

ENDORSED
FILED
San Francisco County Superior Court

AUG 8 - 2019

CLERK OF THE COURT

BY: Martha Smith
Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**
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IN RE: SEARCH WARRANT NO. 43687.

Case No. 2516292/SW#43687
**ORDER GRANTING
MOTION TO RETURN
PROPERTY and
MOTION TO QUASH
re: SEARCH WARRANT 43687**

19 On August 2, 2019, the Court heard the Motion of Bryan Carmody to Quash the Search Warrant
20 No. 43687 and for Return of Property.

21 This single search warrant was issued May 9, 2019 to search the person of Mr. Carmody, his
22 home, outhouses, storage sheds, storage compartments, containers capable of storing the items to be
23 sought, Mr. Carmody's personal cellphone and eight motor vehicles.

24 Mr. Carmody is not a defendant; he has standing pursuant to PC 1539; and this court can restore
25 his property pursuant to PC 1540 for two reasons: the property taken is not the same as described in the
26

1 warrant—which is not the case here; OR there is no probable cause for believing the existence of the
2 grounds on which the warrant issued—which was not argued here.

3 However, this motion does lie in Penal Code section 1564.4(c), the California Electronic Privacy
4 Act; ¹an individual may petition the issuing court if a warrant is inconsistent with the California
5 Constitution.

6 The Court finds that Mr. Carmody is a journalist protected by the California Shield Law found in
7 the California Constitution Article I, Section 2 and evidence code 1070; particularly in light of the fact ,
8 which was not disclosed to this court at the time of application for this warrant, that he was issued a press
9 pass by the San Francisco Police Dept. several years ago.

10 The justification for **this** warrant, contained in the Statement of Probable Cause, was based on
11 information seized from Mr. Carmody's phone records authorized by one to three previous search
12 warrants. In addition, this May 9, 2019 warrant also authorized the seizure and the search of Mr.
13 Carmody's personal cellphone.

14 The California Shield Law provides immunity for news persons who refuse to disclose their
15 sources. It applies

- 16 (1) if an individual is a news person
- 17 (2) if the information was obtained for communication to the public and
- 18 (3) if that information was not publicly disseminated by the source.

19 *People vs Vasco* 131 Cal.App.4th, 131, pin cite 151.

20 The statement for probable cause to issue this warrant was supported by tainted information
21 seized in violation of the California Shield Law. One or more of those previous warrants for search of cell
22 phone records pertaining to Mr. Carmody have been suppressed and all information obtained as a result of
23 searching those cell phone records were ordered destroyed. (July 18, 2019 order from the bench by Judge
24 East, Case No. 2516763).

25 ¹ California Electronic Communication Privacy Act (CALECPA) as codified under Penal Code section 1564.4(c).

1 ORDER:

2 Warrant No. 43687 is invalid pursuant to Penal Code section 1524(g) because the grounds for
3 issuance were based on information seized in violation of the California Constitution. The Motion to
4 Quash is granted.

5 The Motion to Return Property is granted.²

6 The results of a search of Mr. Carmody's cell phone pursuant to this warrant, if any, are ordered
7 destroyed.
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9
10 August 2, 2019

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12 _____
13 GAIL DEKREON
14 JUDGE OF THE SUPERIOR COURT
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28 ² Both Parties confirmed that all of Mr. Carmody's personal property has been returned.

**Superior Court of California
County of San Francisco**

IN RE: SEARCH WARRANT
NO. 43687

Case Number: 251692

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Marsha Smith, a Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action.

On **August 8, 2019** I served the attached **ORDER GRANTING MOTION TO RETURN PROPERTY and MOTION TO QUASH re: SEARCH WARRANT 43687** by placing a copy thereof in a sealed envelope, addressed as follows:

Duffy Carolan, Esq.
Jassy Vick Carolan LLP
501 Montgomery Street, Suite 850
San Francisco, CA 94111

Thomas R. Burke, Esq.
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111

Ronnie M. Wagner, Esq.
SFPD Legal Division Attorney
San Francisco Police Department
850 Bryant Street, Room 511
San Francisco, CA 94103

and, I then placed the addressed, postage paid, sealed envelopes in the outgoing mail at 850 Bryant Street, San Francisco, CA 94103 on the date indicated above for collection, and mailing on that date following standard court practices.

Dated: **August 8, 2019**

T. Michael Yuen, Clerk

By: _____

Marsha Smith

Marsha Smith, Deputy Clerk

Criminal Division
Superior Court of California
County of San Francisco
850 Bryant Street, Room 101
San Francisco, CA 94103

CRIM DIVISION
CA 940
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