

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
 )  
v. ) Crim. No. 04-24-B-W  
 )  
DANIEL RALPH BISHOP, )  
 )  
Defendant )

**RECOMMENDED DECISION**

This matter is before the court on Defendant Daniel Bishop's motion to suppress (Docket No. 12). Because this motion is a straight-up frontal attack to the facial sufficiency of the challenged state court search warrant, no evidentiary hearing was held. I did schedule oral argument on the motion, held on May 27, 2004, and I now recommend that the court **DENY** the motion to suppress.

***DISCUSSION***

In unambiguous terms the search warrant affidavit filed on January 22, 2004, sets forth probable cause to believe that firearms and related gun paraphernalia belonging to Daniel Bishop, located inside his residence at 170 Kelly Road, Orono, Maine, were subject to seizure as evidence of the commission of a criminal offense. The affidavit recites that Bishop is a convicted felon and prohibited from owning or possessing firearms. It also reveals that on January 22, 2004, Bishop's roommate indicated to law enforcement officers that there were locked firearms in the residence at that time and the firearms did not belong to the roommate. Furthermore, the roommate's former girlfriend told law enforcement personnel that sometime between February and October 2003 she traveled with Daniel Bishop to a storage unit in Corinth, Maine where Bishop picked up

two or three handguns and two or three long guns which he then transported to 170 Kelly Road. According to the former girlfriend, those guns were still in the house when she moved out in October 2003.

Based upon these facts the officer sought and obtained a state court search warrant authorizing a search of 170 Kelly Road and “any vehicles located on the premises of the described property.” The warrant authorized the seizure of firearms. It also authorized the seizure of “[f]irearm-related components, including holsters, scopes, and cases” and any ammunition on the premises. The police reports and search warrant inventory return indicate that firearms and related items such as ammunition, cleaning kits, and gun cases were recovered from inside the residence during the execution of the search warrant.

Bishop’s facial challenge to this warrant is three-pronged. He argues, first, that the warrant lacks the requisite specificity; second, that there is no probable cause for the search; and, third, that the search warrant exceeds the scope of Maine Rule of Criminal Procedure 41. In my opinion the latter two arguments are nonstarters. Clearly any common sense reading of the affidavit supports a finding of probable cause to support the search of the residence and Bishop’s own vehicle. Kevin Wood, a resident of 170 Kelly Road, told the officers that there were firearms in his home and that they did not belong to him. The other occupant of 170 Kelly Road was Bishop, an individual with a felony conviction, and the person who was identified some months prior to the issuance of the warrant as bringing the guns into the home. Furthermore, even though it is not a separate criminal violation to possess things like holsters, scopes, and cases, the appearance of those items in the residence constitutes evidence of the use and possession of firearms,

and, thus, their seizure is within the scope of Rule 41 under either the Federal or Maine rules governing criminal procedure. The Maine rule authorizes the seizure of “any property that constitutes evidence of the commission of a criminal offense.” Me. R. Crim. P. 41(b); see also Fed. R. Crim. P. 41(c)(1) (authorizing the issuance of a warrant for search and seizure of “evidence of a crime”). The legality of the seizure does not change because Bishop could lawfully possess some firearm-related components. A piece of property may constitute evidence of a crime even if it is not contraband in and of itself. Courts routinely issue search warrants for legal items that are nevertheless evidence of criminal conduct. See, e.g., United States v. Leahy, 47 F.3d 396, 398 (10th Cir. 1995)(documents relating to acquisition of firearms); United States v. Conley, 4 F.3d 1200, 1204 (3d Cir. 1993) (revenue records); United States v. Porter, 831 F.2d 760, 764 (8th Cir. 1987) (stamps and currency).

Turning to Bishop’s other argument, that the warrant lacks specificity and is perilously close to, if not over, the line into the realm of a “general warrant,” there are two fronts to the attack. First, Bishop maintains that the description of the items to be seized was impermissibly vague, leaving broad discretion to the officers executing the warrant. The items were described as “[f]irearm-related components, including holsters, scopes, and cases.” I find that this description is sufficiently specific to pass constitutional muster. A general description in a warrant can be acceptable when the surrounding circumstances render it reasonable. United States v. Morris, 977 F.2d 677, 680-81 (1st Cir. 1992). A warrant may authorize the seizure of an entire class of items if it establishes probable cause as to the entire class. In United States v. Morris, for instance, the First Circuit found that a warrant authorizing the seizure of “all that is

relating to drugs and narcotics" was sufficiently particular because the affidavits submitted in support of the warrant established probable cause that the property to be searched was used for drug trafficking. The court upheld the warrant against constitutional attack, finding that it was "clearly not a case where, insofar as drugs and narcotics are concerned, the executing officers were left with unfettered discretion as to what they could seize." Id. at 682.

In addition, the Bishop warrant contained a specific reference to the statute the officers alleged was being violated. Statutory references in the warrant can adequately narrow otherwise broad language describing the items to be seized. For instance, in United States v. Docktor, 58 F.3d 1284, 1288-89 (8th Cir. 1995), the court upheld a warrant permitting the seizure of firearms, ammunition and "all other instrumentalities, substances or documents" relating to the crime of possession of a firearm by a felon. The Eighth Circuit ruled that the warrant was sufficiently particular because the affidavit filed in support of the warrant specifically referred to the gun possession statute and the items described in the warrant were narrowly tailored to the crimes alleged. Id. at 89. For these reasons, the warrant was sufficiently particular when it authorized seizure of firearm-related components. This type of property is evidence relevant to the crime of firearm possession. The affidavit filed in support of the warrant established probable cause that the entire class of components could be seized. The warrant was accompanied by a statutory reference to 15 M.R.S.A. § 393 and a list of examples that narrowly defined what types of evidence to be seized. Like Morris, therefore, it was not a case where the officers were left with unfettered discretion about what to seize.

What the affidavit does not do is establish probable cause, as a class, as to all vehicles that might be on the premises of 170 Kelly Road. Bishop correctly points out that clearly the warrant is overbroad in this respect and that with a minimum amount of investigative work law enforcement personnel could have identified the specific vehicles registered to or used by him. The United States does not really dispute that contention in its response, but relies upon the "no harm, no foul" rule. None of the seized firearms were removed from Bishop's vehicle or anyone else's vehicle. In cases of this ilk, the First Circuit has said that the court can selectively excise the offending portions of the warrant and still admit other items of evidence properly seized under the warrant. See United States v. Díaz, 841 F.2d 1, 4 (1st Cir.1988) (search warrant which allowed impermissible seizure of some items without probable cause and properly allowed seizure of other items, was not entirely invalid) (citing United States v. Riggs, 690 F.2d 298 (1st Cir.1982)). That principle can be applied to the vehicle searches in this case.

### **Conclusion**

Based upon the foregoing, I recommend that the court **DENY** the motion to suppress.

### **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, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge 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 June 4, 2004

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

**Case title:** USA v. BISHOP

**Other court case number(s):** None

**Magistrate judge case number(s):** None

**Date Filed:** 03/09/04

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**Assigned to:** JUDGE JOHN A.  
WOODCOCK JR.

**Referred to:**

**Defendant(s)**  
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**DANIEL RALPH BISHOP** (1)

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**Pending Counts**  
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UNLAWFUL TRANSPORT OF  
FIREARMS, ETC.  
(1)

**Disposition**  
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**Highest Offense Level (Opening)**  
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Felony

**Terminated Counts**

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None

**Disposition**

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**Highest Offense Level  
(Terminated)**

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None

**Complaints**

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None

**Disposition**

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**Plaintiff**

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