

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) CR-00S-422-S
)
ERIC ROBERT RUDOLPH,)
Defendant.)

**DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE AND FRUITS SEIZED
PURSUANT TO WARRANT 2:98M09**

COMES NOW, Eric Robert Rudolph, by and through undersigned counsel, and hereby files this Motion to Suppress Evidence and Fruits Seized Pursuant to Warrant 2:08M09.¹ In support of this filing, the undersigned show the following:

BACKGROUND

On June 26, 2003, Mr. Rudolph was indicted for violations of 18 U.S.C. § 844(i) and § 924(c)(1), in connection with the bombing of an abortion clinic in Birmingham, Alabama which occurred on January 29, 1998. Following the crime, search warrants were obtained and executed by the government in the Western District of North Carolina. The search warrants at issue were obtained and executed in February, March, and May 1998 for

¹ The number 2:98M09 refers to the docket number allocated to this Warrant when it was filed in the United States District Court for the Western District of North Carolina.

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the following locations:

1. Cal's Mini Storage, Unit #91, 65 Old Peachtree Road, Marble, North Carolina ("Cal's");
2. a single wide mobile home located on Caney Creek Road in Murphy, North Carolina ("Caney Creek"); and
3. a Gray 1989 Nissan Truck.

With respect to these three locations, on the following dates and times, the government obtained and executed the following warrants:

No.	Warrant/Location	Obtained	Executed
1	2:98M08 Cal's Storage 1	02/01/98 10:57 pm	02/02/98 10:00 am
2	2:98M09 Caney Creek 1	02/03/98 5:00 pm	02/04/98 7:52 am
3	2:98M10 Cal's Storage 2	02/04/98 12:15 pm	02/05/98 10:45 am
4	2:98M12 Nissan Truck	02/08/98 8:25 pm	02/09/98 4:42 pm
5	2:98M20 Caney Creek 2	03/05/98 3:15 pm	03/06/98 11:30 am
6	2:98M21 Cal's Storage 3	03/05/98 3:15 pm	03/06/98 9:00 am
7	2:98M46 Cal's Storage 4	05/13/98 4:55 pm	05/14/98 8:20 am

In a June 23, 2004 Order (Doc. 255), this Court directed counsel for Mr. Rudolph to file motions to suppress evidence on or before September 13, 2004. In compliance therewith, we hereby file this Motion to Suppress Evidence and Fruits Seized Pursuant

to Warrant 2:98M09 (hereinafter "Warrant M09" or "the Warrant").

Warrant M09 was executed in a constitutionally-flawed manner. An exhibit to the Warrant directed the agents to seize certain items. The agents, however, ignored the Warrant's constitutionally-based directive and seized other items anyway. For example, although the Warrant did not permit them to do so, the agents seized a Bible, 24 miscellaneous books, family photographs, a picture frame, \$1600.00 in cash, and a number of other items whose seizure was not authorized by the Warrant. See, Ex. B at BH-CWA-000085-86. Therefore, since the well-established rule is that only the items described in the search warrant may be seized, the Court should suppress many of the items seized pursuant to Warrant M09.

ARGUMENT

In relevant part, the Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend IV. On many occasions, the Court has made clear that "'[t]he requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another." Stanford v. Texas, 379 U.S. 476, 485 (1965) (quoting

Marron v. United States, 275 U.S. 192, 196 (1927)). "As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." Marron, 275 U.S. at 196.

Importantly, "the Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant." Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 395 n.7 (1971) (citations omitted). For this reason, "[s]eizing items beyond the scope of a warrant's authorization violates the Fourth Amendment rights of the subject of a search." Shamaeizadeh v. Cunigan, 338 F.3d 535, 554 (6th Cir. 2003) (citing Andresen v. Maryland, 427 U.S. 463, 480 (1976)). Therefore, the uniformly applied rule is that when materials are seized which are not identified in a search warrant, those materials are "subject to suppression." United States v. Hendrixson, 234 F.3d 494, 497 (11th Cir. 2000) (citation omitted). See also, Walter v. United States, 447 U.S. 649, 656 (1980) (plurality opinion) (recognizing that "[w]hen an official search is properly authorized – whether by consent or by the issuance of a valid warrant – the scope of the search is limited by the terms of its authorization"); Creamer v. Porter, 754 F.2d 1311, 1319 (5th Cir. 1985) (stating that a "search warrant describing particular items to be seized cannot be used as an admission ticket to a general search of the premises. If

this were possible, the particularity requirement of the Fourth Amendment would have little import.")

On February 3, 1998, the government obtained Warrant M09. In the section of the Warrant pertaining to the items the agents were authorized to seize, Warrant M09 contained the following notation: "See Exhibit 'B' attached hereto." Ex. B at BH-CWA-000083. Exhibit B contained the following entry:

"Nails, batteries, knives and other cutting instruments; tools; records (in both digital and documentary form as detailed below); furniture, clothing, and household items capable of absorbing and retaining residue of high explosives or triggering devices; black powder, smokeless powder, lead azide, mercury fulminate, or other explosive powders; small metal tubes or other containers; and electric wires, light bulb filaments, rocket motor ignitors, pyrotechnic fuses, and safety fuses; receipts, notes, journals, diaries, calendars, address books, computer data bases, and correspondence related to the construction, storage, procuring, and testing of explosive devices and/or their component parts."

Ex. B at 000089.

Although Exhibit B restrained the officers by permitting them to seize only certain items, the agents ignored Exhibit B and seized other items anyway. Indeed, according to the return accompanying Warrant M09, the agents seized a number of items the Warrant simply did not authorize them to seize. For example, despite the directive of Exhibit B, the agents seized the

following items:

- Green spiral notebook
- Mead writing pad
- Misc. photos & negatives
- Leupold gold ring box & receipt
- Panasonic audio tape
- Black Bible
- Sales receipt/Walmart 1224/97
- Picture frame/\$1600 cash
- Walmart receipt and blue bag
- Walmart blue plastic bag
- 24 misc. books
- One roll of 35mm film
- Model 37/Featherlight 12 ga. shotgun s/n 371234045
pistol grip
- Ruger Model 10/22 carbine .22 LR caliber
- Ruger M77 .30-06 Springfield sn/31102 Bushnell Scope
- Heckler and Koch 9mm GMBH sn/90705 with magazine
- Smith & Wesson .38 special Model 10, sn 94157
- Two (2) daggers/one bayonet
- Sig Sauer P220 .45 caliber pistol sn/G169574
w/magazine
- 3 misc. sales receipts

Ex. B at BH-CWA-000086.

Again, "[s]eizing items beyond the scope of a warrant's authorization violates the Fourth Amendment rights of the subject of a search." Shamaeizadeh, 338 F.3d at 554 (citations omitted). And the well recognized remedy for such a violation is suppression of the improperly seized materials. See, Hendrixson, 234 F.3d at 497 (recognizing that when materials are seized which are not identified in a search warrant, those materials are "subject to suppression."); United States v. Robbins, 21 F.3d 297, 300 (8th Cir. 1994) ("The general rule, of course, is that

police may only seize items described in the search warrant, absent an exception to the warrant requirement"). Moreover, when a warrant authorizes the search and seizure of personal papers, books, or indicia of membership in an organization, exacting scrutiny must be utilized to ensure the warrant satisfies the specificity mandated by the Fourth Amendment to protect against the threat to individual privacy, freedom of expression, and the right of association. See, Stanford v. Texas, 379 U.S. 476 (1965) (books); Andresen v. Maryland, 427 U.S. 463, 482 n.11 (1976) (personal papers); United States v. Washington, 797 F.2d 1461, 1468 (9th Cir. 1986) (document searches); United States v. Rubio, 727 F.2d 786 (9th Cir. 1983)(membership in an association); United States v. Christine, 563 F. Supp. 62, 66 (D. N.J. 1983) (personal papers). Indeed, as the Supreme Court observed:

"We recognize that there are grave dangers inherent in executing a search warrant authorizing a search of a person's papers that are not necessarily present in executing a warrant to search for physical objects whose relevance is more easily ascertainable. In search for papers, it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized [R]esponsible officials, including judicial officials, must take care to assure that they are conducted in a manner that minimizes unwarranted intrusions upon privacy."

Andresen, 427 U.S. at 482 n. 11.

Here, Exhibit B specified the items the agents were authorized to seize. Although it contained a category of items that included "receipts, notes, journals, diaries, calendars, address books, computer data bases, and correspondence," these items could only be seized if they "related to the construction, storage, procuring, and testing of explosive devices and/or their component parts." See, Ex. B at BH-CWA-000089. In spite of this limitation, however, the executing agents seized a Bible, 24-four miscellaneous books, a notebook and writing pad, family photographs, and a number of other items.

CONCLUSION

These items, as well as the items listed above do not fit within any category listed on Exhibit B. Therefore, since the well recognized remedy for a constitutional violation of this nature is suppression of the improperly seized materials, we respectfully request that the Court suppress the items set forth above.

Dated: September ~~13TH~~ 2004 Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the following by mailing the same by first class United States mail, properly addressed and postage prepaid, on this ~~12th~~ day of September 2004 to:

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Bill Bowen
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