

**03-10-00253-CR**

**COURT OF APPEALS FOR THE  
THIRD DISTRICT OF TEXAS  
AUSTIN, TEXAS**

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**CASE NO.  
03-10-00253-CR  
03-10-00290-CR**

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**MICHAEL EMACK,  
Defendant-Appellant,**

**v.**

**STATE OF TEXAS,  
Plaintiff-Appellee.**

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**APPEAL FROM THE 51st DISTRICT COURT  
OF SCHEICHER COUNTY, TEXAS**

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**MOTION FOR REHEARING**

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## INTRODUCTION

Mr. Emack respectfully moves this Court for a rehearing in both Case Number 03-10-00253-CR and 03-10-00290-CR.

On appeal, this Court held that, even assuming an illegal entry upon the YFZ Ranch by workers from the Texas Department of Family and Protective Services (“DFPS”), Mr. Emack had no standing to object to the inclusion of the information gathered through the interrogating of children on the ranch into the affidavit in support of the second warrant issued in this case (the April 6, 2008 warrant).<sup>1</sup> *See* Opinion at 10-12. Mr. Emack submits that the Court erred in failing to recognize that the information gathered from the children was fruit of the illegal entry onto the ranch thereby giving him standing to object to the inclusion of the children’s information into the second warrant affidavit. The failure of the Court to conduct a full “fruit analysis” supports a motion for rehearing.

Moreover, even assuming that the information from the children was not fruit of the illegal entry onto the ranch, Mr. Emack believes that the Court’s ultimate determination that the second warrant was constitutionally valid, was based on a faulty premise. Indeed, the Court’s decision upholding the validity of the second warrant was based on the premise that, even if information gathered during the search made pursuant to the first warrant (the April 3, 2008 warrant) was disregarded, there was still sufficient information remaining to render the second warrant valid. *See* Opinion at 13. Nevertheless, as set forth below, stripped of

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<sup>1</sup>The second warrant is attached hereto as Attachment A.

information gathered during the first search, the affidavit in support of the second warrant produced a warrant that was both general and overbroad. This faulty premise also justifies a motion for rehearing.

## ARGUMENT

### **I. THE STATEMENTS MADE BY CHILDREN AFTER BEING INTERROGATED BY DFPS WERE FRUIT OF THE ILLEGAL ENTRY ONTO THE RANCH AND, CONSEQUENTLY, COULD NOT BE RELIED UPON TO SUPPORT THE SECOND WARRANT.**

Armed with an Order in Aid of Investigation, DFPS workers, accompanied by law enforcement officials acting as “security,” entered the YFZ Ranch, went house to house searching for all children, and interrogated “truckloads” of children between seven and seventeen years of age (10 RR79,80,85,90,95,107, 99; 13RR135; 18RR Defense Exhibit 35 at ¶ 1.8).<sup>2</sup> As previously argued, Mr. Emack submits that the Order in Aid of Investigation was obtained by misrepresentations and reckless omissions contained in the DFPS petition.

The trial court previously found and the state conceded on appeal that Mr. Emack had standing to contest the entry onto and search of the YFZ Ranch. Moreover, as this court notes in its opinion, Mr. Emack “contends that the [DFPS] interviews, and the information they revealed, were the fruit of unlawful conduct by DFPS employees, to whom he argues the Fourth Amendment applies.” Opinion at 11.

Nevertheless, in its opinion, this court concludes that it is not necessary to determine

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<sup>2</sup>See, e.g., 18RR Defense Exhibit 35 at ¶ 1.8 (“[A]dditional teams of law enforcement were brought in to check numerous buildings for additional juvenile females that were not turned over to law enforcement for identification and inspection.”)

whether the DFPS entry onto the ranch was based upon a constitutionally invalid Order in Aid of Investigation because Mr. Emack's privacy interests were not violated by the interrogation of the children. Opinion at 12. With due respect to the court, Mr. Emack submits that the court's opinion ignores the well established "fruit of the poisonous tree" analysis.<sup>3</sup>

*United States v. Karathanos*, 531 F.2d 26 (2d Cir. 1976) is instructive. In that case, law enforcement officials entered and searched a restaurant based on a warrant that was later determined to be invalid because it lacked probable cause. *Id.* at 28-32. During the search, several illegal aliens were detained and questioned and the defendant argued that the information provided by the aliens were fruit of the illegal entry into and search of the restaurant and, therefore, could not be used against him. The United States Court of Appeals for the Second Circuit agreed. *Id.* 34-35.<sup>4</sup>

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<sup>3</sup>The failure to perform a complete "fruit analysis" likely stems in part from the court's circumscribed attempt "to identify the precise government conduct being objected to." Opinion at 11. The court identifies the "conduct" only as DFPS agents "making a false statement of material fact and using unlawfully obtained evidence in their petition for order in aid of investigation, and by thereafter exceeding the scope of their authority under the order." *Id.* It fails to recognize that part of the "conduct" was the constitutionally invalid entry onto the ranch in violation of Mr. Emack's privacy rights.

<sup>4</sup>Similarly, *United States v. Rubalcava-Montoya*, 597 F.2d 140, 141-42 (9<sup>th</sup> Cir. 1978) involved the illegal stop of a vehicle containing illegal aliens. The aliens included Appellant Rubalcava. *Id.* at 142. The court held that testimony from the other aliens against Rubalcava and the co-Appellant driver of the vehicle was fruit of the illegal stop and, since Rubalcava and the driver had standing to complain of the illegal stop, they also had standing to complain of the testimony of the aliens being used against them.. *Id.* at 142-44. *See also Brown v. State*, 2001 WL 827490 (Tex. App. – Dallas, July 24, 2001) [unpublished] (When the car Appellant was driving was illegally stopped, information obtained from passenger was fruit of the stop and Appellant could prevent passenger from testifying and giving information against him.)

This case is no different. Just as Karathanos had standing to complain regarding the illegal entry into his restaurant pursuant to a warrant lacking probable cause, Mr. Emack had standing to complain regarding the illegal entry into the ranch pursuant to the Order of Investigation that was obtained as a result of misrepresentations. Moreover, just as Karathanos could suppress information given by the aliens found in the restaurant and later questioned, so too was Mr. Emack entitled to the suppression of information given by the children found at the ranch and interrogated.

In short, Mr. Emack suggests to the court that its analysis went awry when it failed to recognize that the misrepresentations made by DFPS officials allowed them to illegally enter the ranch when it is conceded Mr. Emack had standing to complain of such an illegal entry.<sup>5</sup> Upon entering the ranch illegally, DFPS officials immediately rounded up numerous children and interrogated them. The information gained from the interrogation was fruit of the illegal entry and, therefore, Mr. Emack was entitled to complain that this fruit formed the basis for the second warrant.

**II. STRIPPED OF THE INFORMATION GATHERED AS A RESULT OF THE FIRST WARRANT, THE AFFIDAVIT IN SUPPORT OF THE SECOND WARRANT RESULTED IN A WARRANT THAT WAS BOTH A GENERAL WARRANT AND OVERBROAD.**

In its opinion, the court wrote:

In his April 6 probable cause affidavit, Long stated that while conducting a search of the ranch pursuant to the first warrant, he saw computers, vaults, and

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<sup>5</sup>Of course, entry was also made pursuant to the first warrant, however, the court declined to reach the question of whether the first warrant was valid. *See* Opinion at 13.

locked drawers inside the temple and temple annex. He also saw several beds in the temple, in one of which the linens were disturbed and there was a strand of what Long believed, due to its length, was female hair. He also saw a document indicating marriages between one man and over twenty wives. Even if this information is redacted from the April 6 affidavit, what remains—the information gathered during the DFPS interviews and received from the confidential informer—was more than sufficient to give the magistrate a substantial basis for concluding that there was probable cause to believe that the offenses of sexual assault of a child and bigamy had been and were being committed at the YFZ Ranch and to issue a warrant to search for evidence of those offenses

Opinion at 13.<sup>6</sup>

**A. The Second Warrant Was Still a General Warrant and Lacked Particularity as to the Places to Be Searched and, Therefore, The Second Warrant Was Unconstitutional under the Fourth Amendment to the United States Constitution**

At best, stripped of the information obtained as a result of the first search, the second warrant contained information which could only give the magistrate a sufficient basis to believe that *some* residents living in the YFZ community (*e.g.*, Lee Roy Jessop, Joseph Jeffs,

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<sup>6</sup>Mr. Emack notes that, while the second warrant recounts that some information was obtained from the confidential informer on April 5, 2008, there is absolutely no indication as to when the informer obtained his/her information. In other words, there is no indication in the affidavit for the second warrant that the confidential informer's information that "the temple at the Suspected Place and Premises contains an area where there is a bed where males over the age of seventeen engage in sexual activity with female children under the age of seventeen" was not stale other than the observations of beds and a strand of hair made by Ranger Long during the execution of the first warrant. *See, e.g., Schmidt v. State*, 659 S.W.2d 420, 421 (Tex. Crim. App.1983); *Serrano v. State*, 123 S.W.3d 53, 61 (Tex. App. – Austin 2003) ("Where, as here, a search warrant affidavit fails to state when the affiant received the information from the informant, *when the informant obtained his information, or when the described incident took place*, the affidavit is insufficient to support the issuance of a search warrant." (emphasis added)) Wayne R. LaFave, *Search and Seizure* § 3.7(b) 391 n. 67 (2004) ("The time needed is the time of the facts relied upon to establish probable cause, not the time that these facts were conveyed to law enforcement authorities.").

Nathan Jessop, and Richard Jessop Barlow)<sup>7</sup> might have engaged in bigamy and/or sexual assault. Nevertheless, the second warrant sought permission to search the entire 1,691 acre ranch including “all buildings, temples, temple annexes, places of worship, vaults, safes, lockboxes, locked drawers, medical facilities, structures, places and vehicles” located thereon.

This carte blanche mentality is foreclosed by authority from the Supreme Court and the Court of Criminal Appeals. *See Steagald v. United States*, 451 U.S. 204, 220 (1981) (Searching one’s citizen’s home, based on an arrest warrant for another, was tantamount to a general search warrant as it “leaves to the unfettered discretion of the police the decision as to which particular home should be searched”); *Morales v. State*, 640 S.W.2d 273, 275 (Tex. Crim. App.1982) (“Where a warrant describes a multi-use dwelling, the description therein must contain sufficient guidelines to apprise the officers executing the warrant of the particular unit to be searched.”).

While the state has previously argued that the ranch was one household, this submission has already been rejected by this court and should be *res judicata*. Moreover, any contention that the normal rules requiring a particularized showing of probable cause as to places to be searched do not apply to the ranch and its residents has also been found wanting by this court. In *In re Steed*, 2008 WL 2132014 (Tex.App. – Austin 2008) [unpublished],

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<sup>7</sup>The affidavit for the second warrant also makes reference to Matthew Jessop fathering a child with P.J. and J.J.J. having a child. Nevertheless, both P.J and J.J.J were fifteen years of age or older at the time their children were born and there is no evidence in the affidavit that they were not legally married to the father of their respective children.

this court addressed the seizure of the 468 children from the ranch by DFPS. In finding that DFPS had not met its burden of proof to justify the seizure of the children, this court rejected the argument that the ranch was one household:

The notion that the entire ranch community constitutes a “household” as contemplated by section 262.201 [of the Texas Family Code] and justifies removing all children from the ranch community if there even is one incident of suspected child sexual abuse is contrary to the evidence. *The Department’s witnesses acknowledged that the ranch community was divided into separate family groups and separate households. While there is evidence that the living arrangements on the ranch are more communal than most typical neighborhoods, the evidence was not legally or factually sufficient to support a theory that the entire ranch community was a “household” under section 262.201.*

*Id.* at \*3 n. 10 (emphasis added). *See also State v. Jeremiah*, 696 A.2d 1220, 1225 (R.I. 1997) (Search warrant authorizing police to conduct general search of entire twelve-acre business park comprised of eighteen buildings and ten warehouses divided into eighty-three units did not describe place to be searched with particularity.).

Moreover, in *Steed*, DFPS argued that a showing that some children on the ranch had allegedly been sexually abused justified the seizure of all of the children because it posited that there was no need to present particularized evidence that a particular child had been abused or was in danger of being abused prior to the seizure. This court rejected this submission, concluding that DFPS was required to elicit evidence that a particular child was in danger of abuse before that particular child could be seized by the Department. *Id.* at \*3-4. But using the identical reasoning in this case, the state has previously maintained that it was not obligated to demonstrate that any particular resident of the ranch community had engaged

in criminal activity before being permitted to search the entire community. In other words, the state has previously posited that evidence that one or more persons in the ranch community may have committed a criminal offense justified a search of every other residence and structure on the ranch despite the fact that this is the exact reasoning rejected by this court in *Steed*.

Moreover, any claim that law enforcement lacked the ability to obtain specific descriptions of particular places on the ranch is belied by the law and the record. For example, since there was nothing in the affidavit for the second search warrant indicating that anybody other than Lee Roy Jessop, Joseph Jeffs, Nathan Jessop, and Richard Jessop Barlow had committed possible criminal offenses, the search warrant could have been limited to “the residences of Lee Roy Jessop, Joseph Jeffs, Nathan Jessop, and Richard Jessop Barlow.” Indeed, it is not unusual for search warrants to describe property by means other than addresses. Descriptions by location, size, and shape of buildings as well as directions to a particular location are common in search warrants.

In *State v. Jeremiah*, 696 A.2d at 1225, the Rhode Island Supreme Court rejected claims similar to the ones previously posited by the state in this case and held that a warrant police procured to search an entire twelve-acre business park comprised of eighteen buildings and ten warehouses divided into eighty-three units “amounted to a modern-day version of the dreaded writ of assistance.”

The state argues that the warrant was as particularized as it could be in the circumstances because the police had a difficult time pinpointing the exact

location of the crates within the complex. In support of this contention, the state claims, *inter alia*, that no numbers were affixed to the outside of the buildings and that the city of Providence sends the tax bills for building No. 4 to 387 Charles Street. But the state does not say what the police knew about the discrete subparts of the complex before they applied for the search warrant, and does not indicate to what extent the police disclosed what they knew about the complex to the District Court master when they applied for the warrant. Ultimately, given the vast scope of commercial territory embraced by the address cited in the warrant, we are not convinced that the police exhausted reasonably available means to “describ[e] as nearly as may be ... the place to be searched.

*Id.* (internal citation and quotation omitted).

In sum, simply disregarding the information obtained as a result of the execution of the first warrant in this case does not render the affidavit in support of the second warrant “more than sufficient” to justify the second warrant as held by this court. *See* Opinion at 13. The affidavit in support of the second warrant only gives probable cause to believe that four persons may have committed criminal violations, nevertheless, the warrant permits the search of almost 1,700 acres and of hundreds<sup>8</sup> of other individuals despite the lack of any evidence that these hundreds of other residents were engaged in criminal activity. Such a warrant is an unconstitutional general warrant lacking in particularity. *Steagald*, 451 U.S. at 220. Consequently, evidence obtained pursuant to the second warrant should have been suppressed.

**B. Even after Excising the Information Obtained During the Execution of the First Warrant, the Second Warrant Was Overboard And, as Such, It Violated the Fourth Amendment to the United States Constitution.**

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<sup>8</sup>The warrant affidavit indicated that approximately 250 men, women and children lived on the ranch.

The cornerstone of the Fourth Amendment is that a magistrate shall not issue a search warrant without first finding “probable cause” that a particular item will be found in a particular location. A magistrate must determine whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

*State v. Hoffman*, 617 S.W.2d 16 (Ark. 1981) illustrates the point. There, a gas station owner suspected his employee and her husband, both of whom also lived on the premises, of doctoring sales records in order to steal gasoline. *Id.* at 17. Authorities obtained a warrant to search the premises for documents related to the fraud. *Id.* The Arkansas Supreme Court found the warrant constitutionally invalid.

Here there is no reasonable basis for an inference that any particular document would be discovered by a search.... We are compelled to conclude that although Dr. Babbitt [that station owner] may have had a solid basis for suspecting that he was being defrauded a fact that might have been shown, as the prosecuting attorney suggested, by an audit he had no reasonable basis for a description of “the thing to be seized.” The Constitution does not permit the police to search a person's home in the vague hope that something of an incriminating nature may be discovered.

*Id.* at 18.

In this case, the second warrant sought, *inter. alia.*, “records” of births and marriages and computer records. Nevertheless, there is nothing in the affidavit in support of the second warrant establishing probable cause to believe that such records existed at the ranch other than information obtained during the execution of the first warrant. Indeed, the second warrant application contains the following averment by Ranger Long:

Furthermore, while conducting a search of the Suspected Place and Premises under the authority of [the first warrant], on April 5, 2008, Affiant while agents were searching for documents pertinent to that Search Warrant, Affiant personally observed a document indicating marriages between one man and over twenty wives, all of whom resided in the same residence at the Suspected Place and Premises, as of August 9, 2007, while no record of divorce or death of a spouse found.<sup>9</sup>

On the other hand, absolutely nothing “gathered during the DFPS interviews and received from the confidential informer” would have given probable cause to believe that the records sought actually existed or, if they existed, would be located on the ranch; let alone records related to the children that were identified as possible victims in the second warrant affidavit or the individuals identified as possible perpetrators in the affidavit.

Simply put, there was no evidence in the affidavit for the second warrant that would establish that the records set forth in the second warrant would be found on the ranch after the observations made by Ranger Long during the execution of the first warrant are excised from the affidavit. Indeed, neither the children interviewed nor the informer (who was allegedly very conversant with the FLDS church, having purportedly been a former member) made reference to documents being maintained at the ranch regarding criminal activity (*i.e.* records of bigamy or sexual assault). Likewise, Ranger Long did not claim that, based on his experience, bigamists and perpetrators of sexual assault ordinarily maintain records of

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<sup>9</sup>The affidavit for the second warrant also notes observations of “multiple safes and a computer and computer peripherals” made during the execution of the first warrant.

their alleged crimes.<sup>10</sup> Consequently, and contrary to this court's opinion, probable cause to search the ranch for "records" of the suspected criminal activity was not based on the interviews of the children and the informer alone.

### CONCLUSION

The court should grant the Motion for Rehearing in both cases and reverse Mr. Emack's convictions and remand the case for a new trial.

Respectfully submitted,



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<sup>10</sup>Compare *United States v. Young*, 745 F.2d 733 (2d Cir. 1984) (Search warrant for "notes, documents and papers and other evidence of a conspiracy to distribute" drugs was permissible because affiant, "invoking his 13 years of experience" as a DEA agent, observed in his affidavit that narcotics dealers "often keep the cash proceeds of their narcotics business in such safes" and that "[i]t is also common for narcotics dealers to keep records and other evidence of their business in their homes."), *cert. denied sub nom., United States v. Meyers* 470 U.S. 1084 (1985)

**CERTIFICATE OF SERVICE**

I, F. Clinton Broden, do hereby certify that, on this 10th day of October, 2011, I caused a copy of the foregoing document to be served on Joseph Corcoran, Office of the Texas Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711.



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F. Clinton Broden

**ATTACHMENT A**

THE STATE OF TEXAS  
COUNTY OF SCHLEICHER

NO. 11-08-0025

AFFIDAVIT FOR SEARCH AND ARREST WARRANT

The undersigned Affiant, being a peace officer under the laws of the State of Texas and being duly sworn, on oath makes the following statements and accusations:

1. There is in Schleicher County, Texas, a suspected place and premises described and located as follows. the YFZ Ranch, located at 2420 County Road 300 (Rudd Road), Eldorado, Texas, 76936; if driving from the Schleicher County Courthouse or Schleicher County Sheriff's Office, proceed north on U.S. Highway 277, travel approximately eight tenths (.8) of a mile to County Road 300 (Rudd Road), turn northeast on County Road 300 (Rudd Road) and travel approximately 4 miles to the gate of the YFZ Ranch; the gate is a metal double gate and one side is damaged; the gate is located on the north side of the road.

The ranch covers approximately 1691.11 acres and contains multiple residential structures, buildings, medical facilities, and other places, structures and vehicles where persons and property sought may be.

Said Suspected Place and Premises includes all buildings, temples, temple annexes, places of worship, vaults, safes, lockboxes, locked drawers, medical facilities, structures, places and vehicles on said premises and within the curtilage of said Suspected Place, which are found to be under the control of the Suspected Party named below and in, on, or around which the persons who are the object of the search may reasonably be found.

2. Said suspected place and premises are in charge of and controlled by the following persons: Frederick Merrill Jessop, dob 12/27/1935;

3. It is the belief of the affiant that a specific criminal offense has been committed, to-wit: Sexual Assault of a Child, Texas Penal Code Section 22.011 and Bigamy, Texas Penal Code Section 25.01

4. It is the belief of Affiant that there is at said suspected place and premises the following property which constitutes evidence of said offense and constitutes evidence that a particular person committed said offense, and said property is described as follows:

- (1) Records or other information relating to the birth of a child or children to a mother who is A CHILD UNDER THE AGE OF SEVENTEEN;
- (2) Prenatal information or records relating to any pregnancy of A CHILD UNDER THE AGE OF SEVENTEEN;
- (3) Records or information relating to the age and true identity of any and all children UNDER THE AGE OF SEVENTEEN who have been married to an adult male (over the age of seventeen);
- (4) Records or information relating to any marriage and true identity of A CHILD UNDER THE AGE OF SEVENTEEN to any party;
- (5) any photographs, including and not limited to family portraits, which show A CHILD UNDER THE AGE OF SEVENTEEN together with her purported husband and/or child(ren);
- (6) any computer or any electronic storage medium; including but not limited to zip drives, storage drives, thumb drives, external hard drives, CD's, DVD's, videos, videotapes and digital photographs of a child under the age of seventeen with her purported husband and/or child(ren);
- (7) any family bible or books showing the marriages or births of children in reference to the marriage or union between A CHILD UNDER THE AGE OF SEVENTEEN and any party;
- (8) any medical records, documents or files related to A CHILD UNDER THE AGE OF SEVENTEEN and the birth of her child and or her pregnancy; including any documents related to any medical treatment;
- (9) bed linens, undergarments, hair (head, body, and/or pubic), fibers, bodily fluids, blood, articles of clothing;
- (10) blood, head hair, pubic hair, buccal cells, and fingerprints of adult males over the age of seventeen who reside at the Suspected Place and Premises;
- (11) blood, head hair, pubic hair, buccal cells, and fingerprints of adult females over the age of seventeen who reside at the Suspected Place and Premises; and

(12) any device capable of electronic capture or storage of images, which may contain images of a child under the age of seventeen with her purported husband and/or child(ren), including, but not limited to video cameras and cellular telephones;

5. Affiant has probable cause for said belief by reason of the following facts, to-wit: Affiant is Leslie Brooks Long, a certified peace officer under the laws of the State of Texas for approximately 19 years. Affiant is currently employed by the Texas Department of Public Safety as a Texas Ranger and has investigated criminal offenses in the State of Texas, including the criminal offense of Sexual Assault of a Child. Affiant has received training from the Texas Department of Public Safety Training Academy in Austin, Texas, including specialized Criminal Law Enforcement training in reference to offenses identified as Sexual Assault of a Child. Affiant has personally been on the premises of the YFZ Ranch on multiple occasions over the past four years and knows that it is located as described above as the Suspected Place and Premises. Also, Affiant has now been to the Suspected Place and Premises on April 4, 2008, April 5, 2008, and April 6, 2008, for many hours each day. At the Suspected Place and Premises, Affiant entered the gate described in the Suspected Place and Premises, drove further onto the property and observed another fence and gate within the ranch. At the interior gate, Affiant observed a small, enclosed, roofed building with tinted windows and antennae believed to be used in the purpose of communications. This structure is built a few feet above ground. Based on these observations and Affiant's training and experience, Affiant believes this building is a surveillance platform, guard tower or guard house. Affiant has personally spoken with Frederick Merrill Jessop, as recently as April 5, 2008, who identified himself as the point of contact to law enforcement involving any requests or needs from the YFZ Ranch, hereafter referred to as the Suspected Place and Premises. Affiant has personally observed other persons at the YFZ Ranch seek authorization from Frederick Merrill Jessop to respond to questions from law enforcement and other government officials. Frederick Merrill Jessop advised Affiant that Frederick Merrill Jessop resides at the Suspected Place and Premises and has presented himself to Affiant as the authority at the Suspected Place and Premises. Affiant observed that numerous other people were present at the Suspected Place and Premises and Frederick Merrill Jessop on April 4, 2008, advised Affiant that around two hundred fifty men, women and children reside at the Suspected Place and Premises. The occupants of the residential structures on the Suspected Place and Premises have been not been identified to Affiant.

On April 5, 2008, while conducting a search of the Suspected Place and Premises under authority of Search and Arrest Warrant number M-08-001-S, out of the 51<sup>st</sup> Judicial District of Texas, for the County of Schleicher, a copy of which is attached hereto with accompanying affidavit as "Attachment A" for all purposes, Affiant made the following observations: within a large building, that Affiant heard the residents at the Suspected Place and Premises refer to as a Temple, hereafter referred to as the "Temple," Affiant observed multiple locked safes, locked desk drawers, locked vaults, as well as multiple computers and beds. On one of the beds within the Temple, Affiant observed that the bed linens were disturbed as if the bed had been used and Affiant observed a strand of hair believed to have come from the head of a female. Affiant believes the strand of hair belongs to a female because Affiant has seen numerous male residents at the Suspected Place and Premises and all of the males observed by Affiant wear their hair shorter than the strand of hair observed by Affiant.

On April 5<sup>th</sup> and 6<sup>th</sup>, 2008, Affiant observed a building similar in appearance to the Temple, but smaller in size that is built away from the Temple, that Affiant will hereafter refer to as the Temple Annex. Inside the Temple Annex, Affiant observed multiple safes and a computer and computer peripherals.

On April 6, 2008, Affiant has personally spoken with Tina Martinez, an employee with the Texas Department of Protective and Family Services who personally interviewed a child who identified herself as Yvonne Jessop on April 4<sup>th</sup> or 5<sup>th</sup> of 2008; Yvonne Jessop said she is fifteen years of age; that Yvonne Jessop knows a child named Suzanne Johnson who is sixteen years of age and was spiritually united (married); Yvonne Jessop further advised Tina Martinez that Suzanne Johnson had a baby and is pregnant and resides at the Suspected Place and Premises.

Tina Martinez also advised Affiant that she interviewed a child on April 4, 2008, who appeared to be approximately sixteen years of age who identified herself as Lee Ann Nelson Jessop; that Tina Martinez asked Lee Ann Nelson Jessop her age in the presence of Lee Roy Jessop; that, before responding to Tina Martinez' question, Lee Ann Nelson Jessop looked at Lee Roy Jessop; that Lee Roy Jessop told Lee Ann Nelson Jessop, "you are eighteen;" after which Lee Ann Nelson

Jessop advised that she is eighteen with a date of birth of March 24, 1990; that Lee Ann Nelson Jessop advised Tina Martinez that she has a baby that is ten months old, that she is spiritually united with Lee Roy Jessop who is approximately thirty-three years of age; that Lee Ann Nelson Jessop is the fourth wife of Lee Roy Jessop who is still married to the other three wives.

On April 6, 2008, Tina Martinez further advised Affiant that, between this date and April 4, 2008, she interviewed a child who identified herself as Pamela Jessop with a date of birth of 12/9/1989 who advised that she has a son named Matthew Jessop who was born 8/1/2006; that Pamela Jessop advised that the father of Matthew Jessop is Jackson Jessop who is thirty-six years old.

On April 6, 2008, Tina Martinez advised Affiant that, between this date and April 4, 2008, Tina Martinez interviewed a female who identified herself as Janet Jeffs Jessop with a date of birth of 9/16/1988 who advised Tina Martinez that she has a daughter named Diana Zinne Jessop who was born 8/19/2005 and she has another daughter named Spiritual Unity Jessop who was born 8/12/2004.

Also on April 6, 2008, Affiant has personally spoken with Ruby Gutierrez, an employee with the Texas Department of Protective and Family Services who personally interviewed a child who identified herself as Josie Steed between this date and April 4, 2008. Ruby Gutierrez advised Affiant that Josie Steed told Ruby Gutierrez that a resident of the Suspected Place and Premises, Sarah Johnson, is sixteen and has been spiritually united (married) to Joseph Jeffs who is approximately forty years of age.

Also on April 6, 2008, Affiant has personally spoken with Rebecca Baxter, an employee with the Texas Department of Protective and Family Services who, between this date and April 4, 2008, has personally interviewed a child who identified herself as Teresa Steed Jessop, with a date of birth of sixteen years of age; Teresa Steed Jessop advised Rebecca Baxter that Teresa Steed Jessop is pregnant and due to give birth in June 2008 and that Teresa Steed Jessop is married to Nathan Jessop whose first wife, to whom Nathan Jessop is also still currently married, is approximately forty years of age.

On April 6, 2008, Rebecca Baxter also advised Affiant that, between this date and April 4, 2008, she interviewed a female who appeared to be approximately sixteen years of age, identified herself as Arta Jessop Barlow, and advised Rebecca Baxter that Arta Jessop Barlow does not know her own age, but that she has given birth to a child who is now two years old and that she is currently pregnant again. On April 6, 2008, Rebecca Baxter advised Affiant that, between this date and April 4, 2008, she interviewed a child who identified herself as Viola Barlow, age 8, who advised that Arta Jessop Barlow has four children and Arta Jessop Barlow is under sixteen years of age; that Arta Jessop Barlow is spiritually united to Richard Jessop Barlow; that Richard Jessop Barlow is the father of Viola Barlow; that Viola Barlow's mother, Susan Black Barlow, is the first wife of Richard Jessop Barlow; that Arta Jessop Barlow is the second wife of Richard Jessop Barlow; and that both wives are still alive and married to Richard Jessop Barlow.

Affiant has been advised by Schleicher County Sheriff David Doran that Sheriff Doran has worked with residents at the Suspected Place and Premises over the past four years. Sheriff Doran advised Affiant that he has learned from the residents at the Suspected Place and Premises that the residents all belong to the religious group the Fundamentalist Church of Jesus Christ of Latter-Day Saints (hereafter referred to as FLDS). On April 6, 2008, Sheriff Doran advised Affiant that, over the past four years, Sheriff Doran has worked with a confidential informant who is a former member of the FLDS; that the confidential informant has provided Sheriff Doran with information regarding the FLDS on more than twenty occasions over the past several years and, that on each occasion, the information was proven to be reliable, true and correct; that the confidential informant has continued to provide Sheriff Doran reliable information as recently as April 5, 2008; that, on April 5, 2008, the confidential informant advised Sheriff Doran of the following: that adult male FLDS church members over the age of seventeen engage in the practice of marrying multiple wives, at the initial time of the marriage, the bride is often under the age of sixteen years; and that the temple at the Suspected Place and Premises contains an area where there is a bed where males over the age of seventeen engage in sexual activity with female children under the age of seventeen.

As stated above, on April 5, 2008, Affiant observed a bed within the Temple that has disturbed bed linens and a strand of hair that appears to be from a female head.

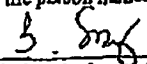
Furthermore, while conducting a search of the Suspected Place and Premises under the authority of Search Warrant number M-08-001-S, on April 5, 2008, Affiant while agents were searching for documents pertinent to that Search Warrant, Affiant personally observed a document indicating marriages between one man and over twenty wives, all of whom resided in the same residence at the Suspected Place and Premises, as of August 9, 2007, with no record of divorce or death of a spouse found.

Therefore, Affiant requests authority to search the Suspected Place and Premises to include all buildings, temples, temple annexes, places of worship, vaults, safes, lockboxes, locked drawers, medical facilities, structures, places and vehicles on said premises and within the curtilage of said Suspected Place and Premises for and seize the following property:

- (1) Records or other information relating to the birth of a child or children to a mother who is A CHILD UNDER THE AGE OF SEVENTEEN;
- (2) Prenatal information or records relating to any pregnancy of A CHILD UNDER THE AGE OF SEVENTEEN;
- (3) Records or information relating to the age and true identity of any and all children UNDER THE AGE OF SEVENTEEN who have been married to an adult male (over the age of seventeen);
- (4) Records or information relating to any marriage and true identity of A CHILD UNDER THE AGE OF SEVENTEEN to any party;
- (5) any photographs, including and not limited to family portraits, which show A CHILD UNDER THE AGE OF SEVENTEEN together with her purported husband and/or child(ren);
- (6) any computer or any electronic storage medium; including but not limited to zip drives, storage drives, thumb drives, external hard drives, CD's, DVD's, videos, videotapes and digital photographs of a child under the age of seventeen with her purported husband and/or child(ren);
- (7) any family bible or books showing the marriages or births of children in reference to the marriage or union between A CHILD UNDER THE AGE OF SEVENTEEN and any party;
- (8) any medical records, documents or files related to A CHILD UNDER THE AGE OF SEVENTEEN and the birth of her child and or her pregnancy, including any documents related to any medical treatment;
- (9) bed linens, undergarments, hair (head, body, and/or pubic), fibers, bodily fluids, blood, articles of clothing;
- (10) blood, head hair, pubic hair, buccal cells, and fingerprints of adult males over the age of seventeen who reside at the Suspected Place and Premises;
- (11) blood, head hair, pubic hair, buccal cells, and fingerprints of adult females over the age of seventeen who reside at the Suspected Place and Premises; and
- (12) any device capable of electronic capture or storage of images, which may contain images of a child under the age of seventeen with her purported husband and/or child(ren), including, but not limited to video cameras and cellular telephones;

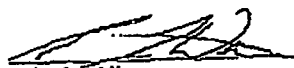
As such evidence would be relevant to the investigation to help identify suspects and victims of the offenses of sexual assault of a child and bigamy.

WHEREFORE, YOUR affiant asks for issuance of a warrant to search the above described premises and to seize said property described and to arrest the person named above in this affidavit.

  
Leslie Brooks Long, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME BY THE SAID AFFIANT ON THIS

April 6, 2008 at 10:12 PM

  
Judge Presiding

# BRODEN & MICKELSEN

PERMANENT COURT COPY  
DO NOT REMOVE

ATTORNEYS - AT - LAW

Board Certified, Criminal Law - Texas Board of Legal Specialization

*A team approach to criminal defense*

E. Clinton Broden

Mick Mickelsen

October 10, 2011

Clerk  
Price Daniel Sr. Building  
209 West 14th Street, Room 101  
Austin, Texas 78701

RECEIVED  
2011 OCT 11 AM 10:49  
JEFFREY D. KYLE, CLERK  
COURT OF APPEALS

RE: *State of Texas v. Michael George Emack*  
Cause No's: 03-10-00253-CR; 03-10-00290-CR

Dear Clerk:

Please find enclosed two originals and three copies each, two unbound for scanning, of the Motion for Rehearing in regards to the above referenced cases.

Thank you for your assistance.

Sincerely,



Lucy Monreal  
Legal Assistant

Enclosures (8)  
Cc w/enclosure:

Joseph P. Corcoran  
Office of the Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711-2548

RT 136 6 B  
FZ 137 3955  
10.11

Alignment of FedEx Express Shipping Label here.  
FedEx  
TRK# 8744 4893 3955  
0215  
TUE - 11 OCT A1  
STANDARD OVERNIGHT  
DSR  
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TX-US  
AUS



Exp# 085416 18OCT11 RDA 58TCL/ML3/V5F4

Express

FedEx US Airbill Express  
Tracking Number 8744 4893 3955

1 From this portion can be removed for Recipient's records.  
Date 10/10/11 Tracking Number 874448933955  
Sender's Name F. Clinton Byden Phone 214 720-9552  
Company BRODEN & MICKELSEN  
Address 2600 STATE ST  
City DALLAS State TX ZIP 75204

2 Your Internal Billing Reference

3 To Recipient's Name Clerk Phone  
Company 3rd Court of Appeals  
Address 209 West 14th Street Box 101  
City Austin State TX ZIP 78701



8744 4893 3955

0215 Recipient's Copy

4a Express Package Service

FedEx Priority Overnight  
Next business morning. Most shipments will be delivered on Monday unless SAT/USPS Delivery is selected.

FedEx Standard Overnight  
Next business afternoon. Saturday Delivery NOT available.

FedEx First Overnight  
Earliest next business morning delivery to most locations.

FedEx 2Day  
Second business day. Thursday shipments will be delivered on Monday unless SAT/USPS Delivery is selected.

FedEx Express Saver  
Third business day. Saturday Delivery NOT available.

4b Express Freight Service

FedEx 1Day Freight  
Next business day. All city shipments will be delivered on Monday unless SAT/USPS Delivery is selected.

FedEx 2Day Freight  
Second business day. Thursday shipments will be delivered on Monday unless SAT/USPS Delivery is selected.

FedEx 3Day Freight  
Third business day. Saturday Delivery NOT available.

5 Packaging

FedEx Envelope\*  
\* Delivered unless both \$100 and FedEx Large Fee.

FedEx Pak\*  
\* Delivered unless both \$100 and FedEx Large Fee.

FedEx Box

FedEx Tube

Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery  
NOT available for FedEx Standard Overnight, FedEx Express Saver, or FedEx 2Day Freight.

No Signature Required  
Package may be left without obtaining a signature for delivery.

Direct Signature  
Signature at the shipper's address. Fee applies for delivery. Fee applies.

Indirect Signature  
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. Fee for residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?  
One box must be checked.

No  
Yes (if one checked, Shipper's Declaration not required)

Yes  
Shipper's Declaration not required

Dry Ice  
Dry Ice, 6 UN 1845

Cargo Aircraft Only

7 Payment Bill to:

Sender  
FedEx Account

Recipient

Third Party

Credit Card

Cash/Check

Total Packages Total Weight Credit Card Auth.

605

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fedex.com 1800.GoFedEx 1800.463.3339