IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff	)	Cause No. 16BA-CR00037-01
	)	Division No. 2
v.	)	
DAVID L REED, Defendant	)	

MOTION TO SUPPRESS EVIDENCE

COMES NOW David Reed and moves this Court to suppress the evidence obtained in this matter, to wit, all items in the "Search Inventory List" pertinent to this matter, for the reason that said items were obtained in violation of Mr. Reed's right against unreasonable search and seizure protected by the Fourth and Fourteenth Amendments to the United States Constitution as well as by Art. I., Sec. 15, of Missouri's Constitution. This unreasonable seizure also violated Mr. Reed's statutory right regarding lawful application for, and procedure of, executing search warrants as mandated by RSMo Secs. 542.261, 542.266, and 542.271.

The seizure of all items listed in the Inventory Return List pertinent to this cause should be suppressed pursuant to RSMo 542.296.5(2)(3) and (4) for the following reasons:

First, the search warrant was invalid because the application for the search warrant was not signed by the prosecuting attorney, nor his or her designated agent, as RSMo 542.276.2 (8) requires. *See* Complaint for Search Warrant, Search Warrant, and Affidavit *(Exhibits A, B, and C).*

RSMo 542.276.1 *(Exhibit E)* states "Any peace officer or prosecuting attorney may make application under section 542.271 for the issuance of a search warrant." *See Exhibit E.* However, the statute goes on to require "The application shall: (8) [b]e signed by the prosecuting attorney of the county where the search is to take place, or his or her designated assistant. *See* RSMo 542.276.2(8). This requirement is unambiguous. The application in this case lacked signature by a prosecuting attorney

of Boone County or his/her designated assistant.

Although the Southern District of Missouri held in *State v. Gordon,* 851 S.W.2d 607 (1993) *(Exhibit G)* that a search warrant is not invalid due to the lack of signature by a prosecuting attorney, or designated assistant, that decision contravenes the plain language of the statute. In 1989 (same as today) RSMo 542.276.1 permitted a peace officer, *or* prosecuting attorney, to make out the application for a search warrant. However, in 1989 two additional changes were made with regards to requiring *signature* on the warrant. The law changed to require signature of a prosecuting attorney (or designated assistant) and required that the inventory list be delivered to the office of the prosecuting attorney within two working days. *See Gordon,* p.611 and RSMo 542.276.2(8) and 542.291.5 *(Exhibits G and F).* The legislature, although still allowing for a peace officer to *apply* for a search warrant, was very clear when stating that the warrant application "shall" be signed by a prosecuting attorney or his/her designated assistant. "Shall" is not ambiguous. The legislature is presumed to act for a reason. Statutes are to be given their plain language meaning. Additionally, utilizing the statutory interpretation theory of *expressio unius est exclusio alterius,* when the legislature expresses one thing, it implies the exclusion of what is not mentioned. Thus, when the legislature stated that the search warrant application, made by a prosecutor or peace officer, "shall" be signed by a prosecutor or his/her designated assistant, the legislature is presumed to have left out that the peace officer's signature would suffice for a reason. The legislature, when adding the language requiring the signature of a prosecuting attorney, or his/her designated assistant, could have easily added "*...or by the peace officer making the application"* but chose not to.

Additionally, in the same year of 1989 when the above stated requirement was made in 542.276.2(8), the legislature also added the requirement in 542.291.5 RSMo that the inventory list of seized items be delivered to the office of the prosecuting attorney. *See* RSMo 542.291.5. Because both additions require attention of the office of the prosecuting attorney, it appears that the legislature clearly wanted more participation by that office with regards to the issuance of search warrants and the

products thereof. This would be a safeguard against potentially overzealous law enforcement.

Thus, the *Gordon* Court got it wrong because "shall" is not a suggestion, it is a mandate.

Second, in this particular instance, the items seized were not listed in the search warrant application, and no item listed in the search warrant was seized! *See* Search Warrant *(Exhibit C)* and Inventory List *(Exhibit D).* Eleven items were stated in the application for search warrant with specificity (as required), as well as "'undescribed jewelry' on a white metal ornamental jewelry stand." The eleven items stated with particularity are as follows:

1. wooden box 6"x7"x10"
2. silver money clip with "MEC"
3. silver CRKT knife with 2" serrated blade
4. black CRKT knife with 2 1/2" serrated blade
5. Apple iPad mini, F9FMQ05NFCM6
6. Victim's boating license
7. HyVee rewards card
8. Dick's rewards card
9. Ace rewards card
10. white ornamental jewelry stand
11. Synergy, Inc. cream-colored pillow case

Sixty seven (67) items were seized. Again, none of the items inventoried are items listed in the warrant. (A pillow case was seized, but the Inventory List does not indicate whether it was a cream-colored Synergy, Inc. brand as stated in the search warrant.) All other items appear totally unrelated to those listed on the Application for Search Warrant. Also, nothing within the four-corners of the search warrant suggests the illegality of the items seized, nor do the items possess independent indicia of being contraband or otherwise unlawful in nature.

Because the officer executing the search warrant collected items not related to those authorized for collection by the search warrant, said officer illegally executed

said warrant. The Western District has held in *State v. Lucas,* 452 S.W.3d 641 (Mo.App. W. D. 2014) *(Exhibit H)* that where there is a seizure of items not listed in the warrant, the "good faith" exception does not apply to overcome an invalid search warrant, holding, "[W]e conclude, therefore, that the circuit court did not err in declining to apply the good faith exception and suppressing all of the items seized when officers executed a search warrant on Lucas's residence because the officers failed to properly execute the search warrant by seizing items outside the scope of the warrant and flagrantly disregarding the scope of the warrant." *Id.* at 644.

Additionally, the *Lucas* Court suppressed *all* items seized, not just those outside the scope of the search warrant. Thus, this Court should follow that precedent and suppress all items because they were obtained, as in *Lucas,* "by flagrantly disregarding the scope of the warrant." *State v. Lucas,* 452 S.W.3d, at 644.

In conclusion, the evidence in this matter should be suppressed because it was obtained without a valid search warrant and because the good faith exception does not apply and the items seized were obtained in flagrant disregard to the scope of the pertinent warrant.

Respectfully submitted,

/s/ Jenean Thompson

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Certificate of Service

I hereby certify that on this _____ day of _____, 20__, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Jenean Thompson

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Jenean Thompson