IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

STATE OF TENNESSEE	)	
	)	
v.	)	**CASE NO. 2006-A-559**
	)	
WILLIAM GLENN TALLEY	)	

MOTION TO SUPPRESS FRUITS OF UNLAWFUL SEARCH AND SEIZURE

Mr. William Talley is charged with two counts of possession of child pornography and four counts of possession of various controlled substances with intent to sell or deliver same. The alleged pornography and controlled substances were found by the authorities in a search of Mr. Talley's residence occurring in the late evening of August 16, 2005 and a subsequent search of his business premises in the early morning of August 17, 2005. Pursuant to Rule 12(b), Tenn.R.Crim.P., Mr. Talley moves to suppress this alleged evidence because it was unlawfully secured from his residence and business premises in violation of the Fourth Amendment to the United States Constitution which provides, in part, that the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated... ." The seizure of the evidence also violated Article I, Section 7 of the Tennessee Constitution which provides, in part, that "the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures... ." Although the evidence was ultimately seized pursuant to multiple search warrants, the search warrants were themselves the product of an earlier warrantless entry which Mr. Talley asserts was unreasonable.

Mr. Talley's home is in a condominium which shares a locked, secured entrance protected by a burglar alarm. The police slipped past another resident to gain entrance to the locked front door of the condominium property. They then went to Mr. Talley's residence and a female inside permitted the officers to enter. Once inside Mr. Talley's home, without benefit of a warrant, the officers "froze" the scene and then secured a search warrant for Mr. Talley's home. After finding evidence in his home the officers then obtained a search warrant for Mr. Talley's business locating additional evidence.

The controlling issue is whether the initial unlawful entry by guile into Mr. Talley's locked condominium premises violated his reasonable expectation of privacy and his constitutional rights to be free from unreasonable searches and seizures under the Constitutions of the State of Tennessee and the United States. Clearly, a warrantless search, illegal in its inception, renders unlawful subsequent searches with a warrant under the "fruit of the poisonous tree" doctrine. *State v. Wert*, 550 S.W.2d 1 (Tenn. Crim. App. 1977).

THE FACTS [1]

In August, 2005 the police received an anonymous telephone call that "drug activity might be occurring" at Mr. Talley's residence. As a result the officers decided to do a "knock and talk" if anyone was at home. When the officers arrived at the premises in the evening hours of August 16, they found it was a private condominium and that Mr. Talley's individual residence was on the second floor.

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[1] Attached to this Motion in the Appendix the Court will find the testimony of the investigating officer adduced at the preliminary hearing. The attachments include copies of the search warrants and pertinent police reports provided to the defense via discovery. Additional documents include photographs of Mr. Talley's condominium. The attachments are bates stamped in the upper right hand corner.

Photographs attached to this motion show the front of the condominium. There is a locked door secured by a burglar alarm. Access is through a keypad and a speaker system adjacent to the exterior door of the condominium. A plan of the condominium and relevant documents from the master deed are also attached. Mr. Talley is one of the owners of the condominium and, as noted in the master deed, has an ownership interest in the common areas. (See Appendix pages 25-41).

As the testimony at the preliminary hearing revealed, the officers first attempted to get the security code to gain access to the interior of the condominium. While they were doing this a resident came out of the condominium and, as the resident was exiting the condominium, the officers slipped past the resident through the normally secured door. The four officers then marched up to the second floor of the shared common hallway to the interior door beyond which was Mr. Talley's personal residence.

The officers had no permission from anyone to enter into the private, secured common area of the small condominium. The relevant testimony was as follows:

Defense Attorney Jon Peeler: And did you speak with the owner or the homeowners association to get permission to get into that hallway to get to his door?

Detective Simonik: No.

Peeler: Well, how did you get through a secured entrance to get to his door to knock on the door to speak to Kimberly Knight, [Mr. Talley's female companion]?

Simonik: We were clearly marked as police officers. We had called our dispatcher to get the security code to get through. Before dispatch could get back with the security code, someone had come out of that apartment, so we went in.

Peeler: They came out. You went in?

Simonik: That's correct.

Peeler: You didn't have permission from anybody?

Simonik: Umm…

DA: I'll object, your Honor — .

Judge: Overruled. Did you have permission from anybody to go into the common areas of the building?

Simonik: Did we have permission from anybody?

Judge: Yeah.

Simonik: Just the police authority to go up and investigate a complaint.

Peeler: You eventually got a… You investigated first, right?

Simonik: That's correct.

Peeler: You eventually got a Search Warrant?

Simonik: That's correct.

Peeler: Why not go get Search Warrant before you do this investigation?

Simonik: Like I said we went up to do a knock and talk to investigate it. I didn't know if it was true or not. I'd never spoken with the caller. I didn't have any confidence in the ----. So --- contact with Mr. Talley. Tried to make a purchase. So that's why.

Peeler: You knew that the owner of the residence was Mr. Talley from NES records, I think. Is that right?

Simonik: Through NES records and through the complaint also we received referred directly to Mr. Talley.

Peeler: That's kind of directly where I was going. So when you went over there and you knock on the door… What do you call that? Knock and talk?

Simonik: That's a knock and talk. That's what we call it. Yes, we knock on the door.

Peeler: And you knew that the young lady that came to the door was not the owner of that property, didn't you?

Simonik: I didn't know if she was staying there or the owner, whatever, until we asked her how long she'd lived there. She stated that she did live there. She had a key to the residence ----

Peeler: I thought you just told me that he was the owner. In fact you knew my client was the owner before you went.

Simonik: That was where the NES check ----. It came back with Mr. Talley and the drug complaint said Mr. Talley's apartment.

Peeler: And so you knew Ms. Knight was not Mr. Talley.

Simonik: I did not know if Mr. Talley had a girlfriend or whoever living with him. No, at that time, no, I did not.

Peeler: When you knocked on the door, Ms. Knight came to the door…

Simonik: That's correct.

Peeler: …and um… I assume you are at the threshold of the door when she answers the door?

Simonik: Standing outside the door, threshold. I guess you could call it just knocking on the door, like any other person would do, knock on the door and stand there.

Peeler: You are in the hallway knocking on the door?

Simonik: That's correct.

Peeler: Was anybody with you?

Simonik: I had a couple of other detectives with me, yes.

Peeler: Who were they?

Simonik: Detective Fox, Detective Osborne.

Peeler: I'm sorry, Detective who?

Simonik: Detective Fox. Detective Osborne. And um, Detective Gonzales was down the hall. And I believe Detective Stokes was down the hall.

Peeler: Is that typical to take three other detective on an anonymous call?

Simonik: Yes.

Peeler: And so, you knock on the door and you're standing in the hallway and she comes to the door and opens the door. Does she ask who you are before she opens the door?

Simonik: No. She just opens the door.

Peeler: They weren't smoking any pot or doing anything illegal at the time that she opened the door, correct?

Simonik: Not that I could see.

Peeler: Or could smell?

Simonik: No.

Peeler: Okay. As you stood in the hallway, when she opened the door, could you seen any sort of illegal activity?

Simonik: I didn't see any illegal activity. I actually asked Ms. Knight if we could step inside and talk for a minute.

Peeler: Okay, but before you did that, you couldn't seen any thing right?

Simonik: No.

Peeler: You didn't see the scales.

Simonik: No.

Peeler: And you didn't see a pipe?

Simonik: Not from the hallway, sir.

Peeler: Okay. You told me that the anonymous call was... it was a phone call. Was it communicated any other way to you? Was it written or was it someone received an email, anonymous tip. Was it anything like that or just a phone call?

Simonik: Just a phone call.

Peeler: Was it more than one phone call, or just one?

Simonik: I don't know. I received a packet from SID.

Peeler: Okay. Did you actually speak with my client on the telephone during this investigative stage of the…

Simonik: Yes, I did.

Peeler: Okay. You're sure?

Simonik: Yes, I spoke with your client.

Peeler: And was it through a cell phone or a land line?

Simonik: It was through a cell phone. His girlfriend's cell phone.

Peeler: And you explained what you were doing there.

Simonik: That's correct.

Peeler: Okay, and you asked his consent to search and he ---- said no.

Simonik: I didn't ask for consent to search until he arrived at the residence and I explained to him what was going on.

Peeler: And you went away, I assume, to get a Search Warrant?

Simonik: Eventually, yes, I did leave to go have a Search Warrant --------- .

Peeler: Did you leave officers there?

Simonik: Yes, I did.

Peeler: Did they stay in the apartment?

Simonik: They did stay in the apartment with Ms. Knight, who seemed happy with us present and ---- .

Peeler: And you had several conversations with Ms. Knight?

Simonik: Just that night. I spoke with her, yes.

The full testimony of Detective Simonik appears at page 2 of the Appendix. At page 42 of the Appendix this Court will see the "consent to search premises form" provided to Mr. Talley by the authorities when he arrived at his dwelling. Mr. Talley refused to permit the search of his dwelling. The officers then "froze" the apartment and applied for a search warrant. The substance of the affidavit for the search warrant appears as follows:

> My name is Joseph Simonik. I have been a sworn law enforcement officer since 1998. I have participated in narcotics since 1998. I was assigned to the west sector narcotics unit, Metropolitan Nashville Police Department, in 2000.
>
> Probable cause is as follows: Detectives received a drug complaint on 116 31st Avenue North Apartment 201. Detectives went to this location and knocked on the door and a Kimberly Knight (F/W DOB 10-29-86) answered the door. Detective Fox explained to Kimberly Knight that we were there for a drug complaint. Your Affiant asked Kimberly Knight if we could come inside to talk with her and she gave detectives permission to come inside the residence. Once your affiant came into the living room of this location on a table in plain view your affiant saw a glass smoking pipe with copper mesh in it with residue. Next to this pipe there was a knife with white residue on it. Your affiant asked Kimberly Knight if she lived at the residence and Kimberly Knight stated that she had been staying there for about 3 weeks. Detective Fox asked Shane Cathey who was also at this residence if he had anything illegal on his person and Mr. Cathey replied not that I know of and then Detective Fox asked are you sure and Mr. Cathey replied well I have some pills and

motioned to his right from pants pocket. Detective Fox recovered 43 Xanax Bars (Schedule IV Narcotic) and 3 half bars of Xanax from Mr. Cathey's pocket which were packaged in 2 clear bags.

Your affiant then called Mr. William Glenn Talley (M/W DOB 12-19-62) using Kimberly Knights phone. Your affiant asked Mr. Talley if 116 31st Avenue North Apartment 201 was his residence and he replied yes and that he would be home in a few minutes. When Mr. Talley arrived at this location your affiant explained to Mr. Talley what was going on and asked him if he would be willing to sign a consent to search form. Your Affiant read this form to Mr. Talley and Mr. Talley stated that he would like to call an attorney and asked there opinion on what he should do. After calling several different attorneys Mr. Talley was unable to get a hold of any of them. Your affiant then asked him if he would like to sign the consent form and Mr. Talley replied that he did not think that would be a good idea.

NES shows active to Mr. William Glenn Talley at 112 31st Avenue North Apartment 201.

I respectfully request authorization to search each person present on the subject premises. From my experience and training, I have learned that persons present at locations where illegal narcotics are sold and/or used often have contraband, narcotics, paraphernalia, weapons, or other evidence of criminal conduct hidden on their persons or in their belongings. (Appendix page 47).

The relevant police report prepared by Detective Simonik provides as follows:

On the above date officers attempted a knock and talk at 116 31st Ave North Apartment 201. Officers knocked on the door to this apartment and a Kimberly Knight answered the door. Detective Fox and myself explained to Ms. Knight that we were there for a drug complaint. I asked Kimberly Knight if we could come inside and talk with her and she replied yes come on in. Once I came into the living room area of the residence I saw in plain view a glass smoking pipe with copper mesh in it with residue and next to it a knife with white residue on it. I asked Kimberly Knight if she lives at this residence and she replied that she has been living there for about 3 weeks with Bill. Detective Fox then asked Shane Cathey who was also at this residence if he had anything illegal on his person and Mr. Cathey replied not that I know of and then Detective Fox asked are you sure and Mr. Cathey replied well I have

some pills and motioned to his right front pants pocket. Detective Fox then recovered 43 Xanax Bars (Schedule IV Narcotic) and three half bars of Xanax from Mr. Cathey's pocket which were packaged in two clear bags.

I then asked Kimberly Knight if she had Mr. Talley's phone number and she gave me her phone with Mr. Talley's number on it. I then called Mr. William Talley. I asked Mr. Talley if 116 31st Ave North Apartment 201 was his and he replied yes and that he would come home to his apartment and he replied that he would be home in a little while. When Mr. Talley arrived at his residence I met him at the front door and explained to him what was going on, I told him that we had found some drug paraphernalia and asked him if we could have consent to search his apartment. Mr. Talley appeared very nervous I then read the consent to search form to Mr. Talley, Mr. Talley then replied that he would like to call an attorney and ask there opinion on what he should do. After calling several different attorneys and being unable to get a hold of any of them I asked Mr. Talley again if he would be willing to sign a consent to search form and he replied that he did not think that would be a good idea. I then told Mr. Talley that he was free to go.

I then went and got a search warrant for Mr. Talley's residence:

SEE ATTACHED LIST FOR ITEMS SEIZED FROM RESIDENCE.

Kimberly Knight made several statements about Mr. Talley. Ms. Knight stated that Mr. Talley would sell pills and cocaine to friends of theirs and that she would go with Mr. Talley to get the cocaine. Ms. Knight also stated that all the pills were Mr. Talleys. Ms. Knight also stated that Mr. Talley stores drugs at his place of business Tennessee Home Medical.

A narrative prepared by Office Stokes relates to the initial encounter with Ms. Knight when she "consented" to let the officers in the residence:

On the above date and time, West CSU officers conducted a knock and talk at the above listed address. Kimberly Knight answered the door and consented to let officers in the residence. Ms. Knight stated she had been living in the residence for three weeks and she was Mr. Talley's "fuck buddy". In plain view were a glass pipe and a knife with white residue on the blade. Mr. Talley was contacted by phone and he came to the residence. Mr. Talley denied consent to let officers search his apartment. Officers froze the scene and obtained a search warrant. Mr. Talley never entered the dwelling but did

place the briefcase he was carrying on the floor just inside the door. Mr. Talley then left the building. (Appendix page 51).

The investigative report of Detective Osborne provides as follows:

> On above date and time, Detective conducted a knock and talk at the above location. Detectives knocked on the door to the apartment and a female white (Kimberly Knight) answered the door. Detectives Fox and Simonik explained to her why we were there and Detective Simonik asked if we could come inside and she stated yes come on in. I entered the residence and stayed in the entrance area by the door. Detective Fox and Simonik spoke with Ms. Knight and also spoke to Mr. Talley by phone. I was then informed that Mr. Talley would be home in a moment and that we were standing by. When Mr. Talley arrived at the residence Detectives Fox and Simonik spoke to outside the residence after a short time Detective Simonik told me that we were holding the scene and he was going to get a search warrant. I was the instructed to stand by with Detectives Stokes and Gonzalez with Mr. Cathey and Ms. Knight until Detective Simonik returned with a search warrant. When Detective Simonik returned with a search warrant I began assisting with searching the residence. I found the following: [various pipes, scales and bags]. I also heard Ms. Knight make several statements about Mr. Talley. Ms. Knight said that Mr. Talley would sell pills and cocaine to friends of theirs and that she would go with him to get cocaine. Ms. Knight also stated that ll of the pills were Mr. Talley's and that he stores drugs at his place of business Tennessee Home Medical. She also stated that the drugs that were at his business were hid in a secret compartment underneath the sink in his personal bathroom. That was the extent of my involvement in this case. (Appendix page 54).

These narratives relate what occurred prior to, during and subsequent to the search of Mr. Talley's residence. As a result of conversations with Ms. Knight the officers secured a second search warrant for Mr. Talley's business.

The relevant portion to the affidavit of the second search warrant appears as follows:

> During the conversation with Detective Simonik [at Mr. Talley's residence] Mr. Talley stated that he owned a business name THM (Tennessee Home Medical).
>
> On 8/16/05 officers executed a narcotics search warrant at 116 31st Avenue North Apartment 201, which is the residence of William Talley. Detectives recovered at this residence thousands of pills that are schedule narcotics, marijuana, and drug paraphernalia as well as several images of child pornography that were downloaded from different internet sites. While under Miranda, Kimberly Knight, Mr. Talley's girlfriend, stated that Mr. Talley commonly stores illegal narcotics at his place of business which is Tennessee Home Medical (THM, inc.). Mrs. Knight also states that she has seen illegal narcotics at the location at 535 Brick Church Pike Drive. Mrs. Knight stated that she has seen illegal narcotics stored in a hidden compartment located under a sink located in Mr. Talley's office. (Appendix page 62).

After securing the second search warrant in the early morning hours of August 17, the officers traveled to Mr. Talley's business and found him inside. The officers conducted a search and found additional drugs and alleged child pornography. Mr. Talley was arrested and made certain statements to the police that he occasionally gave pills to his friends and sometimes received money for the pills. He also said that he had downloaded the images found on his computer out of curiosity.

Detective Melzoni's report is as follows:

> At approximately 2130 hrs I was contacted by Det. Fox and Simonik in reference to incident #05-443120. There was another search warrant being prepared for 535 Brick Church Park Dr. I was assigned to set up surveillance at that location. Talley was suspected to be at that location and when I arrived I noticed the car he had been driving at the location (Home Office of TN Home Medical). I set up surveillance there until the incident at #05-443120 was completed and warrant was signed. I met with other West CSU officers at the location and began to knock on the door in an attempt to get Talley to

> the door. I called an emergency contact number on the door and got a hold of an operator and then a supervisor that worked there. Talley then came to the door at approximately 0445 hors. He was hiding something under a blanket and attempted to conceal it to officers. He placed that item down (later to be determined to be a glass pipe and cocaine) and then opened the door. After the location was secure a search was conducted I assisted in completing the property/inventory sheet of all items seized. I also recovered two humidors and two dell palm pilots w/ chargers and case from Talley's office. After meandered Talley stated that he did sometimes sell drugs to his friends. He said his company was successful and didn't need the money, but would sell to his friends if they need something. (Appendix page 67).

Detective Stokes' prepared an additional narrative concerning Mr. Talley's alleged statements made after his arrest:

> On the above date and time, West CSU officers executed a narcotics search warrant at the above listed address. I arrived on scene after entry had been made and the suspect was in custody. As I was checking the computer in the suspect's office for drug records I opened a file folder that contained several images of what appeared to be nude children under the age of 18. I stopped any further search of the computer and notified Sgt. Welch. A Sex Crimes detective was then requested to the scene. After the suspect was given his Miranda rights I heard the suspect state he self medicated with pills he ordered through his company and cocaine. I heard the suspect state that he gave pills to his friends and sometimes received money. The suspect also stated that he had downloaded the images I found on his computer out of curiosity. (Appendix page 68).

During the searches of Mr. Talley's dwelling and business the officers seized three computers and a number of computer discs, computer drives and other computer storage devices. Search warrants were obtained on March 14, 2006 and September 19, 2006 for an inspection of these computers and computer storage devices. (Appendix pages 74, 81, 87, and 93). The affidavits in support of these search warrants all relate back to the initial searches

of Mr. Talley's premises. It is clear that, like a set of dominos, the search of the premises, business, and the computers all fall if the initial intrusion into Mr. Talley's condominium was unlawful.

BURDEN OF PROOF

Generally speaking if a search is conducted pursuant to a search warrant the defendant has the initial burden of establishing that the search was illegal. *State v. Evans*, 815 S.W.2d 503 (Tenn. 1991). In this case, however, Mr. Talley asserts that the initial warrantless intrusion on his premises – which ultimately led to a search warrant – was itself unlawful and thus the burden of proof is on the State. See *State v. Burton*, 751 S.W.2d 440 (Tenn. Crim. App. 1988) (the prosecution has the burden of establishing by a preponderance of the evidence that the search and resulting seizure were justified pursuant to one of the recognized exceptions to the warrant requirement since warrantless searches and seizures are presumed to be unreasonable). Thus, the State must prove by a preponderance of the evidence that the initial intrusion into Mr. Talley's premises was lawful. If the State fails to establish that it adhered to the constitutional mandate of the Fourth Amendment, the resulting search warrants are invalid since they constitute fruits of the initial unlawful search. *State v. Wert*, 550 S.W.2d 1 (Tenn. Crim. App. 1977).

THE INTRUSION INTO MR. TALLEY'S PREMISES VIOLATED HIS REASONABLE EXPECTATION OF PRIVACY AND CONSTITUTED AN UNREASONABLE SEARCH

The police officers went to the front entrance of Mr. Talley's condominium as part of a "knock and talk" procedure. Neither probable cause nor reasonable suspicion is needed

to conduct a "knock and talk." *State v. Cothran,* 115 S.W.3d 513 (Tenn. Crim. App. 2003) (it is not improper for a police officer to call a particular house and seek admission for the purpose of investigating the complaint or conducting other official business). Naturally, it is highly significant as to where the police are standing when they do their "knocking." See *State v. Somfleth*, 8 P.3d 221 (Or. App. 2000):

> Neither the warrant nor their status as peace officers gave them any greater right to intrude onto defendant's property than any other stranger would have. Going to the front door and knocking was not a trespass. Drivers who run out of gas, Girl Scouts selling cookies, and political candidates all go to front doors of residences on a more or less regular basis. Doing so is so common in this society that, unless there are posted warnings, a fence, a moat filled with crocodiles, or other evidence of a desire to exclude casual visitors, the person living in the house has impliedly consented to the intrusion. Going to the back of the house is a different matter. Such an action is both less common and less acceptable in our society. There is no implied consent for a stranger to do so. '[W]e do not place things of a private nature on our front porches that we may very well entrust to the seclusion of a backyard, patio or deck.' The facts of this case do not show either an express or an implied consent for strangers to go to the back of defendant's house.

While the police may walk upon a person's property if that property consists of no more than "open fields" the authorities may not, without a warrant, intrude upon the "curtilage" which is the land immediately surrounding and associating with the home. At common law, the curtilage is the area to which extends the intimate activity associated with the sanctity of a man's home and the privacy of life and therefore has been considered part of the home itself for Fourth Amendment purposes. Thus, courts have extended Fourth Amendment protection to the curtilage and they have defined the curtilage, as did the common law, by reference to the factors that determine whether an individual reasonably can

expect that an area adjacent to the home will remain private. *Oliver v. United States*, 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984).

In *State v. Harmon*, 775 S.W.2d 583 (Tenn. 1989), the court held that a defendant may contest illegally seized evidence if he can show that he has some interest in the property seized or the premises searched, or at least his right of privacy has been involved. The police do not actually have to go into the home to violate a person's constitutional rights. Intrusion within the curtilage of his home is sufficient to constitute an unlawful search given that "the curtilage is within the individual's expectation of privacy." *State v. Prier*, 725 S.W.2d 667 (Tenn. 1987).

In *State v. Bowling*, 867 S.W.2d 338 (Tenn. Crim. App. 1993), which arose in Davidson County, the defendant had parked a vehicle in his garage. The garage door was open about a foot to allow the defendant's dog to enter and leave the garage. The police entered on the defendant's property and looked under the door of the garage to observe the defendant's vehicle. Based on this observation the officers then obtained a search warrant to search the garage and inspect the vehicle.

Under these facts Judge Kurtz held that the initial observation of the truck was illegal and thus the subsequent search warrant was also unlawful since it was based upon the initial observation which violated the defendant's expectation of privacy. Judge Kurtz' ruling was affirmed on appeal which held that "society has recognized that the resident of a home usually has a reasonable expectation of privacy in a garage." The court found that the officer's "actions of getting on his hands and knees with his head very near to the ground and looking into the garage are not those actions which society would permit of a reasonably

respectful citizen." See also *State v. Lakin*, 588 S.W.2d 544 (Tenn. 1979), "ordinarily, officers searching occupied, fenced, private property must first obtain consent or a warrant; otherwise they proceed at the risk that evidence obtained may be suppressed." The above authorities make it crystal clear that any intrusion upon closed property violates an individual's expectation of privacy under the United States and Tennessee Constitutions.

It has been said many times that a man's home is his castle. An officer need not intrude only into a person's bedroom to violate that person's constitutional rights: intrusion past the locked gate is sufficient to intrude upon the expectation of privacy. What happens when the defendant shares a locked gate with other individuals? May the police sneak past the locked gate to roam within the castle at will? Fortunately, as we shall see, the courts have held that police intrusion upon the locked common areas of an apartment violate the expectation of privacy of the residents even before the officers get to the front door of the individual apartments.

What is the law when the gate is unlocked? There are many cases that hold that unlocked and unsecured common areas of apartments are not places where a person can expect constitutional privacy. In *State v. Taylor*, 763 S.W.2d 756 (Tenn. Crim. App. 1988) the police obtained information for a subsequent search warrant by standing in the hallway of an apartment and hearing the telephone inside ringing when that number was called by another officer. The defendant attacked the search warrant by contending that the means by which the location of the defendant's telephone within the apartment was confirmed constituted an unlawful search. The court held that there was no justified expectation of

privacy in the hallway and therefore it was not a constitutionally protected area. The court found that the apartment shared a common hallway with several other units. Significantly "the doors to the hallway were not locked and entrance into the hallway was not limited or guarded." Given that the hallway was readily accessible to the general public there was no expectation of privacy in the hallway and thus the initial intrusion was not unlawful.

In *State v. Matthews*, 805 S.W.2d 776 (Tenn. Crim. App. 1990) the officers entered the premises through a common driveway and found drugs lying on the ground along the edge of the parking lot to the apartment. The officers also found a larger quantity of drugs just inside the opening to the foundation of the apartment building. The court held that:

> [The defendant] did not have standing to challenge the seizure of either the packet of cocaine or the larger quantity of cocaine found inside the opening of the foundation. The fact that the [defendant] was a co-owner of the property did not, standing alone, establish a reasonable expectation of privacy in the premises. Also, society is not willing to accept an expectation of privacy in a parking lot which is provided for the use of tenants and their guests or an area under a rooming house which does not have a door or other means to secure the area and is not being used either by the owner or tenants to store personal property. The tenants, their guests and strangers had access to the parking lot as well as the area inside the opening contained in the foundation.

The leading case regarding intrusion into a locked common area is *United States v. Carriger*, 541 F.2d 545 (6th Cir. 1976) where the officers went to the defendant's apartment building which had a locked front entrance to the common area. The doors to both the front and the back of the building were locked and could only be opened by key or by someone within activating a buzzer system. The officer waited until a workman walked out through the door and, before the door closed, the officer slipped into the building. The officers then

went up to the defendant's apartment. A search warrant was later obtained. The District Court found that the officers' entry into the building and their search for the defendant in the common area of the building did not violate the defendant's reasonable expectation of privacy. The appellate court reversed:

> Whether the officer entered forcibly through a landlady's window or by guile through a normally locked entrance door, there can be no difference in the tenant's subjective expectation of privacy, and no difference in the degree of privacy that the Fourth Amendment protects. A tenant expects other tenants and invited guests to enter in the common areas of the building, but he does not expect trespassers. . . . Under the circumstances, we believe that the government agent violated the Fourth Amendment by entering an apartment building, and that entry was not legally permissible because probable cause did not exist for the arrest of [the defendant].

Carriger is by no means an isolated opinion. Many other courts have held that where the door to an apartment building is locked, the residents have a reasonable expectation of privacy in the common areas of the apartment building. See *People v. Trull*, 64 Ill.App.3d 385, 20 Ill.Dec. 960, 380 N.E.2d 1169 (1978) (holding "that the common entries and hallways of a locked apartment building are protected by the Fourth Amendment"); *State v. Di Bartolo*, 276 So.2d 291 (La.1973) ("apparently the building was kept locked and only tenants who had keys and guests whom they admitted could gain entrance to the building"); *Garrison v. State*, 28 Md.App. 257, 345 A.2d 86 (1975) ("the entrance door was kept locked and only tenants and management personnel had keys to the door," and the "only way one visiting a tenant could gain entrance was by telephoning a tenant who 'would come down' and unlock the door"); and *People v. Beachman*, 98 Mich.App. 544, 296 N.W.2d 305 (1980) (Fourth Amendment protections extend to lobby of locked residential hotel).

All these cases turn on the proposition that the resident has a reasonable expectation of privacy in the locked common area of the apartment. In *State v. Ross*, 49 S.W.3d 833 (Tenn. 2001) the Tennessee Supreme Court listed the various factors relevant to the expectation of privacy inquiry. These include whether the defendant owns the property, whether the defendant has a possessory interest in the item seized, whether the defendant has a possessory interest in the place searched, whether he has the right to exclude others from that place, whether he has exhibited a subjective expectation that the place would remain free from government invasion, whether he took normal precautions to maintain his privacy, and whether he was legitimately on the premises. Whether a defendant's expectation of privacy was legitimate has two components: (1) whether the defendant had a subjective expectation of privacy; and (2) whether that expectation is one that society is prepared to recognize is reasonable. *Katz v. United States*, 389 U.S. 347, 362, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967).

Here, all of the factors weigh in favor of Mr. Talley. He was not merely a renting an apartment owned by someone else. Rather, he was the owner of his own residence and also the owner of the entire condominium along with the several other owners. This included joint ownership of the common areas as noted in the master deed to the property. (Appendix page 36).

Indeed, it is difficult to conceive of what more Mr. Talley could have done to exhibit an expectation of privacy in the front door of the condominium itself. It was locked. It had

a burglar alarm. The front door, from all appearances, could have just as easily been his personal front door. The fact remains that he shared that front door with several other individuals who owned condominiums jointly with him. That he shared the locked front door does not diminish his expectation of privacy.

The ultimate test of course is whether Mr. Talley's subjective expectation of privacy in the locked entrance to his condominium was one that society is prepared to recognize as reasonable. We live in an urban society. A large percentage of our population lives in gated communities or locked condominiums which permit access only from afar. Do we really want to have police officers physically trespass within private, limited-access buildings in hopes of finding contraband or other evidence of wrongdoing? The privacy and security interests an individual enjoys in those areas close to the home do not vanish simply because that person lives in an apartment complex.

Finally, this case can be resolved by looking at the implicit invitation that one extends by having a path to one's front door. In *State v. Harris*, 919 S.W.2d 619 (Tenn. Crim. App. 1995) the court found that a sidewalk, pathway or similar passage leading from a public sidewalk or road to the front door of a dwelling represents an implied invitation to the general public to use the walkways for purposes of legitimate or social or business interests and, within this rule, police officers conducting official business are considered members of the general public and what the officers sees from his or her point of view along the way is not protected by the Fourth Amendment or the Tennessee Constitution. However, those constitutional provisions are violated once the officer walks around the exterior of the dwelling or attempts to look into the window. In *Harris* the officers went beyond the fenced

area of the dwelling and observed some marijuana plants some one-hundred yards from the house. The court found that this intrusion was unlawful and the police had no authority to "prowl around private, occupied, fenced property." The court cited multiple cases that prohibited police entry upon private, occupied, fenced land without a warrant.

Where apartments have open and unsecured common areas the police should be able to use these walkways precisely as they may use the path to the front door of a single, family residence. However, when the police come upon a locked, secured front door leading to a common area of a condominium then this is no different than the secured, fenced-in area of a residence or farm. Society is prepared to accept as reasonable the owner's expectation of privacy in the closed area whether it is a single family dwelling or a multiple family condominium protected by a locked, secured door and, in our case, protected by a burglar alarm to guard against unauthorized entry.

For all the above reasons, the entry into the locked common area of Mr. Talley's condominium was unlawful and, in the words of the Fourth Amendment, clearly "unreasonable." Accordingly the resulting evidence should be suppressed as a matter of law.

MR. TALLEY'S COMPANION DID NOT HAVE AUTHORITY TO ALLOW THE POLICE TO ENTER HIS PREMISES, AND IN ANY EVENT, ENTRY INTO THE APARTMENT WAS TAINTED BY THE UNLAWFUL ENTRY INTO THE COMMON AREA OF THE CONDOMINIUM.

The facts in this case are that once the police surreptitiously gained entrance to Mr. Talley's condominium, they went up to the second floor. A female in Mr. Talley's premises allowed the officers to come in. The facts are that this woman told the police that she was Mr. Talley's "fuck buddy" and that she had been staying there but a few weeks.

It is clear that a valid consent to enter may be given by third persons who have some type of joint authority over the area to be searched. *State v. Woods*, 806 S.W.2d 205 (Tenn. Crim. App. 1990). Tennessee law is clear that consent of a third person looks to the "common authority test." *State v. Bartram*, 925 S.W.2d 227 (Tenn. 1996). The common authority rests on mutual use of the property by persons generally having joint access or control for most purposes; the burden of establishing that common authority rests on the State. *Illinois v. Rodriguez*, 497 U.S.117, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990).

It is difficult to reconcile the "consent" given by Mr. Talley's "companion" with the Fourth Amendment. The fact is that the police were well aware that Mr. Talley was a resident of the condominium given that the "anonymous tip" was to that effect. The authorities had already checked with the Nashville Electric Service and determined that the property was owned by Mr. Talley.

Undoubtedly, the State will also cite *Illinois v. Rodriguez, supra* for the proposition that a warrantless entry is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably believed possessed a common authority over the premises but, in fact, does not. According to *Illinois v. Rodriguez*, the determination of consent to enter must be judged against an objective standard.

The State's proof of "consent" here is very thin when measured by the account given in the police reports. This is particularly the case since, as noted, Mr. Talley was clearly the owner of the premises. See *Hembree v. State*, 546 S.W.2d 235 (Tenn. Crim. App. 1976)

(child's consent was invalid where the child and parents are in custody and the parents are readily to give or withhold consent).

Recall that the police did not knock at the front door of the condominium building. Rather, they gained entrance into the locked common area by guile and then knocked at the door of Mr. Talley's apartment on the second floor. Assuming, without agreeing that Mr. Talley's companion had "apparent" authority to permit the entry into his residence, it should be uncontested that the police were standing in a place they did not have the right to be at the time they asked for entry into Mr. Talley's interior premises. See *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990) (to constitute a plain view seizure the officer must not have violated the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed).

United States v. Heath, 259 F.3d 522 (6th Cir. 2001) is squarely on all fours with Mr. Talley's motion to suppress here. In *Heath* the police obtained a key to a locked apartment building to access the entryway into the common areas. The officers then went to the apartment in question and knocked on the door. An occupant answered the door and the police asked if they could come inside and the occupant allowed them in. The officers then asked if the occupant had any marijuana and the occupant produced a small quantity of drugs. The occupant executed a search consent form and the officers searched the apartment. The police then arrested Mr. Heath who was also a resident of this apartment as well.

The court found that the consent to enter, even if consent were proper, was the product of the unlawful, initial intrusion into the common area of the apartment and thus the evidence against Mr. Heath was inadmissible:

> Assuming, arguendo, that these officers could somehow arrive at the outer gate to Horton's apartment building without violating Heath's Fourth Amendment rights, their entry into the building would still be barred. In *United States v. Carriger*, 541 F.2d 545, 552 (1976), we held that when "an officer enters a locked building, without authority or invitation, the evidence gained as a result of his presence in the common areas of the building must be suppressed."
>
> In *Carriger*, police officers were engaged in the surveillance of defendant Beasley, a known drug dealer. In the months preceding the arrest of defendant Carriger, Beasley had unwittingly sold narcotics to undercover officers on several occasions. The officers admitted that the purpose of their efforts on the day of Carriger's arrest "was to order a 'sufficiently large quantity of heroin from defendant Beasley to force him to go, under agents' surveillance, to his source of supply.' " Id. at 547. The officers followed Beasley to an apartment building "which Carriger owned and where he maintained an apartment." Id. at 548. Having observed Beasley as he entered the apartment building with a green shopping bag, the officers attempted to follow him and found that the "entrance doors were locked and could only be opened by a key or by someone within activating a buzzer system." Id. After attempting to enter the building when Beasley was admitted, the officer surreptitiously entered the apartment building and began to search for Beasley. Ultimately the officer witnessed Beasley and Carriger engaged in a conversation at the door of Carriger's apartment. Upon the defendants departure, the officers entered the apartment and conducted a warrantless search that lead to the discovery of heroin. Carriger subsequently filed his motion for suppression of the evidence, which the district court denied.
>
> On appeal, we found that a tenant in a locked building enjoys a "subjective expectation of privacy ... that the Fourth Amendment protects." Id. at 551. We further opined that the "peaceable" nature of an officer's entry will not vitiate the degree of infringement; whether it is effectuated "forcibly through a ... window or by guile through a normally locked entrance door," any entry without permission, probable cause or a warrant is "an illegal entry." Id. at 550-51. "[B]ecause the officer did not have probable cause to arrest appellant or his accomplice before he invaded an area where appellant had a legitimate expectation of privacy, the subsequent arrest and seizure of

> narcotics were invalid." Id. at 547. We attributed particular significance to the fact that the officers lacked probable cause to arrest the defendants prior to entering the apartment building. See id.
>
> We believe that the holding of *Carriger* is applicable here. The officers in the instant matter entered a locked building without utilizing the proper procedure and, therefore, the ensuing search was violative of defendants' subjective expectation of privacy. The government contends that *Carriger* is distinguishable, arguing that the police in this case used "a key lawfully seized from Heath to enter the building." Appellee's Br. at 53. However, the mere possession of a key will not transform an illegal entry into a valid one. It is the authority to enter, not the manner of entry, that provides the legality for the officers' conduct; the most casual reading of *Carriger* reveals that any entry into a locked apartment building without permission, exigency or a warrant is prohibited.
>
> As noted earlier, the government argues that Horton's consent to the search was an "intervening act of free will" which "purged [the entry] of its taint." Appellee's Br. at 54 (citing *Wong Sun v. United States*, 371 U.S. 471, 486, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). However, it was the officers' illegal entry into the common areas of the building that led them to Ms. Horton's door. Consequently, the consent for the ensuing search and the illegal drugs must be suppressed because they were "gained as a result of [the officers'] presence in the common areas of the building." *Carriger,* 541 F.2d at 552. Accordingly, we hold that the taint of the illegal arrest and entry into the apartment building was not purged by Horton's intervening consent to the search and, thus, the fruits of the consent should have been suppressed as to both defendants.

The *Heath* decision is by no means an isolated opinion. See *State v. Trecroci*, 630 N.W.2d 555 (Wis. App. 2001) (consent to search apartment which was granted by the owner after the police made a warrantless entry into the locked common area was tainted by the prior unlawful entry and thus the search was illegal).

Based on the above authorities, Mr. Talley asserts that his "companion" did not have authority to allow the officers to enter his condominium. However, even if the entry into the

private apartment was somehow with the "common consent" of his "companion," the consent was the product of an earlier illegality and thus the subsequent search was unlawful.

THE FIRST SEARCH WARRANT FAILED TO ESTABLISH PROBABLE CAUSE TO SEARCH THE ENTIRE APARTMENT AND MR. TALLEY'S BRIEFCASE

As noted in the facts, the police entered Mr. Talley's residence and noticed a smoking pipe on the table "in plain view." Another individual in the apartment had some Xanax bars in his pocket. When Mr. Talley arrived on the scene the officers asked for a consent to search the apartment which was refused. The officers then obtained a search warrant. The affidavit recites, in material part, the following:

> My name is Joseph Simonik. I have been a sworn law enforcement officer since 1998. I have participated in narcotics since 1998. I was assigned to the west sector narcotics unit, Metropolitan Nashville Police Department, in 2000.
>
> Probable cause is as follows: Detectives received a drug complaint on 116 31st Avenue North Apartment 201. Detectives went to this location and knocked on the door and a Kimberly Knight (F/W DOB 10-29-86) answered the door. Detective Fox explained to Kimberly Knight that we were there for a drug complaint. Your Affiant asked Kimberly Knight if we could come inside to talk with her and she gave detectives permission to come inside the residence. Once your affiant came into the living room of this location on a table in plain view your affiant saw a glass smoking pipe with copper mesh in it with residue. Next to this pipe there was a knife with white residue on it. Your affiant asked Kimberly Knight if she lived at the residence and Kimberly Knight stated that she had been staying there for about 3 weeks. Detective Fox asked Shane Cathey who was also at this residence if he had anything illegal on his person and Mr. Cathey replied not that I know of and then Detective Fox asked are you sure and Mr. Cathey replied well I have some pills and motioned to his right from pants pocket. Detective Fox recovered 43 Xanax Bars (Schedule IV Narcotic) and 3 half bars of Xanax from Mr. Cathey's pocket which were packaged in 2 clear bags.

> Your affiant then called Mr. William Glenn Talley (M/W DOB 12-19-62) using Kimberly Knights phone. Your affiant asked Mr. Talley if 116 31st Avenue North Apartment 201 was his residence and he replied yes and that he would be home in a few minutes. When Mr. Talley arrived at this location your affiant explained to Mr. Talley what was going on and asked him if he would be willing to sign a consent to search form. Your Affiant read this form to Mr. Talley and Mr. Talley stated that he would like to call an attorney and asked there opinion on what he should do. After calling several different attorneys Mr. Talley was unable to get a hold of any of them. Your affiant then asked him if he would like to sign the consent form and Mr. Talley replied that he did not think that would be a good idea.
>
> NES shows active to Mr. William Glenn Talley at 112 31st Avenue North Apartment 201.
>
> I respectfully request authorization to search each person present on the subject premises. From my experience and training, I have learned that persons present at locations where illegal narcotics are sold and/or used often have contraband, narcotics, paraphernalia, weapons, or other evidence of criminal conduct hidden on their persons or in their belongings. (Appendix page 47).

Mr. Talley asserts that this affidavit fails to assert sufficient probable cause to search his entire apartment and his briefcase. From all that appears in the affidavit there was nothing more than a glass smoking pipe on a table sitting in the middle of the room. At worst this was associated with Ms. Kimberly Knight, Mr. Talley's companion. Moreover, there was nothing contained in the affidavit that shows this so-called smoking pipe was unlawful in any way.

The affidavit also relates that the detectives asked Mr. Shane Cathey, who was also at the residence, if he had anything illegal in his pocket and he produced the Xanax bars. Again, at worst, this was an offense committed by Mr. Cathey which had nothing in any way to do with Mr. Talley.

The search warrant specifically asked for permission to search "each person present on the subject premises." Without doubt the search warrant contained more than sufficient probable cause to search the persons present at the premises particularly given that an unlawful substance was present in Mr. Cathey's pocket. However, the search warrant affidavit was totally lacking in probable cause sufficient to search Mr. Talley's condominium and his briefcase since there was no nexus between the "crimes" committed by the two persons in his apartment and the apartment itself.

In *State v. Longstreet*, 619 S.W.2d 97 (Tenn. 1981) the search warrant for a weapon did not disclose any nexus between the weapon sought and the defendant's automobile which was the object of the search. The court held that the warrant was defective "since it failed to set forth any facts which a reasonable conclusion might be drawn that the evidence was in place to be searched."

In Mr. Talley's case the officers were well aware of the fact that the "female companion" was only a casual visitor at that point because they had questioned her. There is no evidence to suggest that the male individual who was at the condominium had any connection with the condominium in any manner other than just being present at the time. As a consequence, the affidavit fails to recite probable cause to search the premises of Mr. Talley. Again, there is no argument that the affidavit was sufficient to search the individuals but the separate property of Mr. Talley was beyond the scope of information provided to the magistrate for which the blanket, general search warrant was issued. Accordingly, the fruits of the first search warrant must be suppressed.

THE SECOND SEARCH WARRANT FAILS TO ESTABLISH PROBABLE CAUSE

The affidavit for the second search warrant for Mr. Talley's business contains the following material facts:

> During the conversation with Detective Simonik [at Mr. Talley's residence] Mr. Talley stated that he owned a business named THM (Tennessee Home Medical).
>
> On 8/16/05 officers executed a narcotics search warrant at 116 31st Avenue North Apartment 201, which is the residence of William Talley. Detectives recovered at this residence thousands of pills that are schedule narcotics, marijuana, and drug paraphernalia as well as several images of child pornography that were downloaded from different internet sites. While under Miranda, Kimberly Knight, Mr. Talley's girlfriend, stated that Mr. Talley commonly stores illegal narcotics at his place of business which is Tennessee Home Medical (THM, inc.). Ms. Knight also states that she has seen illegal narcotics at the location at 535 Brick Church Pike Drive. Mrs. Knight stated that she has seen illegal narcotics stored in a hidden compartment located under a sink located in Mr. Talley's office. (Appendix page 62).

Mr. Talley asserts that the information about drugs at his business, which came from Ms. Knight, failed to establish probable cause to search his business. Clearly Ms. Knight was a criminal informant since the officers had already seen her in the presence of what they believe to be drug paraphernalia. Further, the officers administered *Miranda* warnings to her prior to taking an incriminating statement from her. Under this set of facts she was what is known as a "criminal" informant rather than a mere "citizen" informant whose information is to be considered *per se* reliable for purposes of assessing probable cause.

When determining the reliability of a criminal informant, Tennessee requires the affidavit establish both the basis for the informant's knowledge and either a basis establishing the informant's credibility or a basis establishing that the informant's

information is reliable. Probable cause may not be found until both prongs have been independently considered and satisfied. *State v. Ballard*, 836 S.W.2d 560 (Tenn. 1992). See also *State v. Jacumin*, 778 S.W.2d 430 (Tenn. 1989).

While the affidavit relates that the criminal informant had some alleged "basis of knowledge" to establish that drugs might be present at Mr. Talley's business the affidavit is totally silent as to why the officers (and the magistrate) should have believed the criminal informant. In short, the veracity of the informant was not established by the affidavit.

Usually veracity can be established by "past performance" such as reciting that the informant had supplied correct information in the past. *State v. Henry* 680 S.W.2d 476 (Tenn. Crim. App. 1984). There is no "past performance" recited in this affidavit.

Alternatively, the State may establish veracity by what is known as self-verifying detail. For example, in *State v. Ballard*, 836 S.W.2d 560 (Tenn. 1992) the court found that where there is no proof as to the informant's credibility, veracity may still be established if the information given by the informant is reliable from other sources. Thus, the informant's description of a unique jewelry which matched the description given by the victims constituted independent corroboration of the unique facts described by the informant from which the magistrate could conclude that the informant's information was reliable and, therefore, the veracity of the informant was established.

There is nothing in this affidavit here which relates to any unique items such as unique or peculiar drugs from which anyone can conclude that the informant here was reliable in any way. Recall that Tennessee still requires the two prongs, which are independent, and one may not be used to buttress the other. Given the total lack of any sort of prior "history" with

this informant and given the lack of self-verifying detail in the affidavit, the affidavit for Mr. Talley's business premises was deficient and failed to state probable cause. Accordingly, the search of Mr. Talley's business premises should be suppressed.

ASSUMING THAT THE SEARCH WARRANT FOR MR. TALLEY'S RESIDENCE AND/OR THE SEARCH WARRANT FOR HIS BUSINESS ARE VALID, THE SEARCHES WERE THE PRODUCT OF AN UNLAWFUL INITIAL INTRUSION INTO MR. TALLEY'S PREMISES AND THUS THE FRUITS OF BOTH SEARCH WARRANTS SHOULD BE SUPPRESSED; FOR THE SAME REASON THE SEARCH WARRANTS FOR THE COMPUTERS ARE ALSO UNLAWFUL.

Assuming that the search warrant for Mr. Talley's business and the search warrant for Mr. Talley's residence are valid, the fruits of these searches must still be suppressed because the information contained in the search warrants had as their origin an initial unlawful intrusion into Mr. Talley's condominium. Thus, the subsequent searches are the unlawful fruits of the initial poison tree contaminated by the official surreptitious entry into Mr. Talley's condominium. See *Hughes v. State*, 588 S.W.2d 296 (Tenn. 1979) (initial illegal stop "tainted the entire episode culminating in the confrontation with Hughes and the search of the automobile"); *State v. Wert*, 550 S.W.2d 1 (Tenn. Crim. App. 1977) (initial intrusion on defendant's land was illegal and so was the subsequent search with a warrant which was based on the initial illegal entry). The four search warrants to examine Mr. Talley's computers, executed in 2006 as part of the continuing investigation, are similarly part of the same unlawful chain of constitutional violations and thus these searches are invalid as well.

CONCLUSION

The fact that Mr. Talley chooses to live in an urban environment does not detract from the notion that the curtilage to his living premises includes a common hallway shared with other owners of the building. That common hallway is secured by a locked door and a burglar alarm making it clear to all that the area beyond the door is private. Improper entry triggers the burglar alarm and summons the police. It is unreasonable to suppose that the police should enter on their own before they are requested to do so by the residents of the condominium.

We do not yet live in a police state where our locked, private halls are open to the government to roam at will to see what turns up. "In their zeal to preserve and protect, however, our police officers must respect the fundamental constitutional rights of those they are sworn to serve." *State v. Hayes*, 188 S.W.3d 505, 518 (Tenn. 2006) (identification checkpoint at entrance to public housing development violated driver's right to be free of unreasonable seizures under the Fourth Amendment, where goal of checkpoint was to reduce crime, exclude trespassers, to decrease crime and drug use).

A surreptitious entry by guile into Mr. Talley's locked, secured entrance to his condominium was clearly unreasonable and thus all of the searches and seizures in this case should be held to be unlawful and the fruits thereof suppressed.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via United States Mail, postage prepaid, to Assistant District Attorney General Deborah M. Housel, Washington Square, Suite 500, 222 Second Avenue North, Nashville, Tennessee 37201 this the 2nd day of November, 2006.

_____
David L. Raybin