

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

vs.

JASON MANEWAL,

Defendant.

Case No. CR02-9

**ORDER ON MOTIONS
AND DISMISSAL**

DATE OF HEARING: April 22, 2003.

DATE OF RENDITION: July 22, 2003.

DATE OF ENTRY: See court clerk's file-stamp date per § 25-1301(3).

APPEARANCES:

For plaintiff:

Eric A. Scott, Cherry County Attorney.

For defendant:

Mark Kozisek with defendant.

SUBJECT OF ORDER:

Defendant's: (1) motion in limine and/or to suppress filed December 10, 2002, and, (2) motion to compel filed production filed February 25, 2003.

PROCEEDINGS:

See journal entry rendered following hearing.

FINDINGS:

The court finds and concludes that:

1. The defendant has established by the greater weight of the evidence that the chain of custody of the physical evidence against the defendant, in the hands of the Valentine Police Department under the direction of the former chief of police, has been broken. The court concludes that such physical evidence is not admissible at trial. *State v. Bobo*, 198 Neb. 551, 253 N.W.2d 857 (1977). The court has considered all of the relevant criteria, including the nature of the exhibits, the circumstances surrounding preservation and custody, and the likelihood of intermeddlers tampering with the objects. *State v. Huffman*, 181 Neb. 356, 148 N.W.2d 321 (1967).

2. Because the prosecution is for possession of a controlled substance and because the controlled substance cannot be admitted at trial, there is insufficient evidence to proceed

with the prosecution as a matter of law. The information must be dismissed without prejudice.

3. The motion to compel is moot.

ORDER: IT IS THEREFORE ORDERED that:

1. The motion in limine is sustained and the plaintiff is prohibited from offering or referring to the physical evidence constituting the items seized during the applicable search.

2. Because the prosecution for possession of a controlled substance cannot be sustained without such physical evidence, the information is dismissed without prejudice.

3. The motion to compel is denied as moot.

4. Upon expiration of time for appeal, the defendant's bond shall be released and discharged by the court clerk.

Signed in chambers at **Ainsworth**, Nebraska, on **July 22, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.

Note the decision on the trial docket as: [date of filing] Signed "**Order on Motions and Dismissal**" entered.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge