

AUG 02 2019

CLERK OF THE COURT
BY: R. SPEARS

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

IN RE: SEARCH WARRANTS)	Case No. 2516293
)	
)	ORDER GRANTING
)	MOTION TO RETURN
)	PROPERTY AND
)	GRANTING
)	MOTION TO QUASH
)	
)	SEARCH WARRANT 43684
)	
)	

On July 12, 2019, the Court heard the Motion of Bryan Carmody to Quash the Search Warrant and for Return of Property. The Court invited Mr. Carmody to file supplemental briefing on the issue of standing to bring a Motion to Quash and the Court has now heard arguments of counsel, conducted all *in-camera* hearings, and reviewed all filings.

MOTION TO RETURN PROPERTY:

Mr. Carmody has standing to bring a motion for return of property under Penal Code sections 1539 and 1540. At the time of the hearing on July 12, 2019, the San Francisco Police Department ("SFPD") represented that all property seized through execution of this warrant had been returned with the exception of the incident report related to the death investigation.

The SFPD did not oppose release of the report back to Mr. Carmody but requested that "CLETS" information be redacted pursuant to Penal Code sections 11105, 11140 et seq.

Order of the Court

1 The Court ordered an *in camera* review of the report and after review, orders that the
2 incident report be released to Mr. Carmody without further redaction. All property seized by the
3 SFPD in execution of this warrant is ordered returned.
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6 **MOTION TO QUASH**

7 1. Standing

8 Based upon the Petitioner's moving papers, the Court initially declined to quash the
9 warrant since Penal Code sections 1539 and 1540 allow only for the return of property and
10 1538.5 governing the motion to quash is clearly limited to individuals charged with a crime. The
11 Court declined to make a ruling based upon the "inherent powers" of the court.
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13 However, on further review of Exhibit A attached to the warrant which authorizes the
14 viewing and forensic examination of Mr. Carmody's cell phone, tablet, and computers, the Court
15 finds that this language brings the warrant within the meaning of the California Electronic
16 Communication Privacy Act (CALECPA) as codified under Penal Code section 1564 et seq.
17 CALECPA provides standing for non-defendants such as Mr. Carmody to challenge a warrant
18 which targets electronic information.
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20 2. California Shield Law

21 It is undisputed that Mr. Carmody is a "journalist" within the definition of the California
22 Shield Law and that the Shield Law would protect Mr. Carmody from having to disclose any
23 source or information obtained in his *lawful* gathering or receiving of news material. However,
24 while the U.S. Supreme Court has protected the lawful receipt of even unlawfully-gained
25 information, no case extends protections to the *unlawful* gathering of information, even if by a
26 journalist. *Bartnicki v. Vopper*, 532 U.S. 514 (2001).
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Order of the Court

1 3. Probable Cause

2 The analysis in a motion to quash thus turns therefore on whether or not there was
3 probable cause to believe that Mr. Carmody had *unlawfully gathered* these materials, placing
4 him outside the protections of the journalistic privilege.
5

6 Probable cause is a low standard of proof in criminal law, it “is less than a preponderance
7 of the evidence or even a *prima facie* case.” *People v. Carrington* (2009) 47 Cal.4th 145, 161.
8 “The task of the issuing magistrate is “simply to make a practical commonsense decision
9 whether, given all the circumstances set forth in the affidavit... there is a fair probability that
10 contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates* (1983),
11 462 U.S. 213, 238. Probable cause has been defined by the California Supreme Court as “when
12 the facts known... would lead a person of ordinary care and prudence to entertain an **honest and**
13 **strong suspicion** that the person... is guilty of a crime.” *People v., Price* (1991) 1 Cal.4th 324 at
14 410 (emphasis added).
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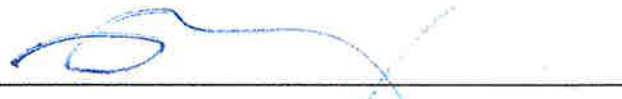
17 Based upon the factual allegations contained within the affidavit, there was probable
18 cause at the time of the signing of the warrant to believe that Mr. Carmody had unlawfully
19 conspired to obtain the police report. The heart of the probable cause finding in this case is the
20 close proximity in time between Mr. Carmody’s calls to certain police officers and the
21 suspicious, unlogged and unexplained visit by an officer to Central Station which was the source
22 of the leaked report. There is probable cause if a “succession of superficially innocent events
23 ha[s] proceeded to the point where a prudent man could say to himself that an innocent course of
24 conduct was substantially less likely than a criminal one.” *People v. Andrino* (1989) 210
25 Cal.App.3d 1395, 1402.
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1 4. Effect of Judge East's Quashing of First Warrant

2 The records of these calls now having been quashed by Judge Rochelle East, there is
3 insufficient evidence, even at a probable cause standard, to justify this warrant. Without the calls
4 to an officer immediately before and after that officer's unauthorized visit to Central Station,
5 there is no probable cause to believe that Mr. Carmody actively participated in the alleged theft.
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7 Therefore the motion to quash is GRANTED and consistent with Judge East's order, the
8 San Francisco Police Department is ordered to destroy and not use any and all information
9 obtained by warrant **43684**. An affidavit attesting to the destruction will be filed with the Court
10 and served on the parties by August 16, 2019.
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13 August 2, 2019

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16 Victor M. Hwang, Superior Court Judge
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