UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	)	**CRIMINAL ACTION NO.**
	)	
Plaintiff,	)	**3:-01-CR-246-P**
	)	
v.	)	
	)	
XXX XXX,	)	
	)	
Defendant.	)	
	)	

MOTION TO SUPPRESS ALL ITEMS SEIZED FROM 5302 ANCHOR COVE CIRCLE AND MEMORANDUM OF LAW IN SUPPORT THEREOF[1]

Defendant, XXX XXX, hereby moves this Court to suppress all of the items seized in from the search of her home on July 27, 2002. In support of this motion, Ms. XXX sets forth the following facts and argument

I. FACTS

On or about July 27, 2001, detectives from Allegheny County, Pennsylvania, with the assistance of City of Garland police officers, secured a warrant to search the home of XXX XXX located at 5302 Anchor Cove Circle, Garland, Texas. The warrant permitted the seizure of the following items: "financial records, telephone records, travel receipts, tape recording equipment and cassette tapes, and shipping receipts and documents." While not noted in the search warrant itself, the seizure was based upon allegations that Ms. XXX committed the offense of Murder in violation of Section 2501 of the Pennsylvania Crimes Code and 19.02 of the Texas Penal Code. The affiant to the affidavit alleged that, on June 1, 2001, Ms. XXX told the Allegheny County detectives and Agent XXX of the Federal Bureau of investigation that she maintained control

over "receipts/documents etc., pertaining to this case" and that she told them "that these items (evidence) were currently kept in her house at 5302 Anchor Cove Circle, Garland, Texas."

On or about July 27, 2001 the search of Ms. XXX's home was conducted. Almost all "documents" were removed from Ms. XXX's home whether or not they had any bearing on this case and regardless of their privileged nature. For example, the homework assignments of her children were seized as well as correspondence between Ms. XXX and her attorneys. In addition, numerous items that were not authorized to be seized by the search warrant were, in fact, seized. These items included, but were not limited to: books on witchcraft, stuffed animals belonging to Ms. XXX's young children, jewelry, film (both developed and undeveloped), computers, computer disks, computer equipment, "vials of colored liquid," cell phones, etc.... In short, those conducting the search took everything that they could get their hands on regardless of whether it fell under the terms of the search warrant or not.

II. ARGUMENT

A. The Information Contained in the Search Warrant Affidavit was Stale

It is axiomatic that allegations of probable cause set forth in a search warrant affidavit must show that probable cause exists *at the time the warrant is issued*. Indeed, the United States Supreme Court spoke about "stale" search warrant affidavits as early as 1932 in *Sgro v. United States*, 287 U.S. 206, 211 (1932): "[I]t is manifest that the proof [contained in a search warrant affidavit] must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *See also* 3 Wright, *Federal Practice & Procedure*, § 662, p. 23. ("Probable cause must exist at the time it is sought to make the search. It is not enough

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[1] Ms. XXXrequests the Court to hold an evidentiary hearing on her motion.

that at some time in the past there existed circumstances that would have justified the search in the absence of reason to believe that those circumstances still exist.").

In this case, the affiant to the search warrant affidavit stated that Ms. XXX told law enforcement officials on June 1, 2001 that she had "receipts/document etc., pertaining to this case" in her home. Nevertheless, a search warrant for that home was not sought for another **eight weeks.** Ms. XXX obviously realized she was a suspect in this case and it would be reasonable to assume that, had she told officials that she had such documents in her home, she would have removed them from the home during the **fifty-six days** it took law enforcement officials to get around to securing a search warrants. Documents, easily mobile, could have been removed or destroyed with ease.

In short, the search warrant affidavit alleging that Ms. XXX told officials she had "receipts/document etc., pertaining to this case" in her home eight weeks earlier was stale and thereby rendered the search warrant invalid.

B. The Warrant was Overbroad.

As noted above, the warrant permitted the seizure of the following items: "financial records, telephone records, travel receipts, tape recording equipment and cassette tapes, and shipping receipts and documents." To characterize the warrant as "overbroad" is an understatement.

"Overbroad" or "general" warrants were one of the primary concerns leading to the enactment of the Fourth Amendment to the United States Constitutions. Indeed, the colonists were deeply concerned about the type of general warrants the British used to search their homes in the hopes of finding some evidence of a crime. *Marron v. United States*, 275 U.S. 192, 195-96 (1927). As noted by the United States Supreme Court:

> General warrants, of course, are prohibited by the Fourth Amendment."[T]he problem [posed by the general warrant] is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings.... [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized." This requirement "'makes general searches... impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.'"

Anderson v. Maryland, 427 U.S. 463, 480 (1976) (citations omitted).

The United States Court for the Fifth Circuit in upholding a search warrant in the face of an overbroad challenge where the home searched doubled as a business, issued a strong statement that applies directly to this case:

> Our holding today should not be read as a broad authorization for the issuance of all records searches of homes. We caution law enforcement agencies to draft warrants carefully to ensure the mandates of the Fourth Amendment are satisfied and note that it is only in extreme cases, such as the one before us today, that we will uphold warrants of this type.

United States v. Humphrey, 104 F.3d 65, 69 n.2 (5th Cir.), *cert. denied*, 520 U.S. 1235 (1997). Nevertheless, this was, without question, an "all documents" search of Ms. XXX's home; the very type of search the Fifth Circuit states it would not authorize. Indeed, in this case, the warrant called for the wholesale seizure of all document in Ms. XXX's home as well as all her financial records regardless of whether they related to the death of John XXX. A review of the "documents" seized include the homework of Ms. XXX's children and other "documents" purely of a personal nature.

United States v. Blitzstein, 800 F.2d 959 (9th Cir. 1986) is very instructive. The warrants at issue in that case "authorize[d] wholesale seizures of entire categories of items not generally evidence of criminal activity, and provide[d] no guidelines to distinguish items used lawfully

from those the government had probable cause to seize." *Id.* at 964.[2] Ultimately the Court concluded that the warrants at issue did "not describe the items to be seized with sufficient particularity" and that the warrants could not be distinguished from warrants held to be invalid in other cases because of their general terms. *Id*. at 965. *See also*, *United States v. Falon*, 959 F.2d 1143 (1st Cir. 1992) (Affirming District court order suppressing defendant's checkbooks, canceled checks, telephone records, address indexes, message slips, mail, telex and facsimile records, calendars and diaries, memory typewriters, word processors, computer discs, both hard and floppy, and other electronic storage media and related software, where those items had been insufficiently described with particularity in warrant.).

Moreover, in this case, the searches did not even limit themselves to those items set forth in the overbroad warrant. As noted above, numerous items that were not authorized to be seized by the search warrant were, in fact, seized. These items included, but were not limited to: books on witchcraft, stuffed animals belonging to Ms. XXX's young children, jewelry, film (both developed and undeveloped), computers, computer disks, computer equipment, "vials of colored liquid," cell phones, etc.... The United States Court of Appeals for the Fifth Circuit has made it clear that:

> Blatant disregard by executing officers of the language of a search warrant can transform an otherwise valid search into a general one and, thus, mandate suppression of all evidence seized during the search. *United States v. Rettig*, 589 F.2d 418, 423 (9th Cir. 1978); *United States v. Medlin*, 842 F.2d 1194, 1199 (10th Cir. 1988). The execution of a search warrant "must be one directed in good faith

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[2] For example, one warrant permitted the seizure of "[c]ertain property, namely notebooks, notes, documents, address books and other records; safe deposit box keys, cash, gemstones and other items of jewelry and other assets; photographs, equipment including electronic scanning devices, and other items and paraphernalia, which are evidence of violations of 18 U.S.C. § 1084, 1952, 1955, 892-894, 371, 1503, 1511, 2314, 2315, 1962-1963, and which are or may be: (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense." *Id*. at 961.

> toward the objects specified in the warrant." *Gurleski v. United States,*405 F.2d 253, 258 (5th Cir. 1968), *cert. denied,* 395 U.S. 981, 89 S. Ct. 2140, 23 L. Ed. 2d 769 (1969).

United States v. Kimbrough, 69 F.3d 723, 728 (5th Cir. 1995), *cert. denied,* 517 U.S. 1157 (1997).

In short, if the Court reviews the items seized from Ms. XXX's home, it will be clear that the search was simply a free-for-all in which all documents were seized whether they had anything to do with the case and almost all other items were seized, even a child's teddy bear, regardless of whether they had anything to do with the case and regardless of whether they were specified in the search warrant. The warrant in this case was totally overbroad and the search that resulted from it was a general search. Therefore, the items seized from Ms. XXX's home must be suppressed.

C. Even Assuming that the Warrant was not Overbroad and that the Information Contained in the Search Warrant Affidavit was not Stale, Items Not Permitted to be Seized Under the Terms of the Warrant Must be Suppressed.

Even assuming that the warrant in this case was valid, as explained immediately above, numerous items not specified in the warrant were, nevertheless, seized in blatant disregard of the terms of the warrant. While Ms. XXXacknowledges that items not provided for in a warrant could be seized if the warrant was valid and it was "immediately apparent" those items seized outside the warrant were evidence of a crime, Ms. XXXsubmits that **none** of the items seized from here home that were not provided for in the warrant were immediately apparent to be evidence of a crime. For example, how could it be that it was immediately apparent that a stuffed animal was evidence of a crime? Likewise, despite the fact that all of Ms. XXX's computers were turned off at the time of the search, all of the computers were seized despite the

fact that the warrant did not permit their seizure. Of course, a computer in the off position is no more evidence in a murder trial than a stuffed animal.

Therefore, even assuming *arguendo* the warrant was valid in this case, all items seized that were not provided for in the warrant and which were not immediately apparent to be evidence in John XXX's death, must be suppressed.

III. CONCLUSION

For the foregoing reasons, all of the items seized from the search of Ms. XXX's home at 5302 Anchor Road Circle.

Respectfully submitted,

F. Clinton Broden
Tx. Bar 24001495
Broden & Mickelsen
2715 Guillot
Dallas, Texas 75204
214-720-9552
214-720-9594 (facsimile)

Attorney for Defendant
XXX XXX

CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that on April 20, 2002, I caused the foregoing document to be served by first class mail, postage prepaid, on William C. McMurrey, Assistant United States Attorney, 1100 Commerce Street, Third Floor, Dallas, Texas 75242.

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F. Clinton Broden