

STATE OF MINNESOTA
COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
CRIMINAL DIVISION

STATE OF MINNESOTA,

Plaintiff,

vs.

MONICA BICKING,
ROBERT CZERNIK
GARRETT FITZGERALD,
LUCE GUILLEN-GIVINS,
ERIK OSELAND,
NATHANAEL SECOR,
MAX SPECKTOR,
ERYN TRIMMER,

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

Defendants.

**NOTICE OF MOTION AND
MOTION TO SUPPRESS – 627 SMITH AVENUE, ST. PAUL, MN**

TO: THE STATE OF MINNESOTA AND ASSISTANT RAMSEY COUNTY ATTORNEY
HEIDI WESTBY, 50 W. KELLOGG BLVD, #315, ST. PAUL, MN 55102

PLEASE TAKE NOTICE that on February 2, 2010, at 9:00 a.m., or as soon thereafter as the parties can be heard, Defendants will move the court to suppress evidence as set out below.

Defendants, by their undersigned counsel, state as follows in support of their Motion to Suppress:

1. This Motion is made on authority of the Fourth, Fifth and Sixth Amendments to the Constitution of the United States and Article I, Sections 7 and 10 of the Minnesota Constitution, and Defendant's rights under the Minnesota Rules of Criminal Procedure, Rule 10.01.

2. Defendant seeks to suppress all physical and testimonial evidence obtained by law enforcement as a result of the search, and seizure of property and persons pursuant to a search warrant executed at 627 Smith Avenue, St. Paul, MN, on or about August 29, 2009.
3. This Motion to Suppress raises issues related to the night-time execution of the warrant and is filed by Defendants separate from, and in addition to, the Motion to Suppress for this property based upon defects in the Affidavit in Support of Probable Cause submitted by law enforcement to obtain the search warrant.
4. Minn. Stat. §626.14 requires that a search warrant be executed between the hours of 7:00 a.m. and 8:00 p.m. unless the court determines on the basis of facts stated in the affidavits that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search or to protect the searchers or the public.
5. On August 29, 2008, members of the Ramsey County Sheriff's Department sought a warrant from The Honorable Joanne M. Smith of Ramsey County District Court for the search of 627 Smith Avenue. In the search warrant application, the Affiants from the Ramsey County Sheriff's Department made a generalized claim that a nighttime search was requested because "a search outside these hours and under the cover of darkness provides the best approach for the safety of the officers executing the warrant."
6. The statement claiming a nighttime search was required falsely stated that the premises to be searched was a "residence."

7. The factual allegations made in support of the request for a nighttime search were not particularized and did not support a reasonable suspicion that a nighttime search was required to protect the officers executing the warrant.
8. On August 29, 2008, the Honorable Joanne M. Smith of Ramsey County District Court signed a search warrant for the search of 627 Smith Avenue. The search warrant signed by Judge Smith did not make any findings that a nighttime search was required to prevent the loss of evidence or protect the safety of the officers executing the warrant, nor did the warrant authorize a search outside the hours of 7:00 a.m. to 8:00 p.m.
9. The Ramsey County officers who sought the search warrant for 627 Smith Avenue had no reasonable belief that dangerous weapons or other items that could be used to harm law enforcement officers were present on the premises of 627 Smith Avenue. Through an undercover, confidential informant, these officers had recent, reliable information that such items were not present at 627 Smith Avenue.
10. The Ramsey County officers who sought the search warrant for 627 Smith Avenue had conducted substantial surveillance of the premises and in fact knew that it was likely that the greatest number of persons would be present at the premises if the warrant was executed in the evening.
11. Despite failing to obtain judicial authorization for a nighttime search, the search warrant for 627 Smith Avenue was executed beginning at 9:15 p.m. on August 29, 2008.
12. The Ramsey County officers who executed the search warrant for 627 Smith Avenue knowingly and intentionally executed the warrant outside the hours of 7:00 a.m. to

8:00 p.m. with knowledge that they had not obtained judicial authorization to do so and in deliberate violation of Minn. Stat. Minn. Stat. §626.14.

13. The nighttime search of 627 Smith Avenue without judicial authorization was part of a pattern and practice of law enforcement officers prior to and during the 2008 Republican National Convention to disregard the protections against unreasonable search and seizure under the Constitution of the United States and the Constitution of the State of Minnesota, and to instead carry out illegal and unconstitutional searches and seizures with the stated purpose of disrupting alleged unlawful activity.
14. The nighttime search of 627 Smith Avenue without judicial authorization was conducted to maximize the intelligence gathering purposes of Ramsey County law enforcement officers, who wished to identify, photograph, and compile a database of all persons on the premises, regardless of whether any law enforcement officer had reasonable suspicion or probable cause to believe the individual had committed a public offense.
15. The nighttime search of 627 Smith Avenue without judicial authorization subverted the basic purpose of the statute regulating nighttime searches and violated the Defendants' rights to be free from unreasonable searches and seizures under the Constitution of the United States and the Constitution of the State of Minnesota.

WHEREFORE, Defendants request that this matter be set for hearing, and that upon hearing, all physical and testimonial evidence arising from search and seizure of the premises, property and persons at 627 Smith Avenue, St. Paul, MN, on August 29, 2008, be suppressed.

Respectfully submitted this _____ day of January, 2010.

Bruce Nestor, MN ID 0318024
3547 Cedar Avenue South
Minneapolis, MN 55407
612-659-9019

Attorney for Monica Bicking

John Bachman, WI 1022480
P.O. Box 477
Eau Claire, WI 54702-0477
(715) 839-1040

Attorney for Garrett Fitzgerald

Jordan Kushner, MN ID 219307
431 S. 7th Street, #2446
Minneapolis, MN 55415
612-288-0545

Attorney for Luce Guillen-Given

Larry Leventhal, MN ID 62534
319 Ramsey Street
St. Paul, MN 55102
612-333-5747

Attorney for Max Spector

Robert Kolstad, MN ID 258994
1005 W. Franklin Avenue #3
Minneapolis, MN 55405
612-721-3425

Attorney for Nathanael Secor

Barbara Ann Nimis, MN ID 0235428
350 River Road, P.O. Box 50812
Mendota, MN 55150
(651)452-1474

Attorney for Eryn Trimmer

Travis Snider, MN ID 270842
1005 W. Franklin Avenue, #3
Minneapolis, MN 55405
612-872-1200

Attorney for Robert Czernik

Ted Dooley, MN ID 0189583
Peter Nickitas, MN ID 212313
1595 Selby Avenue
St. Paul, MN 55104
612-325-8433

Attorney(s) for Erik Oseland