

STATE OF MINNESOTA

SECOND JUDICIAL DISTRICT

COUNTY OF RAMSEY

CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

Monica Rachel Bicking,
Robert Joseph Czernik,
Garrett Scott Fitzgerald,
Luce Guillen-Givins,
Erik Charles Oseland,
Nathanael David Secor,
Max Jacob Specktor, and
Erin Trimmer,

Defendants.

MEMORANDUM OF LAW
IN SUPPORT OF MOTION
TO SUPPRESS

No. 62-CR-08-10515
No. 62-CR-08-10338
No. 62-CR-08-10335
No. 62-CR-08-10342
No. 62-CR-08-10345
No. 62-CR-08-10365
No. 62-CR-08-10336
No. 62-CR-08-10370

PRELIMINARY STATEMENT

The State of Minnesota has charged Max Jacob Specktor, Monica Rachel Bicking, Erik Charles Oseland, Robert Joseph Czernick, Garrett Scott Fitzgerald, Nathanael David Secor, Luce Guillen-Givens, and Erin Trimmer with Conspiracy to Commit Criminal Damage to Property in the First Degree, in violation of Sections 609.595.1(1), 609.595.1(3), and 609.175.2(3) of Minnesota Statutes, and Conspiracy to Commit Riot in the Second Degree, in violation of Sections 609.71.2 and 609.175.2(3) of Minnesota Statutes. Before the Court are numerous motions, including a Motion to Suppress the fruits of search conducted on 29 August 2008 of the so-called “Convergence Center,” located at 627 Smith Avenue, St. Paul, Minnesota, and the searches conducted 30 August 2008 at 2301 23rd Avenue South, 3240 17th Avenue South, and 3500 Harriet Avenue South, all in Minneapolis, Minnesota. The hearing on these Motions is scheduled for 2 February 2010 before the Honorable Theresa Warner, Judge of Ramsey County District Court.

Max Jacob Specktor, Monica Rachel Bicking, Erik Charles Oseland, Robert Joseph Czernick, Garrett Scott Fitzgerald, Nathanael David Secor, Luce Guillen-Givens, and Erin Trimmer submit this Memorandum in support of their Motions to Suppress, arguing that the searches were unlawful because the applications for those warrants do not establish probable cause and contain material omissions and intentional and reckless misrepresentations of facts upon which the judges who signed the warrants relied when issuing the warrants all in violation of Section 626.08 of Minnesota Statutes, the Fourth Amendment to the United States Constitution, and Article I of Section 10 of the Minnesota Constitution.

FACTS

Overview

On the evening of 29 August 2008, law enforcement officers from the Ramsey County Sheriff, St. Paul Police Department, and numerous other agencies raided the Convergence Center located on Smith Avenue in St. Paul. During the course of that raid the police detained dozens of people and seized several truckloads of items, most of which was literature, documents, maintenance items and computers. The officers conducted the raid pursuant to a warrant signed by the Honorable Joanne M. Smith, Judge of Ramsey County District Court.

Judge Smith issued the search warrant upon the application of Inspector Tony Samec, Commander Dale Sommerhause, and Deputy Sheriff Richard Clark, all of the Ramsey County Sheriff's Office. All three officers signed the application, which they presented to Judge Smith on 29 August 2008.

On that same date, the same officers submitted three additional and virtually identical applications to the Honorable Mark S. Wernick, Judge of Hennepin County District Court, seeking search warrants for three Minneapolis residences located at 2301 23rd Avenue South, 3240 17th

Avenue South, and 3500 Harriet Avenue South. Judge Wernick issued all three of the requested warrants that day.

Law enforcement officers from the Minneapolis Police Department, Ramsey County Sheriff, and other agencies executed all three of the Minneapolis warrants and raided the Minneapolis residences early in the morning on the day after the Convergence Center raid. In the course of those raids, officers seized numerous computers, literature, documents, and an abundance of standard household cleaning and maintenance items.

Warrant Applications

Briefly, there are four Application for Search Warrant and Supporting Affidavit forms that were submitted to courts for review at issue in this Motion.¹ The Applications are sworn to by three law enforcement officers and it is impossible to know if all three officers claim knowledge of all assertions in the Applications or if each officer claims knowledge of only a portion of the assertions. Whatever the case, the three law enforcement officers claim to have reason to believe and that they do believe they will find a long list of items, some nefarious and others not, at the Convergence Center and at the three Minneapolis residents. Supp. Ex. 1-a to 1-b.

The list of items for which the officers claim probable cause exists to justify the searches includes assembled incendiary devices, parts from which to manufacture those devices, smoke bombs, sling shots, paint, bricks, human waste, digital cameras, maps, cell phones, computers, and bills from internet service providers. *Id.* Nothing in any of the Applications suggests the officers

¹ Each of the Applications is essentially identical and there are no differences material to the instant Motion. For ease of understanding all references to page numbers of the Applications refer to the Application for the search of the “Convergence Center.” A copy of the “Convergence Center” Application and Warrant is attached at Suppression Exhibit 1, referred to hereinafter at Supp. Ex. 1.

made any efforts to differentiate between what might be found at the Convergence Center and what might be found at any of the Minneapolis Residences.

The officers' claimed probable cause for the searches is for the most part a recital of publicly available information and media culled from websites the officers claim were operated or controlled by RNC Welcoming Committee, hereinafter RNCWC, which for all intents and purposes of the officers consisted of Max Jacob Specktor, Monica Rachel Bicking, Erik Charles Oseland, Robert Joseph Czernick, Garrett Scott Fitzgerald, Nathanael David Secor, Luce Guillen-Givens, and Erin Trimmer. Id. at d-f. In addition to publicly available information, the officers rely for probable cause on the reports of an undercover informant, who infiltrated the RNCWC, apparently at the command of her superiors based upon their fear upon viewing a satirical video² on the RNCWC website. Id. at d-e. The officers also rely upon information provided to them by two so-called "Confidential Reliable Informants,"³ at least one of which the officers admit acted as a paid infiltrator of the RNCWC. Id. at d.

According to the Search Warrant Applications, the infiltrators were all active members of the RNCWC. Each of them apparently had access to the RNCWC group email system, Id. at f, and at least one of the infiltrators attended events sponsored by the RNCWC, Id. at g-j. The officers, in a very carefully worded assertion, claim that members of the RNCWC "discussed planning and committing criminal acts during the RNC." Id. at f. This assertion is followed by a long list of activities, some legal and others not so. Id. The officers never assert in the Applications that the RNCWC discussions ever went beyond "discussed planning and committing criminal acts" to the

² A copy of the video is contained on the CD attached to this Memorandum as Suppression Exhibit 3.

³ Despite the claims of the officers of reliability, nothing in the discovery obtained to date from the government establishes CRI2 was reliable. The FBI claims him only as a "source who is in a

RNCWC “planned criminal acts” or “planned on committing criminal acts.” In fact, due to the apparent broad access their infiltrators had to the activities of the RNCWC had such discussions occurred the officers would have been aware of it.

Indeed, it should have been clear early on in the investigation to the investigating officers that the RNCWC had no real interest in planning the type of criminal acts insinuated by the officers who made the Applications. Rather, it was one of the infiltrators with whom the investigators should have been concerned. In January of 2008, according to an FBI report, CRI2 told the FBI that CRI1, who is now known to be an informant working for the Ramsey County Sheriff, “expressed a profound hatred of law enforcement and shared his desire to ‘kick some cops asses’ with the RNCWC.” Supp. Ex. 2- b. CRI2 further stated that CRI1 was “extremely motivated and aggressive but that he did not ‘fit in’ with the RNCWC. Id. The officers never revealed the contents of this FBI report to the judges who issued the search warrants.

According to the officers who made the Applications, one of the informants went to the Convergence Center and was “given” several documents. Supp. Ex. 1-n. The officers describe the contents of five of these documents in the Applications. Id. at n-p. Only one of these documents can fairly be established as produced by or endorsed on any level by the RNCWC. That document is entitled the “RNC Welcoming Guide.” Remarkably, the “RNC Welcoming Guide” makes no reference to any criminal activity beyond blocking and disrupting traffic. Id. at pp. n-o, Supp. Ex. 4-a to 4-d.

Another of the documents is described by the officers as depicting on its cover a person “holding a slingshot.” Supp. Ex. 1-o. There is no indication the officers actually showed this document to the judges who issued the warrants, which, from the officers’ perspective is quite

position to testify.” Supp. Ex. p. 2-a, 12.

sensible, given their goal of getting the search warrants signed, because the person is a young girl. Supp. Ex. 5. That simply would not fit into the picture the officers hoped to draw for the judges. As for the remaining documents, there is nothing in the reams of discovery disclosed by the government to date that even hints that any member of the RNCWC or the RNCWC as a whole either endorsed or had any hand in their production.

ARGUMENT

Legal Standards

Both the United States Constitution and the Minnesota Constitution prohibit the issuance of a search warrant in the absence of probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. That is, a search is only lawful if it is executed pursuant to a warrant issued by a neutral and detached magistrate after a finding of probable cause. Minn. Stat. § 626.08; State v. Harris, 589 N.W.2d 782, 787 (Minn. 1999). More particularly, “a search warrant may only be issued upon a showing of probable cause that evidence or instrumentalities of a crime or contraband will be found in the place to be searched.” United States v. Gettel, 474 F.3d 1081, 1086 (8th Cir. 2007)(emphasis added, cites omitted). Furthermore, “it is axiomatic that probable cause must exist at the time of the search and not merely at sometime earlier.” United States v. Kennedy, 427 F.3d 1136, 1141 (8th Cir. 2005). Illegally seized items cannot be used as evidence and must be suppressed. State v. Lozar, 458 N.W.2d 434, 438 (Minn. Ct. App. 1990)(citing Wong Sun v. U.S., 371 U.S.471 (1963); Nardone v. U.S., 308 U.S. 338 (1939)); Minn. Stat. § 626.21.

Generally, a court reviewing the issuance of a warrant gives deference to the issuing magistrate’s determination of probable cause. State v. McGrath, 706 N.W.2d 532, 539 (Minn. Ct. App. 2005). That is, a reviewing court should grant to the warrant a presumption of validity. Id. at 540. But, “a search warrant is void, and the fruits of the search must be excluded, if the application

includes intentional or reckless misrepresentations of fact material to the findings of probable cause.” State v. Moore, 438 N.W.2d 101, 105 (Minn. 1989); Franks v. Delaware, 438 U.S. 154, 171 (1978). Deliberate or reckless omissions of material facts can also invalidate a warrant. State v. Doyle, 336 N.W.2d 247, 250 (Minn. 1983).

Simply put a warrant application must not contain and deliberate or reckless falsehoods and must not deliberately or recklessly omit any facts material to the probable cause determination. In addition the warrant application is required to “provide the magistrate with adequate information from which he (sic) can personally assess” the credibility of any informants. State v. Souto, 578 N.W.2d 744, 750 (Minn. 1998).

The four warrant applications in this case do not pass muster. They contain falsehoods that the officers either deliberately or recklessly asserted, omit facts material to the determination of probable cause the officers knew or should have known, and they do not establish the reliability of the informants. In addition, the applications do not establish that the items for which the warrants authorized the officers to search would be found where the officers requested to search.

The Informants

The officers claim in the Applications that the informants are reliable. Supp. Ex. 1-d. The officers claim that CRI1 had actually worked with their department and other law enforcement agencies with an excellent track record. Id. Very little of the information contained in the applications has CRI1 as its source. The applications are, however, replete with information the officers claim was provided by CRI2 for whom the officers apparently have no personal knowledge of his reliability. The officers simply assert that some other agency vouches for his reliability. Id.

That other agency is the FBI. Numerous reports from the FBI refer to the person who everyone involved with this case knows is CRI2. The FBI does not refer to this person as a reliable

source. Nor does the FBI indicate that this informant has ever worked any cases in the past. Rather, the FBI refers to this informant as a “source who is in a position to testify.” Supp. Exs. 2-a, 12. His FBI handlers simply did not view him as a “reliable informant” but as a source of information whose veracity needs to be established by oath and subjected to the challenge of cross-examination. All information that was provided by CRI2 should therefore be stricken from the applications before this Court reviews whether there was probable cause for the searches.

Omissions, Affirmative Falsehoods, and Exaggerations

The officers not only failed to provide affirmative information to establish the reliability of CRI2, they failed to inform the judges who issued the search warrants that CRI1 was a violent individual and that arrangements had been made for the dismissal of domestic assault charges against him just prior to his infiltration of the RNCWC. Supp. Exs. 6-a and 2-b. That it was domestic assault charges dismissed is a particularly important fact given that this person was subsequently awarded with employment as a Ramsey County Sheriff’s Deputy. Persons convicted of Domestic Assault are precluded by Federal Law from possessing firearms, 18 U.S.C. § 922(g)(9), and such a preclusion would prevent CRI1 from being able to claim his reward because law enforcement officers carry firearms.

There are numerous other facts that the officers failed to provide to the judges who signed the warrants. There is a range in the importance of these omissions taken individually but their omission as a whole demonstrates that the officers making the search warrant applications at issue here knew they were not providing a complete and accurate picture for the judges they were asking to sign the warrants.

Nowhere is this point more obvious than the officers' discussion of the video released by the RNCWC on 27 August 2007. This discussion is perhaps the hallmark of the exaggerated tone of the application.

The officers explain in the application that the video depicts persons dressed in "black bloc" attire, that a person in one scene is shown throwing a Molotov, that there is a hand off of a bolt cutter, that there is a reference to an old almost certainly defunct anarchist group (RABL) and that there is a person throwing rocks at persons dressed up as riot police. These claims are generally true.

What the officers failed to reveal to the judges from whom they requested the warrants is that the video is an obvious spoof of a stereotypes of antiauthoritarian protesters.⁴ More specifically, however, the officers omit the fact that the Molotov lands in a barbeque grill. As Commander David Korus said of the scene in sworn testimony before the United States District Court for the District of Minnesota in the case of United States v. McKay, U.S. Dist. Court File No CR 08-291 (MJD/FLN), "my personal opinion, if I can give that, it kind of decriminalizes when it lands in a grill and starts the grill on fire and then somebody starts cooking with it." Supp. Ex. 7-b.

The officers also failed to inform the judges that the bolt cutter was passed to someone to trim some bushes and that nothing has been heard from RABL in almost certainly more than ten years. And then to cap it off, the officers fail to inform the judges that the "individual" throwing rocks is a small child throwing something very clearly much lighter than rocks.

The officers also assert that they observed a "stack of bricks in the backyard" of the Food Not Bombs house (2301 23rd Avenue South). Supp. Ex. 1-j. This assertion is an apparent attempt to convince the judges from whom they requested the warrants that members of the RNCWC, in particular Messrs. Czernick and Secor, intended to use bricks during some sort of action during the

RNC as they also claimed that “it should be noted that there appears to be no construction projects at the residence.” Id.

What the officers failed to inform the judges was that their own investigation had revealed on 24 April 2008 that the residents of the house intended to use the bricks to build a barbeque pit. Supp. Ex. 8-a. Certainly the officers had an obligation to inform the judges of this fact. Of course, this omission becomes all the more suspect due to the failure of the officers who ultimately conducted the search to seize no more than a few of the bricks. If they were as dangerous as the officers imply in the search warrant applications, surely they would have seized them all.

At page 13 of the Application, Supp. Ex. 1-m, the officers make the outrageous claim that Erin Trimmer’s trip to Krech Ironworks in Inver Grove Heights followed by a trip to Home Depot where he purchased a gallon of paint, a deadbolt, and a tool to install the deadbolt somehow supports probable cause for the search of the Convergence Center and all three Minneapolis residences. What the officers failed to reveal to the judges signing the search warrants was that Krech Ironworks a fifty-year-old company specializing in ornamental iron fabrication, a fact that is readily available to anyone willing to look. Supp. Ex. 9-a to 9b. The officers also failed to inform the judges that Erin Trimmer and Monica Bicking had just moved into the house at 3240 17th Avenue South, another fact readily available to the officers and conveniently overlooked. Supp. Ex. 10.

One of the most disturbing claims found in the Applications is that the RNCWC intended to use incendiary devices during the RNC. It is the first thing found on the list of items for which the officers claim probable cause to support a search exists. Supp. Ex. 1-a. Recklessly overlooked by the officers is that CRI2 was present at and participated in a meeting on 17 August 2008 at Powderhorn Park where the use of any such devices was firmly rejected.

⁴ This is apparent to anyone who actually views the video.

The officers make much of their claim that there was an apparent “squat” at the Lilydale Tennis Club and that police officers found a bunch of cleaning and maintenance items there as well as what they claim was an anarchist flag, so-called “RNCWC pamphlets,” maps of St. Paul, and a carpet with “No RNC printed on it. Supp. Ex. 1-i. Consistent with many of the other assertions contained in the Applications, the officers failed to inform the signing judges that no person or activity remotely associated with that “squat” was in any way related to any person staying at any of the residences for which they sought warrants. There is, furthermore, no allegation that anything occurred at the Tennis Club beyond a simple trespass.

Another half-truth in the Applications is that the Undercover Informant, who was and remains an employee of Ramsey County, claimed to have seen some glass bottles, both empty and with liquid in them at the Food Not Bombs house located at 2301 23rd Avenue in Minneapolis. The officers did not reveal when it was that the Undercover Informant claimed to have seen these things and did not inform the judges that this person had been infiltrating the RNCWC for at least a year before the date of the Applications. Supp. Ex. 11-a. Since probable cause must exist at the time of the search, the purpose of this information serves no purpose other than to create a false sense of urgency in the minds of the judges the officers were asking to sign the warrants.

The officers who made the Applications for the search warrants in this case utterly failed at providing to the signing judges information they were both aware of and legally obligated to share. Once this missing information is added to the mix of assertions contained in the Applications, a very different picture of the RNCWC begins to emerge and the shrill nature of the governmental response to RNCWC organizing becomes more clear.

In addition to omitting material information from that provided to the signing judges, the officers also made claims that were false in support of their requests for the search warrants. The

officers also exaggerated what they must have known in order to create a misleading view for the signing judges.

Most obvious is an assertion made about the Food Not Bombs house. The officers claimed that CRI2 had seen a shotgun at the house. Supp. Ex. 1-j. They also parenthetically noted that “no further information provide on location or functionality.” Id. The officers’ parenthetical note is a lie. The same informant who told them about the shotgun reported that the shotgun appeared inoperable. Supp. Ex. 12. There is no denying that is further information on functionality and that the officers knew what they told the judges who signed the warrants was utterly false.

The officers who signed the Applications and requested that the judges sign the warrants undoubtedly were highly desirous of conducting the searches. In this case, that desire overcame their obligations under the United States Constitution, the Minnesota Constitution, and Minnesota Statutes to provide the issuing judges with truthful information. As a result, the officers painted a picture for the signing judges that did not match reality.

CONCLUSION

For all the foregoing reasons the evidence obtained as a result of the searches should be suppressed.

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