

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File Nos.

62-CR-08-10515, CA 2073776

62-CR-08-10338, CA 2073782

62-CR-08-10335, CA 2072783

62-CR-08-10342, CA 2073787

62-CR-08-10345, CA 2073778

62-CR-08-10365, CA 2073785

62-CR-08-10336, CA 2073786

62-CR-08-10370, CA 2073788

State of Minnesota,

Plaintiff,

v.

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

Defendants.

**STATE'S MEMORANDUM
IN OPPOSITION TO
DEFENDANT'S MOTION TO
SUPPRESS REGARDING
627 SMITH AVENUE**

TO: The Honorable Theresa Warner, 15 West Kellogg Boulevard, Saint Paul, MN 55102; Defendants and Defendants' counsel Bruce Nestor, 3547 Cedar Avenue South, Minneapolis, MN 55407; Travis Snider, 1005 W. Franklin Avenue, #3, Minneapolis, MN 55405; John Bachman, P.O. Box 477, Eau Claire, WI 54702; Jordan Kushner, 431 S. 7th Street, #2446, Minneapolis, MN 55415; Ted Dooley, 1595 Selby Avenue, St. Paul, MN 55104; Robert Kolstad, 1005 W. Franklin Avenue, #3, Minneapolis, MN 55405; Larry Leventhal, 319 Ramsey Street, Saint Paul, MN 55102; Barbara Ann Nimis, 350 River Road, P.O. Box 50812, Mendota, MN 55150:

The State opposes the Defendants' motion to suppress evidence seized during execution of a search warrant at 627 Smith Avenue (also known as the "Convergence Center"). There was no serious violation committed and the minor, technical violation that occurred did not, in any way, subvert the statutory purpose.

FACTS

On August 12, 2008, Betsy Raasch-Gillman rented the space located at 627 Smith Avenue South in Saint Paul – 1.5 miles from the Xcel Center and venue for the Republican National Convention ("RNC"). Ms. Gillman signed the lease as a board member of Jack Pine Community Center. The building is a rental hall, Smith Hall. None of the eight Defendants signed the lease.

The lease describes the landlord as Riverview Theatre LLC. The property is a commercial space. In accordance with Saint Paul City Code, sleeping at the rental property is against the law, and there has been no indication that the space was being used illegally as an overnight space. Additionally, the lease specifically provided that "No portion of TENANT'S leased area shall at any time be used or occupied as sleeping or lodging quarters."¹

The space became known by the Defendants and other anarchists organizing actions during the RNC as the "Convergence Center." During the term of Raasch-Gillman's lease, the Convergence Center was opened up to the public. People came and went freely. Protest literature was available.

On August 29, 2008, law enforcement obtained a search warrant for this location. The application portion of the warrant specifically requested a nighttime search, stating:

A nighttime search outside the hours between 7:00 a.m. and 8:00 p.m. is necessary to prevent the loss, destruction or removal of objects in the search to protect the searchers or the public because:

¹ Office lease, page 14.

A nighttime search of the residence outside the hours of 7 AM and 8 PM is requested because your Affiant believes that a search outside these hours and under the cover of darkness provides the best approach for the safety of the officers executing the warrant.²

The application, containing the nighttime search language, was approved and signed by Judge Joanne M. Smith.³ The warrant was attached to the application. Presumably, it was intended that the warrant reflect the language of the application, but that sentence was cut-off before completion.⁴

Officers believed that they had authority for an entry later than 8 p.m. The warrant was executed at approximately 9:15 p.m. on the same day it was obtained. Sixty-eight people were inside the Convergence Center. Defendants Guillen-Givens, Fitzgerald, and Czernik were present. Defendants Bicking, Oseland, Secor, Spector, and Trimmer were not present. All 68 people were dressed and awake. People were yelling, “We do not consent to this search.” A number of items were seized, including computers and video cameras, maps, PVC and metal pipes, flares, paint cans, and protest, anti-government, and anarchist literature.

Soon after the warrant was executed, numerous people other than Defendants, filed motions claiming they jointly owned the literature that had been seized from the Convergence Center.

I. DEFENDANTS HAVE THE BURDEN TO SHOW, BEFORE THE COURT MUST ADDRESS THE MERITS OF THE MOTION, THAT THEY EACH HAVE A REASONABLE EXPECTATION OF PRIVACY IN THE LOCATION SEARCHED.

The Constitutions of the United States and Minnesota both provide that people are to be secure from search of their person, home, and property: “[T]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated . . .”⁵ Search

² Application for Search Warrant and Supporting Affidavit, page Application 1-17.

³ Application for Search Warrant and Supporting Affidavit, page Application 1-18.

⁴ The sentence reads “The Court further finds that probable cause exists to believe that the above-described property and things are” Search Warrant, page Warrant 1-2.

⁵ U.S.C.A. Const. Amend. IV; Minn. Const. Art. 1, § 10.

and seizure can be made, however, upon a showing of probable cause and particular description of the persons, places, or things to be searched.⁶

To challenge the propriety of law enforcement's search and seizure, an individual must first demonstrate that they have standing – or more appropriately stated: a reasonable expectation of privacy. Standing exists only when the individual has exhibited a subjective expectation of privacy in the object of the challenged search, and society is willing to recognize that expectation as reasonable.⁷ The person challenging the search has the burden of proof.⁸ Certainly then, not all places and things are protected under the state and federal constitutions. Overnight guests generally enjoy an expectation of privacy because “[s]taying overnight in another's home is a long standing social custom that serves functions recognized as valuable by society.”⁹ Guests that are not staying overnight, however, are considered to be ‘merely permitted on the premises’ [and] are not entitled to Fourth Amendment protection.”¹⁰ Even in a home, one individual does not have an expectation of privacy in the apartment of another, if he is not a co-tenant.¹¹

It is also true that the expectation of privacy in a business or commercial premises is much lower than that in a home:

Property used for commercial purposes is treated differently for Fourth Amendment purposes from residential property. “An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home.”

New York v. Burger, 482 U.S. 691, 700 (1987).

⁶ U.S.C.A. Const. Amend. IV; Minn. Const. Art. 1, § 10.

⁷ In re B.R.K., 658 N.W.2d 565, 571 (Minn. 2003).

⁸ State v. Bryan Dion Harris, unpublished, A08-1270, 2009 WL 2925527 (Minn. App. September 15, 2009), citing State v. Gail, 713 N.W.2d 851, 860 (Minn. 2006); State v. Jordan, 742 N.W.2d 149, 156 (Minn. 2007).

⁹ Minnesota v. Olson, 495 U.S. 91 (1990).

¹⁰ State v. Harris, unpublished, A08-1270 2009 WL 9295527 (Minn. App. September 15, 2009), citing State v. Sletten, 664 N.W.2d 870, 876 (Minn. App. 2003).

¹¹ United States v. Sacco, 436 F.2d 780 (2d Cir. 1971); United States v. Shea, 436 F.2d 740 (9th Cir. 1970), appeal after remand 445 F.2d 856 (9th Cir. 1971); State v. Christenson, 371 N.W.2d 228 (Minn. App. 1985); A co-tenant or person that lives in the apartment does, however, have an expectation of privacy.

There are also limited privacy expectations on certain property. Property that “a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.”¹²

All eight Defendants signed one motion to contest the search of 627 Smith Avenue. None of these Defendants signed the lease. None of these Defendants were overnight guests at this commercial space. Defendants Bicking, Oseland, Secor, Spector, and Trimmer were not even present when the warrant was executed. This commercial space was open to the public. Numerous other members of the public were in fact present when the warrant was executed. Numerous other people have claimed ownership of the literature that was seized from this commercial space. Each of these Defendants, before they can even proceed on the merits of the motion, must prove that they individually have a reasonable expectation of privacy.

II. STATUTORY LAW REGARDING NIGHTTIME SEARCHES

Minnesota law regulates the execution of search warrants at night as follows:

A search warrant may be served only 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. The search warrant shall state that it may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless a nighttime search outside those hours is authorized.¹³

To justify a nighttime search, the warrant must establish a “reasonable suspicion that a nighttime search is necessary to preserve evidence or to protect officer or public safety.”¹⁴

Minnesota Statute section 626.14 (2008) requires specific authorization for a nighttime search.

However, a violation of this statute does not mean evidence seized as a result of the search must be

¹² Katz v. United States, 389 U.S. 347, 351 (1967).

¹³ Minn. Stat. § 626.14 (2008).

¹⁴ State v. Jackson, citing State v. Bourke, 718 N.W.2d 922 (Minn. 2006).

suppressed because the violation is statutory, and not constitutional. To determine whether suppression is proper, this Court must ask whether the statutory violation was a serious one that subverted the purpose of the statute.¹⁵ Suppression is justified only under those circumstances.¹⁶ In conducting the analysis, this Court must remember that the United State Supreme Court has “long held that the ‘touchstone of the Fourth Amendment is reasonableness,’”¹⁷ and that “that reasonableness ‘is measured in objective terms by examining the totality of the circumstances.’”¹⁸

An example of serious violation can be found in State v. Cook. There, evidence obtained via a telephonic warrant was suppressed. The rule governing telephone warrants specifically requires the affiant to read from a prepared statement and to record the application being made. The affiant did not do either of these, and since the purpose of the rules is to create a contemporaneous record in case of challenge later, and no record existed because of the affiant’s violations, the Court deemed the purpose of the rule to have been subverted.¹⁹

In many cases, where the errors are more innocuous, evidence remains admissible. The courts have stated:

“[W]e will not require suppression of evidence obtained in violation of a statute or rule when the violation is merely technical and ‘did not subvert the basic principle of the statute.’”

State v. Jordan, 742 N.W.2d 149 (Minn. 2007), citing State v. Smith, 367 N.W.2d 497 (Minn. 1985). In Smith, law enforcement improperly obtained the defendant’s address from the county’s Department of Social Services.²⁰ Obtaining the data in this manner violated the Data Practices Act. Since the purpose

¹⁵ State v. Jordan, 742 N.W.2d 149 (Minn. 2007); See also State v. Jackson, 742 N.W.2d 163 (Minn. 2007).

¹⁶ State v. Cook, 498 N.W.2d 17 (Minn. 1993).

¹⁷ Ohio v. Robinette, 519 U.S. 33, 39, (1996) (quoting Florida v. Jimeno, 500 U.S. 248, 250 (1991)).

¹⁸ Id.

¹⁹ State v. Cook, 498 N.W.2d 17, 20 (Minn. 1993)

²⁰ State v. Smith, 367 N.W.2d 497, 504 (Minn. 1985).

of the Data Practices Act is to protect the identity of welfare recipients, and “there is little doubt that a court order would have been issued upon request,” however, the purpose was not subverted.²¹

III. LIMITATIONS ARE PLACED ON NIGHTTIME SEARCH WARRANTS BECAUSE PEOPLE ARE UNIQUELY VULNERABLE DURING THE NIGHT.

What exactly is the privacy interest that is protected by limiting nighttime searches? The definition of the protected interest preventing nighttime search without a warrant was defined by the United States Supreme Court as “freedom from intrusion during a period of nighttime repose.”²² In reaching this definition, the Court emphasized the unique vulnerability of nighttime, and therefore the extra need for protection. John Adams described the status as follows:

Every English[man] values himself exceedingly, he takes a pride and glories justly in that strong protection, that sweet security, that delightful tranquility which the laws have thus secured to him in his own house, especially in the night. Now to deprive a man of this protection, this quiet and security in the dead of night, when himself and family confiding in it are asleep, is treat[ing] him not like an Englishman not like a freeman but like a slave * * *.²³

The Minnesota Supreme Court has characterized the policy behind limited nighttime searches as aimed at preventing “the kind of nighttime intrusion with people being roused out of bed and forced to stand by in their night clothes while the police conduct the search.”²⁴

IV. SEMINAL WARRANTLESS NIGHTTIME SEARCH CASELAW: STATE V. LIEN, STATE V. JACKSON, STATE V. JORDAN, AND STATE V. GOODWIN.

Three Minnesota Supreme Court cases and one Court of Appeals case stand out as the key cases in which the appellate courts considered nighttime searches without the necessary/requisite nighttime search language in the warrant. Ultimately, the seized evidence was not suppressed in Lien and Goodwin – cases more similar to this one – and was suppressed in Jackson and Jordan.

²¹ Id.

²² Jackson, 724 N.W.2d at 171.

²³ 1 Legal Papers of John Adams 137 (L. Kinvin Wroth & Hiller B. Zobel eds., The Belknap Press 1965) (republished from the 1774 original).

²⁴ State v. Lien, 265 N.W.2d 833 (Minn. 1978).

In State v. Lien, officers obtained a warrant to search an apartment.²⁵ The warrant was signed by a magistrate, but it was later determined that the warrant did not establish a sufficient basis to justify a nighttime search.²⁶ Believing the warrant to be valid, it was executed by law enforcement shortly after 9 p.m.²⁷ Before executing the warrant, the officers observed many people coming and going from the apartment.²⁸ They also saw the defendant enter the apartment shortly before the officers entered, so they knew he was awake, dressed, and not involved in any personal activity that he wished to keep private.²⁹ The time at which the warrant was executed, shortly after 9 p.m., was deemed by the Court as “a reasonable hour when most people are still awake.”³⁰ The type of intrusion meant to protect against was described in this case as “the kind of nighttime intrusion with people being roused out of bed and forced to stand by in their night clothes while the police conduct the search.”³¹ While there was a technical violation, it was considered statutory and not of a constitutional nature.³² The Court further determined that “the police acted in good faith and that any error committed is attributable to the magistrate, who should have required the police to make a clearer showing of need before granting the nighttime search clause.”³³

In State v. Jackson, the search warrant authorized a nighttime search, based on an affidavit that said “[t]his investigation has led your affiant into the nighttime [sic] scope of search warrant.”³⁴ The warrant was executed at the defendant’s home at 9:25 p.m.³⁵ Upon entry, officers found the defendant sitting at the kitchen table with her two teenage children.³⁶ Jackson challenged the validity of the search

²⁵ Id.

²⁶ Id. at 840.

²⁷ Id. at 836.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 841.

³¹ Id.

³² Id.

³³ Id. at 840.

³⁴ State v. Jackson, 742 N.W.2d 163 (Minn. 2007).

³⁵ Id. at 166.

³⁶ Id.

warrant, arguing that the affidavit failed to articulate a sufficient basis to support a nighttime search.³⁷ Her motion was denied by the trial court based on a finding that the nighttime search warrant was not justified, but the violation was statutory rather than constitutional.³⁸ Jackson was convicted and appealed.³⁹ Her conviction was affirmed by the Minnesota Court of Appeals, but reversed by the Minnesota Supreme Court, ruling that there had been a serious violation because of the time at which the search of the defendant's home took place and the absence of facts in the affidavit to show why the nighttime search warrant was necessary.⁴⁰

Though the Jackson court suppressed the State's evidence, they acknowledged that facts can vary widely, and even though a warrant was served during the "night," as defined by statute, it may or may not have been executed during a period of nighttime repose. Specifically:

. . . at certain times it will be readily apparent what is protected during this period of nighttime repose. For example, if the police search an unlit home at 3 a.m. without proper nighttime authorization, they run considerable risk of violating the occupants' interest in being free from intrusion during a nighttime period of repose. But if the police search a home at 8:30 p.m. on the summer solstice when the doors are open and a party is underway at a home, they are much less likely to run the risk of seriously violating the occupants' interest in being free from such intrusion.⁴¹

In State v. Jordan, the search warrant authorized nighttime entry, but based on an application with insufficient particularized reason to justify the entry, as conceded by the State.⁴² Officers executed the warrant at 6 a.m. This time was chosen, in part, based on their belief that the defendant would be present. Upon entry, they learned that the defendant was actually not present, but the defendant's 20-year-old daughter, her boyfriend, and a social guest were found sleeping in their nightclothes inside. The district

³⁷ Id. at 167.

³⁸ Id.

³⁹ Id.

⁴⁰ Id. at 177, 179.

⁴¹ Id. at 171.

⁴² State v. Jordan, 742 N.W.2d 149 (Minn. 2007).

court suppressed the evidence on the basis of the insufficient nighttime search authorization. The state appealed and the Court of Appeals reversed, finding that because the defendant was not present at the time the search warrant was executed, policy concerns regarding nighttime response did not apply to him. His absence rendered the nature of the violation statutory rather than constitutional.

The defendant then appealed to the Minnesota Supreme Court. His case was considered contemporaneously with State v. Jackson, and the issue was framed as that in Jackson, but with the added consideration whether Jordan's absence from the home during execution of the search warrant reduced the statutory or constitutional protections.⁴³

The Court noted that, as in Jackson, the police entered without any knowledge of what was transpiring inside, and decided that a defendant has a protected statutory interest in freedom from intrusion during nighttime repose, whether or not he is home. The Court applied the newly defined critical inquiry stated in Jackson, "what the officers know at the time of entry."⁴⁴ And determined that "[i]f the purpose of the statute is to deter unauthorized nighttime searches, then the after-the-fact knowledge that the homeowner is not present should be irrelevant in determining whether the purpose of the statute was subverted, especially when members of the homeowner's family and social guests are present."⁴⁵ The Court found that the basic purpose of the statute had been subverted, and the evidence was suppressed.

It is important to note, however, that Jordan's constitutional privacy interest, though not at home, applied because it was his home that was searched. The Court found that "under the Fourth Amendment, Jordan had a reasonable expectation as a homeowner that his person, house, papers, and effects would be secure against an unauthorized nighttime search and seizure, even though he was not present during the

⁴³ Id. at 153.

⁴⁴ Id. at 154.

⁴⁵ Id.

search, where the search occurred during a period of nighttime repose and members of his family and a social guest were present in the home.”⁴⁶

In State v. Goodwin, the Minnesota Court of Appeals held that a warrant executed less than two minutes before the applicable time was a “deminimis” violation of the statute because the departure from Minnesota Statutes section 626.14 would not cause a surprise intrusion into a defendant’s privacy beyond the invasion into a defendant’s privacy beyond the invasion that would occur if the search was properly executed one minute and seven seconds later. 686 N.W.2d 40, 43-44 (Minn. App. 2004). The Court recognized that the officers violated section 626.14 because they entered at a few minutes prior to 7:00 a.m. Id. But, the Court recognized that the violation was statutory, technical, and that the district court was not obligated to suppress the evidence seized. Id. The Court cited State v. Koller, 559 F.Supp. 539, 541 (D.Ark. 1983) (concluding that evidence obtained by a search that was executed ten minutes after the daytime warrant had expired would not be suppressed because (1) the search did not violate the policy prohibiting unexpected searches in the middle of the night, (2) it began only a matter of minutes after the warrant expired, and (3) it did not cause surprise intrusion into the defendant’s privacy). The Court refused to suppress any evidence seized because the privacy intrusion was no greater when the officers entered outside of the statutorily allowed time, then it would have been if they had complied with the statute. Id.

V. PURPOSE OF NIGHTTIME WARRANT LIMITATIONS NOT SUBVERTED HERE.

As set forth in Lien, Jackson, Goodwin, and Jordan above, the purpose of requiring specific permission in a search warrant for its execution at night is to preserve the sanctity and sense of security one enjoys in their home, tucked cozily into their bed, sleeping and therefore vulnerable, at night. This search had nothing to do with that. The Convergence Center was searched at a reasonable hour, 9:15 p.m.

⁴⁶ Id. at 158.

On the date the warrant was executed, it may not have even been dark outside yet. The property searched was a commercial property being used for a commercial purpose – to organize resistance to the Republic National Convention. It was wide open for business when police entered, with a flurry of activity taking place among the 68 people present. There was no indication that anyone was sleeping, sought to be sleeping, or had any intentions of sleeping there in the near future or ever. There were no toothbrushes or pajamas, no overnight bags filled with toiletries. In fact, the lease for this commercial building explicitly prohibited use of the building for lodging or sleeping.

Additionally, the tenants, occupants, and guests never intend that the commercial building be used for nighttime repose. The property was rented for a business purpose – to serve as a community gathering space for protestors to congregate, review literature, organize, and plan. The business purpose was not private. The Convergence Center was open to the public. It was open to anyone that wanted to come by. For all practical purposes, the Convergence Center was a public place – anything but a home.

Furthermore, law enforcement did not just get lucky in finding what they found at the Convergence Center. As stated in Jackson, the critical inquiry is what information officers had at the time of entry. The officers knew what they would find inside. At the time of entry, officers knew that the space to be searched was a business rental space, being used for a business purpose. The space was not a home. They knew that there were people coming and going from the building at this time in the evening. They knew that the space could not be used as an overnight sleeping area, and that there was no fear interrupting nighttime repose.

It is also worth noting that these officers never had any intention of disturbing anyone during a time of nighttime repose. Had they sought to “rouse [anyone] out of bed,” they would not have executed the search warrant so early, but would have waited until the wee hours of the night.

This case is most similar to Lien. As in Lien, the Ramsey County Sheriff's Department knew there were many people present and coming and going as they were preparing to execute the warrant. The warrant was executed at approximately the same time as in Lien. The officers knew that people were awake, dressed, and not in bed when they executed the warrant.⁴⁷ Lien discussed that the type of intrusion meant to protect against was described as "the kind of nighttime intrusion with people being roused out of bed and forced to stand by in their night clothes while the police conduct the search."⁴⁸ There was zero chance of this happening when the sheriff's deputies entered the convergence space.

Although the evidence was suppressed in Jackson, the Court's reasoning is helpful in explaining exactly why the evidence in this case should not be suppressed. Jackson involved a search of Jackson's home. Jackson and her teenage children were home when the warrant was executed. But significantly, the Court explained that a case with facts similar to the facts in this case would not require suppression. The Court reasoned that if Jackson had been home, with the doors open and a party underway, the officers would have been much less likely to run the risk of violating the occupants protected interest. In this case, the doors were open to the public and 68 people were present. And, again, the convergence space was not a home. There was no risk of violating the "homeowner's protected interest."

Jordan also provides guidance in this case. Jordan requires a court to focus on what the officers knew at the time they entered. In this case, the officers knew that the Convergence Center was not a home. The officers knew people were not allowed to sleep on the premises. The officers knew that many people were at the Convergence Center. They observed that the doors were open to the public. It was loud. It was busy. People were coming and going from the premises. There was zero chance any one would be in their own bed in their own home sleeping when they executed this warrant.

⁴⁷ Id. at 841.

⁴⁸ Id.

It is also important to note that all eight Defendants have jointly filed this motion to suppress. None of the Defendants lived at the Convergence Center. In Jordan, the Court held that Jordan had a constitutional protected privacy interest even though he was not present when the warrant was executed because it was his home that was searched. The Convergence Center is no one's home. None of the eight Defendants lived or stayed there. Five of the Defendants were not even present when the warrant was executed. How can they possibly claim that their constitutional privacy interest of possibly being roused out of bed and forced to stand by in their night clothes while police searched, was implicated?

This case is also very similar to State v. Goodwin. In Goodwin, the violation was two minutes. Here the violation was approximately an hour and fifteen minutes. However, there was no surprise intrusion into any of these Defendants' privacy beyond the invasion that would have occurred had the Sheriff's Department entered the Convergence Center at 8:00 p.m. And, there really would not have been whether it was two minutes or two hours. The Convergence Center was not a home. There was no risk of violating the intrusion that the statute is designed to protect. No one would have been sleeping at the Convergence Center, and roused out of bed, whether the violation was two minutes, two hours, or whether the Sheriff's Department entered in the middle of the night.

CONCLUSION

Legal strictures on execution of search warrants during the night are designed to protect an individual's privacy interest when he is most defenseless. Here, there was no threat to the "nighttime repose" of any of these Defendants even if they had been present at this leased business location, being used for a single business purpose. The police knew that all occupants were awake, alert, and active when law enforcement entered just after 9 p.m. Neither the three Defendants present nor any of the other sixty-five people at the Convergence Center were sleeping and there was no sign that anyone intended to sleep there -- which would have been a violation of the lease and local law.

The protections against nighttime searches are to protect people in a type of situation not at all found here. The violation was not serious, and was merely the product of a technical drafting error. And the violation in no way subverted the purpose of the statute, nor created a constitutional issue. For these reasons, the State respectfully requests that the Defendants' motion be denied in its entirety.

SUSAN GAERTNER
RAMSEY COUNTY ATTORNEY

Date: 4-23-10

Heidi Westby

Heidi Westby
Assistant Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
Saint Paul, MN 55102
Attorney Registration # 241672
651.266.3134

Derek Fitch / DFW

Derek Fitch
Assistant Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
Saint Paul, MN 55102
Attorney Registration # 328339
651.266.9641

Attorneys for the Plaintiff