

COUNTY COURT JEFFERSON COUNTY, COLORADO

Case No. 97M811 & 97M81 2 Division A

PEOPLE OF THE STATE OF COLORADO, Plaintiff

v.

STEVE GARTIN, Defendant

MOTION TO DISMISS DUE TO OUTRAGEOUS GOVERNMENTAL CONDUCT

Mr. Gartin. through counsel, requests this Court dismiss the charges against him based on the outrageous conduct of governmental officials, and as grounds states the following:

1. Mr. Gartin currently has two separate cases pending, both involving violation of a restraining order. The cases involve three restraining orders issued by this Court in case numbers 96C7386, 96C7387 & 96C7386.

FACTUAL BACKGROUND

2 The genesis of these two cases arose on January 30, 1997 when deputies with the Jefferson County Sheriffs Department took a report from Markus Merritt regarding an alleged violation of a restraining order on that evening. Specifically, Mr. Markus claimed that Mr. Gartin left a message on Mr. Merritt's answering machine at home stating This is Steven Gartin. Markus Merritt I know you. I know what you are and what you do. We'll have plenty of fun.'" No threats were made, nor was this message in any way stated in a menacing manner. **Deputy Whitus subsequently contacting the filing deputy at the district attorneys office who, after reviewing the case, refused to accept it.** Despite the fact that no case would be filed took it upon himself arrangements to locate Mr. Gartin **On February 5, 1997, Deputy Whitus contacted Deputy Estep requesting assistance in locating Mr. Gartin**

3. Approximately one month later, on February 25. 1997. Mr. Merritt again contacted Jefferson County Sheriffs Department and reported a violation of a restraining order on that date. This allegation again involved messages left on a home answering machine. In three of these messages. **Mr. Gartin asks to speak with his two children.** In two of the messages. Mr. Gartin asks to speak with the brothers of Tamara Gartin in one message, Mr. Gartin asks to speak with Tamara Gartin.

None of these messages involve threats or violence or anything resembling threats or violence.

4. The following day. **approximately ten members of the Jefferson County Sheriffs Department SWAT. team descend upon Mr. Gartin's home allegedly to arrest him on a misdemeanor warrant.** At the time, **no misdemeanor warrant for his arrest existed.** Mr. Gartin has only one conviction on his record, a misdemeanor harassment conviction. This case was resolved prior to February, 1996 and no warrant existed. Mr. Gartin has **no history of violence which would lead a reasonable police officer to believe he was**

dangerous. In fact, the only warrant which existed was an unsigned (and therefore invalid) warrant issued by this Court for failing to appear on a contempt citation. In addition, deputies had not obtained a warrant for his arrest in either of the two restraining order cases they had investigated. Further there was no search warrant authorizing these deputies to enter and search Mr. Gartin's home.

5. Mr. Gartin did not leave his home nor did he give anything which could possibly be construed as consent to enter his home. In fact, he remained silent within his home while deputies attempted for almost two hours to persuade him to leave. Finally, without any legal authority whatsoever, deputies kicked in the door to the home, tearing through a barricade which had been set up on the other side of the door and damaging Mr. Gartin's property in the process. Mr. Gartin was taken into custody without incident. There were no weapons or any dangerous implements found within the home. Deputy Estep subsequently completed and signed an Affidavit in Support of Warrantless Arrest.

POLICE INTRUSION INTO Mr. GARTIN'S HOME ON FEBRUARY 26,1997 WAS UNCONSTITUTIONAL, ILLEGAL AND SHOCKS THE CONSCIENCE

6. While in most circumstances involving illegal searches and seizures, suppression of the evidence and statements obtained may be an appropriate remedy to seek, this is not a meaningful remedy in this case. This case is worthy of dismissal based on the egregious and outrageous conduct of the Jefferson County Sheriffs Department.

7. The Fourth and Fourteenth Amendments to the United States Constitution and Art. II, subsec. 7 and 25 of the Colorado Constitution protect citizens from unreasonable searches and seizures. The Fourth Amendment applies "to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." *Bond v. United States*, 116 U.S. 616., 630, 6 S.Ct. 533. 534. 9 L.Ed.2d 746. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment. *Payton v. New York* 100 S.Ct. 1371. 1379 (1980).

8. When an arrest warrant is invalid, an arresting officer must have both probable cause to believe an offense had been committed by the individual apart from the complaint and exigent circumstances must exist. *People v. Moreno* 491 P.2d 575 (solo. 1971).

9. Determining whether exigent circumstances exists requires an evaluation of the facts and circumstances known at the time of the warrantless entry and search. *People v. Miller*, 773 P.2d 1053 (solo. 1989). There are three General categories of exigent circumstances. *Id.* at 1057. The first is when there is a bona fide pursuit of a fleeing suspect. *Id.* The second exigent circumstance is presented if there is a risk of immediate destruction of evidence. *Id.* The third type of exigent circumstance involves a colorable claim of emergency threatening the life or safety of another. *Id.* Any doubt as to whether a warrantless search was justified must be resolved in favor of the accused whose property was searched. *Id.*

10. Voluntary consent to search waives the search warrant requirement. *People v. Reynolds*. 672 P.2d 529 (solo. 1983). Either the person whose property is to be searched. or a third party who possesses common authority over the property may consent to a search. *People v. Breidenbach*. 875 P.2d 879 (solo. 1994). The court must consider the totality of the circumstances surrounding the individual's consent in determining whether the consent is voluntary. *People v. Drake*. 785 P.2d

11. (Colo. 1990). The *prosecution has the burden of proving* by clear and convincing evidence **that consent was voluntary**. *Id.*

12. In this case, the **warrant was invalid** since it had never been signed by a judge. There were **no exigent circumstances** to justify this arrest and the significant intrusion into Mr. Gartin's home.

13. Taken as a whole, the **actions of the Jefferson County Sheriffs Department in conducting the arrest of Mr. Gartin was unconstitutional. illegal and shocks the conscience.**

**DISMISSAL, NOT SIMPLY THE EXCLUSION OF EVIDENCE AT TRIAL,
IS THE APPROPRIATE REMEDY DUE TO THE OUTRAGEOUS
CONDUCT OF GOVERNMENT OFFICIALS.**

14. In this case, exclusion of evidence to be used at trial is **not a sufficient remedy and dismissal is warranted. A search or seizure which is so unreasonable as to shock the conscience of the Court cannot be the basis of a state-imposed sanction.** *People v. Atencio*. 525 P.2d 461 (solo. 1974).

15. A claim of outrageous governmental conduct implicates the protections of the Fourteenth Amendment right to Due Process. *People v. Aponte*. 867 P.2d 183 (solo. App. 1993). This protection justifies the exercise of a Court's supervisory powers in dismissing a criminal case. *Id.*

16. **Outrageous governmental conduct** is generally Defined as that which violates **fundamental fairness** and is **shocking to a universal sense of justice**. *Id.*

17. When the **governmental conduct at issue is so outrageous** that appropriate sanctions are required. dismissal of a case is not considered "too severe" a remedy. *Id.*

CONCLUSION

For the aforementioned reasons. Mr. Gartin requests this Court dismiss the charges against him. Mr. Gartin requests a hearing on this Motion.

DAVID F. VELA
COLORADO STATE PUBLIC DEFENDER

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing **MOTION TO STRIKE** PLAINTIFF'S Complaint was placed in the United States mail, postage prepaid at Golden, Colorado, on the /~ day of August, 1997, addressed to:

Steve Douglas Gartin
P.O. Box 70
Golden, CO 80401

Estate of Robert V. Zehnder
5587 South Urban Street
Littleton, CO 80127

Delores Jean Zehnder
5587 South Urban Street
Littleton, CO 80127

Tamara Ann Zehnder
5587 South Urban Street
Littleton, CO 80127

Markus Bemard Merrit
5587 South Urban Street
Littleton, CO.80127

Lewis Shellenberger
1470 10th Street
Golden, CO 80401

Russell Cook
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Ronald L. Miller
911 10th Street
Golden, CO 80401

Judith Cherne
Golden Municipal Court
911 10th Street
Golden, CO 80401

William Hayashi
City Attorney
911 10th Street
Golden, CO 80401

Theresa Reilly
City of Golden
911 10th Street
Golden, CO 80401

Mike Bestor
City of Golden
911 10th Street
Golden, CO 80401

Bev Koenig
Golden Community Center
1470 10th Street
Golden, CO 80401

Michael Moler
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Ted Schnack
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Glenn Moore
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Robert Tortora
Golden Police Dept.
1470 10th Street
Golden, CO 80401

William Killpatrick
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Paula Anderson
U.S. West
7800 East Orchard Road
Suite 190
Englewood, CO 80155-6508

Richard McCormick
U.S. West
7800 East Orchard Road
Suite 190
Englewood, CO 80155-6508

Maury Knaizer
Office of the Attorney
General
1525 Sherman Street
Denver, CO 80203

John Holloway
Colorado Supreme Court
Grievance Committee
600 17th Street, #510
Denver, CO 80202-5435

Dave Parley
Golden Police Dept.
1470 10th Street
Golden, CO 80401

Barbara Byers
U.S. West
7800 East Orchard Road
Suite 190
Englewood, CO 80401

Elizabeth Kiovsky
U.S. West
7800 East Orchard Road
Suite 190
Englewood, CO 80401

James Allison
U.S. Attorney
1961 Stout Street, #1100
Denver, CO 80294

Lynda Donnelly
Colorado Supreme Court
Grievance Committee
600 17th Street, #510
Denver, CO 80202-5435

Frank A. Loturco
Federal Bureau of
Investigation
1929 Stout Street, #1823
Denver, CO 80294-1823

J. Terry Wiggins, Esq.
Alan Karsh, Esq.
Larry Fulton, Esq.
Seymour Joseph, Esq.
Valerie Krogman
KARSH & FULTON, P.C.
950 S. Cherry Street
Denver, CO 80222

Antonio Troy Ciccarelli,
Esq.
CICCARELLI & KENNEY, LLC
3900 East Mexico Street,
#330
Denver, CO :

Kathleen McGuire No. 24686
Deputy State Public Defender
17700 S. Golden Rd.. #220
Golden. Colorado 80401
(303)279-7841

CERTIFICATE OF DELIVERY

I hereby certify that a copy of the above and foregoing MOTION TO STRIKE PLAINTIFF'S COMPLAINT was placed in the Jefferson County interoffice mail to the following:

Judge Roy G. Olsen

1st Judicial District

Judge Charles T. Hoppin 1st Judicial District
Judge James C. Demlow 1st Judicial District
Judge Henry E. Nieto 1st
Judicial District