

SNEATHERN & LHOSPITAL PLLC

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November 13, 2012

Phyllis Stewart, Clerk of Court
Albemarle County General District Court
501 East Jefferson Street
Charlottesville, VA 22902

By hand delivery

RE: Commonwealth of Virginia v. Christopher Dumler
Case No. GC12016532-00

Dear Ms. Stewart,

Enclosed, please find a Motion to Quash Search Warrant, Motion to Suppress, Motion for Returning of Seized Property, and Notice and Motion for Hearing Pursuant to Virginia Code §19.2-67.7, which I ask that you file in the above styled case.

Please do not hesitate to contact me with any questions or if further information is needed. Thank you for your kind assistance in this matter.

Very truly yours,



K. Andrew Sneathern

cc. Jeff Haislip, Commonwealth's Attorney
Sgt. Terry Walls, ACPD
Christopher Dumler

VIRGINIA: IN THE GENERAL DISTRICT COURT OF ALBEMARLE COUNTY
COMMONWEALTH OF VIRGINIA

v.

Case No. GC12016532-00

CHRISTOPHER DUMLER

MOTION TO QUASH SEARCH WARRANT,
MOTION TO SUPPRESS,
MOTION FOR RETURN OF SEIZED PROPERTY, AND
NOTICE AND MOTION FOR HEARING PURSUANT TO VIRGINIA CODE §19.2-67.7

COMES NOW Defendant, Christopher Dumler, by counsel, and in support of his motions and notice, states as follows:

1. On or about October 17-18, 2012, Defendant was arrested on a warrant charging one count of forcible sodomy.
2. The case is currently pending before the General District Court of Albemarle County, Virginia.
3. Preliminary hearing is set for December 13, 2012 @ 9:30 a.m.
4. On or about October 4, 2012, Defendant and the complaining witness, ("CMH"), an adult female, had sexual relations.
5. On or about October 16, 2012, CMH reported to law enforcement authorities that the sexual encounter with Defendant on October 4, 2012 became non-consensual at some point, and that she had been forced by Defendant to engage in it.
6. On or about October 17, 2012, Defendant was approached by law enforcement authorities and gave a full statement regarding the alleged offense, including that the sexual activity was consensual.

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7. At the time of said statement, Defendant had his briefcase with him, which contained his portable laptop computer and an iPad.
8. On or about October 18, 2012, following his statement, Defendant was arrested on one count of forcible sodomy.
9. The only factual issue for trial is whether or not the sexual encounter on October 4, 2012 was consensual.
10. CMH waited approximately twelve (12) days to report this alleged sexual assault to law enforcement.
11. Defendant is a member of the Albemarle County Board of Supervisors, a Virginia attorney in good standing engaged in the active practice of criminal defense, and a Captain in the U.S. Army, JAG reserve Corps, where he also serves as trial counsel.
12. Defendant has no prior non-traffic related criminal history.
13. On or about October 23, 2012, Defense counsel provided law enforcement with a package of documents, including the complete set of available printed electronic communications between Defendant and CMH, as well as between Defendant and an adult female prior sexual partner of Defendant, ("P1").
14. The electronic communications support a consent defense to the allegations against Defendant.
15. The electronic communications further establish that the charges were brought only after CMH consulted with P1, that P1 has other motivations for harming Defendant, and that P1 stated on October 5, 2012 after consulting with CMH: "we have a stake in you going down in flames".

16. P1 has directly contacted the press to solicit publicity of the story against Defendant in an effort to destroy his reputation and career.
17. On or about October 10-11, 2012, days after the alleged offense, but before reporting it to the police, CMH made statements to another third party, P2, which also support a consent defense.
18. Facts exist in this case which make it appropriate to have a hearing on the admissibility of certain evidence, including the aforementioned electronic communications as well as witness testimony, pursuant to *Virginia Code §19.2-67.7* prior to the preliminary hearing, and this pleading shall constitute NOTICE pursuant to that statute.
19. In early November 2012, Detective Terry Walls obtained a Search Warrant for Defendant's laptop computer and iPad, already in the possession of police.
20. Defendant has a collateral secret clearance, which allows him access to material classified as secret, and on a case-by-case basis, top secret.
21. Defendant is actively engaged in the practice of law, including the defense of pending criminal cases before the courts of Albemarle County, Virginia.
22. Defendant's computers contain attorney-client privileged information, including information about pending criminal cases in Albemarle County, Virginia, classified U.S. government documents, as well as other confidential and private information.
23. All communications between and among the relevant persons in this case are either stored in the databases at Google Voice and Facebook, or in Defendant's cell phone.
24. Defense counsel has already provided the entirety of communications stored online.

25. Defendant has offered to provide passwords for Defendant's cell phone, computer, and iPad, as well as Google and Facebook accounts, so long as the search can be circumscribed by time, communicants, or in any other way so as to avoid the disclosure of privileged or other protected or private information.
26. The Commonwealth has declined Defendant's offers, indicating it prefers to file a search warrant, so that it can search not only Defendant's cell phone, but also his laptop computer and iPad in their entirety, without restriction.
27. The Commonwealth has indicated a particular desire to search Defendant's internet search history on the computers.
28. In early November 2012, the Commonwealth filed an Affidavit to obtain a Search Warrant for Defendant's laptop computer and iPad.
29. The Affidavit sets forth the material facts on which to base a finding of probable cause as follows:

ON 10/16/2012 the victim (MH) reported that Christopher Dumler sexually assaulted her on 10/4/2012. Dumler was arrested on 10/18/2012 for forcible sodomy. The victim reported that Dumler would communicate with her by text messages, phone calls, and Facebook using electronic devices belonging to Dumler. These communications started on 9/29/2012 and continued until 10/6/2012. The victim did not continue conversations with suspect after the offense even after he initiated contact until directed to by police. During these communications Dumler and the victim talked about their relationship, previous encounter, and about meeting in the future. The investigation has identified major discrepancies between the victim's and suspect's version of the forcible sodomy. The communication on Facebook and text messages before and after the event will assist in verifying [sic] the truth when taken in conjunction with physical evidence taken from the scene. During the interview of the suspect he made statements and showed police certain messages on his phone that was seized about his conversations/texts with the victim and another female. He specifically mentioned text messages he sent and received from the victim about their sexual relationship. The defense counsel

has provided a log of text messages and a search is needed to confirm their accuracy and account for missing information.

30. The evidence to be searched for under the Affidavit includes "all electronic data".
31. Defendant maintains a heightened expectation of privacy in his computers, which are password protected.
32. There is absolutely no reason to believe that evidence of the commission of any crime will be contained in Defendant's Internet search history.
33. Text messages are neither sent nor received by computer, but by cell phone, and it is on the cell phone that those messages are stored.
34. Upon information and belief, Facebook communications are stored on the Facebook server, not on the devices from which they are sent.
35. According to the Commonwealth's own Affidavit, all communications between Defendant and CMH were made between 9/29/2012 and 10/6/2012, so there is a very limited date range at issue.
36. Nothing in the Affidavit establishes that laptop computer or iPad seized from Dumler are even among the electronic devices from which he communicated with CMH.
37. CMH would have no opportunity to know what computer Dumler may have used to send Facebook messages in any event.
38. Defendant has already offered, and remains willing, to provide passwords necessary to view the relevant text and Facebook messages on the cell phone, and on the Facebook server.
39. The *Fourth Amendment to the constitution of the United States, Article I, §10 of the Constitution of Virginia* and *Code of Virginia §19.2-54* bar "general warrants".

40. The request by the Commonwealth for “All electronic Data” is the very definition of a prohibited general warrant.
41. Both Constitutions require that search warrants must be supported by probable cause.
42. *Code of Virginia §19.2-54* requires that an affidavit for a search warrant set forth “the things ... to be searched for thereunder”, the “offense in relation to which such search is to be made” a statement “that the object, thing, or person searched for constitutes evidence of the commission of such offense”, and the “material facts constituting probable cause” for the warrant to issue.
43. The U.S. Supreme Court has defined “probable cause” in the context of search warrants as “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found” *Ornelas v. United States, 517 U.S. 690, 696 (1996)*.
44. There is no Constitutional, statutory, case law or other authority whatsoever for the issuance of a search warrant to look for evidence which may or may not “verify” other evidence in the case; rather, the only authority for the issuance of a warrant is to search for evidence of the crime itself. See *Code of Virginia §19.2-54*, (“that the object, thing or person searched for constitutes evidence of the commission of such offense”), and *Ornelas*, (“evidence of a crime”).
45. There are no facts and circumstances which support a belief that evidence of the commission of any crime will be found on Defendant’s laptop or iPad, let alone facts and circumstances “sufficient to warrant a man of reasonable prudence” that such items would be found there.

46. There are in particular no facts and circumstances which justify a search of Defendant's internet search history.
47. There are in particular no facts or circumstances which justify a search of any file created or last modified before September 29, 2012.
48. The purpose of the ban on general warrants is "to limit the discretion that police officers may exercise when executing a search warrant and to preclude them from engaging in a fishing expedition or an 'exploratory rummaging in a person's belongings'", *Morke v. Commonwealth*, 14 Va. App. 496, 500 (Va. Ct. App. 1992), quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).
49. The Commonwealth in this case has:
- A) declined offers from Defendant which would provide access to the places where any evidence relevant to the crime alleged could reasonably be expected to be found;
 - B) expressed a particular desire to search Defendant's internet search history, and;
 - C) requested a sweeping and overbroad warrant, including "All electronic Data".
50. The Commonwealth's actions demonstrate that the search warrant is being sought in this case purely as a fishing expedition, and in violation of Defendant's privacy and the rights of third parties.
51. Execution of the search warrant as written for Defendant's laptop computer and iPad in this case would be in bad faith, and in direct, intentional, and unconstitutional violation of the rights of Defendant and of third parties.
52. If the search warrant is executed, Defendant's privacy rights will have been irremediably violated, and attorney-client privileged, US. Government classified, and

other confidential documents will have been exposed, doing irreparable damage to Defendant, as well as his clients and other persons who will have no recourse.

53. Defendant moves to suppress any material recovered from Defendant's laptop computer and/or iPad pursuant to U.S. and Virginia Constitutional law and cases.

54. Defendant moves for the return of Defendant's laptop computer and iPad pursuant to Code of Virginia §19.2-60.

WHEREFORE your Defendant respectfully requests that this Court enter an Order:

- A. Staying the execution of the Search Warrant for Defendant's laptop computer and iPad until a full hearing can be had on this Motion;
- B. Scheduling an expedited hearing on this Motion;
- C. Quashing the Search Warrant for Defendant's laptop computer and iPad;
- D. Requiring the immediate return to the Defendant of all those items seized on October 17th or 18th of 2012, except for Defendant's cell phone.
- E. Suppressing the use as evidence of any material recovered from Defendant's laptop computer and/or iPad; and
- F. Providing such further and general relief as may be appropriate under the circumstances.

Respectfully submitted
CHRISTOPHER DUMLER
By counsel

TUCKER GRIFFIN BARNES, P.C.
Counsel for Chris Dumler

BY: 

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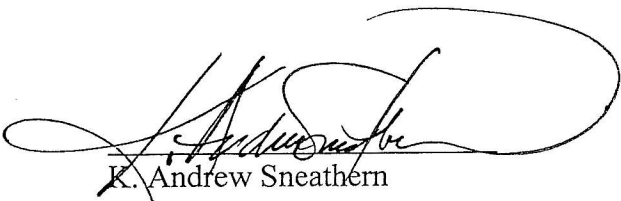
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(434) 872-0893 telephone
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CERTIFICATE

I hereby certify that a true copy of the foregoing was faxed and mailed via first class mail, postage prepaid on this 13th day of November, 2012 to:

Jeff Haislip, Esq.
Commonwealth's Attorney for Fluvanna County
P.O. Box 116
Palmyra, VA 22963
FAX: 591-1986

Sgt. Terry Walls, ACPD
Via email


K. Andrew Sneathern