

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR388
)	
Plaintiff,)	
)	
v.)	MOTION TO SUPPRESS
)	EVIDENCE AND REQUEST FOR
DEJAY MONSON,)	EVIDENTIARY HEARING AND
)	ORAL ARGUMENT
Defendant.)	

The Defendant, Dejay Monson, by and through his attorney, Michael F. Maloney, moves the Court for an order suppressing all evidence seized as a result of the anticipatory search warrant executed at his property on September 16, 2008, including his statements to law enforcement officers. In support of this motion, the Defendant states as follows:

1. Law enforcement executed an anticipatory search warrant at the Defendant's property on September 16, 2008. The warrant was issued solely upon information received from an "unwitting" confidential informant.

2. The warrant authorizing the search was not supported by probable cause. All evidence seized as a result of the search warrant, including the Defendant's statements, must be suppressed as fruit of an unconstitutional search.

3. The Leon "good faith" exception does not excuse the lack of probable cause because the affidavit supporting the warrant contained so few indicia of probable cause as to render belief in its existence unreasonable, and the warrant itself was so facially deficient that no officer could have reasonably presumed it to be valid.

4. All evidence obtained as a result of the search must also be suppressed because the anticipatory search warrant did not condition the search upon the delivery of contraband.

5. The Defendant's statements to law enforcement must be suppressed because they were made while he was in custody and in the absence of a valid waiver of his rights as mandated under Miranda v. Arizona, 384 U.S. 436 (1966).

3. The Defendant's alleged statements must be suppressed because they were involuntary and obtained in violation of his rights under the Fifth Amendment to the United States Constitution.

WHEREFORE, the Defendant moves the Court for an order suppressing all evidence seized during the execution of the anticipatory search warrant at his property on September 16, 2008, including his statements to law enforcement. The Defendant further requests an evidentiary hearing and oral argument.

Respectfully submitted,

DEJAY MONSON, Defendant,

By: s/ Michael F. Maloney

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: Kim Bunjer, Assistant United States Attorney, Omaha, NE.

s/ Michael F. Maloney