

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPREME JUDICIAL COURT
No. SJ-2009-212
NEWTON DISTRICT COURT
No. 0912SW03

IN RE: MATTER OF SEARCH WARRANT ISSUED AND EXECUTED ON
MARCH 30, 2009, AT THE RESIDENCE OF MOVANT RICCARDO CALIXTE

COMMONWEALTH'S SUR-REPLY TO PETITIONER'S EXPEDITED
APPLICATION FOR LEAVE TO APPEAL THE DENIAL OF HIS
MOTION FOR EMERGENCY RELIEF TO QUASH THE WARRANT
AND FOR RETURN OF PROPERTY

1. The Commonwealth hereby responds to certain points which the petitioner raises in his Reply to the Commonwealth's Opposition to the petitioner's Expedited Application for Leave to Appeal the Denial of his Motion for Emergency Relief to Quash the Warrant and for Return of Property.

2. For a recitation of facts and prior proceedings underlying the petitioner's Application, see Commonwealth's Opposition, pp. 2-5, incorporated by reference herein.

3. The Commonwealth agrees with the petitioner that the affidavit does not establish probable cause that the petitioner committed larceny, criminal harassment, or a civil rights violation.

The petitioner filed his Application with this Court on April 27, 2009. The Commonwealth filed its Opposition on May 5. The petitioner filed a Reply to the Commonwealth's Opposition on May 8.

4. The affidavit states facts which warrant further investigation into whether the petitioner has committed larceny, criminal harassment, or a civil rights violation. See G.L. c. 266, § 30; G.L. c. 265, § 43A; G.L. c. 265, § 37. Additional warrants may be required. For this reason, an order to return the petitioner's property may stymie the ongoing investigation.

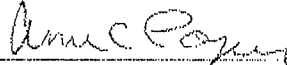
5. Investigators have been attempting to analyze the petitioner's property since it was seized. They have made duplicates of and previewed most of the drives and have examined two of the three computers which were confiscated. The third computer, which was chained to the petitioner's desk, has a complex protection system on the hard drive. Investigators have not yet been able to either duplicate or access the drive for analysis, and the petitioner declined to give law enforcement the password. Investigators have been searching for alternative programs or personnel who may be able to unlock the petitioner's hard drive and expect that analysis will only take approximately two weeks to complete, once the hard drive is unlocked. Investigators have conducted initial, cursory examination and concluded that some of the items will yield no evidentiary value; the Commonwealth may therefore be in a position to return some of the petitioner's property forthwith.

CONCLUSION

For the reasons stated above and for those reasons stated in the Commonwealth's Opposition, pp. 5-16, this Court should deny the petitioner's application for interlocutory relief from the denial of his emergency motion to quash the warrant and for return of property.

Respectfully Submitted
for the Commonwealth,

GERARD T. LEONE, JR.
DISTRICT ATTORNEY



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Dated: May 12, 2009

CERTIFICATE OF SERVICE

I, Anne C. Pogue, Assistant District Attorney, served the preceding document and all attachments on counsel for the petitioner by placing a copy in our office depository for mailing, first-class, postage pre-paid, to the following address, and by faxing to the following number, on the date noted below.

Dated: May 12, 2009



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