

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

**NEWTON DISTRICT COURT
SEARCH WARRANT NO. 0912SW03**

IN RE MATTER OF SEARCH WARRANT 0912SW03

**COMMONWEALTH'S MEMORANDUM IN OPPOSITION TO RICCARDO
CALIXTE'S MOTION FOR EMERGENCY RELIEF TO QUASH THE
WARRANT AND FOR RETURN OF PROPERTY**

INTRODUCTION

Now comes the Commonwealth in the above matter and hereby opposes Riccardo Calixte's ("Calixte") Motion for Emergency Relief to Quash the Warrant and for Return of Property. Calixte's Motion should be denied for the following reasons: 1) the Motion is moot, in part, premature and procedurally improper 2) the Search Warrant is supported by Probable Cause 3) there is a specific nexus between the illegal activity and to the items seized, and 4) the Search Warrant was properly executed and timely.

STATEMENT OF FACTS

On January 27, 2009, Boston College Police Officer Eng responded to a domestic incident involving two roommates, residing in a Boston College Dormitory. The reporting party ("RP") is a named individual, a student of Boston College, noted in the application for the Search Warrant. He was identified as the roommate of Riccardo Calixte. The RP informed Officer Eng that Calixte had been involved in some computer hacking incidents. The RP further told Officer Eng that Calixte had changed grades for other students by accessing the Boston College Computer System. The affiant of the Search Warrant, Detective Kevin Christopher of the Boston College Police Department, noted that the RP was a named individual who was a reliable witness in another investigation.

On January 28, 2009, Detective Christopher met with the RP, informing the Detective of Calixte's reputation as a "hacker." The RP went on to describe data devices Calixte controls, specifically a Dell computer, external hard drives, and other media devices Calixte utilizes. The RP further stated Calixte was known to appear with unknown laptops. Calixte is a suspect in another Boston College investigation involving a stolen laptop computer. The RP explained to Detective Christopher that Calixte utilizes two operating systems: the Boston College Computer System, and one system on a black screen with white font accessed by prompt commands. The RP informed Detective Christopher that Calixte uses the nicknames "enigma" and "Bootleg enigma."

The RP further detailed to Detective Christopher that the RP had observed Calixte hack into the Boston College Grading System, utilized by Boston College professors, to change grades for students. Additionally, the RP told Detective Christopher that Calixte has "fixed" computers to circumvent detection by systems for illegal downloads and illegal internet uses. The RP told Detective Christopher that Calixte "jail breaks" cell phones so that the cellular telephones can utilize different network providers than those on which they are intended for use as well as download program software against the licensing agreement free of cost. The RP stated that Calixte has a cache in excess of two hundred illegally downloaded movies, and that Calixte had implicated himself in illegal activity to the RP on previous occasions.

In March, the RP was a victim of a mass e-mailing fraud. Specifically a mass e-mail was sent to the Boston College Community reporting that the RP is gay and "coming out of the closet." A gay website (www.adam4adam.com) profile for the RP was included in the e-mail. The e-mail was sent utilizing a Boston College List Server and the commercial e-mail programs "Yahoo" and "G-Mail."

Detective Christopher continued the investigation involving the list server and e-mail messages sent throughout the campus. Through his investigation, Detective Christopher learned the e-mails sent to the list server were utilizing a wired connection to a specific IP address 136.167.207.174. The location sending the e-mail was from Gabelli Hall. The specific computer name was identified as "bootleg-laptop." A computer previously registered as "bootleg-laptop" was utilized by Riccardo Calixte on August 24,

2008. Further, this computer was utilizing a Unix Linux Operating System, specifically Linux Ubuntu.

Detective Christopher, during his investigation, learned that the contents of the e-mail, a link to a profile on www.adam4adam.com displaying a photograph of the RP, provided additional information. Specifically, that this IP address was not used to visit the www.adam4adam.com website. Rather, only one computer in Gabelli Hall had accessed the website prior to the mass e-mail. The network registration for the DNS log of the IP address utilized to access www.adam4adam.com reveals a registration for Riccardo F. Calixte, Computer Name: calixte-ubuntu, utilizing the Linux Ubuntu Operating system. Detective Christopher learned that the Linux Ubuntu Operating System is a rare system, with only two users in Gabelli Hall having computers utilizing Linux Ubuntu in the five days preceding the mass e-mail.

On March 30, 2009, Detective Christopher applied for a Search Warrant, limited to 80 Commonwealth Avenue, Gabelli Hall, Room 207. The Application included the person of Riccardo F. Calixte, specifically seeking a Dell Computer, all objects capable of storing digital data in any form, drives, zip disks, thumb drives, software, manuals, protocols, access codes, passwords, and others (see Search Warrant Application 0912SW03). The Assistant Clerk of Newton District Court issued the Search Warrant 0912SW03 on March 30, 2009. Detective Christopher, along with members of the Boston College Police Department and the Massachusetts State Police, executed the Search Warrant that same day, March 30, 2009. On April 1, 2009, Detective Christopher signed and filed the Search Warrant Return at Newton District Court. On April 10, 2009, Riccardo F. Calixte, filed a Motion for Emergency Relief to Quash the Warrant and for Return of Property through his attorneys.

I. THE MOTION IS MOOT, IN PART, PREMATURE AND PROCEDURALLY IMPROPER.

A Search Warrant was issued by Newton District Court, signed by an Assistant Clerk, and executed that same day. Calixte is seeking to quash a search warrant which has already issued, which has already been executed, and which has already been returned. A Motion to Quash the search warrant should be denied as moot. Criminal charges have not been filed against Calixte. Additionally, Calixte seeks a Motion for Return of Property. This, too, should be denied. Massachusetts General Law Chapter 276 § 3 states “If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial.” Calixte’s Motion for Emergency Relief to Quash the Warrant and for Return of Property should be denied.

II. THE SEARCH WARRANT IS SUPPORTED BY PROBABLE CAUSE.

Detective Christopher’s affidavit establishes probable cause. That probable cause has already been found by the assistant clerk. Probable cause that a crime has been committed must be established within the four corners of the affidavit. (*Commonwealth v. O’Day*, 440 Mass. 296, 297 (2003)). The affidavit should be read in a commonsense manner, not in a hypercritical manner. (*Commonwealth v. Harmon*, 63 Mass. App. Ct. 456, 461 (2005)). In the instant search warrant, the RP, a named individual, explained to the Boston College Police what the RP had personally seen. Furthermore, it is reasonable to infer that Boston College has a use policy regarding its computer systems which restricts the uses for which students and staff may access the internet on the Boston College networks and also reasonable to infer that sending harassing e-mails, downloading illegal music and movies, and “hacking” into the Boston College system storing students’ grades would be a violation of that policy. Inferences drawn from the facts provided within an affidavit need only be reasonable and possible, not necessary or inescapable. (*Commonwealth v. Beckett*, 373 Mass. 329, 341 (1977)).

Calixte appears to raise the issues of knowledge and veracity, often addressed pursuant to the Aguilar-Spinelli test. However, the Aguilar-Spinelli test is most often used in cases where a confidential, unnamed informant supports the probable cause of an affidavit for a search warrant. (See *Commonwealth v. Burt*, 393 Mass. 703, 710 (1985); *Commonwealth v. Harding*, 27 Mass. App. Ct. 430, 434 (1989)) Although courts have applied the Aguilar-Spinelli test to named informants, they have done so in a more relaxed, less rigid manner. (*Commonwealth v. Mullande*, 445 Mass. 702, 705-706 (2006)).

Personal observations satisfy the knowledge prong of the Aguilar-Spinelli test. (See *Commonwealth v. Beliard*, 443 Mass. 79, 85 (2004) where three named individuals provided firsthand observations, satisfying both knowledge and veracity requirements) (see also *Commonwealth v. Valdez*, 402 Mass. 65, 70 (1988)), personal observation satisfies knowledge requirement) (*Commonwealth v. Alfonso A.*, 438 Mass. 372, 374 (2003) informant observed evidence on premises) (*Commonwealth v. Ilges*, 64 Mass. App. Ct. 503, 508 (2005) informant observes suspect's illegal activities).

The veracity prong is met here by a named individual, the RP. Since a confidential informant can provide information to satisfy the veracity prong, a named individual will be presumed reliable and the information provided will be presumed to be credible (see *Commonwealth v. Alvarez*, 422 Mass. 198, 203 (1996)) (see also *Commonwealth v. Beliard*, 443 Mass. 79, 85 (2004), *Commonwealth v. Carey*, 407 Mass. 528, 534-535 (1990)) (*Commonwealth v. Bowden*, 379 Mass. 472, 477 (1980) eyewitness presumed credible)

Moreover, there are a number of crimes which Calixte has been alleged to have violated. First, as noted in the Search Warrant Affidavit, it is alleged that he accessed G-mail, Yahoo, and the Boston College Computer system for unauthorized uses. Furthermore, the allegation of the created fraudulent profile provides an inference of illegal computer activity, both utilizing the Boston College Network as well as the website www.adam4adam.com. Detective Christopher, during his investigation, learned that the contents of the e-mail, a link to a profile on www.adam4adam.com displaying a photograph of the RP, provided additional information. Specifically, that this IP address was not used to visit the www.adam4adam.com website. Rather, only one computer in

Gabelli Hall had accessed the website prior to the mass e-mail. The network registration for the DNS log of the IP address utilized to access www.adam4adam.com reveals a registration for Riccardo F. Calixte, Computer Name: calixte-ubuntu, utilizing the Linux Ubuntu Operating system. Detective Christopher learned that the Linux Ubuntu Operating System is a rare system, with only two users in Gabelli Hall having computers utilizing Linux Ubuntu in the five days preceding the mass e-mail.

Information provided to the Boston College Police, including the sending of the e-mail, utilizing the Boston College Computer system to access those websites, as well as the allegations of illegal content being stored on Calixte's computers and data/media devices provide ample probable cause that the items sought were utilized as the means of committing numerous crimes, and hold evidence of criminal activity in violation of Massachusetts General Law Chapter 266 § 120F as named in the affidavit, as well as other Massachusetts General Laws. As such, the Search Warrant is supported by probable cause, and Calixte's Motion should be denied.

III. THERE IS A SPECIFIC NEXUS BETWEEN THE ILLEGAL ACTIVITY AND TO THE ITEMS SEIZED.

The affidavit clearly states that the RP indicated Calixte utilized a Dell Computer, various laptops, various data storage units, as well as various cellular telephones. The itemized return includes items under all those categories described in the application for search warrant. The RP informed the Boston College Police of Calixte's use and control of data storage devices and cellular telephones, specifically "jail breaks" of cellular telephones. Both cellular telephones as well as iPods are capable of storing electronic data and media. Therefore there is a specific nexus between illegal activity, as stated in the affidavit and the items seized as data storage units. Calixte's Motion should be denied.

IV. THE SEARCH WARRANT WAS PROPERLY EXECUTED AND TIMELY.

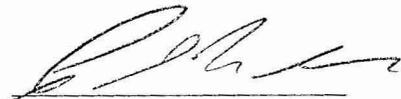
The Search Warrant was applied for on March 30, 2009, executed on March 30, 2009, and returned on April 1st, 2009. Additionally, it should be noted that the initial allegations of illegal activity came to the attention of Boston College on January 27, 2009. Additional allegations were provided on January 28th, 2009 and also the beginning of March, 2009. Subsequent investigation revealed the March incident to be traced backwards initiated from Gabelli Hall. First, the e-mails sent to the list server were utilizing a wired connection to a specific IP address 136.167.207.174. The location sending the e-mail was from Gabelli Hall. The specific computer name was identified as "bootleg-laptop." A computer previous registered as "bootleg-laptop" was utilized by Riccardo Calixte on August 24, 2008. Further, this computer was utilizing a Unix Linux Operating System, specifically Linux Ubuntu. The contents of the e-mail, a link to a profile on www.adam4adam.com displaying a photograph of the RP, provide additional information. Specifically, that this IP address was not used to visit the www.adam4adam.com website. Rather, only one computer in Gabelli Hall had accessed the website prior to the mass e-mail. The network registration for the DNS log of the IP address utilized to access www.adam4adam.com reveals a registration for Riccardo F. Calixte, Computer Name: calixte-ubuntu, utilizing the Linux Ubuntu Operating system. Detective Christopher learned that the Linux Ubuntu Operating System is a rare system, with only two users in Gabelli Hall having computers utilizing Linux Ubuntu in the five days preceding the mass e-mail. Once all of this information was learned through the numerous aspects of the investigation, a search warrant was applied for on March 30, granted on March 30, executed on March 30, and returned on April 1, 2009. Therefore the Search Warrant was property executed and timely and Calixte's Motion should be denied. .

CONCLUSION

For these reasons the Commonwealth requests that the court DENY Calixte's Motion for Emergency Relief to Quash the Warrant and for Return of Property.

Respectfully Submitted
For the Commonwealth

GERARD T. LEONE, JR.
DISTRICT ATTORNEY



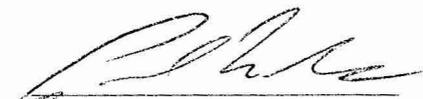
Patrick Michael Grogan
Assistant District Attorney
25 Chestnut Street,
Newton, Ma. 02465

Dated: April 21, 2009

CERTIFICATE OF SERVICE

I, Patrick Michael Grogan , Assistant District Attorney, County of Middlesex, Commonwealth of Massachusetts, do hereby certify that I forwarded ~~(in-hand)~~ (via fax)/(via first-class mail, postage pre-paid), a copy of the Commonwealth's response to defense counsels.

Signed under pains and penalties of perjury this 21st day of April, 2009.



Patrick Michael Grogan
Assistant District Attorney
25 Chestnut Street,
Newton, Ma. 02465