



Las Vegas Police Protective Association Metro, Inc.



To: LVPPA Members
From: David Roger, General Counsel *DR*
Re: Search Warrant Affidavits
Date: February 14, 2014

Late last year, the Nevada Supreme Court affirmed a lower court's decision to suppress evidence obtained pursuant to a search warrant, because the warrant did not contain a statement of probable cause or include the affidavit in support of the warrant. This memo is intended to remind officers to either attach the search warrant affidavit or obtain a sealing order.

NRS 179.045 (5) mandates:

The warrant must be directed to a peace officer in the county where the warrant is to be executed. It must:

(a) State the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof; or

(b) Incorporate by reference the affidavit or oral statement upon which it is based.

Because it is cumbersome to state the probable cause relied upon by the magistrate, our search warrants typically provide a statement that the judge found probable cause to issue the search warrant. Additionally, our search warrants include language that the affidavit in support of the application for search warrant is incorporated by reference.

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Provided the search warrant includes the language set forth above, the officer must either attach a copy of the affidavit to the search warrant to be left at the location searched or obtain an order sealing the affidavit.¹ If the officer obtains a sealing order, the officer must attach the order to the search warrant.

In *State v. Kincade*, 129 Nev. Adv. Op 102 (filed December 26, 2013), a Lincoln County Deputy Sheriff investigated Kincade for sexually abusing minor relatives. The detective secured a search warrant for Kincade's residence but failed to attach the affidavit to the search warrant left at the residence. The detective seized the suspect's computer and found numerous child pornography images. The district court judge suppressed the evidence because the warrant did not comply with NRS 179.045(5).

The Court declined to overturn the lower court's decision and upheld the suppression of the child pornography. In doing so, the court relied upon the earlier decision in *State v. Allen*, 119 Nev. 166, 171-72, 69 P.3d 232, 235-36 (2003) by explaining, "We held that exclusion is proper upon failure to leave a copy of an affidavit with a warrant where the warrant does not itself include a statement of probable cause, even if the affidavit is incorporated by reference into the warrant."

It is important to remember to incorporate by reference your affidavit in support of your search warrant. You must either attach the affidavit to the copy of the search warrant, to be left at the residence, or attach an order sealing the affidavit. If you fail to do so, because you are in a hurry, the court will suppress the incriminating evidence you seize.

¹ NRS 179.045 (3) allows, "Upon a showing of good cause, the magistrate may order an affidavit or a recording of an oral statement given pursuant to this section to be sealed. Upon a showing of good cause, a court may cause the affidavit or recording to be unsealed."