IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA	*	
v.	*	**Criminal No. AMD-01-0217**
ROBERT JUNIOR WARDRICK	*	

* * * * *

MOTION TO SUPPRESS EVIDENCE #4

The defendant herein, Robert Junior Wardrick, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Michael T. CitaraManis, Assistant Federal Public Defender, hereby moves this Honorable Court to suppress for use against him at trial, any and all evidence seized from the residence owned by him at 1808 Division Street, Baltimore, Maryland 21217, on January 23, 2001, pursuant to a search warrant, and all fruits thereof, on grounds that evidence necessary to a finding of probable cause for the search warrant was unlawfully obtained. In support of this motion, undersigned counsel states the following:

I. INTRODUCTION

Robert Junior Wardrick is charged by way of a superseding indictment with two counts of possession of ammunition and/or firearms after conviction of a felony, in violation of 18 U.S.C. §922(g)(1), and one count of possession of unregistered firearms, in violation of 24 U.S.C. §5.

In Count One, Wardrick is charged with possessing seven specified firearms (four handguns and three shotguns), along with various ammunition. In Count Two, Wardrick is charged with possessing two "sawed-off" shotguns. In Count Three, Wardrick is charged with possessing a single firearm (a shotgun).

The offenses charged in Counts One and Two were allegedly committed on January 23, 2001. The offense charged in Count Three was allegedly committed between September 1, 2000, and January 23, 2001.

The firearms and ammunition specified in Counts One and Two were seized on January 23, 2001, pursuant to a search warrant issued by a Maryland District Court judge, from a residence owned by Wardrick located at 1808 Division Street, Baltimore, Maryland 21217. Also seized were two gun holsters, personal papers, and photographs.

The firearm charged in Count Three was seized from a nearby residence located at 1835 Division Street, Baltimore, Maryland, occupied by Wardrick's son. Although consent was apparently given to seize this firearm, police learned of its existence and location as a result of the search at 1808 Division Street.

Undersigned counsel maintains that the firearms and all other items seized at 1808 Division Street should be suppressed for use against him on grounds that information necessary to the finding of probable cause was obtained in violation of the Fourth Amendment. Since the search warrant was an unlawful fruit of this constitutional violation, the evidence seized pursuant to the search warrant, along with all further fruits thereof, must be suppressed.

More particularly, probable cause to search 1808 Division Street was based on two general assertions: (1) that Wardrick had purchased ammunition on three separate occasions with the last purchase occurring in November 2000; and (2) that Wardrick lived at 1808 Division Street. Because there was reason to believe Wardrick lived at 1808 Division Street, the affiant, Baltimore County Police Detective Robert Overfield, submitted that it was likely the ammunition in question, along with firearms, would be found there.

Det. Overfield concluded that Wardrick lived at 1808 Division Street based on the following: (1) his contact with "a local utility," which produced information that Wardrick was receiving service at 1808 Division Street; (2) his contact with Wardrick's wife's probation officer who told Overfield that the wife's telephone number was 410-383-2509 and the wife's address was 1808 Division Street; (3) Overfield's confirmation with another utility company that 410-383-2509 was listed to Wardrick at 1808 Division Street; and (4) a check of records of the Maryland Department of Taxation and Assessments which revealed that Wardrick purchased 1808 Division Street on May 9, 2000, and listed it as his primary residence.

During a conversation with Overfield on Thursday, June 14, 2001, undersigned counsel and his investigator learned the following: (a) the "local utility" from which Overfield obtained the first piece of information was Baltimore Gas & Electric (B G & E) and this information was obtained over the telephone; and (2) the second utility contacted by Overfield was the telephone company and the information from it too was obtained over the telephone.[1]

As maintained below, Wardrick reasonably expected that personal information about him in the hands of B G & E and the telephone company, including his address, be kept private and not given out to whomever asked over the telephone, including a law enforcement officer. This expectation, in part, is evidenced by the fact that Wardrick's telephone number was unlisted.

As shown below, Det. Overfield's unauthorized accessing of this information was illegal, in

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[1] Also learned was that the information Det. Overfield obtained from the Maryland Department of Taxation and Assessments was obtained through its official web site on the internet.

violation of state and federal laws and the Fourth Amendment, and because the information learned by Det. Overfield over the telephone was necessary to the conclusions that Wardrick lived at 1808 Division Street and there was probable cause to believe that the ammunition he had apparently purchased would be found there, all evidence seized as a result of the search warrant at 1808 Division Street, must be suppressed.

II. ARGUMENT

The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy." *United States v. Chadwick*, 43 U.S. 1, 7 (1977).

As to what constitutes a "legitimate expectation of privacy," various Supreme Court decisions over the last forty years have provided the following guiding principles:

One, is that "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967).

Two, whether something is protected depends on whether one has a "reasonable expectation of privacy" in it. *Rakas v. Illinois*, 439 U.S. 128, 139-143 (1978)

Three, a privacy interest, in the constitutional sense, consists of an expectation that uninvited and unauthorized persons will not intrude so that one may freely admit guests of one's own choosing without sacrificing one's right to keep something private from all other persons. *See Stoner v. California*, 376 U.S. 483, 489-90 (1964); *Chapman v. United States*, 365 U.S. 610, 616-17 (1961).

Four, an expectation of privacy consists of a belief that uninvited people will not intrude in a particular way so that a person may renounce the assumption he is immune from one kind of invasion while retaining the belief that he is protected from other invasions. *See Katz v. United States*, 389 U.S. at 351 (a person who makes a call from a phone booth gives up his right to be seen

but not his right to keep his conversation private).

With the advent of technological advances, making it easier for intruders to snoop into peoples' private lives, and the proliferation of computer information systems, which can open up all kinds of personal information to prying eyes, concerns over privacy and how to keep personal information private have grown.

As a consequence, various laws have been enacted making it easier for people to keep their personal information private or to make it more difficult for the holders of personal information to disclose such information to other persons

One example is part of the Telecommunications Act of 1996 codified at 47 U.S.C. §222. This section, titled, "Privacy of customer information," provides: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, . . . customers."

Par. (c)(1) of this section provides that except as "required by law or with the approval of the customer," a telecommunications carrier shall not use, disclose or permit access to customer "proprietary network" information obtained in rendering telecommunications service except as is necessary in rendering the service or related services, such as in publishing directories.

Customer "proprietary network" information includes the "location" of any telecommunications service subscribed to by a customer and "information contained in the bills" of a customer.

The meaning of all this is that a customer's telephone number and address cannot be disclosed by a telecommunications company and is to remain private, absent the customer's consent or to the extent required by law or as is necessary to provide the service or in connection with

publishing directories.[2]

Consequently, persons who choose to have their information kept unpublished retain the protection of privacy afforded by §222.[3]

Since Wardrick chose to have his personal information kept unpublished, he had every reason to believe that the protections afforded him by 47 U.S.C. §222 would be maintained and not subverted by law enforcement. Clearly, disclosure of the information to Det. Overfield was not necessary to provide service to Wardrick, it was not done with Wardrick's consent, and it otherwise was not required by law.

Indeed, although law enforcement can lawfully obtain unpublished subscriber information from a telephone company, there are specific procedures for doing so. *See* 18 U.S.C. 2511(2)(a)(ii) (which permits providers of wire or electronic communications service to provide information to persons authorized by law to intercept wire, oral, or electronic communications, if such provider has been provided with a court order or specific certification); §10-402, Md. Courts and Judicial Proceedings (permitting same when the provider is given a court order signed by the authorizing judge); 18 U.S.C. §2703 (requiring that a provider of electronic communications service disclose records or information pertaining to a subscriber to a governmental entity only when presented with a warrant, court order, consent of the subscriber, or, in the case of telemarketing fraud, a formal

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[2] Although par. (e) requires telecommunications companies to provide "subscriber list information," which includes customer addresses and telephone numbers (*see* par. (h)(3)) for the purpose of publishing directories, "subscriber list information" does not include information relating to subscribers who have asked that their information not be published.

[3] Customer "proprietary network" information, including billing information and personal information of a customer with an unpublished telephone number, is given the highest protection under §222. *See U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1229, n.1 (10th Cir. 1999).

written request); and §10-4A-04, Md. Courts and Judicial Proceedings (which provides for substantially the same as §2703, except that disclosure is limited to "an investigative or law enforcement officer" and not merely a "governmental entity," and disclosure is also permitted upon presentment of a subpoena).

When it comes to customer information in the hands of electric utilities, there is a similar expectation that personal information, including one's address, remains private and will not be given out to anyone, even a law enforcement officer who asks for it over the telephone.

The Maryland legislature has mandated that, pursuant to regulations to be issued by the Public Utility Commission, electric utilities are prevented from disclosing a retail electric customer's "billing" information without their consent, except as allowed by the Commission for bill collecting or credit rating reporting purposes. *See* Public Utility Companies, § 7-505(b)(6).[4]

Clearly, the disclosure of Wardrick's address to Det. Overfield by the electric company was not necessary for purposes of bill collecting or credit reporting purposes.

Wardrick's expectation that his personal information, including address and telephone number, would not be disclosed to people to whom he did not consent to receive such information was a reasonable expectation. The various laws noted above are evidence of this fact.

The same expectation was central to the decision in *Heights Community Congress v. Veterans Administration*, 732 F.3d 526 (6th Cir. 1984), where the Sixth Circuit ruled that FOIA production of information concerning lenders on VA-insured loans, including their addresses, was

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[4] Although "billing" information is not defined under § 7-505, a fair interpretation of this term would include the address where service is provided. This certainly would be consistent with the protections against disclosure of information contained in the "bills" of a customer, pursuant to 18 U.S.C. §222 (under the definition of customer "proprietary network" information).

an unreasonable invasion of privacy. In making its ruing, the Court stated:

> . . . as the Third Circuit noted in [*Wine Hobby USA, Inc., v. IRS*, 502 F.2d 133, 137 (3rd Cir. 1974)], "there are few things which pertain to an individual in which his privacy has traditionally been more respected than his own home." [Citation omitted.] The importance of the right to privacy in one's address is evidenced by the acceptance within society of unlisted telephone numbers, by which subscribers may avoid publication of an address in the public directory, and postal boxes, which permit the receipt of mail without disclosing the location of one's residence.

In the context of a criminal investigation, at least one court has agreed, and as a result, suppressed the fruits of a search warrant for an address illegally obtained. *See People v. Chapman*, 36 Cal.3d 98, 201 Cal.Rptr. 628 (1984).

In *Chapman*, the California Supreme Court held that a defendant had a reasonable expectation of privacy in the unlisted information which the telephone company disclosed to the police, that this right was protected under California Constitution, and that the action of the police, in obtaining the unlisted information without a warrant, consent, or exigent circumstances, violated the Constitution. Since a warrant to search the home and car of the defendant was based on the fruits of this unlawful seizure, the Court held that the trial court correctly ordered all the physical evidence obtained via this tainted warrant to be suppressed. *Chapman*, 201 Cal.Rptr. at 637-38.

Although not on point, the Fourth Circuit decision in *Doe v. Broderick*, 225 F.3d 440 (4th Cir. 2000) is instructive in how to approach the issue of whether Wardrick possessed a reasonable expectation of privacy in his unlisted telephone number and address.

In *Broderick*, a patient of a methadone clinic sued a police detective and county under 42 U.S.C. §1983, alleging that the detective violated the patient's rights under the Fourth Amendment and 42 U.S.C. §290dd-2, a federal statute which regulates the disclosure of drug treatment records.

The basis for the suit was the detective's visit to the treatment center, where he searched the patient's confidential treatment records as part of an attempt to identify the person responsible for the theft of a nearby jewelry store.

In reviewing the patient's Fourth Amendment claim on appeal, the Fourth Circuit noted that whether an expectation of privacy under the Fourth Amendment is reasonable is determined by "our societal understanding," citing *Oliver v. United States*, 466 U.S. 170, 177-78 (1984), and that the statute regulating the disclosure of drug treatment records, §290dd-2, "is relevant to the determination of whether there is a 'societal understanding' that Doe has a legitimate expectation of privacy in his treatment records." *Broderick*, 225 F.3d at 450.

Because §290dd-2 makes access to records more difficult for law enforcement, the Fourth Circuit concluded that it "is a fitting indication that society is willing to recognize Doe's expectation of privacy as objectively reasonable." *Id*. It therefore found that Doe's rights under the Fourth Amendment had been violated.

Because of the general acceptance in society, and in fact need, for persons to elect that personal information about them not be disseminated to whomever inquires, as reflected in the various laws cited above, Wardrick's subjective expectation of privacy was a reasonable one.

Since Det. Overfield obtained Wardrick's address and telephone information without his consent or other reasonable process, Wardrick's rights under the Fourth Amendment were violated; and since the unlawfully obtained information about Wardrick was used as a basis for the search warrant executed at 1808 Division Street, the items seized pursuant to the warrant must be suppressed as the fruit of this unlawfully obtained information.

Although information concerning Wardrick's connection to 1808 Division Street was

obtained by Det. Overfield from other sources, this information was the fruit of the information unlawfully obtained from the telephone and electric companies.[5]

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[5] Moreover, this information does not show that Wardrick actually lived at 1808 Division Streeet at the time of the search warrant. More particularly, the information from Mrs. Wardrick's probation officer only shows that *she* lived at 1808 Division Street. Also, the information from the Maryland Department of Taxation and Assessments only shows that Wardrick purchased 1808 Division Street the year before the search. It does not reflect whether he lived there at the time of the search some eight months later -- a necessary element to Det. Overfield's probable cause assessment.

III. CONCLUSION

For the foregoing reasons, Robert Junior Wardrick respectfully requests this Court to direct that any and all evidence seized from 1808 Division Street, Baltimore, Maryland, on January 23, 2001, and all fruits thereof, including but not limited to the firearm seized at 1835 Division Street, Baltimore, Maryland, be suppressed for use herein against him.

Respectfully submitted,
JAMES WYDA
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for the District of Maryland

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REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on the Defendant's Motion.

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MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

_____I HEREBY CERTIFY that on this 30th day of July 2001, a copy of the foregoing Motion to Suppress Evidence #4was delivered to James H. Green, Assistant United States Attorney, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201-2692.

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MICHAEL T. CITARAMANIS
Assistant Federal Public Defender