

STATE OF WISCONSIN

Plaintiff,

vs.

Case No. 2014-CF-4185

THOMAS KREINBRING

Defendant.

**NOTICE OF MOTION AND THIRD MOTION FOR SUPPRESSION OF FRUITS OF
POLICE SEARCH AND REQUEST FOR HEARING**

To: Honorable Judge Stark
Milwaukee Circuit Court Branch 17
901 N. 9th Street
Milwaukee, WI 53233

John Chisholm
District Attorney
821 W. State Street
Milwaukee, WI 53233

The Defendant, THOMAS L. KREINBRING, respectfully moves this Court for an order excluding all evidence obtained in a violation of his constitutional and statutory rights, including but not limited to the following: all alleged contraband and other items found and seized within Defendant's room.

The Defendant brings this motion pursuant to section 971.31(2) and (5) of the Wisconsin Statutes on the grounds that the evidence was seized from the premises of 3321 North Oakland Avenue, "Room 5," City of Milwaukee, Wisconsin, in violation of the rights guaranteed the Defendant under the Fourth and Fourteenth Amendments to the United States Constitution; Article I, §§ 1, 7, 8, 9, and 11 of the Wisconsin Constitution; and *United States v. Hinton*, 219 F.2d 324 (7th Cir. 1955); *Katz v. United States*, 389 U.S. 347, 361 (1967); *United States v. Roth*, 391 F.2d 507 (7th Cir. 1967); *United States v. Higgins*, 428 F.2d 232 (7th Cir. 1970); *Franks v. Delaware*, 438 U.S.154 (1978); *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981); *Maryland v. Garrison*, 480 U.S. 79 (1987); and *Horton v. California*, 496 U.S. 128 (1990).

Defendant also moves for exclusion from use as evidence all derivative evidence. *Taylor v. Alabama*, 457 U.S. 687 (1982); *Dunaway v. New York*, 442 U.S. 200 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899; *State v. Harris*, 199 Wis. 2d 227, 544 N.W.2d 545 (1996).

INTRODUCTION

The University of Wisconsin-Milwaukee Department (herein “UWMPD”) violated Mr. Kreinbring’s Constitutional rights in a variety of ways during their investigation of an off-campus party involving underage drinking. In the present motion, Mr. Kreinbring argues that the search warrant used to justify the search of his private residence was unconstitutionally overbroad and vague and thus did not properly authorize the search of his separate, secure, private room within the multi-dwelling house at issue.

BASIC FACTS AND DEFENDANT’S STANDING

According to the criminal complaint, on September 22, 2014, Thomas Kreinbring was charged with one count of possession with intent to deliver THC less than 200 grams, one count of possession of illegally obtained prescription pills, and one count of maintaining a drug trafficking place. (Adams Affidavit at ¶6). The charges were issued as a result of a search of Kreinbring’s room (herein “Room 5”) on the third floor of a multi-tenant house (herein “multi-tenant house”) located at 3321 N. Oakland Drive, City of Milwaukee, Wisconsin. The multi-tenant house itself contained at least seven separate, private bedrooms. Each of the bedrooms was occupied by a single student (except one that was occupied by two students). Each student had executed their own lease with the property’s landlord. (Adams Affidavit at ¶7). Further, each room was secured with its own lock. While the house was associated with the Tau Kappa Epsilon fraternity and occupied by six members of the organization, the house was also occupied by two non-members. (Adams Affidavit at ¶7).

The warrants' face sheets state there was probable cause in their attached affidavits that within 3321 N. Oakland Avenue there was evidence of "(1) Recklessly Endangering Safety (2) Placing Foreign Objects in Edibles (3) Party to Crime." The affidavits' descriptions of the multi-tenant house follow the face sheets verbatim with no other added information. The warrants do not name an individual person who they believe to have probable cause to have committed a crime. The affidavits never connect Thomas Kreinbring or "Room 5" with the alleged crimes, or evidence thereof, that the Police stated would probably be found within the multi-tenant house. (Adams Affidavit at ¶ 4).

During a house party on September 13, 2014, UWMPD and Milwaukee Police Department (herein "MPD") officers searched the entire multi-dwelling house for medically distressed (i.e. over intoxicated or drugged) individuals. The search was extensive and included a search of Defendant's third story bedroom, "Room 5." According to the MPD "CAD report" officers were on scene nearly two hours from 1:14 a.m. until 3:07 a.m. (Adams Affidavit at ¶33). During the search UWMPD gained actual knowledge of the existence of separate, locked and secured residences within the house. (Adams Affidavit at ¶11).

Three days later on September 16, UWMPD searched the multi-dwelling house a second time, based on highly questionable affidavits that are described more fully in Mr. Kreinbring's Second Motion to Suppress (*Franks*). During UWMPD's preparation for executing the original warrant (2014SW02019), UWMPD were told by MPD "entry team" officers that they believed there may be an issue with the validity of the original search warrant (2014SW02019). (Adams Affidavit at ¶5). Thereafter, the warrant affiant, UWMPD officer Ashley Hageman, wrote an amended warrant (2014SW02059), inserting at paragraph 3, "(t)he house has common entrances but individual rooms with locks for the fraternity members," and at paragraph 18, "I know the

subjects who experience blackouts can be sexually assaulted with no memory of it. I know that used condoms can be used as evidence in a sexual assault.” No other aspect of the warrant affidavits were changed. The affidavit does not describe the interior of the building other than to state each room has individual locks. The affidavits (redacted by the State) are attached. (Adams Affidavit at ¶ 4).

According to police records, the Police entered the multi-tenant house at approximately 2:24 p.m. on September 16, 2014. The Police then cleared and searched the common areas of the building, before being granted a second search warrant that stated the tenants of the house occupied separate, locked rooms. The second warrant was obtained at 4:24 p.m. (Adams Affidavit at ¶ 5).

Thomas Kreinbring’s room (“Room 5”) was searched and inventoried after 6:00 p.m. Within his room, the Police reportedly found and seized just over half an ounce of marijuana and 9.5 prescription Adderall pills. (Adams Affidavit at ¶ 5, 6). Thomas Kreinbring admits to occupying “Room 5.” (Adams Affidavit at ¶ 7).

During the execution of the search warrants, the UWMPD searched the entirety of the house, kicked holes in walls of the basement, and searched all residential units of the home.

LEGAL STANDARD

Search warrants must specify the place to be searched.

A warrant is valid under the Fourth Amendment only where it is based “upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. Where a warrant fails to describe with particularity the place to be searched, it is void. *See Horton v. California*, 496 U.S. 128, 139-40 (1990); *United States v. Higgins*, 428 F.2d 232, 234 (7th Cir.1970) (“[P]robable cause

and the particular description of the place to be searched are essential requirements of equal importance.”); *United States v. Hinton*, 219 F.2d 324, 326 (7th Cir. 1955).

The purpose of the particularity requirement is to direct the officer to the exact place to be searched, and guard against the abuses which existed under the old writs of assistance, which left the place to be searched up to the discretion of the officer. *State v. Morales*, 44 Wis.2d 96, 104, 170 N.W.2d 684 (1969). The Constitutional requirement that the search warrant particularly describe the place to be searched is highlighted when that place is within a multi-tenant structure, as in the present case.

Search warrants pertaining to multi-tenant building must specify unit to be searched.

“Federal courts have consistently held that the Fourth Amendment's requirement that a specific ‘place’ be described when applied to dwellings refers to a single living unit (the residence of one person or family). When a building is divided into more than one residential unit, a distinct probable cause determination must be made for each unit.” *United States v. Hinton*, 219 F.2d 324, 326 (7th Cir. 1955). Thus, a warrant which describes an entire building when cause is shown for searching only one apartment is void. *Id.* (citations omitted). *Maryland v. Garrison*, 480 U.S. 79, 87 (1987) (stating that if police officers knew or should have known that a building contains multiple “separate dwelling units,” the officers are obligated to exclude from the warrant any units for which they do not have probable cause to conduct a search).

Wisconsin courts follow this line of cases. In *State v. Jackson*, the defendant was a tenant of a duplex, “4124 N 21st Street.” 2008 WI App. 109, 756 N.W.2d 623 (2008). While the search warrant did indicate the house was a duplex, the warrant did not specify which unit of the house belonged to the defendant. The police searched and found a gun and drugs. Because of the lack of particularity in describing the defendant’s portion of the duplex, the First District Court of

Appeals concluded that, “the warrant failed to establish the particularity required for the search of one unit in a multifamily residence...” *Id.* at ¶ 1. The defense has attached the *State v. Jackson* decision in its entirety. (Adams Affidavit at ¶35).

ARGUMENT

UWMPD’s warrant was overly broad and too vague to justify a search of Defendant’s private unit within the multi-tenant house

The search warrants fail to meet the particularity requirement set forth in *Jackson*, *Garrison*, and *Hinton*. The affidavit in support of the second warrant notes that the premises, “has common entrances but individual rooms with locks for the fraternity members.” However neither warrant identifies any particular individual unit(s) that should be searched, nor does either affidavit contain facts or allegations that would justify the search of any particular private room. Further, if UWMPD thought that searching Mr. Kreinbring’s private, secure unit was necessary, the affidavits failed to document which unit was actually occupied by Defendant.

Furthermore, the search warrant affidavit does not specify why it is Defendant’s room, and not common areas or another resident’s unit, that is subject of the search. UWMPD did not attempt to differentiate Mr. Kreinbring’s private unit from the rest of the building. As discussed more thoroughly in Mr. Kreinbring’s Second Motion to Suppress (*Franks*), there is no credible evidence that any drugging or sexual assaults occurred. At the time of the warrant requests, three days after the party, the UWMPD were well aware that there were no credible reports of sexual assault or drugging (other than the rumors started by UWMPD), and zero evidence that any wrongdoing occurred in his private room. To the contrary, during the party UWMPD made a contemporaneous search of Defendant’s “Room 5,” and thereafter broke up the party. Clearly, there seeing nothing of noteworthy seen during the search that lends itself to providing probable cause to search Room 5.

UWMPD's overall theory, as explained thoroughly in Mr. Kreinbring's Second Motion to Suppress (*Franks*), was implausible and irrational. Their "conspiracy theory" is not borne out by an objective review of the evidence available to the Police at the time the warrant was sought. Moreover, to be a valid search warrant, the Police theory must necessarily be that each resident of the house (all 8 individuals) were engaged in the conspiracy as none of the house residents or rooms were excluded from the UWMPD's overly broad search warrant.

In their attempts to justify their search, UWMPD executed an overly broad and unconstitutionally vague search of Mr. Kreinbring's private unit, which is the only reason they ever discovered the evidence of THC and Adderall that provides the sole basis for the current case against him.

Dated at Milwaukee, Wisconsin, this _____ day of February 2015:

ADAMS URFER LLC
Attorney for the Defendant

By: _____
Daniel M. Adams
State Bar No. 1067564