

399
In re Search Warrant Application
19 FSM R. 399 (Pon. 2014)

FSM SUPREME COURT TRIAL DIVISION

In re APPLICATION FOR A SEARCH WARRANT) SEARCH WARRANT NO. 2014-707
Pursuant to FSM Crim. R. 41 to Search)
Personal Property of Delincoln Norman, Jr.,)
_____)

SEARCH WARRANT ORDER

Martin G. Yinug
Chief Justice

Decided: May 13, 2014

APPEARANCE:

For the Applicant: April Dawn M. Skilling, Esq.
 Secretary of Justice
 FSM Department of Justice
 P.O. Box PS-105
 Palikir, Pohnpei FM 96941

* * * *

HEADNOTES

Search and Seizure – Warrants

The FSM Supreme Court has the authority to issue a search warrant only upon probable cause supported by affidavit and the search warrant application must particularly identify the specific property or persons to be seized and naming or describing the person or place to be searched. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

Search and Seizure – Warrants

The search warrant’s particularity requirement prohibits general searches and exploratory rummaging while looking for evidence of a crime. The constitutional protection of the individual against unreasonable searches and the limitations of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

Search and Seizure – Warrants

When the search warrant application adequately establishes probable cause as required but is unreasonably broad in its request to search the suspect’s dwelling, an adjacent house owned by his mother-in-law but believed to be used as an alternative residence, and his vehicle, the court will grant the warrant to search the suspect’s dwelling and his vehicle but deny the request to search the mother-in-law’s home. The breadth of the application is not supported by the facts therein because the mere belief that the suspect uses the other home as a residence is not sufficient, nor is it reason to believe that the evidence sought will be found there. The Department of Justice may file another application, or applications, supported by additional evidence, if that location is determined to be necessary to the investigation. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

On April 16, 2014, April Dawn M. Skilling, the Secretary of Justice (AG) submitted an Application for a Search Warrant Pursuant to FSM Crim. R. 41. This application is supported by the affidavit of FSM national police officer Wensper Raymond who has set out that probable cause exists to believe that several criminal offenses have occurred including: 11 F.S.M.C. 931, Grand Theft; 11 F.S.M.C. 933, Theft by Unlawful Taking or Disposition; 11 F.S.M.C. 934, Theft by Deception; 11 F.S.M.C. 936, Theft by Property Lost, Mislaid, or Delivered by Mistake; 11 F.S.M.C. 937, Receiving Stolen Property; 11 F.S.M.C. 941, Forgery of Specified Documents; 11 F.S.M.C. 601, Theft Against the Government.

Pursuant FSM Criminal Rule 41, this court has the authority to issue a search warrant only upon probable cause supported by affidavit. Furthermore, the application for a search warrant must particularly identify the specific "property or persons to be seized and naming or describing the person or place to be searched." FSM Crim. R. 41(c)(1); see FSM Const. art. IV, § 5. "The warrant must be specific in designating what is to be seized, where, from whom, and on what grounds." 3A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 668, at 92 (4th ed. 2000). The particularity requirement prohibits "general searches" and "exploratory rummaging . . . while looking for evidence of a crime." 68 AM. JUR. 2D *Searches and Seizures* § 167, at 760 (rev. ed. 2000). "The constitutional protection of the individual against unreasonable searches and the limitations of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy." FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).¹

The search warrant application submitted adequately establishes probable cause as required by FSM Crim R. 41. It is, however, unreasonably broad in its request to search the suspect, Delincoln Norman's dwelling, an adjacent house owned by his mother-in-law, but believed to be used as an alternative residence, and his vehicle. The breadth of this search is not supported by the facts in this application. The mere belief that he uses the other home as a residence is not sufficient, nor is it reason to believe that the evidence sought will be found there.

ACCORDINGLY, the court will GRANT the warrant to search the suspect's dwelling, and his vehicle, subject to the limitations in the attached warrants, but DENIES the request to search the mother-in-law's home. The Department of Justice may file another application, or applications, supported by additional evidence, if that location is determined to be necessary to the investigation.

* * * *

¹ U.S. courts have given special consideration to the expectation of privacy in a home. See *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501, 114 S. Ct. 1006, 1015, 127 L. Ed. 2d 325, 338 (1994) ("We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions."). See *United States v. United States Dist. Court*, 407 U.S. 297, 313, 92 S. Ct. 2125, 2134, 32 L. Ed. 2d 752, 764 (1972) ("Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.").