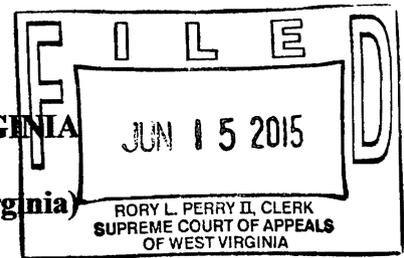


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO.: 15-0008
(Lower Tribunal: Circuit Court of Mineral County, West Virginia)
(Civil Action No.: 14-C-137)



PRISTINE PRE-OWNED AUTO, INC,
a West Virginia Corporation,

Petitioner,

v.

JAMES W. COURRIER, JR.,
Prosecuting Attorney for Mineral
County, West Virginia

and

TROOPER M.L. TRAVELPIECE, individually and
in his official capacity as a West Virginia State Trooper,

Respondents.

**PETITIONER'S REPLY TO THE BRIEF OF RESPONDENT M. L. TRAVELPIECE'S
SUMMARY RESPONSE BRIEF**

James E. Smith, II, CPA, Esq.
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Keyser, West Virginia 26726
Counsel for Petitioner

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COUNTER-STATEMENT OF THE CASE AND
COUNTER- ARGUMENTS

The Petitioner reasserts and reiterates its Statement of the Case and Argument(s) sections of its Petition as if fully set forth below. Where there are inconsistencies between the Petitioner's and Respondent Travelpiece's Statement of the Case and Argument(s) sections, the Petitioner specifically objects and challenges such inconsistencies.

ASSIGNMENT OF ERROR AND ARGUMENT

PRISTINE IS ENTITLED TO THE ENTRY OF A WRIT OF MANDAMUS. PRISTINE WAS THE VICTIM OF AN UNCONSTITUTIONAL SEARCH AND SEIZURE AS A RESULT OF THE LOWER COURT' FAILURE TO SET ASIDE THE GENERAL SEARCH WARRANT.

Counsel for Respondent Travelpiece refuses to acknowledge the erroneous general search warrant and ignores the consequences of its issuance. A general warrant is defined as:

A warrant that gives a law-enforcement officer broad authority to search and seize unspecified places or persons; a search or arrest warrant that lacks a sufficiently particularized description of the person or thing to be seized or the place to be searched. General warrants are unconstitutional because they fail to met the Fourth Amendment specificity requirement. (Black's Law Dictionary, Deluxe Seventh Addition, Page 1579). (Emphasis added).

Respondent Travelpiece proudly testified that he expected to take everything from the premises of Pristine. He detained representatives of Pristine and seized their cell phones; he seized Pristine's computers; he and approximately ten (10) other law enforcement officers ransacked Pristine's premises, based on only one (1) actual complaint without disclosing to Magistrate Roby other exculpatory evidence. Respondent Travelpiece's entire testimony of his actions is the definition of a general search warrant. This wholesale rummaging, burrowing, dragnet, blanket search is the most foul example of the intolerable and unreasonable affront to Pristine's Constitutional rights and is the most egregious of the unreasonable processes that the Fourth Amendment renounces.

Counsel for Respondent Travelpiece goes to great length to argue that the form of the search warrant is valid in all respects, and therefore all items seized were lawfully seized. Within the affidavit of the search warrant, Respondent Travelpiece only mentioned the alleged victim

Shelley Jackson. The references to the West Virginia Department of Motor Vehicles only pertained to Shelley Jackson's complaint. Only in a conclusory manner did Respondent Travelpiece state "Since Monday, September 8, 2014 there have several additional victims come forward stating that they had purchased vehicles from Pristine and believed they had been sold a reconstructed vehicle". (See Amended Appendix; Attachment C; Page 79). Those conclusory assertions fall short of the level of substance required to establish probable cause for the issuance of search warrant. State vs. Adkins, 176 W. Va. 613, 346 S.E. 2d 762 (1986) provides:

The conclusory probable cause affidavit based on hearsay does not establish probable cause under the totality of information test required the Forth Amendment and the State Constitution, unless there is a substantial basis for crediting hearsay set out in the affidavit which can include collaborative efforts of the police officers.

The Adkin's Court relied on State vs. White, 167 W. Va. 374, 280 S. E. 2d 114 (1981). It stated:

The question presented is whether it is proper for a Court to look outside the "four corners" of a search warrant affidavit and consider at a suppression hearing testimony that was given to the Magistrate at the time the warrant was issued in order to determine if there was adequate probable cause to issue the warrant.

Respondent Travelpiece freely admitted that he failed to disclose to Magistrate Roby, exculpatory documents that contradicted Attachment C of the Search Warrant. Respondent Travelpiece's failure to disclose those exculpatory documents prevented Magistrate Roby from ascertaining whether a nexus between the criminal activity and the things searched existed to substantiate probable cause. As a result, the Search Warrant fails, reflecting another incident of Respondent Travelpiece's perversions of the Fourth Amendment and State Constitution.

Counsel for Respondent Travelpiece is quick to argue that Pristine contributed to the “overtaking” of items seized, as cited by the lower Court. How could Pristine be expected to assist Respondent Travelpiece when his intent was to take the entirety of the records on site in order to create a criminal case? If representatives of Pristine would have assisted Respondent Travelpiece, it would have been construed as a consent to the search. This Court in State vs. Jonathan B., 230 W. Va. 229, 737 S.E. 2d 57 (2012) held “ consent to search may be implied by the circumstances surrounding the search, by the persons prior actions or agreements, or by the persons failure to object to the search.” To justify the ransacking of Pristine’s property because representatives of Pristine’s failed to cooperate with Respondent Travelpiece is outlandish and nonsensical. That would be like asking a person to hold an anchor while attempting to swim.

Counsel for Respondent Travelpiece highly boasts that a twenty-nine (29) count Indictment for both Fernando Manvel Smith and Jamie Elizabeth Crabtree have been secured as a result of the execution of the general search warrant. Notwithstanding the inappropriateness of this statement within the Respondent Travelpiece’s Summary Brief (inasmuch as this is information outside of the initial record of the Complaint for Writ of Mandamus), Counsel for Respondent Travelpiece should be ashamed, rather than proud. The Indictments are the end result of the unconstitutional search and seizure inflicted upon Pristine. Raping someone of their Constitutional rights turns into persecution rather than a prosecution.

Counsel for Respondent Travelpiece argued that Pristine is not entitled to the entry of a Writ of Mandamus, since Pristine is free to file a motion to suppress in the current criminal action. Counsel for Respondent Travelpiece's entire argument is riddled with circular reasoning. Pristine was entitled to the entry of a Writ of Mandamus the moment its property was seized without benefit of due process. Since September 9, 2014, Pristine has been deprived of its property. This Court has consistently held that Mandamus is the proper and adequate remedy as previously cited in State ex rel. White vs. Melton, 166 W. Va. 249, 273 S.E. 2d 81 (1980) and Eureka Pipeline Co. Vs. Riggs, 75 W. Va. 353, 83 S.E. 1020 (1915). The Respondents arbitrarily and capriciously discharged their duties in their zeal to persecute and trounced Pristine's clear legal right to both their property and to be free from unreasonable searches and seizures.

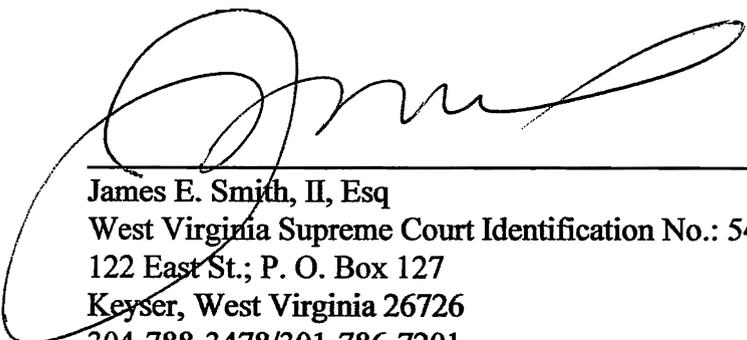
CONCLUSION

Counsel for Respondent Travelpiece offers no logical or valid response to the arguments contained in Pristine's Brief. Continuing to insist that the Search Warrant is not a general warrant is absurd. Even though Counsel for the Respondent admits that "it was obvious that some of the items were not responsive and irrelevant", nonetheless she continues to turn hundreds of years of jurisprudence regarding unreasonable search and seizure on its ear. Pristine has unequivocally shown that the Search Warrant was a general warrant that it was not particular in the places to be searched or the items to be seized. Pristine has unequivocally shown that Respondent Travelpiece purposely omitted exculpatory evidence within the affidavit, which misled and tainted Magistrate Roby's determination of a criminal nexus. This general warrant is fundamentally offensive to Pristine's constitutional rights by virtue of its encompassing, dragnet and rummaging effect through Pristine's property. Interesting enough, Counsel for Respondent Travelpiece fails to acknowledge the error in the seizure of Pristine's computers and not only Pristine's cell phones, but other employees cell phones in complete contradiction to the United States Supreme Court in Riley vs. California, 134 S. Ct. 21473, 189 L. Ed. 2d 430, 82 USLW 4558 (2014). As stated in U.S. v. Clark, 31 F. 3d 831 (9th Circuit, 1993) "The only remedy for such an over- broad search warrant is suppression of the seized evidence and the return of the property to the wronged individual".

For the foregoing reasons, and any other that may be apparent to this Honorable Court,
Pristine respectfully prays:

1. That relief requested by Pristine in it's Petition be granted;
2. The relief requested by Counsel for Respondent Travelpiece be denied;
3. That the Petition be admitted to the Rule 20 Argument Docket;
4. That the lower Court's Order be reversed and that this Honorable Court enter an Order of Mandamus compelling the Respondents to return all of Pristine's property wrongfully seized and compel them from using any information as evidence against Pristine in any proceeding and order the Respondents to expunge all information;
5. And for such other relief as this Honorable Court deems equitable and just.

PRISTINE PRE-OWNED AUTO, INC., a
WEST VIRGINIA CORPORATION,
PETITIONER, BY COUNSEL



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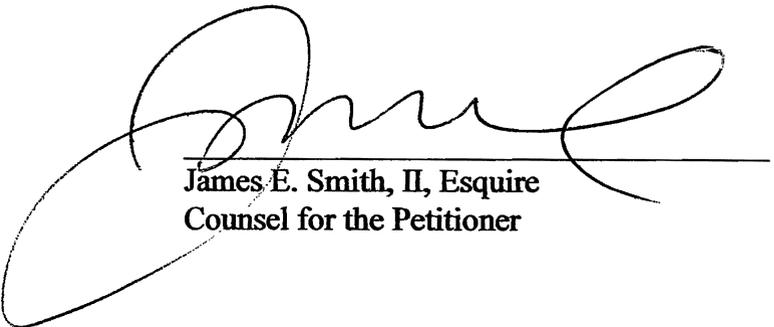
CERTIFICATE OF SERVICE

I, James E. Smith, II, Esquire a practicing West Virginia attorney, pursuant to Rule 37 of the West Virginia Rules of Appellate Procedure, do hereby certify that, a true copy of the foregoing Petitioner's Reply to the Respondent M.L. Travelpiece's Summary Response to Brief of Petitioner was duly served upon the following:

1. James W. Courier, Jr., by United States Mail, First Class, postage prepaid to the Mineral County Prosecuting Attorney's Office, Mineral County Court House, 150 Armstrong Street, Keyser, West Virginia 26726;

2. Virginia Grottendieck-Lanham, Esquire, by United States Mail, First Class, postage pre-paid to West Virginia State Police, Legal Division, 725 Jefferson Road, South Charleston, West Virginia 25309; and

3. That the original and ten (10) copies of the same were duly served by United States Mail, First Class, postage pre-paid to the Office of the Clerk, Attn. Claudia, Supreme Court of Appeals of West Virginia, State Capital Building, Room E-317, 1900 Kanawha Blvd. East, Charleston, West Virginia 25305, for filing on the 11th day of June, 2015.


James E. Smith, II, Esquire
Counsel for the Petitioner