant's validity must be more than conclusory. Myers, 810 F.2d at 1457. The Plaintiffs point to no evidence to support their contention that Burgess lied about his observations of the DeSoto residence during his June 2, 1997 surveillance. The Plaintiffs do not dispute that Willie Boyd, at one time, was arrested at the DeSoto residence. While citing an inconsistency in Burgess' interrogatory answers, the Plaintiffs do not dispute that the confidential informant had indeed proven reliable to other law enforcement agencies. In short, the Plaintiffs' claims of misrepresentation are bare allegations, supported by nothing more than their own conclusory arguments.

The Court finds that there is no genuine issue of material fact as to whether probable cause existed to support the issuance of a warrant. Therefore, the Defendants are all entitled to qualified immunity as to Plaintiffs' claims that the Defendants searched the DeSoto residence without a valid warrant.

3. Reliance on Facially Valid Warrant

Third, Plaintiffs claims that all of the Defendants other than Burgess unreasonably relied on his presentation of the warrant in question are without merit. As stated above, there is no genuine issue of fact as to whether a warrant existed, or as to whether that warrant was supported by probable cause. Thus, all of the Defendants that Burgess enlisted to help effectuate the warrant were objectively reasonable in their reliance on this warrant. Furthermore, "even if the search warrant had been issued without a proper finding of probable cause, the officers who executed the warrant acted in the good faith belief that probable cause existed based on the issuance of the warrant." Walden, 156 F.3d at 872. Given the specific information contained in the search warrant affidavit, which included not only information provided by the confidential informant but also information obtained by Burgess during his surveillance, "it would have been objectively reasonable for the officers executing the search warrant to have relied on the issuing judge's determination that probable cause existed." Id. (citing Johnson, 64 F.3d at 1126). See also United States v. Smith, 63 F.3d 766, 769 (8th Cir. 1995) (holding that officers entitled to qualified immunity when a search warrant was not facially invalid and contained sufficient facts that officers could have executed it with objective good faith on probable cause determination of magistrate judge). Consequently, even if the warrant had been invalid, all of the Defendants would still be entitled to qualified immunity, as they were objectively reasonable to rely on Judge Calvin's determination that probable cause existed.

4. Unreasonable Execution of Warrant

Fourth, the manner in which the Defendants executed the warrant, i.e. kicking in locked closet doors, punching holes in closet walls, overturning furniture, and confiscating photos, jewelry, and personal papers, did not violate clearly established law regarding the execution of search warrants. It is true that the "destruction of property that is not reasonably necessary to effectuate a search warrant may violate the Fourth Amendment." Tarpley v. Greene, 684 F.2d 1 (D.C. Cir. 1982). However, the Court finds the manner in which the Defendants conducted their search did not violate clearly established law regarding the execution of search warrants. There is no question that the search was extensive. However, this fact alone does not make it unreasonable. In regards to the closet doors, the Defendants state that there "is no genuine issue of material fact ... that locked doors must be opened during the protective sweep to see if people are in there, for their safety" as well as that of the police. (Defendant's Memorandum, p. 12). The Court agrees. Breaking in these doors was reasonable not only to ensure the Defendants' safety, but also to perform their search for drugs or other instruments of crime. Likewise, as to the holes punched in the closet walls, the Court finds that an objective officer could have reasonably believed, based on his or her past law-enforcement experiences, that drugs could be stashed behind the walls. Furthermore, an objectively reasonable officer could find it necessary to perform a thorough search of furniture, where drugs could easily be hidden.

Regardless of the fact that some of the Plaintiffs' personal property was confiscated, the Plaintiffs cannot show that any of the items seized were inconsistent with the parameters of the search warrant. "Law enforcement officials must have probable cause to believe that items seized

in connection with a valid search warrant are associated with suspected criminal activity." Walden, 156 F.3d at 873. "Probable cause demands not that an officer be 'sure' or 'certain' but only that the facts available to a reasonably cautious man would warrant a belief 'that certain items may be contraband or stolen property or useful as evidence of a crime.'" United States v. Weinbender, 109 F.3d 1327, 1330 (8th Cir.1997) (citations omitted). Given the wording of the search warrant and the known circumstances giving rise to the search, objectively reasonable law enforcement officials could have believed that the photos, jewelry, and personal papers seized were of such a nature as to constitute contraband or evidence of criminal activity.

The manner in which the Defendants performed their search was reasonably necessary to effectuate the search warrant, and therefore did not violate clearly established law regarding searches and seizures under the Fourth Amendment. The Defendants are thus entitled to qualified immunity on Plaintiffs' claims that the manner of their search exceeded the permissible scope of the search warrant.

D. PRODUCTION OF WARRANT DURING EXECUTION

The Plaintiffs also claim the execution of the warrant was improper, as the Defendants did not produce a copy of the warrant when so asked to produce by Greer. As set forth in the statement of background facts, there is indeed an issue of fact as to whether a copy of the warrant was produced by the Defendants upon Greer's request. Fed.R.Crim.P. 41(d) states that the "officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant." In addition, Mo.Rev.Stat. § 542.296(4) states as follows:

If any property is seized [during a search pursuant to a warrant], the officer shall give to the person from whose possession it is taken, if he is present, a copy of the warrant and an itemized receipt of the property taken.

Viewing the contradictions in the parties' testimony, it would appear that the parties dispute whether the Defendants complied with either of these statutes pertaining to the execution of warrants when performing their search of the DeSoto residence.

With this dispute of fact in mind, the Court recently ordered additional briefing on the following three questions: (1) does the deliberate violation of Fed.R.Crim.P. 41(d) or Mo.Rev.Stat. 542.296(4) constitute a violation of either the Fourth or Fourteenth Amendments to the United States Constitution; (2) if the deliberate violation of Fed.R.Crim.P. 41(d) or Mo.Rev.Stat. 542.296(4) constitutes a violation of either the Fourth or Fourteenth Amendments, is such a constitutional violation a cognizable claim under 42 U.S.C. § 1983 when probable cause existed for the issuance of a search warrant, when a warrant was issued, and when a search was conducted within the scope of that warrant; and (3) at the time of the Defendants' June 3, 1997 search and seizure of Plaintiffs' residence, was it clearly established that such a deliberate violation was unconstitutional, so as to preclude the Defendants in this case from receiving qualified immunity.

After reviewing the parties' supplemental briefs, the Court finds that, even when viewing the facts in a light most favorable to Plaintiffs, the Defendants are still entitled to qualified immunity on this claim, because at the time of the June 3, 1997 search and seizure, it was not clearly established that the failure to follow Fed.R.Crim.P. 41(d) or Mo.Rev.Stat. § 542.296(4) constituted a constitutional violation. Indeed, the Plaintiffs' own memorandum highlights this point, as it states that "[v]arious federal courts have addressed this issue, specifically related to violations of Federal Rule of Criminal Procedure 41(d), but they have not always reached the same conclusion." (Plaintiffs' Supplemental Memorandum, p. 1). The fact that courts have reached differing conclusions on this question demonstrates that the law is not "clearly established" on this question.

Moreover, the sole Eighth Circuit case cited by the Plaintiffs for the proposition that the disregard of Fed.R.Crim.P. 41(d) or Mo.Rev.Stat. § 542.296(4) constitutes a constitutional violation is United States v. Hepperle, 810 F.2d 836, 839 (8th Cir. 1987). The Plaintiffs' description of this case, however, further highlights that the law on this issue is not clearly established, as the Plaintiffs state: "While not directly ruling on the point at issue in this case, *impliedly*, [the Eighth Circuit held] it would be a constitutional violation if ... officers failed to present a copy of the search warrant at any time prior to leaving the premises." (Plaintiffs' Supplemental Memorandum, p. 2) (emphasis added).

As set forth above, if the law was not clearly established at the time the disputed action occurred, a qualified immunity defense will generally succeed, as "an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." Harlow, 457 U.S. at 818. Such is the case in the present matter. It may very well be true that the Eighth Circuit's decision in Hepperle can be read to impliedly hold that a police officer's failure to present a copy of a search warrant before leaving a searched premises constitutes a constitutional violation. Indeed, there are a number of strong policy considerations to support such a holding. But in this Court's view, a holding that must be implied or inferred from an opinion does not constitute "clearly established law" within the meaning of the qualified immunity analysis. Furthermore, there are a number of cases from other circuits which find that failure to present a search warrant during a search does not constitute a constitutional violation, if such a warrant existed at the time of the search. See United States v. Simmons, 206 F.3d 392 (4th Cir. 2000); Frisby v. United States, 79 F.3d 29 (6th Cir. 1996). The holdings of these Circuits further support the Court's belief that the "clearly established law" component of the qualified immunity analysis cannot be met in regards to this claim.

At the time of the search and seizure in question, it was not clearly established law that the deliberate disregard of Fed.R.Crim.P. 41(d) or Mo.Rev.Stat. 542.296(4) constituted a violation of either the Fourth or Fourteenth Amendments to the United States Constitution. Therefore, the Defendants are entitled to qualified immunity on this claim.

E. ACTION FOR REPLEVIN

The final claim before the Court is Plaintiffs' claim for replevin. This claim is founded solely on Missouri state law. Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental jurisdiction over a claim over which it would otherwise not have jurisdiction if "the district court has dismissed all claims over which it has original jurisdiction" In this case, the only remaining claim is Plaintiff's state law replevin claim. Because the Court has dismissed all claims over which it has original jurisdiction, the Court declines to exercise supplemental jurisdiction over this claim.

F. CONCLUSION

The Defendants are entitled to qualified immunity on every count in Plaintiffs' Complaint. Accordingly,

IT IS HEREBY ORDERED that the Defendants' Motion for Summary Judgment. (Docket # 87) is **GRANTED**. This case is **DISMISSED WITH PREJUDICE**. An appropriate order of judgment shall accompany this memorandum and order.

So ordered this 6th day of April, 2001.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE