

The following search warrant, application and affidavit have been unsealed and are provided in a redacted form as a representative sample of the search warrants executed on June 10, 2009.

The charges in the indictment related to this search warrant include trafficking in stolen artifacts, theft of government property, and trafficking in Native American cultural items.

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**FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH**  
**JUN 08 2009**  
**D. MARK JONES, CLERK**  
BY \_\_\_\_\_  
**DEPUTY CLERK**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

In the Matter of the Search of

2:09-cr-0045

David Lacy, [REDACTED]  
[REDACTED]

SEALED

MOTION TO UNSEAL

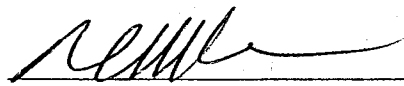
**SEALED**

The United States, by and through the undersigned Assistant United States Attorney, moves the Court for an order unsealing the search warrant, application, and affidavit in redacted form in the above-captioned case, effective June 10, 2009 at 6:00 a.m. Mountain Daylight time.

It is anticipated that the warrant will be served at or about that time, and unsealing will facilitate dissemination of information to the public, concerning facts and circumstances surrounding the investigation.

DATED this 8<sup>th</sup> day of JUNE, 2009.

BRETT L. TOLMAN  
United States Attorney



RICHARD D. McKELVIE  
Assistant United States Attorney

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

2009 JUN -8 P 2:47

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

In the Matter of the Search of

David Lacy, [REDACTED]  
[REDACTED]

2:09-cr-0045

ORDER UNSEALING

**SEALED**

Upon motion of the United States and good cause appearing therefore,

IT IS HEREBY ORDERED that the search warrant, application, and affidavit, in redacted form, be unsealed effective June 10, 2009 at 6:00 a.m. Mountain Daylight time. The redaction shall remove reference to names other than defendant and physical address of personal residences.

DATED this 8<sup>th</sup> day of June, 2009.

BY THE COURT:



SAMUEL ALBA  
United States Magistrate Judge

UNITED STATES DISTRICT COURT

CENTRAL DIVISION District of Utah

SEALED

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

David Lacy

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Case Number: 2:09·MJ·212 A

I, PATRICK G. BROSNAN, being duly sworn depose and say:

I am a Special Agent and have reason to believe that / / on the person of or / X / on the premises known as (name, description and/or location)

SEE ATTACHMENT A, attached to this application and incorporated herein by reference

in the District of Utah there is now concealed a certain person or property, namely, (describe the person or property)

SEE ATTACHMENT B, attached to this application and incorporated herein by reference

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

Believed to be property that constitutes evidence of the commission of a criminal offense and contraband, the fruits of crime or things otherwise criminally possessed.

This application also seeks authorization for executing officers or agents to be accompanied by an archeologist or cultural artifacts expert, for the sole purpose of assisting agents in identifying and authenticating items to be seized, as contemplated in Attachment B of the Application and Warrant, incorporated by reference herein.

Continued on the attached sheet and made a part hereof. xx Yes No in violation of Title(s) 18 United States Code, Section(s) 16 U.S.C. § 470 ee, 18 U.S.C. § 641, 1163. The facts to support the issuance of a Search Warrant are as follows:

See attached Affidavit incorporated by reference herein.

Sworn to before me, and subscribed in my presence

6/08/09 Date

Signature of Affiant

Special Agent, FBI

at SALT LAKE CITY, UTAH City and State

SAMUEL ALBA, UNITED STATES MAGISTRATE JUDGE Name and Title of Judicial Officer

Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

I, Patrick G. Brosnan, being duly sworn, hereby do depose and state

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), currently assigned to the Violent Crimes Squad of the Salt Lake City Division, Salt Lake City, Utah.

2. I graduated from John Marshall Law School in Chicago in December, 1996. I served as an Assistant State's Attorney for Cook County, Illinois from 1997 until 2003. During that time, I reviewed numerous search warrants in my capacity as prosecutor in the narcotics and sex crimes bureau. From 2003 to 2007, I was a criminal defense attorney and litigated hundreds of trials/motions dealing with all aspects of criminal law.

3. As a Special Agent with the FBI, I have conducted numerous federal criminal investigations. The information contained in this affidavit is based on my training and experience, my participation in the Joint BLM/ FBI task force investigation, my personal knowledge and observations during the course of this investigation, and information provided to me by other sources as noted herein.

4. Based upon my knowledge, experience and information provided to me by other law enforcement officers, I am aware that in this type of investigation, relating to the theft, trafficking and destruction of natural resources, it is customary for individuals interested in and/or involved in the collection of artifacts protected under the Archaeological Resource Protection Act (ARPA) 16 U.S.C. 470, and the Native American Graves Protection and Repatriation Act (NAGPRA) 25 U.S.C. 3001, to maintain records, documents (written and electronic), inventories, receipts, letters,

field notes, electronic mail, sketches, ledgers, photographs, and video tapes of artifacts that they found, collected, traded or sold, in addition to hand-drawn diagrams, topographic, official land status or other maps pertaining to the searching, selling, collecting, and excavation of said artifacts. This documentation may also include bank records which may show large, unusual or unexplained deposits of money as a result of the sale of these artifacts.

5. In addition to my training and experience as a federal law enforcement officer, I have been involved in obtaining search and arrest warrants, and have directed, coordinated and assisted other law enforcement officers in executing numerous warrants.

6. Except where otherwise stated, the information set forth herein is based upon my personal knowledge and observations, and your affiant reasonably relies upon, the information identified on this affidavit and application. This information is of the quality and quantity routinely and properly relied on by law enforcement personnel in conducting investigations and analyzing the existence of probable cause to believe crimes, such as those being investigated in this matter, are being or have been committed.

7. Therefore, based on my experience, education, and training as a law enforcement officer and in consultation with other federal officers who are experienced in these types of investigations and the aforementioned facts set forth herein, I reasonably believe that there is probable cause to believe a crime has been committed, to wit: 16 U.S.C. § 470ee (b) illegal trafficking in archeological artifacts; 18 U. S. C. § 641, the theft/retention of government property; 18 U.S.C. § 1163, the

theft of property belonging to an Indian tribal organization; and that the property to be seized as set forth in Attachment B is contraband, evidence, and fruits of a crime. I further reasonably believe that there is probable cause to believe that the property to be searched for will be found within the premises as described in Attachment A for reasons including the following:

8. Based upon my knowledge, experience and information provided to me by other law enforcement officers, I am aware that individuals often conspire with others in the illegal removal and subsequent sale and disposal of this property without appropriate legal documentation and/or approval from the federal government, specifically artifacts taken from public lands illegally. Based upon my knowledge, experience and information provided to me by other law enforcement officers, I am also aware that individuals who have stolen artifacts from public lands often maintain for years artifact collections at their homes and other secure locations, including storage facilities, safes etc. I am also aware through training and investigative experience that these same individuals often maintain for years the following types of records associated with these activities: maps, photos, video recordings, sketches, records of site locations, artifact/historical research documents, sales records, logs, ledgers, etc. I also have knowledge through training and investigative experience that these individuals use and often maintain for years specific tools to excavate and collect artifacts, including trowels, brushes, flipping boards, shovels, etc.

9. In October, 2006, the FBI and the Bureau of Land Management (BLM) developed a significant Confidential Human Source (CHS) (identified hereafter as the Source, and shall be referred to in this affidavit in the masculine gender regardless of

true gender). who has been a major dealer of archaeological artifacts over the past ten years, and is in a position to testify. The Source has an extensive number of contacts who actively deal in archaeological material to include excavators, dealers, and collectors of stolen and illegally obtained artifacts.

10. On November 30, 2006, the FBI and BLM jointly initiated an investigation, via an application for undercover authority, based largely on the development of the Source and the chronic problem of ARPA and NAGPRA violations in the Intermountain West/Four Corners area (intersection of Utah, Colorado, New Mexico, and Arizona) of the United States. ARPA was enacted in 1979 to preserve archaeological resources located on public and Indian Lands, and to prevent the loss of such irreplaceable items which are part of this nation's heritage and increasingly endangered due to their commercial attractiveness. NAGPRA is corresponding legislation enacted in 1990 which provides direction for the proper return of skeletons, funerary items and cultural property to the proper lineal descendants.

11. In March of 2007, the Source entered into a service agreement with the FBI. From approximately March, 2007 until November 2008, the Source, acting at the direction of the FBI and BLM, purchased approximately 256 archeological artifacts totaling \$335,685.00. In most cases, the Source obtained audio and or video evidence of the illegal transaction(s), via an audio/video recording device worn by the Source. These transactions were also monitored by case agents, via a real time transmitter, worn by the Source. Therefore the Source's information was corroborated by consensually obtained audio and video recordings and through the real time surveillance monitored by Special Agents of the FBI and BLM. The Source has also



provided reliable information including, but not limited to addresses, telephone information, and subject identification which have been corroborated through independent means such as property records, websites and law enforcement records.

12. The FBI and BLM also developed information that there is a large network (“illegal network”) of individuals who regularly pillage archaeological sites, many unknown to the scientific community and many which involve funerary (burial) sites, on public land in the four corners area. Besides these excavators or “diggers”, other individuals in the illegal network are dealers who buy, sell, and transport this material and collectors who are end users.

13. The illegal network is a very close knit entity. Individuals who deal in stolen archaeological objects are usually very careful to disguise the site of origin. This is usually done by identifying the site of origin as leased and/or private property. Objects typically are sold with a letter of provenance which acts as a sort of title document. Letters of provenance usually list the individual who found the item, identify the location where it was found, and include assurances that the item was not illegally collected from public or Indian lands. For most transactions involved in this investigation, the Source provided a blank letter of provenance to the seller, who then represented that the artifact came from leased and/or private land. In fact, the seller recovered or knew the item was recovered on public and/or Indian land. The seller then fills out the blank letter of provenance with the false information. Further, the seller identifies for the Source on a topographic land use map, the real public land location from which the item was recovered. This is done by the seller who points to the location on the map from where the item was recovered or by circling the location

on the map.

14. On December 11, 2007, a consensually monitored conversation occurred between David Lacy and Source and took place at Lacy's residence. This meeting was monitored by the case agents in real time, via a transmitter, worn by Source. Kevin Shumway was also present for this conversation. The Dave Lacy residence is located at [REDACTED]

[REDACTED]

15. During their conversation, Lacy showed the Source numerous artifacts that he had collected that were in his house. One of these items was a Turkey Feather/Yucca Blanket. The Source asked Lacy where this had been found. Lacy pointed to a

section of a BLM map that Source had brought with him. Source then marked the spot where Lacy had indicated on the map.

16. Lacy asked what the Source was interested in; the Source was for sure interested in the digging stick, Turkey Feather Blanket, and Atlatl weight. Lacy stated let's start with the Atlatl Weight. The Source offered Lacy \$800.00. Lacey stated make it \$900.00, Source stated "deal." Lacy asked the Source about the digging stick. The Source offered Lacy \$1,000.00 for the digging stick, and Lacy stated, "Okay." Lacy asked the Source about the blanket. The Source offered Lacy \$1,500.00, Lacey stated "okay." The Source picked up the frame containing the knife, which Lacy earlier stated had come from Mancos Mesa. The Source asked how much Lacy wanted specifically for the knife, but the Source would increase the price and purchase the entire frame. Lacy stated that they had the cops after them because they had parked at the Marquee mine in Red canyon, and someone saw them. Lacy stated he wanted \$2,000.00 for the Knife. The Source asked for the remainder of the frame, and Lacy stated he would take \$2,800 for the entire frame. The Source asked Lacy if he would sell the Knife for \$2,000.00 and keep the frame, which Lacy rejected. Lacy stated the Knife and scraper were found together. The Source agreed on Lacy's asking price of \$2,800.00. At the end of the night, Source paid Lacy \$6,200.00, for all the artifacts. Included in this price was the \$1,500.00, for the blanket.

17. The common practice in these transactions is to generate a false letter of provenance, or title, stating that these items come from private land.

18. Lacy asked the Source if he had something for him to sign. The Source

provided Lacy with a Letter of Provenience. The Source stated that Lacy needed to put private property as the location where the artifacts were found. Lacy then listed a private property location, Eugene Guyman's land Mustang Mesa, and signed the false letter of Provenience.

19. Source stated that he observed hundreds of illegal artifacts at Lacy's residence. They included ceramics, perishables, and lithics.

20. According to Dean Wiese, Bureau of Land Management, Cadastral Surveyor, and Land Record Specialist, the area where Lacy indicated he found the blanket is on BLM and Public land.

21. BLM archeologists Jeanette Matovitch and Emily Paulus, and Utah State archeologist Byron Loosle, examined the turkey feather/Yucca blanket bought by Source from Lacy on December 11, 2007. Based on their education, experience, and professional judgment, this item represents an authentic Native American artifact.

22. On January, 15, 2008, a consensually monitored conversation occurred between David Lacy and Source and took place at Lacy's residence. This meeting was monitored by the case agents in real time, via a transmitter, worn by Source. Kevin Shumway was also present for this conversation.

23. Source and Shumway went to Lacy's house for Source to purchase artifacts. Once at Lacy's house, all three left and went to Lacy's storage shed. This storage shed is

[REDACTED]

[REDACTED] Source observed household items in the shed along with numerous boxes of artifacts. Lacy directed Source to help carry several boxes of artifacts from the storage unit to his car. After this, they drove back to Lacy's residence and unloaded the boxes for the storage unit into Lacy's house.

24. Lacy then showed Source numerous artifacts from these boxes. One of these artifacts was a female loin cloth or menstrual pad. Lacy stated that he had recovered this item from Bullet Canyon near Grand Gulch wilderness area. Lacy also marked on a BLM map supplied by Source exactly where the artifact was found. Lacy and Source agreed upon a price of \$1,500.00, for the pad and a basket fragment Lacy found near it.

25. Lacy also sold three sandals to the source for \$1,000.00, these were excavated by Lacy from a ruin, not a burial, from Alkali Ridge. Lacy also marked exactly on a map where he found these items.

26. Lacy also sold to Source a large grey Olla/pot for \$800.00. This pot was found in the mustang area and Lacy marked on a map where this was found as well. This item was found to have legal provenience.

27. In addition, Lacy also sold to Source two sandals for \$1,700.00. Lacy stated that he had excavated these items from a burial site located at Baby Mummy Cave, Cottonwood wash. Lacy stated that these items were associated with an adult burial. Lacy also marked a map where this item was found.

28. Lacy filled out a Letter of Provenience stating that all the above items were found on "Preston Nielsons property (Westwater)". Lacy then signed this fraudulent Letter of Provenience.

29. Source then tendered Lacy \$5,000.00, for the items that he had purchased.

30. According to Dean Wiese, Bureau of Land Management, Cadastral Surveyor, and Land Record Specialist, the areas where Lacy indicated he found the female loin cloth/ menstrual pad and basket fragment, the three sandals from Alkali Ridge, and the two sandals from Baby Mummy Cave, are all on BLM and Public land.

31. BLM archeologists Jeanette Matovitch and Emily Paulus, and Utah State archeologist Byron Loosle, examined the female loin cloth/ menstrual pad and basket fragment, the three sandals from Alkali Ridge, and the two sandals from Baby Mummy Cave bought by Source from Lacy on January 15, 2008. Based on their education, experience, and professional judgment, each of these items represent authentic Native American artifacts.

32. On May 14, 2009, BLM SA Brent Range, Source, and I drove by [REDACTED] [REDACTED]. This is the listed address for David Lacy, and the residence that case agents observed the Source enter during undercover operations involving Lacy. The Source confirmed in my presence that the single family residence as previously described belonged to David Lacy.

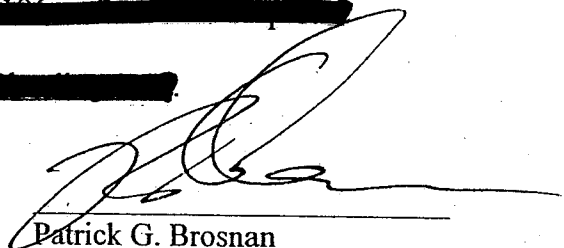
33. In this affidavit and application, affiant seeks authority for executing agents to photograph and catalog archeological artifacts located during the execution of the search warrant to leave those items in the care and custody of the target of the search. Affiant anticipates that an arrest warrant will be served concurrently with the search warrant, and that the United States will seek, as a condition of release, that the target will be ordered to maintain and protect these items pending a final resolution of his/her case in court.

34. In this affidavit and application, affiant seeks authority to include an archeologist and/or cultural experts as a member of the search team. The role of the archeologist or cultural expert will not be to assist in the search itself, but to identify and authenticate artifacts located by agents executing the search warrant. This is necessary to appropriately narrow the scope of the search and seizure, as searching agents will not have the training and experience necessary to make an on-site determination as to which items may be covered by the warrant. Agents and the accompanying archeologist will be instructed that the archeologist or cultural expert is not to engage in any independent effort to uncover evidence, and that the archeologist's or cultural expert's role will be limited to examining and authenticating artifacts uncovered by agents executing the warrant.

35. Therefore, based on your affiant's training and experience, and upon the facts and circumstances set forth herein, your affiant respectfully requests this honorable court to find there is probable cause to search the residence and any other outbuildings and vehicles located at the residence of David Lacy's residence at [REDACTED]

[REDACTED]

[REDACTED]



Patrick G. Brosnan  
Special Agent  
Federal Bureau of Investigation

SUBSCRIBED AND SWORN BEFORE ME THIS, 8<sup>th</sup> June 2009.



United States Magistrate Judge

## ATTACHMENT B

1. All records relating to violations of 16 U.S.C 470 ee (b), trafficking in illegally obtained artifacts and/or 18 U.S.C. 641, theft/retention of stolen property, 18 U.S.C. 1163, Embezzlement and theft from Indian tribal organizations. and/or 18 U.S.C. 1170, illegal trafficking in sacred objects and or items of cultural patrimony. Such records to include lists of customers and related identifying information; types, amounts, and prices of artifacts trafficked as well as dates, places, and amounts of specific transactions; any information related to the provenience of artifacts; any information related to sources of illegally trafficked or obtained artifacts (including names, addresses, phone numbers, or any other identifying information); any and all travel records; any and all bank records, checks, credit card bills, account information and other financial records.

The term "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any electrical, electronic or magnetic form ( such as any information on an electronic or magnetic storage device, including floppy diskettes, hard disks, ZIP disks, CD-ROMSs, optical discs, backup tapes, printer buffers, smart cards, flash/thumb drives, as well as printouts or readouts from any magnetic storage device); any handmade form (such as writing, drawing, painting); any mechanical form (such as printing or typing); and any photographic form ( such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, and photocopies).

2. Any and all artifacts and or items relating to violations of 16 US.C. 470 ee (b), trafficking in illegally obtained artifacts, 18 U.S.C. 641, theft or retention of stolen government property, 18 U.S.C. 1170, illegal trafficking in sacred objects and or items of cultural patrimony or 18 U.S.C. 1163, Embezzlement and theft from Indian tribal organizations.