

FILED  
Aug 16, 2005 5:00pm  
MICHAEL K. JEANES, Clerk  
By H. Cameron  
H. Cameron, Deputy

1 TERRY GODDARD  
Attorney General  
2 Firm Bar No. 14000  
CAMERON H. HOLMES No. 004983  
3 Section Chief, Financial Remedies Section  
1275 West Washington Street  
4 Phoenix, Arizona 85007-2926  
Telephone: (602) 542-3881  
5 Attorneys for the STATE

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA,  
9 Plaintiff,  
10 vs.  
11 \$1,054,216.80 and the proceeds of accounts  
held at Bank One, N.A.  
12 Defendants

Case No.: SW 2005-002516  
APPLICATION FOR  
SEIZURE WARRANT

14 The State of Arizona *ex rel.* TERRY GODDARD, Attorney General, pursuant to  
15 A.R.S. §§ 13-2314 and 13-4310(A), and based on conduct described in A.R.S. §§ 13-1802,  
16 Theft; 13-2310 Fraudulent Schemes; and §13-2317, Money Laundering, requests this Court  
17 to issue a seizure warrant for the property described in Appendix One hereto. This  
18 application is based on the attached Affidavit and the accompanying Memorandum of Points  
19 and Authorities.

20 RESPECTFULLY SUBMITTED August 16, 2005.

21  
22 TERRY GODDARD  
Attorney General  
23 By C. Holmes  
Cameron H. Holmes  
24 Attorneys for the STATE  
25

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A.R.S. § 13-2314(D)(6) and (G) provide that the State may file an action for forfeiture  
3 of:

4 ...

5 3. All proceeds traceable to an offense included in the definition of racketeering  
6 in A.R.S. § 13-2301, subsection D, paragraph 4 and all monies, negotiable instruments,  
7 securities, and other property used or intended to be used in any manner or part to facilitate  
8 the commission of the offense.

9 A.R.S. § 13-2314(D)(6)(d) provides for the forfeiture of any other property up to the  
10 value of property subject to forfeiture as described in A.R.S. § 13-2314(D)(6), above. A.R.S.  
11 § provides:

- 12 A. The court shall order the forfeiture of any other property of a claimant or an in  
13 personal civil or criminal defendant up to the value of the claimant's or  
14 defendant's property that the court finds is subject to forfeiture if any of the  
15 following circumstances apply to the property:
- 16 1. It cannot be located.
  - 17 2. It has been transferred or conveyed to, sold to or deposited with a third party.
  - 18 3. It has been placed beyond the jurisdiction of the court.
  - 19 4. It has been substantially diminished in value by any act or omission of the  
20 defendant.
  - 21 5. It has been commingled with other property which cannot be divided  
22 without difficulty
  - 23 6. It is subject to any interest that is exempt from forfeiture.

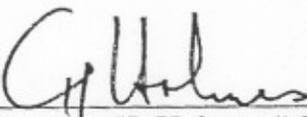
24 The property described in Appendix One is subject to forfeiture as proceeds of A.R.S.  
25 §§ 13-1802, Theft; 13-2310 Fraudulent Schemes; and §13-2317, Money Laundering,  
requests and separately as substitute assets for proceeds of such offenses.

26 The State, pursuant to A.R.S. § 13-4305 and A.R.S. § 13-4310(A) and based on the  
27 Affidavit in support of this application, requests an order directing any peace officer to

1 seized the described property for forfeiture, place it in the custody of this Court and retain it  
2 in the actual or constructive custody of the law enforcement agency making the seizure for  
3 forfeiture by any means provided in A.R.S. § 13-4306.

4 RESPECTFULLY SUBMITTED August 16, 2005

5 TERRY GODDARD  
6 Attorney General

7  
8 By   
9 Cameron H. Holmes # 004983  
Assistant Attorney General

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## APPENDIX ONE

1) Assets held in the name of or for the benefit of Delia P. Kerr, particularly:

1.1 assets held by Bank One, N.A. in any Bank One account

1.2 assets held by Bank One, N.A. invested with Chase Investment Services Corporation

1.3 assets held by Bank One, N.A. invested with The Hartford

## Affidavit

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

David Lugo, being first duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Arizona and an Investigator for the Arizona Lottery. I am authorized to make this affidavit. I make the statements in this Affidavit based upon my own personal knowledge or as noted based on information and belief based on my investigation. The following is a true and complete summary of my investigation.
2. On 8/13/2005 at approximately 1830 hours, I received a telephone call from Investigator Bill Gregory and briefed in reference to conducting further follow up investigation involving a Circle K employee. *Refer to Affidavit by special Investigator Bill Gregory for further on initial investigation.*
3. On 8/15/2005 at approximately 0900 hours, I arrived at the Tucson Circle K corporate office and was met by Retail Operational Director Paul Rodriguez. During a brief meeting with HR Director John Simmons and District Manager Becky Glenn advised after viewing the video tape, their position was they did not have clear cut evidence of any wrong doing by their employee, but would conduct an investigation.
4. At approximately 0930 hours I was escorted to a video monitor and advised this was the video from Circle K Store #0745 on 6-26-2005. The tape was cued to the date/time stamp of 1455 hours. Mr. Rodriguez identified the female clerk as Delia Kerr. At approximately 1448 hours, time stamped on tape, I observed a Mexican male subject wearing a red pull-over shirt approach the counter and hand the male clerk what appeared to be several "on-line" tickets for validation. The clerk proceeded to validate the tickets on the lottery terminal, but turned to get the attention of Delia Kerr who was standing near by. I observed Delia step over to the terminal and began to scan or possibly rescan the on line tickets. The tickets were handed back to the customer. There is no audio on the tape and it is unknown if a conversation took place between the customer and Delia Kerr. Shortly after handing the customer the tickets Delia Kerr walked away from the counter. The customer, apparently dismayed with the incident is seen lingering by the counter. Eventually a female subject identified as the store manager is seen helping the customer with his concern.
5. The actions in the video tape and print out of the lottery validation report for this incident were discussed with the Executive Administration. From my training and

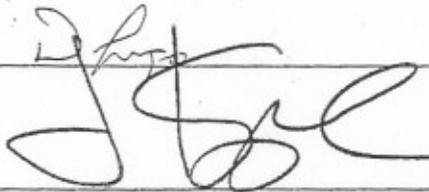
experience I felt that there was enough suspicion to believe that the clerk, Delia Kerr knowingly withheld a winning ticket from the unsuspecting customer.

6. The investigation continued, at Circle K in Patagonia, Arizona where Delia Kerr was presently working. Nogales PD was called and the officer briefed on the incident. Contact was made with Delia Kerr in the presence of the Nogales Police Officer. I conducted the initial questioning to which Delia related she purchased the winning ticket on or about the 24<sup>th</sup> of June. She continued to utter "I bought that ticket legally". Delia Kerr further stated she did not claim the prize because of alimony and child support issues.
7. At approximately 1222 hours Delia was Mirandized by the Nogales police officer. Delia agreed to talk about the incident and reiterated she purchased the ticket. When asked about validating the ticket she claimed she validated the ticket kept in her back pocket prior to the end of her shift on the 26<sup>th</sup> of June, after dealing with the customer in question.
8. During the investigation, video tape of the "wager" of the winning ticket on 6-25-2005 was found. In the video tape I observed the same unknown Mexican male approach the counter at the estimated time the winning ticket was purchased, according to a Arizona Lottery wager report.
9. Delia Kerr was later interviewed by Detective Thompson at the Nogales Police Department (1512 hours). Delia Kerr continued to state she was the one that purchased the ticket on the 25<sup>th</sup> of June. During the interview Delia Kerr admitted the winnings were deposited into several banking investments with Bank One. *Refer to Affidavit by Special Agent Steve Adelstien for further.*
10. When confronted with the present facts of video tape and a time sheet indicating she was not working on the 25<sup>th</sup>, Delia Kerr invoked her rights. The interview was terminated and Mrs. Kerr was booked on related theft/fraud charges. Nogales PD DR #05-003538.

...  
...  
...  
...

11. At approximately 1645 hours an interview was conducted with Susan Kerr, the claimant of the winning ticket. Susan Kerr related in her interview that she was the one that purchased the winning ticket. Due to physical ailments Susan Kerr's charges were referred for prosecution in lieu of incarceration.

Dated this 16 day of August 2005.



Hon. James H. Keppel  
SUPERIOR COURT JUDGE

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest Aug 16, 2005 19  
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By Alamen Deputy

**Affidavit**

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

E. W. Gregory, being first duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Arizona and an Investigator for the Arizona Lottery. I make the statements in this Affidavit based upon my own personal knowledge or information and belief gathered through my investigation.

2. I am authorized by the Arizona Lottery to make this affidavit, which is a true and correct copy of the investigation conducted by me for the Arizona Lottery into the theft/fraudulent scheme by Delia Kerr and Susan Kerr for the Lottery prize of \$1,474,580.20.

3. On 8/12/2005 at approximately 1415 hours, I received a telephone call from Becky Glenn, District Manager for Circle K Corporation. Glenn stated that she had reason to believe that a store clerk at Store # 745, which is located at 360 E. Patagonia in Nogales, had lied to a customer and fraudulently took the customer's winning Pick ticket.

4. Glenn further stated that on approximately June 27, 2005, she had received a call from a gentlemen complaining that he had gone into the above mentioned store on June 26, and presented what he thought was a winning Pick ticket along with some other tickets. He was told by the clerk that none of the tickets were winners, and that after he complained; he was given the wrong ticket back. Glenn stated that at the time she could not confirm his story and dismissed his complaints.

5. Glenn stated that the reason for the call at this late date was that the Corporate Operations Manager had contacted her today as the result of him receiving a telephone call from unknown parties in Nogales in regards to the ticket. The Operations Manager was told that there is a rumor circulating through Nogales that a Circle K clerk had taken a big winning ticket and didn't want anyone to know that she had won over a million dollars.

6. Glenn further stated that when she heard the story from the operations manager, she recalled the complaint she had received in the latter part of June. Glenn stated that the clerk working at the time the ticket was presented was Delia Kerr, and that they have videotape of the transaction.

7. Using the information provided by Glenn, I researched the Lottery transactions for the day the ticket was presented for validation, which was June 26, 2005; and the day that the ticket was purchased, which was June 25, 2005. Terminal Transaction Reports show that the ticket was sold from that Circle K on 6/25/2005 at 1356 hours. The Terminal Transaction Report for the store dated 6/26/2005 shows that the winning ticket was presented at 1503 hours and that it showed that it was a winning Pick ticket for \$1,474,580.00. The Terminal Transaction Report is a computer generated report which identifies all of the Lottery transactions for a given day.

The report is in chronological order and also identifies the type of transaction. The report is typically used in conjunction with a store's videotape or register records to verify a Lottery transaction. The Claim Authorization Form provided with the winning ticket to the Tucson Claims Store on 7/19/2005 by Susan Kerr shows the date of June 26, 2005 and the time of 15:03:42. The original gentlemen's complaint is consistent with the presentation of the claim authorization printed by the terminal when he presented the ticket. The Terminal transaction report further showed that at 15:05:48 that winning ticket was validated another time. We investigated to determine if the videotape would show if the original claimant was still in the store.

8. On 7/19/2005, Susan Kerr went to the Tucson Lottery Claim Office and claimed the prize. She received a check in the amount of \$1,054,216.80 which was written on Arizona Lottery check # 827478. Kerr declined to be photographed as a winner. Cindy Esquer of the Communications Department did speak with Susan Kerr to try and get a story about how she won. Kerr was reluctant to share very much information, but did say that she purchased the ticket from the Circle K Store at 360 E. Patagonia Highway in Nogales.

9. Attached is a copy of the check endorsed by Susan Kerr.

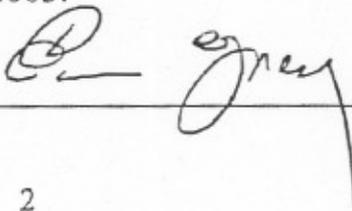
10. On 8/13/2005 at approximately 1845 hours, I spoke with Becky Glenn. Glenn stated that she had just received a telephone call from the Store Manager, Geraldo Parra. Parra told Glenn that Delia Kerr had just told him that the ticket was really hers, and that she was afraid to say anything because nobody would believe her.

11. Glenn stated that there would be a meeting Monday morning to review the tape. I contacted Investigations Supervisor Charles Kennedy, who instructed me to notify Investigator Lugo to make contact with Glenn and follow-up at the meeting on Monday.

12. Dave Lugo was sent to Tucson and met with Becky Glenn on 8/15/2005. During that meeting, they had the opportunity to view the videotape from the store for June 26, 2005; and to observe that at approximately 1503 hours an unidentified male is presenting Lottery On-Line tickets which leads to a disagreement over a ticket. Delia Kerr was present and part of that transaction. At sometime during the afternoon of 8/15/2005, Investigator Lugo also had the opportunity to view the videotape from Circle K Store # 745 for the date of 6/25/2005. The Lottery Terminal Transaction Report showed that the ticket which was subsequently presented as a winner was sold at 1356 hours. Store videotape for that time shows the same unidentified male purchasing the ticket. Delia Kerr was not present when that ticket was printed.

13. Investigator Lugo further reported that Delia Kerr and Susan Kerr have been interviewed by the Nogales Police Department and that Delia Kerr was arrested. The interview also revealed that the proceeds of the Lottery ticket was deposited in Bank One in Nogales. Long Form charges are pending against Susan Kerr.

DATED this 16 day of August 2005.

  
\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this 16 day of August 2005 by  
E. W. Gregory.

Cindy L. Esquer  
Notary Public

My commission expires:

March 9, 2006



# ARIZONA ATTORNEY GENERAL'S OFFICE AFFIDAVIT FOR SEIZURE WARRANT

No. \_\_\_\_\_

YOUR AFFIANT, Steve Adelstein, a Peace Officer in the State of Arizona, being first duly sworn, upon oath, deposes and says:

## **AFFIANT'S BACKGROUND**

Your affiant, Steve Adelstein, has been employed as a Special Agent with the Arizona Attorney General's Office since May 1987. His assignments have included the investigation of various types of financial fraud and related crimes, including money laundering, fraudulent schemes, theft, forgery, computer tampering, conspiracy, and other offenses. During the last 17 years your affiant has participated in the preparation and/or execution of more than 40 search warrants. From February 2003 to May 2005 your affiant has been assigned to a financial task force with the Bureau of Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security. During this assignment your affiant has been involved in various investigations relating to the laundering of proceeds from illegal operations such as major fraud, narcotics trafficking and smuggling of undocumented aliens. Your Affiant has worked closely with other investigators in the field of money laundering and related crimes, including major frauds. Your affiant has a Bachelors Degree in accounting and a Masters Degree in business administration. He has been licensed in Arizona as a Certified Public Accountant since 1981. During the past 17 years he has attended numerous training classes in

the detection and investigation of financial crimes, tracing funds involved in financial crimes and recovering fraudulently obtained funds for victims through civil racketeering remedies.

#### **FACTS RELATING TO PRESENT CIRCUMSTANCES OF ACCOUNT**

On August 15, 2005 I was contacted regarding the recapture of \$1,054, 216.80 representing proceeds of the theft of a larger Arizona Lottery ticket. I contacted Ms. Sherry Geffken, a District Manager for Bank One, N.A. in Tucson. After receiving a subpoena from the Attorney General's Office, she related the following, based on her review of Bank One records and discussions with Bank One employees.

On July 19, 2005 Susan Kerr presented Arizona Lottery check #827478 in the amount of \$1,054, 216.80 to a Tucson Bank One branch and opened a joint account with Delia Kerr at that branch. Susan Kerr held out \$10,000 in cash from the deposit of the check on the day she opened the account.

The next day, Delia Kerr opened an account at a Nogales branch of Bank One and transferred the money from Susan Kerr's Tucson account into that account with Susan Kerr's permission, verified by a bank employee, and Susan Kerr closed the Tucson account. Delia Kerr claimed to have won the lottery and stated she did not want others to know about it. She said that she had opened the account in Tucson to avoid physically carrying the check from Tucson to Nogales. She said that she and her sister had opened the account in her sister's name so that Delia's husband/ex husband would not find out about it.

Delia Kerr asked for and received Bank One's advice in investing the funds. She invested the funds as follows: \$500,000 in mutual funds with Chase

Investment Services Corp.; \$400,000 in annuities with The Hartford; \$100,000 in a certificate of deposit. Shortly after the creation of this account Delia withdrew \$15,000 by cashier's check or personal check to a new account, which was partially deposited into a new account in the name of Susan Kerr. Of the \$15,000, Susan Kerr took about \$2,000 in cash. Approximately \$9,116.65 remains in Susan Kerr's account at the present time. Approximately \$29,000 remained in Delia's account after the \$15,000 withdrawal.

Sherry Geffken said that Susan attempted to withdraw funds from her account this morning. When informed that she could not do so she left. Delia also made an appointment with her Bank One banker for this morning, but did not show up for it.

Sherry Geffken stated that at the request of the Attorney General's Office, and after learning that the money represented the proceeds of theft, she froze the accounts of both Delia Kerr and Susan Kerr pending receipt of a seizure warrant from the court on that ground that it represents proceeds of a theft and a fraudulent scheme, in violation of A.R.S. §§13-1802 and 13-2310, and was used in Money Laundering in violation of A.R.S. § 13-2317.

*[Signature]* # 230

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of August, 2005.

*Carol A. Ferguson*

