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to do justly, to love mercy, and to walk humbly with God Micah 6:8

Clerk
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SUE HALL, CLERK
APACHE COUNTY SUPERIOR COURT

IN THE SUPERIOR COURT, STATE OF ARIZONA
APACHE COUNTY

| | | |
|--------------------------------|---|--|
| In the Matter of: |) | |
| |) | Case No. JV 2008-065 |
| Christian Ryan Romero |) | REPLY |
| |) | Motion to Suppress- Illegal Warrant |
| |) | [Hearing Requested ½ day needed.] |
| |) | |
| A person under 18 years |) | |
| |) | |

To the government's response, the juvenile replies.

The thrust of the arguments, aside from the State's hoped form meaninglessness of the Magistrate's friendship with the victim and his family, is that regardless, good faith and inevitable discovery will save the day. The government is wrong, since good faith depends upon an honoring of the constitutional principals required for the warrant's issuance in the first instance; secondly, inevitable discovery does not apply to a home under the Arizona constitution And, there is no "rural" exception to the Constitutions.

'The point of the Fourth Amendment, which often is not grasped by zealous officers [and apparently prosecutors], is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' (emphasis added) *Aguilar v State of Tex* 378 U.S. 108, 111, 84 S.Ct. 1509,

1512 (U S Tex 1964) quoting *Johnson v United States*, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436.

The Good Faith Exception to the Exclusionary rule requires that the warrant not arise from a Constitutional violation in its issuance initially. “The Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution’s case in chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid and suppression is appropriate where the officers had no reasonable expectation that the warrant was properly issued “ *U S v Leon* 468 U.S. 897, 104 S.Ct. 3405 (U.S.1984).. [t]he courts must also insist that the magistrate purport to “perform his ‘neutral and detached’ function and not serve merely as a rubber stamp for the police.” *Agular v Texas*, 378 U.S. 108, 84 S Ct 1509, 12 L.Ed 2d 723 (1964); 378 U.S , at 111, 84 S.Ct , at 1512. See *Illinois v Gates* 462 U.S 213, 263-264, 103 S Ct. 2317, 2346 (U.S.Ill.,1983), 462 U S , at 239, 103 S.Ct , at

presented with a warrant application” and who acts instead as “an adjunct law enforcement officer” cannot provide valid authorization for an otherwise unconstitutional search. *Lo-Ji Sales, Inc v New York*, 442 U S. 319, 326-327, 99 S.Ct. 2319, 2324-2325, 60 L Ed 2d 920 (1979) *U S v Leon* 468 U.S. 897, 914, 104 S.Ct. 3405, 3416 (U.S.1984) Put succinctly in the concurring opinion by Justice White in *Illinois v Gates* 462 U.S. 213, 263-264, 103 S Ct 2317, 2346 (U.S.Ill.,1983) “In any event, I would apply the exclusionary rule when it is plainly evident that a magistrate or judge had no business issuing a warrant” See, e g , *Agular v Texas*, 378 U.S. 108, 84

S.Ct. 1509, 12 L.Ed.2d 723 (1964); *Nathanson v United States*, 290 U.S. 41, 54 S.Ct. 11, 78 L.Ed. 159 (1933)

Good faith is not available here to rescue the government's evidence since the magistrate had no business issuing the warrant, a fact that the magistrate recognized from the outset

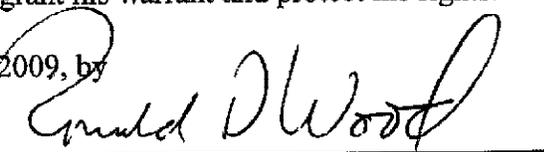
Likewise, inevitable discovery is not available

Our decision not to extend the inevitable discovery doctrine into defendant's home in this case is based on a violation of art. 2 § 8 of the Arizona Constitution regardless of the position the United States Supreme Court would take on this issue. While our constitutional provisions were generally intended to incorporate federal protections, *State v Bolt*, 142 Ariz. at 264, 689 P.2d at 523, they are specific in preserving the sanctity of homes and in creating a right of privacy. *Id.* at 265, 689 P.2d at 524. This holding regarding the inevitable discovery doctrine is based upon our own cases and constitution and thereby complies with the United States Supreme Court dictates of holdings based on independent state grounds. *See Michigan v Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

State v Ault 150 Ariz. 459, 466, 724 P.2d 545, 552 (Ariz.,1986)

Here, the warrant was not issued by a neutral magistrate, and therefore good faith is not available. Likewise, under the Arizona Constitution, inevitable discovery is not available either. The child asks the court to grant his warrant and protect his rights.

Respectfully submitted, January 11, 2009, by



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Copies to
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