

COURT OF APPEALS, STATE OF
COLORADO

2 East Fourteenth Avenue, Suite 300
Denver, CO 80203

El Paso County District Court
The Honorable Kirk Stewart Samelson Chief
Judge
Trial Court case # 04CR6238
20 E Vermijo Ave
Colorado Springs CO 80903

Defendant-Appellant: Calvin Karl Cheeks
vs.
Plaintiff- Appelle: The People of the State of
Colorado.

Attorney Don Soulliere
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FILED IN THE
COURT of APPEALS
STATE OF COLORADO
FEB 16 2010

Clerk, Court of Appeals

COURT USE ONLY

Case Number: 08CA7

DEFENDANT'S REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 1,509 words.

ARGUMENT

The original warrant to search ‘3040’ lacked sufficient particularity to accurately guide police to the defendant’s residence. The defense filed its opening brief without the benefit of having a copy of the application page of the original warrant. Later, after the opening brief was filed, the record was supplemented with a copy of the application page of the original warrant. Prior to supplementing the record with the application page, it appeared that the only description provided in the original search warrant as to the place to be searched was the address: 3040 S Academy Boulevard, Colorado Springs, Colorado. (Opening brief, p. 22) However, once the application page of the original warrant was obtained, and the record on appeal supplemented, it became clear that the original warrant directed police to the wrong location, to a location other than the defendant’s residence. The Application Page of the original Search Warrant authorizing the search of 3040 S Academy Blvd, described the location of the place to be searched as having “*a glass door on the west side with the numbers ‘3040’ over the door.*” (Supplemental CD, File, p. 295; Exhibit 1, p. 1) (*emphasis added*). Contrary to the description provided in original search warrant, the entrance to the defendant’s residence is not “a glass

door on the west side” of the building. Police photographs of the exterior of his residence show that the numbers ‘3040’ do not appear over the defendant’s door. (CD, Exh., p. 60; Exhibit #2). No numbers appear, from the outside, above the defendant’s door. (CD, Tans., 1-8-07; p. 29, l. 6-15). Also, the entrance to the defendant’s residence in this multi-unit structure is on the south side of the building, not the west side. (CD, Tans., 1-8-07; p. 26, l. 3-11). The door to the defendant’s residence is a wood door, not a glass door. (CD, Trans., 1-8-07; p. 26, l. 15-p. 27, l. 11; *and*, Exhibits #2 and #3)(photographs of the exterior of the defendant’s residence and its entrance, a wooden door).

It is clear from Detective Chagnon’s testimony that police were not guided to the defendant’s residence by the description provided on the face of the original warrant. Instead, Chagnon testified that he spoke with building management before he executed the original search warrant, and it was building management that, “actually pointed out which door was [the defendant’s].” (CD, Tans., 1-8-07; p. 36, l. 11-13). Chagnon agreed that building management specified the area belonging to the defendant, and that area was “a more narrow search area than the entire ‘3040’ address.” (CD, Tans., 1-8-07; p. 36, l. 16-22). And Chagnon further agreed that he understood, prior to entering the

defendant's residence, that the place to be searched did not extend to all of 3040, but was a more narrow, limited space within '3040'. (CD, Tans., 1-8-07; p. 21; p. 37, l. 8-14).

There is no indication anywhere in the record, including the affidavit in support of the original search warrant that Chagnon spoke with management as part of his investigation in preparation for his original application for the first search warrant. *Compare* (CD, File, p. 71-75; Exhibit # 1, p. 2-5) (affidavit in support of the original warrant, lacking any reference to a conversation between detectives and building management) *to* (CD, File, p. 82; Ex. 5, p. 5) (affidavit in support of the amended warrant, indicating that "Detectives had previously spoken with the building management who stated that the whole building is 3040 South Academy and they indicated exactly which sub-divided space is leased by Calvin Cheeks"). Thus, it appears that detectives spoke with building management just prior to the execution of the original search warrant, but after that warrant had already been signed by a judge. *See* (CD, Trans., p. 36-37).

To identify the place to be searched after receiving the 3040 address from the defendant, Detective Chagnon sent a patrol officer to the location of the address. *See* (CD, File, p. 73; Exhibit #1, p.4)

According to Detective Chagnon's first affidavit, the patrol officer "respond[ed] to that address and he positively identified the location and stated that there is property stored inside." Id. Apparently, the patrol officer provided Chagnon with information regarding the location (i.e. "*a glass door on the west side with the numbers '3040' over the door*") which Chagnon used to describe the place to be searched in his application page for the original search warrant. See (Supplemental CD, File, p. 295; Exhibit #1, p. 1). While at the location, the patrol officer reports that he observed property inside 3040, presumably by looking through the "glass door" he located on the west side of the building, with the numbers '3040' over the door. See (CD, File, p. 73; Exhibit #1, p.4). The police photos and testimony reveal that there were no windows or a glass door at or near the defendant's entrance through which such an observation into the defendant's living area could have been made by the patrol officer from outside the building. See (CD, Exh., p. 60; Ex. # 2; CD, Trans. 1-8-07; pp. 26, 27)(indicating that the south side looked "boarded up" and that there was "plywood covering the glass" above the defendant's door).

It does not appear at all likely that the patrol officer confused the numbers '3040' that were scratched into the back side--not the

outwardly facing front side--of the defendant's mail box with the numbers '3040' above "a glass door located on the west side of the building." *Compare* (CD, Exh., p. 66; Exhibit #4) *to* (CD, Exh., p. 64; Exhibit #3)(photographs of the back side and front side, respectively, of the defendant's mail box located next to the entrance to his residence).

Thus, it is clear that the patrol officer, sent by Chagnon to investigate and confirm the '3040' address provided by the defendant, was focused on the wrong entrance when he investigated '3040' and reported back to Chagnon. Apparently, he was focused on "a glass door on the west side with the numbers 3040 over the door," rather than the entrance to the defendant's residence. That entrance being a wood door on the south side, with no numbers above the door, and with a metal mail box next to the door bearing the "scratched on" numbers, '3040' on its back side, facing toward the defendant's entrance and away from the parking area immediately outside the defendant's door.

Further, detectives should have known, prior to making their first application for a search warrant, that the defendant's address was 3044 S Academy Blvd. Even before speaking with building management about the location of the defendant's residence, detectives had access to Colorado Springs Police Department booking records for Calvin

Cheeks that listed the defendant's address as 3044. Both the first and second affidavits note that Gaming Investigator Martinez obtained a booking photo for the defendant and the address on that record "later matched the address given by Cheeks to Womack's Casino in his application for a player's card." (CD, File, pp. 72, 81) The search warrant return inventory, listing items recovered from "3044," lists "one Womack's mailer addressed to Calvin Cheeks at 3044 S Academy Bl," which was recovered by Chagnon during the search, according to his trial testimony. (CD, File, p. 85; Exhibit #5, p. 8; CD, Trans. 8-24-07; p. 136, l. 2-12) Thus, if detectives had been reasonably diligent in ascertaining the place to be searched, they would have discovered that prior Colorado Springs Police Department criminal records and booking information for Cheeks contained the 3044 address.

The search of the defendant's residence was not valid at its inception. Police entered after speaking with building management, knowing that the warrant was defective in that it did not accurately describe the place to be searched or limit the search of 3040 to the defendant's unit, yet they proceeded with the entry and search despite the obvious defect. In fact, Special Agent Joseph Hunt of the F.B.I., assisted with the execution of the original search warrant and testified

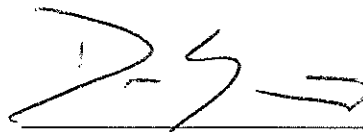
at trial that, "Once we got inside and saw how large it was, I called back to my office, and my boss sent several other F.B.I. agents out to assist the Colorado Springs Police Department with the search." (CD, Trans., 8-24-07 p. 93, l. 7-10) Because the search was unlawful at its inception, the amended warrant cannot cure the defect, otherwise all illegal searches based upon defective warrants could be cured simply by obtaining an amended warrant after the fact.

CONCLUSION

For all the foregoing reasons, the defendant requests an Order vacating his conviction, and reversing the trial court's ruling on the defendant's motion to suppress evidence, and directing the trial court to enter an Order granting the motion to suppress evidence on remand for a new trial.

Dated: 2/16/2010

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Soulliere', written over a horizontal line.

Don Soulliere, Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2010, a true and accurate copy of the foregoing Defendant Reply Brief was ☒ deposited in the United States mail properly addressed with prepaid postage ☐ hand delivered, to the following or their administrative assistants:

John W. Suthers, Attorney General
Attn: Katherine A. Hansen, Senior Assistant Attorney General
State of Colorado, Dept. of Law
1525 Sherman St., 7th Floor
Denver, CO 80203

A handwritten signature in black ink, appearing to read 'D. Soulliere', written over a horizontal line.

Don Soulliere, Attorney

EXHIBIT #1

Ex. E

04-883 SEARCH WARRANT

IN THE (DISTRICT) (COUNTY) COURT, EL PASO COUNTY, STATE OF COLORADO

CRIMINAL ACTION NUMBER _____

Agency Case Number: 04-43639

Whereas Detective Donald Chagnon has made an Application and Affidavit to the Court for the issuance of a Search Warrant, and;

Whereas the application is in proper form and probable cause is found for the issuance of a Search Warrant to search the person(s) and or premises specified in the application.

THEREFORE, the applicant, and any other peace officer into whose hands this Search Warrant shall come, is hereby ordered, with the necessary and proper assistance, to enter and search within the next ten (10) days the person, premises, location and any appurtenances thereto, description of which is:

3040 South Academy Boulevard, Colorado Springs, Colorado, a multi-commercial use building within the shopping complex on the southwest corner of the intersection of Academy Boulevard and Hancock Expressway. 3040 South Academy Boulevard is a two level building with light grey stucco exterior and a glass door on the west side with the numbers '3040' over the door. Also a 1986 white Ford Econoline E250 VIN 1FTEE24N3GHA87316 and a 1979 blue Jaguar XJ6 VIN JAVLN49C100839.

The following person(s), property or thing(s) will be searched for and if found seized:

See Attachment 'B'

as probable cause has been found to believe that it:

- ☒ Is stolen or embezzled, or
- ☒ Is designed or intended for use in committing a criminal offense, or
- ☒ Is or has been used as a means of committing a criminal offense, or
- ☒ Is illegal to possess, or
- ☒ Would be material evidence in a subsequent criminal prosecution, or required, authorized or permitted by a statute of the State of Colorado, or
- ☒ Is a person, property or thing the seizure of which is expressly required, authorized or permitted by a statute of the State of Colorado, or
- ☒ Is kept, stored, transported, sold, dispensed, or possessed in violation of a statute of the State of Colorado under circumstances involving a serious threat to the public safety, or order, or to the public health.

(Mark "X" according to fact)

Furthermore, a copy of this warrant is to be left with the person whose premises or person is searched along with a list of any and all items seized at the time of its execution. If said person cannot be located or identified, a copy of the search Warrant and the list of property seized shall be left at the place from which the property was taken.

Further, a return shall be promptly made to this Court upon the execution of this Search Warrant along with an inventory of any property taken. The property seized shall be held in some safe place until the Court shall further order.

Done by the Court this 21 day of December, 2004

Judge: [Signature]
SLEPA

PC1

ATTACHMENT 'A'

In support of a request for the issuance of a search warrant your affiant, Donald J Chagnon 81D, a Police Officer for the Colorado Springs Police Department and so employed for over eighteen years and now currently assigned to the Major Crimes Robbery Unit, state under oath that I have personal knowledge of the following facts:

On 12-01-2004 at about 12:10 p.m. two unknown males did enter the Compass Bank, 2805 Dublin Boulevard, within the City of Colorado Springs, County of El Paso and State of Colorado. The males were armed with what witnesses and victims described as handguns. One of the males was later observed in surveillance photographs carrying what appears to be a long rifle on a sling over his right shoulder.

The males loudly announced a robbery and ordered to everyone in the bank, "Everyone get down!" Inside the lobby with their mothers were two small children ages 4 and 5. The male carrying the long rifle went behind the closed teller area and ordered the victim teller, "Open it up! Open them all up! Give me everything! Put it in the bag!"

The victim teller stated that this male presented what she described as a green in color army style duffle bag which he held open for her to put the money in. The teller stated that the first items that she placed in the bag were her dye pack and ball bills. She stated that she then put the remaining money that she had into the bag on top of that.

She stated that the male wanted to get into other cash drawers and the vault area but could not because they were locked and the people with the keys were not present at the time. The teller stated that the male then went back into the lobby area where he and the second male left the bank. The males took a total of \$7039 in US currency.

The teller described the male that came behind the counter as a Black male, 6'1" to 6'2" tall and weighing about 220 to 230 pounds. She added that he was wearing a burgundy knit watch cap with some type of black mesh over the eyes and mouth. She stated that he was also wearing a red/black/white plaid flannel or wool shirt and slightly faded jeans. She stated that she did not see the second suspect well enough to describe him. Other victims inside the bank vaguely described him as a male, about 5'10" tall and about 180 to 190 pounds. I asked the teller and other victims inside the bank what they believed would happen if they did not comply with the two males. All indicated that they believed they would be harmed or killed.

After robbing the bank the two unidentified suspects fled the area to the south across the parking lot, behind the strip mall area and through the back yard of the residence directly behind the Overtime Sports Bar to Lange Drive. According to two separate witnesses, a white in color van was seen leaving the area immediately after the robbery had occurred. All information pertaining to this initial investigation is documented in Colorado Springs Police Department Police case report number 04-43639.

On Friday 12-03-2004, Detective Eric Anderson received a phone message from Colorado State Department of Gaming Investigator Tim Martinez. During that phone conversation, Investigator Martinez informed Detective Anderson that workers from Womack's Casino in Cripple Creek, Colorado contacted Investigator Martinez to inform him that they received numerous US Currency bills of various denominations which were either dye stained with red ink, burned or smelled of some sort of tear gas.

Your affiant would note that when a dye pack from a bank explodes the pack will emit a red colored dye, red smoke which contains a chemical irritant gas, a form of tear gas and the pack will burn at approximately 500

degrees. During this conversation with Investigator Martinez, Detective Eric Anderson told Martinez that he would fax a copy of the bait bill list from the bank so that Investigator Martinez could check the serial numbers of recovered money against the list to see if the money matched the money taken from the bank.

On 12-03-2004 after having checked the recovered bills against the bait bill list, Investigator Martinez contacted Detective Eric Anderson and told him that he, Investigator Martinez, found that three of the bills recovered from Womack's were in fact listed on the bait bill list provided by Detective Eric Anderson. Investigator Martinez stated that he recovered two fifty dollar bills and one twenty dollar bill. The bait bills are noted as one fifty dollar bill, 1996 series, bearing serial number AK02603550A, one fifty dollar bill, 1996 series bearing serial number AE66109149A, and one twenty dollar bill, 2001 series, bearing serial number CL88405281C. The rest of the money recovered from Cripple Creek was either dye stained, burned or smelled of tear gas. The total amount recovered from Cripple Creek as a whole was \$3,100.00 US Currency. Your affiant would note that of the \$3,100.00 dollars recovered from Cripple Creek, \$2,960.00 dollars of that money was actually recovered from the Legends Casino which is a part of the Womack's casino.

During review of the video surveillance conducted by Ronald Gagnon of Womack's Security, a possible suspect was identified. This male matched the general physical characteristics as provided by your affiant and Detective Anderson to Investigator Martinez and Womack's security personnel. That male was positively observed playing slot machines in the immediate area where the recovered red dye stained money had originally been played. His play can be tracked to 8 of 13 machines where red dye stained money was found.

On 12-04-2004 Surveillance operator Ron Gagnon from Womack's Casino was checking surveillance video of 12-02-2004 and noticed that a Womack's Casino employee identified as Roger Steggal talking with the then unknown suspect, Calvin Cheeks. Gagnon talked with Steggal later on in the evening and asked him who he had been talking to. Gagnon reported that Steggal told him that he was talking to "Calvin".

Investigator Martinez obtained a copy of Colorado Springs Police Department booking photograph for Calvin Karl Cheeks, Date of Birth 02-04-1962. This is the only Calvin Cheeks listing in Colorado Springs Police Department criminal records. The residence address on that record later matched to the home address given by Calvin Cheeks to Womack's Casino in his application for a player's card.

Investigator Martinez went to the Womack's promotions department and spoke with Amy Hayes. Investigator Martinez asked Hayes if she knew a person named "Calvin", and Hayes stated that yes she knew a Calvin Cheeks. Hayes further reported that Calvin Cheeks is the only person with the first name Calvin who currently has a Players club card with Womack's Casino. Investigator Martinez showed Hayes a still photograph of Cheeks and asked if she knew the person in the photo. Hayes said she was pretty sure the person in the photograph was Calvin Cheeks.

On 12-09-2004, Investigator Martinez was conducting further follow up when he talked to another Womack's Casino employee identified as Gary D. Kring. Kring stated he has known Calvin Cheeks for a number of years. After obtaining some initial information, Investigator Martinez showed Kring a photograph of Cheeks with all identifying information covered up. Upon viewing the photograph Kring told Investigator Martinez that the person in the photo was Calvin. Investigator Martinez asked, "Calvin who?" Kring replied, "Calvin Cheeks."

Calvin Cheeks was noted to have returned to Cripple Creek on 12-06-2004. During his visit on that day, his play patterns and movement within the casino were watched. Calvin Cheeks was observed playing machines

which were later taken out of service and inspected. Additional red dye stained money was removed from the machines, which was later determined that only Cheeks could have put into the machine.

Gagnon has stated that he has done extensive work on tracking Cheeks to the dyed money. He later told Investigator Martinez that he would be available for court to testify about how he came to the conclusion that Calvin Cheeks is the only person who could have put the dyed money in the machines on 12-06-2004. Gagnon added that he has ruled out any other people placing the red dyes money in the slot machines on that day.

Follow-up conducted by Detective Anderson has identified several vehicles registered to Calvin Cheeks. These vehicles include a 1996 white in color Isuzu NPR tilt-cab panel van, a 1979 blue in color Jaguar XJ6 and a 1986 white in color Ford Econoline E250 cargo van. This last vehicle is similar to the vehicle observed in the area where the suspects of the bank robbery were last seen.

On 12-13-2004, your affiant presented to the Honorable Judge Manzanares an application for a Court Order to Produce Records. This order was approved and served upon Sprint Communication for telephone records relating to a cellular phone number that Mr. Cheeks had also given as his own number. A response to the Court Order was received on 12-20-2004 and a call was found placing the telephone in the area of the bank robbery about 2¾ hours after the robbery. Several calls to and from a number 719-635-7362 were also found. A reverse listing on this phone number shows to an E.R. Taylor at 948 East Rio Grande Street, Colorado Springs, Colorado.

On 12-21-2004 pursuant to an Arrest Warrant issued by the Honorable Judge Sletta on 12-20-2004, your affiant and other officers arrested Calvin Cheeks as he arrived for a scheduled court appearance at the El Paso County Court, 20 East Vermijo. At the time of his arrest Cheeks had arrived in his 1996 white in color Isuzu NPR tilt-cab panel van. That vehicle was impounded for the purpose of obtaining a search warrant.

During an interview with Cheeks, after he stated that he understood his rights and agreed to waive those rights, gave his primary residence address as 3040 South Academy Boulevard. He stated that he has a living area inside the building normally used for commercial purposes and has his other vehicles stored there.

Your affiant had a Patrol Officer respond to that address and he positively identified the location and stated that there is property stored inside. The other vehicles belonging to Cheeks were also found parked outside that address.

Your affiant, Detective Donald Chagnon would respectfully request that probable cause be found that on 12-01-2004 at 2805 Dublin Boulevard, within the City of Colorado Springs, County of El Paso and State of Colorado and Aggravated Robbery occurred in violation of 18-04-302, Colorado Revised Statutes as amended. Your affiant would also ask that probable cause be found that the subject Calvin Karl Cheeks was involved in that Aggravated Robbery and was in possession of money taken in that robbery.

Your affiant would also request that probable cause be found that the address 3040 South Academy Boulevard, Colorado Springs, Colorado and fully identified in the application for this search warrant is the current residence of Calvin Cheeks. Your affiant would thus respectfully request the authorization of a search of vehicle described for items as identified in Attachment 'B'

Applicant: [Signature] Detective Donald Chagnon

Law enforcement agency: Colorado Springs Police Department

Position: Detective

Sworn and subscribed before me this 21 day of December, 2004

Judge: [Signature]

SLETTA

ATTACHMENT 'B'

The following person(s), property or thing(s) will be searched for and if found seized:

GENERAL INFO

- General photographs of the residence
- Indicia of residency
- Identification which would identify any occupants of the residence

GUNS INVOLVED

- Any and all firearms
- Any and all ammo
- Any documentation showing the ownership of a firearm
- Any and all sales records showing the purchase of a firearm
- Any projectiles
- Any and all spent shell casings
- Any item commonly used to carry and transport a firearm (i.e. holster & gun carrying case, magazines, cleaning kits)

WRITTEN MATERIAL

- Any letters, notes, tapes, pictures, or other written material depicting any association with this investigation
- Any audio or videotapes depicting any association with this investigation.

CLOTHING

- Burgundy or black in color ski masks
- Long sleeve red/black/white plaid shirt
- Tactical vests or body armor

MISCELLANEOUS

- Any dye stained or burned US Currency
- Any US Currency listed on Bail list provided by victim bank.
- Any and all sales receipts showing purchases of items similar to or that could be described as military style duffle bags.
- Any military style duffle bags
- Any objects or clothing stained with red dye

EXHIBIT #2

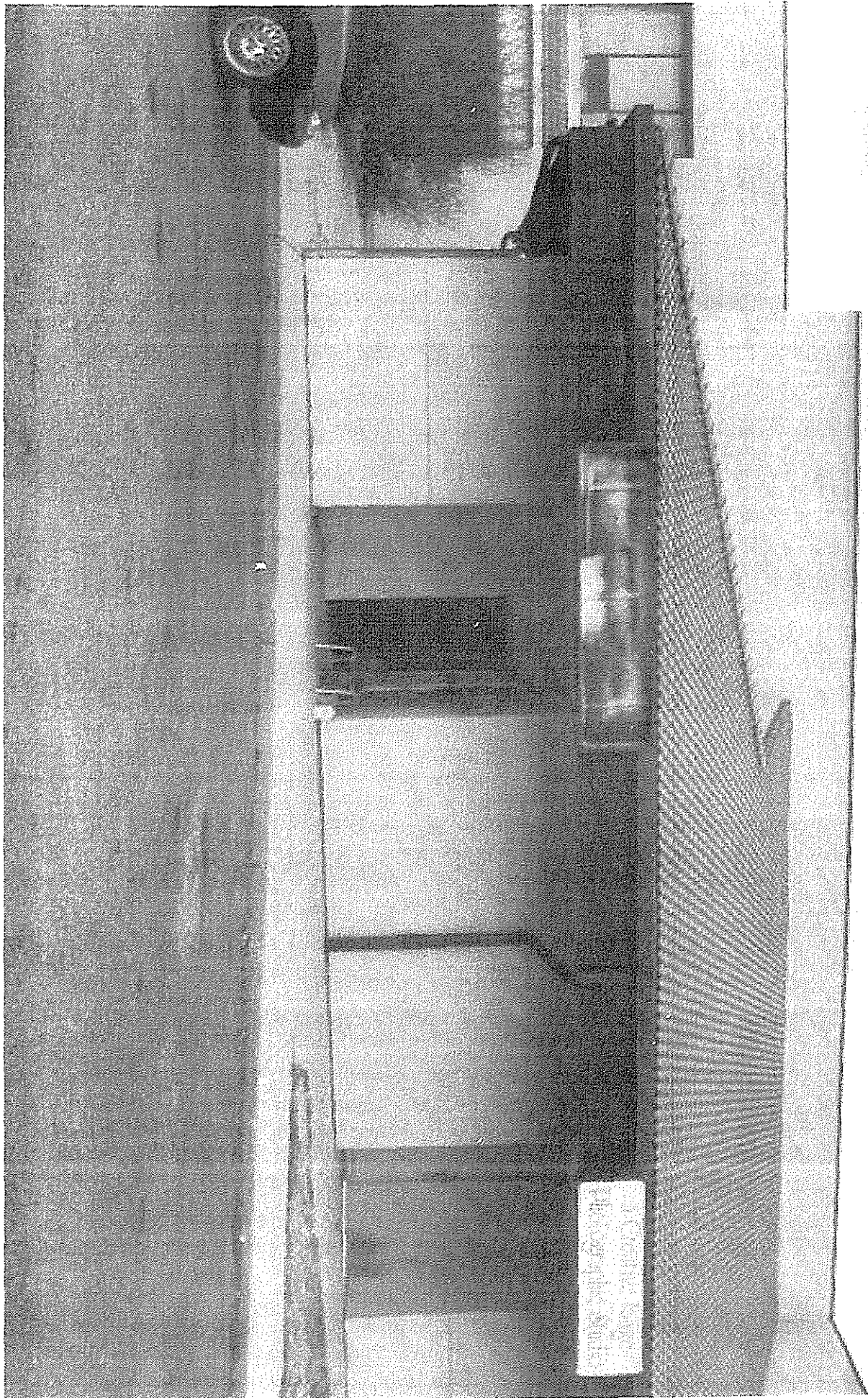


EXHIBIT #3

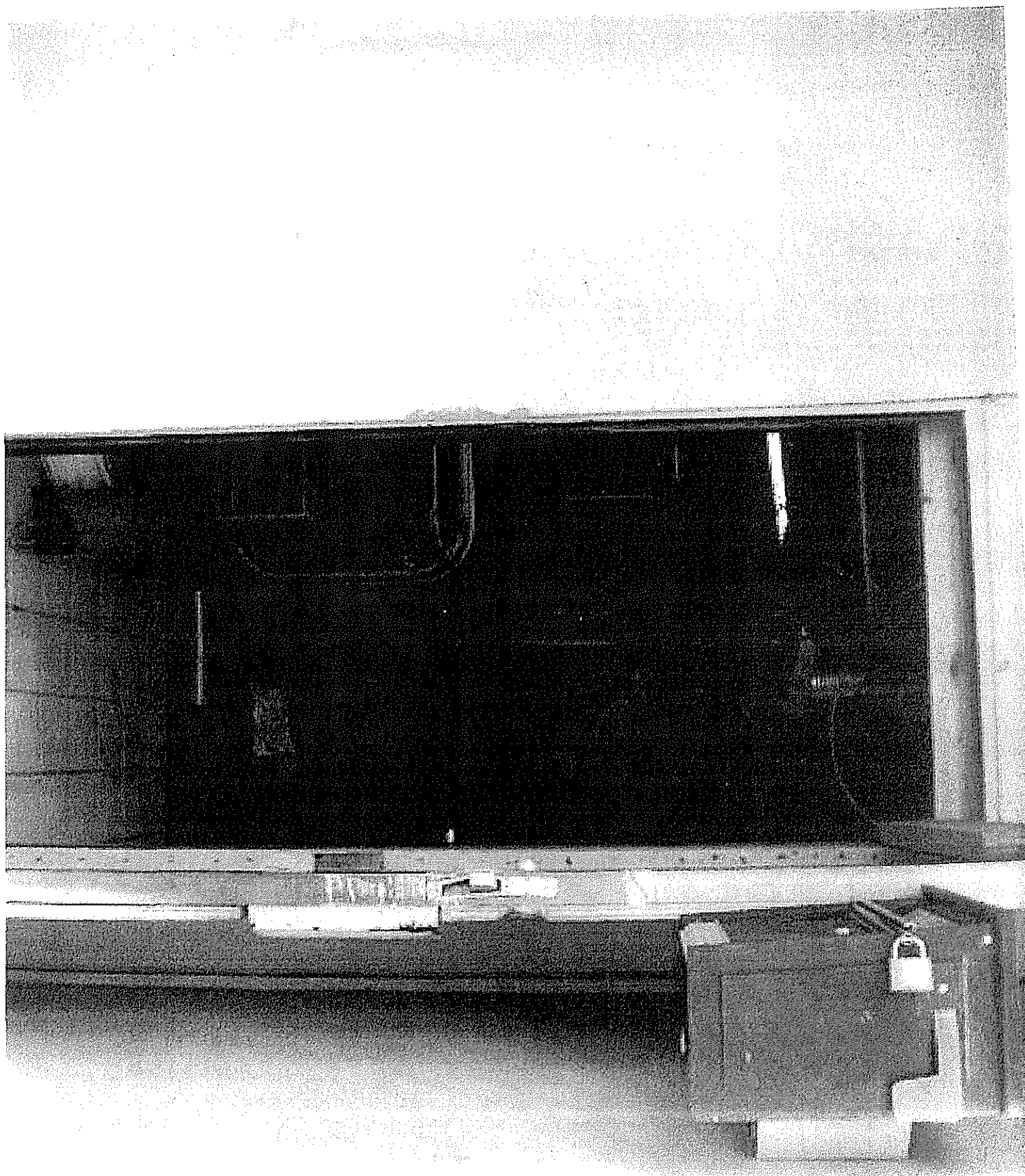


EXHIBIT #4



EXHIBIT #5

SEARCH WARRANT

IN THE (DISTRICT) (COUNTY) COURT, EL PASO COUNTY, STATE OF COLORADO

CRIMINAL ACTION NUMBER _____

Agency Case Number: 04-43639

Whereas Detective Donald Chagnon has made an Application and Affidavit to the Court for the issuance of a Search Warrant, and;

Whereas the application is in proper form and probable cause is found for the issuance of a Search Warrant to search the person(s) and or premises specified in the application.

THEREFORE, the applicant, and any other peace officer into whose hands this Search Warrant shall come, is hereby ordered, with the necessary and proper assistance, to enter and search within the next ten (10) days the person, premises, location and any appurtenances thereto, description of which is:

3044 South Academy Boulevard, Colorado Springs, Colorado, a multi-commercial use building within the shopping complex on the southwest corner of the Intersection of Academy Boulevard and Hancock Expressway. 3040 South Academy Boulevard is a two level building with light grey stucco exterior and a glass door on the west side with the numbers '3040' over the door. Also a 1986 white Ford Econoline E250 VIN 1FTEB24N3GHA87316 and a 1979 blue Jaguar XJ6 VIN JAVLN49C100839.

The following person(s), property or thing(s) will be searched for and if found seized:

See Attachment 'B'

as probable cause has been found to believe that it:

- ☒ Is stolen or embezzled, or
- ☒ Is designed or intended for use in committing a criminal offense, or
- ☒ Is or has been used as a means of committing a criminal offense, or
- ☒ Is illegal to possess, or
- ☒ Would be material evidence in a subsequent criminal prosecution, or required, authorized or permitted by a statute of the State of Colorado, or
- ☒ Is a person, property or thing the seizure of which is expressly required, authorized or permitted by a statute of the State of Colorado, or
- ☒ Is kept, stored, transported, sold, dispensed, or possessed in violation of a statute of the State of Colorado under circumstances involving a serious threat to the public safety, or order, or to the public health.

(Mark "X" according to fact)

Furthermore, a copy of this warrant is to be left with the person whose premises or person is searched along with a list of any and all items seized at the time of its execution. If said person cannot be located or identified, a copy of the search Warrant and the list of property seized shall be left at the place from which the property was taken.

Further, a return shall be promptly made to this Court upon the execution of this Search Warrant along with an inventory of any property taken. The property seized shall be held in some safe place until the Court shall further order.

Done by the Court this 21 day of December, 2004

Judge: [Signature]

SLETTA

04-885

(DISTRICT) (COUNTY) COURT, EL PASO COUNTY, STATE OF COLORADO

CRIMINAL ACTION NUMBER _____

Agency Case Number: 04-43639

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

The undersigned, a peace officer as defined in 18-1-901 (3) (1), C.R.S. 1973 as amended, being first duly sworn on oath moves the Court to issue a Warrant to search those person(s) and/or premises known as:

3044 South Academy Boulevard, Colorado Springs, Colorado, a multi-commercial use building within the shopping complex on the southwest corner of the Intersection of Academy Boulevard and Hancock Expressway. 3040 South Academy Boulevard is a two level building with light grey stucco exterior and a glass door on the west side with the numbers '3040' over the door. Also a 1986 white Ford Econoline B250 VIN 1FTBE24N3GHA87316 and a 1979 blue Jaguar XJ6 VIN JAVLN49C100839.

The undersigned states that there exists probable cause to believe that the following person, property or thing(s) to be searched for, and if found, seized will be found on the aforementioned person(s) and or premises and are described as follows:

See Attachment 'B'

The grounds for the seizure of said person(s), property or thing(s) are that probable cause exists to believe that it: ☒ Is stolen or embezzled, or ☒ Is designed or intended for use as a means of committing a criminal offense, or ☒ Is or has been used as a means of committing a criminal offense, or ☒ Is illegal to possess, or ☒ would be material evidence in a subsequent criminal prosecution, or ☒ Is a person, property or thing the seizure of which is expressly required, authorized, or permitted by a statute of the State of Colorado, or ☒ Is kept, stored, transported, sold, dispensed, or possessed in violation of the statute of the State of Colorado under circumstances involving a serious threat to the public safety, or order, or to the public health, (Mark 'X' according to the fact);

The facts submitted in support of this application are set for in the accompanying attachment designated as Attachment "A" which is attached hereto and made a part hereof.

Applicant:  Detective Donald Chagnon

Law enforcement agency: Colorado Springs Police Department

Position: Detective

Sworn and subscribed before me this 21 day of December, 2004

Judge:  Sworn

ATTACHMENT 'A'

04-885

In support of a request for the issuance of a search warrant your affiant, Donald J Chagnon 81D, a Police Officer for the Colorado Springs Police Department and so employed for over eighteen years and now currently assigned to the Major Crimes Robbery Unit, state under oath that I have personal knowledge of the following facts:

On 12-01-2004 at about 12:10 p.m. two unknown males did enter the Compass Bank, 2805 Dublin Boulevard, within the City of Colorado Springs, County of El Paso and State of Colorado. The males were armed with what witnesses and victims described as handguns. One of the males was later observed in surveillance photographs carrying what appears to be a long rifle on a sling over his right shoulder.

The males loudly announced a robbery and ordered to everyone in the bank, "Everyone get down!" Inside the lobby with their mothers were two small children ages 4 and 5. The male carrying the long rifle went behind the closed teller area and ordered the victim teller, "Open it up! Open them all up! Give me everything! Put it in the bag!"

The victim teller stated that this male presented what she described as a green in color army style duffle bag which he held open for her to put the money in. The teller stated that the first items that she placed in the bag were her dye pack and bait bills. She stated that she then put the remaining money that she had into the bag on top of that.

She stated that the male wanted to get into other cash drawers and the vault area but could not because they were locked and the people with the keys were not present at the time. The teller stated that the male then went back into the lobby area where he and the second male left the bank. The males took a total of \$7039 in US currency.

The teller described the male that came behind the counter as a Black male, 6'1" to 6'2" tall and weighing about 220 to 230 pounds. She added that he was wearing a burgundy knit watch cap with some type of black mesh over the eyes and mouth. She stated that he was also wearing a red/black/white plaid flannel or wool shirt and slightly faded jeans. She stated that she did not see the second suspect well enough to describe him. Other victims inside the bank vaguely described him as a male, about 5'10" tall and about 180 to 190 pounds. I asked the teller and other victims inside the bank what they believed would happen if they did not comply with the two males. All indicated that they believed they would be harmed or killed.

After robbing the bank the two unidentified suspects fled the area to the south across the parking lot, behind the strip mall area and through the back yard of the residence directly behind the Overtime Sports Bar to Lange Drive. According to two separate witnesses, a white in color van was seen leaving the area immediately after the robbery had occurred. All information pertaining to this initial investigation is documented in Colorado Springs Police Department Police case report number 04-43639.

On Friday 12-03-2004, Detective Eric Anderson received a phone message from Colorado State Department of Gaming Investigator Tim Martinez. During that phone conversation, Investigator Martinez informed Detective Anderson that workers from Womack's Casino in Cripple Creek, Colorado contacted Investigator Martinez to inform him that they received numerous US Currency bills of various denominations which were either dye stained with red ink, burned or smelled of some sort of tear gas.

Your affiant would note that when a dye pack from a bank explodes the pack will emit a red colored dye, red smoke which contains a chemical irritant gas, a form of tear gas and the pack will burn at approximately 500

degrees. During this conversation with Investigator Martinez, Detective Eric Anderson told Martinez that he would fax a copy of the bait bill list from the bank so that investigator Martinez could check the serial numbers of recovered money against the list to see if the money matched the money taken from the bank.

On 12-03-2004 after having checked the recovered bills against the bait bill list, Investigator Martinez contacted Detective Eric Anderson and told him that he, Investigator Martinez, found that three of the bills recovered from Womack's were in fact listed on the bait bill list provided by Detective Eric Anderson. Investigator Martinez stated that he recovered two fifty dollar bills and one twenty dollar bill. The bait bills are noted as one fifty dollar bill, 1996 series, bearing serial number AK02603550A, one fifty dollar bill, 1996 series bearing serial number AE66109149A, and one twenty dollar bill, 2001 series, bearing serial number CL88405281C. The rest of the money recovered from Cripple Creek was either dye stained, burned or smelled of tear gas. The total amount recovered from Cripple Creek as a whole was \$3,100.00 US Currency. Your affiant would note that of the \$3,100.00 dollars recovered from Cripple Creek, \$2,960.00 dollars of that money was actually recovered from the Legends Casino which is a part of the Womack's casino.

During review of the video surveillance conducted by Ronald Gagnon of Womack's Security, a possible suspect was identified. This male matched the general physical characteristics as provided by your affiant and Detective Anderson to Investigator Martinez and Womack's security personnel. That male was positively observed playing slot machines in the immediate area where the recovered red dye stained money had originally been played. His play can be tracked to 8 of 13 machines where red dye stained money was found.

On 12-04-2004 Surveillance operator Ron Gagnon from Womack's Casino was checking surveillance video of 12-02-2004 and noticed that a Womack's Casino employee identified as Roger Steggal talking with the then unknown suspect, Calvin Cheeks. Gagnon talked with Steggal later on in the evening and asked him who he had been talking to. Gagnon reported that Steggal told him that he was talking to "Calvin".

Investigator Martinez obtained a copy of Colorado Springs Police Department booking photograph for Calvin Karl Cheeks, Date of Birth 02-04-1962. This is the only Calvin Cheeks listing in Colorado Springs Police Department criminal records. The residence address on that record later matched to the home address given by Calvin Cheeks to Womack's Casino in his application for a player's card.

Investigator Martinez went to the Womack's promotions department and spoke with Amy Hayes. Investigator Martinez asked Hayes if she knew a person named "Calvin", and Hayes stated that yes she knew a Calvin Cheeks. Hayes further reported that Calvin Cheeks is the only person with the first name Calvin who currently has a Players club card with Womack's Casino. Investigator Martinez showed Hayes a still photograph of Cheeks and asked if she knew the person in the photo. Hayes said she was pretty sure the person in the photograph was Calvin Cheeks.

On 12-09-2004, Investigator Martinez was conducting further follow up when he talked to another Womack's Casino employee identified as Gary D. Kring. Kring stated he has known Calvin Cheeks for a number of years. After obtaining some initial information, Investigator Martinez showed Kring a photograph of Cheeks with all identifying information covered up. Upon viewing the photograph Kring told Investigator Martinez that the person in the photo was Calvin. Investigator Martinez asked, "Calvin who?" Kring replied, "Calvin Cheeks."

Calvin Cheeks was noted to have returned to Cripple Creek on 12-06-2004. During his visit on that day, his play patterns and movement within the casino were watched. Calvin Cheeks was observed playing machines

which were later taken out of service and inspected. Additional red dye stained money was removed from the machines, which was later determined that only Cheeks could have put into the machine.

Gagnon has stated that he has done extensive work on tracking Cheeks to the dyed money. He later told Investigator Martinez that he would be available for court to testify about how he came to the conclusion that Calvin Cheeks is the only person who could have put the dyed money in the machines on 12-06-2004. Gagnon added that he has ruled out any other people placing the red dyes money in the slot machines on that day.

Follow-up conducted by Detective Anderson has identified several vehicles registered to Calvin Cheeks. These vehicles include a 1996 white in color Isuzu NPR tilt-cab panel van, a 1979 blue in color Jaguar XJ6 and a 1986 white in color Ford Econoline E250 cargo van. This last vehicle is similar to the vehicle observed in the area where the suspects of the bank robbery were last seen.

On 12-13-2004, your affiant presented to the Honorable Judge Manzanares an application for a Court Order to Produce Records. This order was approved and served upon Sprint Communication for telephone records relating to a cellular phone number that Mr. Cheeks had also given as his own number. A response to the Court Order was received on 12-20-2004 and a call was found placing the telephone in the area of the bank robbery about 2¼ hours after the robbery. Several calls to and from a number 719-635-7362 were also found. A reverse listing on this phone number shows to an E.R. Taylor at 948 East Rio Grande Street, Colorado Springs, Colorado.

On 12-21-2004 pursuant to an Arrest Warrant issued by the Honorable Judge Sletta on 12-20-2004, your affiant and other officers arrested Calvin Cheeks as he arrived for a scheduled court appearance at the El Paso County Court, 20 East Vermijo. At the time of his arrest Cheeks had arrived in his 1996 white in color Isuzu NPR tilt-cab panel van. That vehicle was impounded for the purpose of obtaining a search warrant.

During an interview with Cheeks, after he stated that he understood his rights and agreed to waive those rights, gave his primary residence address as 3040 South Academy Boulevard. He stated that he has a living area inside the building normally used for commercial purposes and has his other vehicles stored there.

Your affiant had a Patrol Officer respond to that address and he positively identified the location and stated that there is property stored inside. The other vehicles belonging to Cheeks were also found parked outside that address. These vehicles specifically the 1986 white in color Ford Econoline E250 bearing no license plate but VIN 1FTEE24N3GHA87316 attached; and a 1979 blue in color Jaguar XJ6 bearing Colorado license plate KAD4975 and VIN JAVLN49C100839 attached.

On 12-21-2004 an application for a Search Warrant was presented to the Honorable Judge Sletta for the address of 3040 South Academy Boulevard, Colorado Springs, Colorado the residence of Calvin Cheeks. The application was approved, Clerk 04-883, and was executed on 12-21-2004 at 2:15 p.m. As Detectives began a search the numbers 3044 was observed over the front door of the residence which is a sub-divided building, the numbers 3044. These numbers can not be seen from outside and a mailbox posted outside the door has the number 3040 scratched into it in 3 different places.

Detectives had previously spoken with the building management who stated that the whole building is 3040 South Academy and they indicated exactly which sub-divided space is leased by Calvin Cheeks. This is the

door that was entered pursuant to the issued Search Warrant. Detectives also found a piece of mail just inside the front door with the address 3044 South Academy Boulevard, Colorado Springs, Colorado

Your affiant, Detective Donald Chagnon would respectfully request that probable cause be found that on 12-01-2004 at 2805 Dublin Boulevard, within the City of Colorado Springs, County of El Paso and State of Colorado and Aggravated Robbery occurred in violation of 18-04-302, Colorado Revised Statutes as amended. Your affiant would also ask that probable cause be found that the subject Calvin Karl Cheeks was involved in that Aggravated Robbery and was in possession of money taken in that robbery.

Your affiant would also request that probable cause be found that the address 3044 South Academy Boulevard, Colorado Springs, Colorado and fully identified in the application for this search warrant, as amended is the current residence of Calvin Cheeks. Your affiant would thus respectfully request the authorization of a search of that business; vehicles identified in this affidavit and parked on the property, as well as the physical property for items as identified in Attachment 'B'.

Applicant:  Detective Donald Chagnon

Law enforcement agency: Colorado Springs Police Department

Position: Detective

Sworn and subscribed before me this 21 day of December, 2004

Judge: 

SLBTT

ATTACHMENT C'

On 12-21-2004 pursuant to Search Warrant authorized by the Honorable Judge Sletta, the following items were seized as evidence during the execution of the Search Warrant at 3044 South Academy Boulevard.

- SKS assault rifle 7.62x39mm with modified pistol grip stock & sling, found inside black plastic garbage bag loaded with a full magazine attached. Also found with 2 spare fully loaded magazines. ALL ITEMS MADE SAFE – SN# 9455064
- Maverick 12 gauge shotgun found fully loaded with six rounds. WEAPON MADE SAFE – SN# 16389B
- Marksman repeater bb air .177 cal with no serial number. WEAPON MADE SAFE
- Two pieces of wood - originally the complete stock of the SKS rifle (above), cut from the original stock to make modified pistol grip.
- Two Colorado license plates 778BMR, 335ILW.
- One Colorado license plate 574cnp.
- One vehicle registration for 1979 Jaguar Colorado license KAD4975 VIN JAVLN49C100839.
- One customer survey card from Colorado Springs Credit Union with handwritten surveillance notes from Mon Nov 10, 2:00 p.m.
- One Ace Loans pawn ticket indicating a night scope was pawned by Calvin Cheeks at Ace Loans on 12-16-2004.
- One key ring containing 3 keys marked 'Do Not Duplicate'.
- One envelope containing a past due notice for a storage unit located at 2303 W. Bott Ay.
- Two hardback books, one titled 'The Cops Are Robbers' & one titled 'Evidence and Its Legal Aspects'.
- One VHS video tape titled, 'Art of Crime'.
- One plastic tub containing suspected red dye.
- One plastic hockey mask.
- One key ring containing multiple keys.
- The left five (5) twenty dollar bills and the left half of one (1) one hundred dollar bill.
- One Ruger handgun box for a P89 9mm handgun, missing the handgun but containing a pawn slip for an Intratec .22 caliber pistol.
- One pair of black knit gloves w/ blue rubber gloves inside them.
- Four pairs of women's stockings made into headwear/skullcaps.
- One pair of wrap around style sunglasses.
- One used book of checks #2003 through 2325 in the name of Olympic Floors.
- Box containing photos and paperwork for gambling winnings.

- Three (3) Womack's gold club cards #92192 & one (1) Premier Club card from the Double Eagle casino in the name Calvin Cheeks.
- One (1) silver colored security officer's badge.
- Four (4) .25 caliber bullets.
- Two (2) 9mm bullets.
- One SKS cleaning klt.
- One Womack's mailer addressed to Calvin Cheeks at 3044 S Academy Bl.
- One (1) brown knit stocking cap.
- One (1) black leather trench coat w/ a skull cap in the pocket.
- One (1) pair black jeans



(Person who helped to conduct the search and seizure) -
Detective Donald Chagnon

ATTACHMENT 'B'

04-884

The following person(s), property or thing(s) will be searched for and if found seized:

GENERAL INFO

- General photographs of the residence
- Indicia of residency
- Identification which would identify any occupants of the residence

GUNS INVOLVED

- Any and all firearms
- Any and all ammo
- Any documentation showing the ownership of a firearm
- Any and all sales records showing the purchase of a firearm
- Any projectiles
- Any and all spent shell casings
- Any item commonly used to carry and transport a firearm (i.e. holster & gun carrying case, magazines, cleaning kits)

WRITTEN MATERIAL

- Any letters, notes, tapes, pictures, or other written material depicting any association with this investigation
- Any audio or videotapes depicting any association with this investigation.

CLOTHING

- Burgundy or black in color ski masks.
- Long sleeve red/black/white plaid shirt
- Tactical vests or body armor

MISCELLANEOUS

- Any dye stained or burned US Currency
- Any US Currency listed on Balt bill list provided by victim bank.
- Any and all sales receipts showing purchases of items similar to or that could be described as military style duffle bags.
- Any military style duffle bags
- Any objects or clothing stained with red dye

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