

STATE OF IOWA,

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NO. FE CR 5351

Plaintiff,  
Vs.

J. J. JOHNSON  
CLERK OF DISTRICT COURT  
WASHINGTON COUNTY, IOWA

JERRY STOUT,

RULING ON MOTION  
TO SUPPRESS

Defendant.

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This matter came before the Court on the 4<sup>th</sup> day of March, 2003, for a contested hearing on Defendant's Motion to Suppress filed on the 18<sup>th</sup> day of February, 2003. After having heard the evidence presented, having heard the arguments of counsel, having reviewed the court file, and being fully advised in the premises, the Court makes the following Findings of Fact:

FINDINGS OF FACT

On November 19, 2002, Washington police officer Jerry Dunbar received a call from an individual named Ron Bush during which Mr. Bush indicated the results of a test on the hair of a child of Lisa Waters was positive for methamphetamine. The call had been placed to Officer Dunbar because he is a Washington police officer assigned to the Washington narcotics enforcement team.

Following receipt of the phone call, Officer Dunbar did further investigation and determined in fact the information he had received was legitimate, and he called Karen Dennler of the Washington County Department of Human Services and provided her with the information. Officer Dunbar called Ms. Dennler because he was aware she was involved with the children of Lisa Waters and Jerry Stout in juvenile court proceedings. Ronald Bush, the individual who called Officer Dunbar, is the father of

Cheyenne Bush, and Jerry Stout is the father of Savannah and Sierra Stout. The mother of all three children is Lisa Waters. Ms. Waters and Mr. Stout, together with the children, resided at 2345 Ivy Avenue in Keota, Iowa, on November 19, 2002.

On November 6, 2002, a Dispositional Review Order from the Juvenile Court was filed regarding the three minor children of Ms. Waters. As a result of the Review Order, the three children remained in the care of their mother and Jerry Stout. This conclusion was hotly contested by Mr. Bush, but the Juvenile Court concluded Ms. Waters and Mr. Stout were currently abiding by terms and conditions the Court had prescribed to protect the children. In its Dispositional Review Order, the Court also stated as follows: "Drop-ins are also to be provided at the Department's discretion." It was understood the drop-ins would be by workers from the Department of Human Services to observe the conditions of the home where the children were residing.

Upon receiving the information from Officer Dunbar, Ms. Dennler suggested he accompany her to the residence for purposes of doing a "drop-in". She was worried about any ongoing drug activity at the residence and felt the officer had more experience in identifying and securing controlled substances.

Ms. Dennler and Officer Dunbar then proceeded to locate Jerry Stout at his work place. He worked as a hired man at the Colliver farm not far from the residence. At that time Ms. Dennler visited with him and advised him of the results of the hair test on the analysis of hair from Cheyanne Bush. She indicated she wished to conduct a drop-in or walk-through at the residence, and the Defendant agreed she could do so. Ms. Dennler, Officer Dunbar, and Mr. Stout then agreed to meet at the residence. Mr. Stout also apparently talked to Ms. Waters on a cell phone while at the farm.

When Mr. Stout arrived, he was talking on a cellular phone to his attorney, and he indicated Mr. Dunbar was not going to be allowed to go into the residence without a search warrant.

At the time Officer Dunbar and Ms. Dennler were visiting with Mr. Stout at the Colliver farm, Mr. Stout received a call from Ms. Waters, and Ms. Denaler spoke to Ms. Waters. Ms. Waters agreed she would also meet them at the residence. Prior to arriving at the residence, Officer Dunbar had called Captain Goodman from the Washington Police Department and asked him to come to the residence as well.

Greg Cloyd of the First Resources Corporation, a family services organization, also arrived at the residence apparently at the request of either Ms. Dennler or Officer Dunbar.

When Ms. Waters arrived, she had with her the minor children, and the time was approximately 5:15 p.m. During the conversation at the residence, Ms. Waters asked if she could take her children inside. Ms. Dennler asked if she would be allowed to go in, and Mr. Stout and Ms. Waters agreed Ms. Dennler could go in but not the police officers. Officer Dunbar had called the Washington County Attorney to obtain a warrant. Ultimately Officer Dunbar entered the residence without a warrant and discovered items believed to be involved with manufacturing methamphetamine. Ms. Dennler was not in the home, however, when Officer Dunbar went in, and Mr. Stout had clearly told them no search could occur without a warrant before the officer went in. Officer Dunbar also called the county attorney and advised the county attorney he had received consent to enter the residence, and the county attorney indicated Officer Dunbar should obtain a written consent. Both Ms. Waters and Ms. Stout refused to provide a written consent for

the search that had been conducted by Officer Dunbar. At the residence, there is no porch, but there are steps leading up to the entry door, and the entry door leads directly into the residence.

Prior to entering the residence, Officer Dunbar had called the county attorney and requested a search warrant be applied for and obtained for purposes of entering the residence. Officer Dunbar advised Mr. Stout he was going to obtain a search warrant, but no search warrant was ever obtained.

The Court finds the testimony of the social worker to be credible. She indicated Mr. Stout advised the police officers they could not go in the home, that he had visited with his attorney and his attorney had advised him they couldn't be in the home without a warrant, and she specifically heard him say he would not consent to or allow a search without being served with a search warrant. This was the position of Mr. Stout prior to Officer Dunbar's entry into the home without a warrant.

#### CONCLUSIONS OF LAW

The findings of fact are incorporated herein by this reference.

The Fourth Amendment to the Constitution of the United States provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched and the persons or things to be seized.

This fundamental right of privacy is also found in Article I, Section 8 of the Iowa Constitution.

The chief evil sought to be addressed by the Fourth Amendment and the Iowa Constitution is the physical entry into the home by law enforcement persons. Special sanctity of the home has deep roots in our history, and "the right of a man to retreat into his home and there be free from unreasonable governmental intrusion" lies at the very core of the Fourth Amendment. It is a basic principle of the Fourth Amendment that all searches and seizures inside a home without a warrant are presumptively unreasonable. Payton v. New York, 445 U.S. 563, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); State v. Culler, 315 N.W.2d 808, 811 (Iowa 1982). The prosecutor has the burden by a preponderance of the evidence to prove that a warrantless search falls within an exception to the warrant requirement. State v. Garcia, 461 N.W.2d 460 (Iowa 1990). One exception to the warrant requirement is when a person with authority over the property gives consent knowingly and voluntarily without police coercion. State v. Myer, 441 N.W.2d 762 (Iowa 1989); State v. King, 191 N.W.2d 650 (Iowa 1971).

This case is not one in which a search is justified because of a juvenile court order that allowed drop-in visits by Department of Human Service employees or other representatives of the Juvenile Court. The State does not appear to base its claim upon the authority granted the Department of Human Services under the Juvenile Court ruling.

In this instance, no consent was given to law enforcement authorities to enter the home. A preponderance of evidence is Officer Dunbar was advised he could not enter the home without a warrant to search. He had contacted the county attorney and was in the process of obtaining a warrant. After the search was completed, Officer Dunbar again talked to the county attorney and the county attorney advised him he should

obtain a written consent. Such a request for a written consent may well have been based upon the proposition that even if an initial search is invalid, a subsequent search based on written consent is valid. State v. Howard, 509 N.W.2d 764 (Iowa 1993).


The State in this case has failed to prove by a preponderance of the evidence the warrantless search of Defendant's home was carried out with the consent of the defendant or any person that had common authority over the property.

RULING

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED the results of the search of the inside of the defendant's mobile residence should be and are hereby suppressed.


IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED such physical evidence obtained as a result of the search of the defendant's residence will not be allowed to be used at trial.

DATED this 15<sup>th</sup> day of April, 2003.

  
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JAMES Q. BLOMGREN  
JUDGE, EIGHTH JUDICIAL DISTRICT

CERTIFICATE OF SERVICE: The undersigned certifies that a true copy of this document was served on each person named (and checked) below, including attorneys of record, or the parties where no attorney is of record, by enclosing this document in an envelope addressed to each named person at the respective addresses disclosed by the pleadings of record herein, with postage fully paid, by depositing the envelope in a United States depository or hand delivered on this 3 day of Apr-03.

Pl./Pet Atty: Barb Edmondson  
 Def./Resp Atty: Clemens Erdahl  
 Pro se:  
 Court Administration

Signed:   
Clerk/Designee