filed
2-17-06 @ 4:42pm
T. Brooks by D.W.

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE, DIVISION I
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE	)	
	)	
vs.	)	No. 2004-D-3113
	)	
PERRY AVRAM MARCH	)	

DEFENDANT'S MOTION TO SUPPRESS FRUITS OF INVALID SEARCH WARRANT

Comes now the Defendant Perry Avram March, by and through counsel, pursuant to Article I, § 7 of the Constitution of the State of Tennessee, the Fourth and Fourteenth Amendments to the United States Constitution, Tennessee Code Annotated § 40-6-103 and Rules 12(b) and 41(f) of the Tennessee Rules of Criminal Procedure, and moves to exclude from evidence any and all fruits of a search of the Defendant's residence at 3 Blackberry Road in Nashville, Davidson County, Tennessee conducted under color of a search warrant issued and executed on September 17, 1996, as well as any and all evidence derived therefrom. For cause the Defendant would show that the subject search warrant (copy attached) is a constitutionally invalid general warrant and that the affidavit in support of the search warrant (copy attached) fails to show probable cause for issuance of the warrant.

On September 17, 1996 the General Sessions court of Davidson County issued a search warrant for the person of the Defendant Perry A. March and of the Defendant's residence at 3 Blackberry Road in Nashville, Davidson County, Tennessee. The warrant purported to authorize the seizure of "The body of Janet Gail Levine March, F/W 02/20-63 **and** any unnamed evidence pertaining to the disappearance and or murder of this victim. Any information contained in software or hardware relating to and including any personal computers." (Emphasis added).

The Defendant avers that the above description of the items to be seized fails to comport with the requirement of the federal Fourth Amendment that a search warrant "particularly describ[e] . . . the persons or things to be seized" and the statutory requirement of Tenn. Code Ann. § 40-3-106 that a warrant "particularly describ[e] the property" to be seized. The challenged warrant accordingly represents an invalid "general warrant" proscribed by Article I, § 7 of the Constitution of Tennessee.

Article I, Section 7 of our state Constitution prohibits general warrants and Tenn. Code Ann. § 40-6-103 specifically requires search warrants to describe the property to be seized with particularity. *See Lea v. State,* 181 Tenn. 378, 181 S.W.2d 351 (1944); *Hampton v. State,* 148 Tenn. 155, 252 S.W. 1007 (1923); *State v. Meeks,*. 867 S.W.2d 361, 371 (Tenn.Crim.App. 1993). A general order to explore and rummage through a person's belongings is not permitted. The warrant must enable the searcher to reasonably ascertain

and identify the things which are authorized to be seized. Obviously, a warrant authorizing a search for and seizure of "evidence of the crime or crimes of armed robbery" would be invalid. *Meeks,* at 371.

The warrant challenged at bar suffers from a similar defect. The challenged warrant leaves to the discretion of the executing officer(s) the determination of what items do or do not constitute "any unnamed evidence pertaining to the disappearance and murder" of Mrs. March. That is exactly what the prohibition of general warrants was intended to preclude.

The affidavit in support of the search warrant fails the probable cause test. "As a general rule, a search warrant shall be issued only on the basis of an affidavit, sworn before a 'neutral and detached' magistrate, which establishes probable cause for its issuance. . . . A showing of probable cause requires, generally, reasonable grounds for suspicion, supported by circumstances indicative of an illegal act. . . . Thus, the need for the magistrate to make a neutral and detached decision regarding the existence of probable cause requires that the affidavit contain more than mere conclusory allegations by the affiant." *State v. Stevens,* 989 S.W.2d 290, 293 (Tenn. 1999) (citations omitted).

The instant affidavit fails to show more than the affiant's belief or suspicion that Janet March was murdered or otherwise met with foul play, let alone that Perry March killed or harmed her. The search warrant affidavit fails to show probable cause to believe

and identify the things which are authorized to be seized. Obviously, a warrant authorizing a search for and seizure of "evidence of the crime or crimes of armed robbery" would be invalid. *Meeks,* at 371.

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The affidavit in support of the search warrant fails the probable cause test. "As a general rule, a search warrant shall be issued only on the basis of an affidavit, sworn before a 'neutral and detached' magistrate, which establishes probable cause for its issuance. . . . A showing of probable cause requires, generally, reasonable grounds for suspicion, supported by circumstances indicative of an illegal act. . . . Thus, the need for the magistrate to make a neutral and detached decision regarding the existence of probable cause requires that the affidavit contain more than mere conclusory allegations by the affiant." *State v. Stevens,* 989 S.W.2d 290, 293 (Tenn. 1999) (citations omitted).

The instant affidavit fails to show more than the affiant's belief or suspicion that Janet March was murdered or otherwise met with foul play, let alone that Perry March killed or harmed her. The search warrant affidavit fails to show probable cause to believe

that the Defendant had committed any crime. The affiant, Detective David Miller, does not claim personal knowledge of the facts recited in the affidavit (apart from the assertion that decomposing bodies have a distinctive foul odor); however, Detective Miller conspicuously fails to identify the source of much of the information recited in his affidavit.

The information related by the affiant concerning Mr. March's alleged culpability is indistinct and conclusory:

> "... Mr. Perry A. March has refused to take a polygraph examination citing that he is on medication. Mr. Perry A. March has not cooperated fully with the investigation of his missing and or murdered wife. Mr. Perry A. March has been untruthful with your Affiant about previous acts of violence as has been reported to your Affiant by his previous employers as well as other information about financial and domestic incidents with the missing and or murdered victim. . . ."

A search of the four corners of the affidavit for any specific details of Mr. March's alleged non-cooperation, untruthfulness, previous acts of violence, financial and/or domestic misdeeds is as fruitless of the search of a blind man, sitting in a dark room, looking for a black cat, which isn't there.

THE FOREGOING PREMISES CONSIDERED, the Defendant respectfully moves to exclude from evidence any and all fruits of a search of the Defendant's residence at 3 Blackberry Road in Nashville, Davidson County, Tennessee conducted under color of a search warrant issued and executed on September 17, 1996, as well as any and all evidence derived therefrom.

Respectfully submitted,

JOHN E. HERBISON # 12659
2016 Eighth Avenue South
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(615) 297-5900

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LORNA S. McCLUSKY # 16803
3074 East Street
Memphis, Tennessee 38128
(901) 384-4004

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered to the Office of the District Attorney General, 222 Second Avenue North, Nashville, Tennessee 37201, this 17th day of February, 2006.

JOHN E. HERBISON

State of Tennessee,
County of Davidson

SEARCH WARRANT

To any Peace Officer within or of said County:

Proof by affidavit having been made before me by Detective David L. Miller that there is probable and reasonable cause to believe that Perry A. March is now in possession and control of certain evidence of a crime, to-wit: The body of Janet Gail Levine March, F/W 02/20/63 and any unnamed evidence pertaining to the disappearance and or murder of this victim. Any information contained in software or hardware relating to and including any personal computers.

You are therefore hereby commanded to make immediate search on the person of said Perry A. March and in the premises used and occupied by him ~~(her) (them)~~ located and described as follows: Same being located in Davidson County, Tennessee, and more particularly described as follows: A tutor style single family dwelling, out buildings, and real property located #3 Blackberry Road Nashville, Davidson County, Tennessee. Further described and known to your Affiant as being a rock type house located on approximately five acres at the dead end of Blackberry Road with the number three affixed to a black mailbox located at the end of the gravel driveway. including all of the buildings, outhouses, and vehicles found thereon, for the said evidence; and if you find the same, or any part thereof, to bring it forthwith before me at Nashville, Tenn.; and I hereby certify that I signed and delivered this search warrant for execution to DAVID L. Miller

at 7:50 o'clock, A. M., on this, the 17th day of Sept, 19 96.

Judge of Part 3 of the Metropolitan General Sessions Court

STATE OF TENNESSEE
DAVIDSON COUNTY

STATE OF TENNESSEE
vs.
Perry A. March

Affidavit and Search Warrant for Evidence of a Crime

COPY

OFFICER'S RETURN

[illegible] warrant came to [illegible] and executed on this 17th day of September, 19 96, [illegible] person (s) [illegible] rein described, and [illegible] bringing in [illegible]

[illegible] of the Metropolitan General [illegible] the following:

1 Book and Divorce
3 Sets of Keys
1 ladies Purse & contents
1 Note
1 pair ladies Jeans
1 bathtub mat
Assorted Papers
Tin with Plant substance
Dry Cleaning Receipt
1 Knife
Trash Can Contents

[illegible] Officer [illegible] Det. David L. Miller
[illegible] of Nashville
[illegible] Tenn.

[illegible] GEMENT ON SEARCH WARRANT:

[illegible] return having been made of the within [illegible] property seized as described in the said return shall [illegible] to the orders of the Criminal Court of [illegible] and the within warrant, affidavit, and return [illegible] the office of the Clerk of said Criminal Court.

[illegible] day of 9-17-96, 19 ___

[illegible] Metropolitan General Sessions

ORIGINAL

☐ DEFENDANT'S COPY
☐ JUDGE'S COPY

AFFIDAVIT AND SEARCH WARRANT FOR EVIDENCE OF A CRIME

AFFIDAVIT

State of Tennessee,
County of Davidson

Personally appeared before me, Michael F. Mondelli, Judge of Part VII of the Metropolitan General Sessions Court for said State and County, the undersigned Detective David L. Miller, Metro Police Dept., and made oath in due form of law that there is probable and reasonable cause to believe that Perry A. March

is ~~(are)~~ now in possession of certain evidence of a crime, to wit: The body of Janet Gail Levine March Female White 02/20/63, and any unnamed evidence pertaining to the disappearance and or murder of said person. Any information contained in software or hardware relating to and including any personal computers.

(Describe with as much particularity as possible the evidence to be searched for)

The said evidence is now located and may be found in possession of said person ~~(s)~~ in Davidson County, Tennessee, on his ~~(or)(their)~~ person, and in premises used and occupied by him ~~(he)(they)~~, described and located as follows: Same being located in Davidson County, Tennessee, and more particularly described as follows: A tutor style Single family Dwelling, out buildings, and real property located at #3 Blackberry Road, Nashville, Davidson County, Tennessee. Further being described and known to your affiant to be a rock type house located on approximately five acres at the dead end of Blackberry Rd. with the number three affixed to a black mailbox located at the end of a gravel driveway.

This affidavit is made (from the personal observation and knowledge of affiant) ~~(upon information received by affiant which affiant verily believes to be true)~~ as follows:
(strike inappropriate words)

SEE ATTACHED AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

COPY

Det David L Miller
(Signature of Affiant)

Sworn to and subscribed before me this 17th day of Sept 19 96

MFM

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

On August 29,1996 Mr. Perry A. March reported this victim to be missing. On 09/14/96 Detective Tim Mason interviewed Marissa Moody, a friend of the victims. She stated that she talked with the victim on the night of 8/14/96 and made plans with the victim for their sons to play together at the March Residence on 08/15/96. This contradicts the statement given to your Affiant by Mr. Perry A. March, that the victim left on an extended vacation. There has been no activity on any of her bank accounts. This victim has not been heard from by anyone known to your Affiant. The victim did not show up at her son's sixth birthday party nor did she show up for her son's first day of school. Her vehicle was recovered at Brixwoth Apartments on Brixwoth Ln. Nashvile, Davidson County Tennessee on 09/07/96. Mr. Perry A. March is considered by the Police as a suspect in the disappearance of this victim whom your Affiant now believes to be deceased. On September 15, 1996 construction workers working on the Crater Hill Project, located in close proximity to Mr. Perry A. March's residence reported to your Affiant and gave written statements to your Affiant, stating during the week of September 08, 1996 they smelled a foul odor as if something or someone was dead. Your Affiant through his experience as a Homicide Investigator knows that decomposing bodies have a very distinctive foul odor. Mr. Perry A. March has refused to take a polygraph examination citing that he is on medication. Mr. Perry A. March has not cooperated fully with the investigation of his missing and or murdered wife. Mr. Perry A. March has been untruthful with your Affiant about previous acts of violence as has been reported to your Affiant by his previous employers as well as other information about financial and domestic incidents with the missing and or murdered victim. Based on information received from Perry A. March, this victim

COPY

communicated by use of personal computers by lists and letters. Information stored in the personal computers located at the residence of Perry A. March and this victim could lead to the whereabouts of this victim. Your Affiant prays for a search warrant to be issued against Mr. Perry A, March, his residence, any out buildings and his personal and real property and any or all software, hardware and personal computers, so a proper search can be conducted in an attempt to locate the body of the victim as well as other as yet unnamed evidence that pertains to the disappearence of this missing and or murdered victim.

Det David Heller

(Signature of Affiant)

Sworn to and subscribed before me this 17th day of Sept, 1996.

Judge of Part 4 of the Metropolitan General Sessions Court.

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