

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT
NEWTON DIVISION
DOCKET NO.: 0912SW03ORDER RE MOTION FOR EMERGENCY RELIEF TO QUASH SEARCH
WARRANT 0912SW03 AND FOR RETURN OF PROPERTYBackground

Upon application of Boston College Detective Kevin Christopher for a search warrant on March 30, 2009, the Newton District Court Assistant Clerk Magistrate found probable cause and issued a search warrant for the computer and related computer equipment of Riccardo Calixte, a student at Boston College. On the same date, the search was executed and the return of items seized (including *inter alia* computers, data storage devices, disassembled Blackberry cell phone, Ipod touch, digital camera) was made. The items seized remain in the custody of the police; no criminal charges have as yet been filed against Calixte.

Calixte subsequently moved to quash the warrant and for the return of his property. A hearing was held on the motion on April 21, 2009.

Findings

The search warrant was sought on the basis of probable cause to believe that the items sought were "intended for use or has been used as the means of committing a crime" and "is evidence of a crime or is evidence of criminal activity." Detective Christopher's affidavit establishes that information he received from a named, reliable source, [REDACTED] indicated that he had observed Calixte (who was a computer

science major and was employed by the Boston College Information Technology department) gaining unauthorized access to the Boston College computer system to change grades for students. [REDACTED] and Calixte were roommates and currently having "domestic issues," although [REDACTED] was aware of Calixte's reputation as a computer 'hacker' before they became roommates. [REDACTED] described Calixte's primary computer, as well as additional hard drives, and Calixte's nicknames for his unauthorized logging on to the Boston College network. [REDACTED] had also observed Calixte with unknown laptops, and using two separate operating systems—the Boston College computer system and a system with a black screen with white fonts that was accessed by prompt commands. Such unauthorized access would constitute a crime in violation of G.L. c. 266 §120F.

In addition, [REDACTED] reporting of Calixte's illegal downloads and illegal internet use (with his own as well as other students' computers and cell phones) could result in criminal charges in violation of G.L. c. 266 §33A.

On the basis of the reliable information available to Detective Christopher, a specific nexus existed between the alleged illegal activities and the items sought in the search warrant.

While Bennefield's suspicion that Calixte had sent an email over the Boston College network 'outing' [REDACTED] that activity would not in itself appear to constitute a violation of either G.L. c. 266 §§ 33A or 120F.

Conclusion

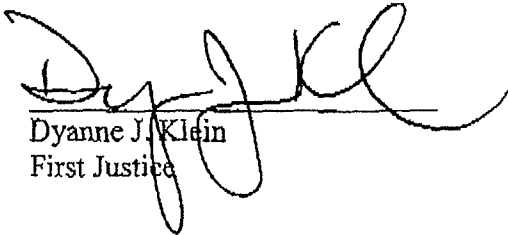
Detective Christopher's affidavit, read in a commonsense and not hypercritical manner, establishes the requisite probable cause, justifying the Assistant Clerk Magistrate's issuance of the search warrant for the location and items sought. See

Commonwealth v. Harmon, 63 Mass.App.Ct. 456, 461 (2005). Once the computer and storage devices were seized, it would appear that some time is required to investigate the contents of those items. See G.L. c. 276 §3.

Order

Calixte's Motion to Quash the Warrant and For Return of Property is hereby

DENIED.


Dyanne J. Klein
First Justice

Dated: April 22, 2009