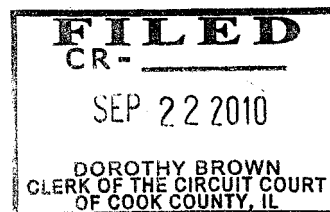


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Plaintiff, )  
)  
v. )  
)  
CHRISTOPHER DREW )  
)  
Defendant. )

No. 10 CR 46



MOTION TO SUPPRESS EVIDENCE

NOW COMES the Defendant, **CHRISTOPHER DREW**, by the undersigned counsel, and moves this Honorable Court to quash his arrest and suppress from introduction into evidence the direct and indirect products of said arrest, and in support thereof states as follows:

1. On or about December 2, 2009, The Defendant was seized and arrested in Chicago, Cook County Illinois. Any search, seizure, and arrest were as contemplated by the Fourth Amendment of the United States Constitution.
2. Christopher Drew was arrested for peddling in violation of City of Chicago ordinance. He was taken to the First District Police Station and his person and property were searched.
3. An arrestee retains an expectation of privacy in places and goods even after they are exposed to the authorities. Michigan v. Tyler, 436 U.S. 499 (1978).
4. At preliminary hearing on December 9, 2009, Officer Deltoro testified that, during a custodial search, he found a digital voice recorder in Defendant's poncho at about 1:30. He further testified that he listened to the recording with Sgt. Mizera, the arresting officer, at about 3:30.
5. The listening to the tape by the police constituted a search under the Fourth Amendment.
6. The warrant requirement of the Fourth Amendment requires that all searches by police be conducted pursuant to a warrant unless the search falls under one of the recognized exception to the requirement. The exceptions to the warrant requirement are: inventory searches, searches incident to arrest, exigency, consent, the automobile exception, and plain view.

7. A search warrant is required to search the contents of a cell phone unless an exception to the warrant requirement exists. United States v. Flores, 122 F. Supp. 2d 491, 494-95 (S.D.N.Y. 2000) (search of cell phone's contents not part of proper inventory search); *see* United States v. Zavala, 541 F.3d 562, 577 (5th Cir. 2008) (possession of cell phone gives rise to reasonable expectation of privacy regarding its contents, citing United States v. Finley, 477 F.3d 250, 258-59 (5th Cir. 2007)); United States v. Quintana, 594 F. Supp. 2d 1291, 1299 (M.D. Fla. 2009) (an owner of a cell phone has a reasonable expectation of privacy in the electronic data stored on the phone, citing Quon v. Arch Wireless Operating Co., 529 F.3d 892, 905 (9<sup>th</sup> Cir. 2008)).
8. It is uncontroverted that the police did not have warrant to search at the time they listened to the digital recording.
9. The search cannot be justified as an inventory search because such a search is intended to merely document the items in Defendant's possession at the time of processing. The purpose of an inventory search is to protect law enforcement from allegations of theft of an arrestee's property. Additionally, the police listened to the recording two hours after the inventory search. Defendant does not challenge the police right to conduct an inventory search.
10. A search incident to arrest must be particular to the crime for which the suspect is arrested. In this case, Drew was under arrest for peddling. The police were not searching for evidence of peddling. In a search incident to arrest, the police may search an item of evidence of the crime for which the defendant is arrested. Here, the recorder was not evidence of the crime for which he was arrested, the recorder should have been merely inventoried, not searched.
11. Defendant challenges the listening of the tape by the police because that search falls under no recognized exception to the warrant requirement.
12. Counsel has found no case in Illinois where the police examined the contents of an electronic device during an inventory search.
13. Warrantless searches for evidence not in the plain view of the police during the inventory have been held to be invalid. United States v. Chadwick, 433 U.S. 1 (1977) (search of foot locker); United States v. Simmons, 567 F.2d 314 (7th Cir. 1977), (search of purse); People v. Helm, 89 Ill. 2d 34 (1981) (search of purse); People v. Bayles, 82 Ill. 2d 128 (1980), cert. denied 453 U.S. 923(1981) (search of suitcase at scene of auto accident);

7. A search warrant is required to search the contents of a cell phone unless an exception to the warrant requirement exists. United States v. Flores, 122 F. Supp. 2d 491, 494-95 (S.D.N.Y. 2000) (search of cell phone's contents not part of proper inventory search); *see* United States v. Zavala, 541 F.3d 562, 577 (5th Cir. 2008) (possession of cell phone gives rise to reasonable expectation of privacy regarding its contents, citing United States v. Finley, 477 F.3d 250, 258-59 (5th Cir. 2007)); United States v. Quintana, 594 F. Supp. 2d 1291, 1299 (M.D. Fla. 2009) (an owner of a cell phone has a reasonable expectation of privacy in the electronic data stored on the phone, citing Quon v. Arch Wireless Operating Co., 529 F.3d 892, 905 (9<sup>th</sup> Cir. 2008)).
8. It is uncontroverted that the police did not have warrant to search at the time they listened to the digital recording.
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11. Defendant challenges the listening of the tape by the police because that search falls under no recognized exception to the warrant requirement.
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13. Warrantless searches for evidence not in the plain view of the police during the inventory have been held to be invalid. United States v. Chadwick, 433 U.S. 1 (1977) (search of foot locker); United States v. Simmons, 567 F.2d 314 (7th Cir. 1977), (search of purse); People v. Helm, 89 Ill. 2d 34 (1981) (search of purse); People v. Bayles, 82 Ill. 2d 128 (1980), cert. denied 453 U.S. 923(1981) (search of suitcase at scene of auto accident);

People v. Hamilton, 74 Ill. 2d 457 (1979), (search of locked briefcase at hospital);

People v. Smith, 103 Cal. App. 3d 840 (1980), cert. denied 451 U.S. 993 (1981) (search of purse).

14. Federal Courts have recognized that there is a reasonable expectation of privacy regarding information stored in cell phones. United States v. Finley, 477 F.3d 250, 259 (5th Cir. 2007). "Consequently, the Fourth Amendment require[s] law enforcement officers to obtain a warrant to search the cell phone unless a recognized exception to the warrant requirement exist[s]." United States v. McGhee, No. 8:09CR31, 2009 U.S. Dist. LEXIS 62427, 2009 WL 2424101 at \*3 (D. Neb. July 21, 2009), adopted at 2009 U.S. Dist. LEXIS 62427, [WL] at \*1.
15. "Few courts have addressed whether the search of a cellular phone can be conducted as part of an inventory search, but at least two of [the] federal district courts that have considered this question have determined that the search of a cellular phone's contents is not a proper inventory search." United States v. Chappell, Crim. No. 09-139 (JNE/IJK), 2010 U.S. Dist. LEXIS 27941, 2010 WL 1131474 at \*15 (D. Minn. Jan. 12, 2010) (citing United States v. Wall, No. 08-60016-CR, 2008 U.S. Dist. LEXIS 103058, 2008 WL 5381412 at \*4 (S.D. Fla. Dec. 22, 2008) & United States v. Park, No. CR 05-375 SI, 2007 U.S. Dist. LEXIS 40596, 2007 WL 1521573 at \*10-12 (N.D. Cal. May 23, 2007)).
16. The Fourth Amendment of the United States Constitution and Article I, s6 of the Illinois Constitution of 1970 guarantee the right of persons to be secure from unreasonable search and seizure of his person, house, papers and effects.
17. The exclusionary rule prohibits the introduction into evidence of the direct and indirect products of unreasonable searches and seizures. Mapp v. Ohio, 357 U.S. 643.
18. The search of the Defendant's property was made without the authority of a valid search or arrest warrant.
19. As a result of the illegal search, and during the subsequent detention the police will allege that they became aware of the existence of physical evidence, all of which, the Defendant contends are direct and indirect fruits of the unlawful, warrantless search.
20. As a result of the illegal arrest, the prosecution has acquired knowledge that it intends to employ in the prosecution of this case.

**WHEREFORE**, the Defendant respectfully moves this Honorable Court to suppress from

introduction into evidence in this cause the following:

- A. Physical evidence and statements discovered directly and indirectly as a result of the search of the Defendant's property;
- B. All other knowledge and fruits thereof, witnesses, statements, whether written or oral, gestural or physical evidence which is the direct or indirect result of the search.
- C. For such other relief as this Court deems proper under the circumstances.

Respectfully submitted,

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One of Defendant's Attorneys

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