

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<i>v.</i>	)	<b>Criminal No. 97-55-P-H</b>
	)	
<b>CATHERINE DUFFY PETIT, et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**RECOMMENDED DECISION ON MOTION OF DEFENDANTS  
STEVEN HALL AND RICHARD TO SUPPRESS SEIZURES OUTSIDE  
THE SCOPE OF THE OCTOBER 9, 1997 SEARCH WARRANT**

Defendant Catherine Duffy Petit filed a Motion to Suppress Seizures Outside the Scope of October 9, 1997 Search Warrant (“Motion”) (Docket No. 92) on March 26, 1998 in this matter. The other four defendants later joined in the motion without submitting any further material to the court. Docket Nos. 110, 112, 114 & 117. Petit subsequently withdrew the motion. Docket No. 174. Defendants Steven Hall and Paul Richard, however, press the motion with regard to specific documents found in the office known as the Coastal Associates suite, located across the hall from the office known as Suite 7 at 23 Water Street in Saco, Maine, both of which were subject to the search warrant issued by this court on October 9, 1997. Affidavit of Paul Richard (Docket No. 176), with attached documents; Memorandum in Support of Motion to Suppress Documents Seized Outside of Scope of Search Warrant (Docket No. 177) (Steven Hall), with attached documents. I recommend that the court deny the motions without hearing.

Petit’s motion sought “suppression of all evidence exceeding the scope of the search warrant

issued on October 9, 1997 for the search of 23 Water Street. The motion is based on the over breadth [sic] of the seizure compared to the specific scope of the warrant as well as the probable cause contained within the warrant.” Motion at 1. The motion mentions the seizure of certain computers and discs and specifically seeks return and suppression only of electronic data, some of which is asserted to be “legal material outside the scope of the warrant.” *Id.* at 2-3. Steven Hall and Richard now seek, in pressing this motion, suppression of documents seized from the Coastal Associates suite not included in the electronic data seized. Both defendants base their claims on attorney-client privilege. The warrant at issue provided, in relevant part:

Specifically excluded from this list of ITEMS TO BE SEARCHED FOR are all correspondence, notes, and memoranda between legal counsel and their clients, including but not limited to Ronald Caron, Esq. or Steven Gordon, Esq. and CATHERINE DUFFY PETIT, PAUL B. RICHARD, STEVEN A. HALL, DAVID J. HALL, ROLAND L. MORIN, ARMAND N. PELLETIER and ROBERT E. PARADIS.

Search Warrant, Exh. E to [Affidavit of ] James Osterrieder (Docket No. 131) at Attachment B, p. 3.

If the motion currently before the court is construed as a challenge to the search itself (the “probable cause” for the warrant mentioned by Petit), I conclude that these defendants lack standing to raise such a claim.

Petit also sought suppression of all materials seized from both offices in a Motion to Suppress Fruits of October 9, 1997 Search of 23 Water Street (“Fruits Motion”) (Docket No. 94), in which Steven Hall and Richard also joined, Docket Nos. 112 & 116. I recommended that the court deny that motion, Memorandum Decision on Request for Hearing and Recommended Decision on Defendant’s Motion to Suppress Fruits of October 9, 1997 Search of 23 Water Street (“Rec. Dec.

on Docket No. 94") (Docket No. 146), and specifically concluded that Steven Hall lacked standing to challenge the search, *id.* at 9. Steven Hall has submitted nothing in connection with his memorandum pressing the current motion, Docket No. 177, to challenge my conclusion on this point.

My recommended decision on the motion to suppress all fruits of the October 9 search did not reach a conclusion regarding the standing of Richard. Rec. Dec. on Docket No. 94 at 10. The government now urges the court to revisit that issue. As I noted in my recommended decision, Richard submitted no evidentiary material of his own in support of the motion. He has now submitted an affidavit identifying the documents he seeks to suppress and characterizing them as “subject to the attorney-client privilege” and containing “confidential communications between myself and several of my attorneys over the past few years.” Affidavit of Paul Richard (Docket No. 176) ¶ 2. The only statement in this affidavit having any bearing on Richard’s standing to challenge the search is the last sentence: “[T]hese documents were seized from the ‘Coastal Suite’ which was originally rented by John Rasza [sic], a private investigator who was working in part for attorneys who were representing me at the time of the search.” *Id.* ¶ 7. The only additional material in the record relevant to this issue is provided in Rzasza’s affidavit, in which he states that he met in Suite 7 with attorneys who represented Richard and that he considered the Coastal Associates office to contain privileged material related to Richard, Petit or related corporations. Affidavit of John Rzasza, Exh. 5 to Fruits Motion, ¶¶ 4-5.

A defendant challenging a search and seizure bears the burden of showing that he had a reasonable expectation of privacy in the premises searched that was independent of that of any other alleged co-conspirator. *United States v. Padilla*, 508 U.S. 77, 82 (1993); *United States v. Lewis*, 40

F.3d 1325, 1333 (1st Cir. 1994). “A defendant who fails to demonstrate a sufficiently close connection to the relevant places or objects will not have standing to claim that they were illegally searched or seized.” *Lewis*, 40 F.3d at 1333. The factors pertinent to this threshold inquiry include

ownership, possession, and/or control; historical use of the property searched or the thing seized; ability to regulate access; the totality of the surrounding circumstances; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of such an expectancy under the facts of a given case.

*United States v. Aguirre*, 839 F.2d 854, 856-57 (1st Cir. 1988). Richard’s submissions, together with Rzasas’s affidavit, fail to establish that Richard had any ownership, possession or control of the Coastal Associates office, that Richard had historically used that office, or that he had any ability to regulate access to that office. The record may obliquely suggest that Richard had a subjective anticipation of privacy in the Coastal Associates office, but any such expectancy cannot be considered objectively reasonable under the circumstances of this case. Accordingly, I conclude that Richard does not have standing to challenge the search itself.

The recent submissions of Steven Hall and Richard may also be construed to challenge merely the seizure of the designated materials, rather than the search itself. This view is not addressed by the government beyond a conclusory assertion that “[t]he crime-fraud exception would bar any attorney-client privilege claim as to these seized documents.” Government’s Memorandum of Law in Opposition to Defendant Steven A. Hall’s and Paul B. Richard’s Motions to Suppress Documents Seized Outside of the Scope of the Warrant (Docket No. 179) at [7]. This view of the motion does not require a different outcome, however. The Supreme Court directs a court considering a motion to suppress evidence to “engage in a ‘conscientious effort to apply the Fourth Amendment’ by asking not merely whether the defendant had a possessory interest in the items

seized, but whether he had an expectation of privacy in the area searched.” *United States v. Salvucci*, 448 U.S. 83, 93 (1980) (citation omitted); *see also United States v. Kimball*, 25 F.3d 1, 9 (1st Cir. 1994) (possessory interest in item seized not sufficient to support suppression when defendant had no reasonable expectation of privacy in premises where item was found). Therefore, in the absence of standing to challenge the search itself, these defendants cannot challenge the seizure of these documents during that search.

This outcome should not be interpreted to foreclose later assertions by these defendants concerning the admissibility of these documents if offered into evidence at trial. *See, e.g., United States v. Borno*, 946 F. Supp. 972, 977 n.5 (M.D.Fla. 1996) (gun suppressed as to only one of three defendants having standing to challenge search may be excluded as to other defendants at trial on other grounds).

### **Conclusion**

For the foregoing reasons, I recommend that the motion of defendants Steven Hall and Richard to suppress certain documents as outside the scope of the search warrant issued October 9, 1998 be **DENIED** without prejudice to subsequent motions concerning the admissibility of these documents to be made upon other bases.

### **NOTICE**

***A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated this 17th day of July, 1998.*

---

*David M. Cohen*  
*United States Magistrate Judge*