

**IN THE SUPREME COURT
OF THE
STATE OF VERMONT**

IN RE: SEARCH WARRANTS

Supreme Court Docket No. 2011-228

**Appeal from the
Vermont Superior Court, Criminal Division.
Chittenden Unit**

APPELLANT STATE OF VERMONT'S REDACTED PRINTED CASE

STATE OF VERMONT

**WILLIAM H. SORRELL
ATTORNEY GENERAL**

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Table of Contents

<i>In re: Search Warrants</i> , Opinion and Order (Vt. Sup. Ct., Chitt. Crim. Div. June 23, 2001) (Levitt, J.) (redacted pursuant to <i>In re: Search Warrants</i> , No. 2011-228 (Vt., June 29, 2011) (Skoglund, J.))	1
Copy Request Form, dated June 15, 2011	4
<i>In re: Search Warrants</i> , Entry Regarding Motion (Vt. Sup. Ct., Chitt. Crim. Div. June 16, 2001) (Levitt, J.)	5
<i>In re: Search Warrants</i> , Entry Regarding Motion (Vt. Sup. Ct., Chitt. Crim. Div. June 21, 2001) (Levitt, J.)	6
Notice of Appeal	7
<i>In re: Search Warrants</i> , Entry Regarding Motion (Vt. Sup. Ct., Chitt. Crim. Div. June 23, 2001) (Crucitti, J.)	8
<i>In re: Search Warrants</i> , Entry Regarding Motion (Vt. Sup. Ct., Chitt. Crim. Div. June 27, 2001) (Crucitti, J.)	9

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

STATE OF VERMONT

JUN 28 2011

SUPERIOR COURT
Chittenden Unit

CRIMINAL DIVISION

Vermont Superior Court

In Re: Search Warrants

JUN 28 2011

Opinion and Order

Chittenden Unit

On June 16, 2011, the State, represented by Deputy State's Attorney Mary Morrissey, moved to seal search warrants, applications for search warrants and affidavits in support of the search warrants, filed in connection with the investigation of the disappearance of Bill and Lorraine Currier of Essex, Vermont. The same day, the Court denied the State's Motion to Seal, stating that the search warrants were not yet public. On June 21, 2011, the State filed its renewed Motion to Seal, as the Essex Police Department had filed a number of returns. The Court denied the State's motion. In its June 21, 2011 Entry Order, the Court wrote:

The Court needs a particularized showing to seal, not a general, it will "compromise the investigation" to disclose. What info is known only to the police and the perp? How will disclosure impede the investigation?

The motion before the Court is the State's June 21, 2011 Supplemental Renewed Motion to Seal, "filed under seal."

The State cites *In re Sealed Documents*, 172 Vt. 152 (2001), which directs the courts to apply "an exacting standard" to a motion to seal search warrants and related materials. The Rules for Public Access to Court Records became effective after the decision in *Sealed Documents* was issued, although the Vermont Supreme Court decision acknowledged the newly promulgated rules, and explained some of the terms found in the rules.

The purpose of these rules is to "provide a comprehensive policy on public access to Judicial Branch records." Rules for Public Access to Court Records § 1. The general policy established by those rules is that "all case and administrative records of the Judicial Branch shall be open to any member of the public for inspection or to obtain copies." *Id.* § 4. Therefore, "all case records" are open to the public unless they fall into the exceptions set forth in § 5(b). *Id.* § 6(a).

State v. Whitney, 2005 VT 102, ¶ 9, 178 Vt. 435.

One of the exceptions to public access is for search warrants: "Records of the issuance of a search warrant, until the date of the return of the warrant, unless sealed by order of the court." Rules for Public Access to Court Records § 6(15).

The Reporter's Notes -- 2001 Amendment supersedes the original Reporter's Notes and state:

Section 6(b)(15) is an exception for records of the issuance of a search warrant. The record of the issuance of a search warrant will become accessible on the execution of the warrant unless sealed pursuant to § 7(a) of these rules. In determining whether to seal warrant issuance records, the court must apply the standards contained in *In re Sealed Documents*, No. 2001-103 (Vt. March 23, 2001.).

The Vermont Supreme Court summarized its holding in *Sealed Documents*:

the appellants had a presumptive right of access to the material sought which could be overcome only through a "specific showing of substantial harm to public or private interests," and that, where necessary, these interests might be served by deletion of the harmful material. *Id.* at 153, 772 A.2d at 521. The requisite showing of harm must be demonstrated with specificity as to each document sought to be withheld; general allegations of harm are insufficient. *Id.* at 161, 772 A.2d at 527. When rendering a decision, "the court must examine each document individually, and make fact-specific findings with regard to why the presumption of access has been overcome." *Id.* at 162, 772 A.2d at 527. The court should then "enter a separate order containing specific factual findings and conclusions to support the decision to seal." *Id.*

State v. Favreau, 173 Vt. 636, 639 (2002).

The *Favreau* case places the burden on the party moving to seal. Here, the State must demonstrate a showing of substantial harm, demonstrated with specificity with respect to each document. The Court has reviewed the affidavits in support of the search warrants, plus the four returns and inventories, as well as the State's submissions, especially pages 3-4 of the Supplemental Renewed Motion to Seal. The State has made only general assertions that the police investigation will be jeopardized if information is released. [REDACTED]

[REDACTED] Furthermore, the listing of items in the search warrant inventories are not so specific that access to the public will jeopardize the police investigation.

Prior to the execution of the warrant, search warrants are not available to the public, in order to allow the police to perform their search without interference. The search warrants for the searches that have not yet been executed continue to be closed to the public. The returns that have been made indicate that a number of the searches have already been performed. Evidence was either found or not found. The public has a right to information about the police investigation that is filed with the court, and that access can not cause interference with a completed search.

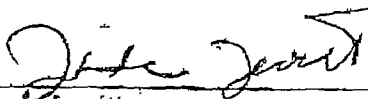
The State has not argued that a substantial risk exists to the privacy or safety of the missing individuals. Although the State has argued that disclosure poses a "substantial risk to the investigation," the possibility of a risk is not the same as the existence of "substantial threat to the interests of effective law enforcement." There must be compelling reasons for the closure of court records. In a free and democratic society, there is always some risk that information will

be misused or applied to nefarious ends. The State has not met its burden of demonstrating compelling reasons that overcome the presumption of public access.

Order

For the reasons stated above, the search warrants that have not been executed may not be disclosed. The search warrant materials for which the warrant has been returned are subject to public access. The State's Supplemental Renewed Motion to Seal is *denied*.

Dated at Burlington this 22 day of June, 2011.



Linda Levitt
Superior Court Judge

Vermont Superior Court

Copy Request Form

JUN 15 2011

Chittenden Unit

Your Name: Sam Hennigway
 Place of Business: BFP
 Phone: 660-1850 Date: 6/15/11
 Address: _____

Docket #(s): See Below
 Case Name: _____ vs _____
 Year/Type of Case Filed: _____

Requesting:	Copies	Certified Copies
Description of Request:	<u>Search warrants in current case for 8 Colbert St, dark blue Saturn, current cellphone bank acct & credit card receipts</u>	

Requested Date To Pick Up: ASAP

Copies are \$0.25 per page, with a minimum charge of \$1.00
 Certified Copies are \$5.00 for the 1st page; \$0.25 each additional page

Please make checks payable to: Vermont District Court (VDC)

****We cannot forward copies without receiving payment****

WE APOLOGIZE, IN ADVANCE, FOR ANY INCONVENIENCE IN DELAY TO COMPLETE YOUR REQUEST.

THANK YOU FOR YOUR PATIENCE AND CONSIDERATION.

5/23/07.

*Denied, No returns have been filed
 Judge Luke Leach 6/16/11
 4*

Hold for memo until: _____

STATE OF VERMONT

<input type="checkbox"/> DISTRICT COURT OF VERMONT	Unit No.	Circuit/County	Docket Number
<input type="checkbox"/> SUPERIOR COURT OF VERMONT			

v. Search Warrants

ENTRY REGARDING MOTION

Title of Motion: Motion to Seal

Date Motion Filed: 6/16/11

Party Filing Motion: Plaintiff/State Mary Morrissey

Defendant _____

Other _____

Date Response Filed: _____
("NONE" if None Filed)

Granted Compliance by _____

____ Denied

____ Scheduled for hearing on: _____ at _____; Time Allotted: _____
(Date) (Time)

____ Other They are not public, yet

[Signature] Presiding Judge Assistant Judge Assistant Judge 6/16/11 Date

Date copies sent to: 6/16/11

Plaintiff/State: _____

Defense _____

Other _____

Clerk's Initials: [Signature]

STATE OF VERMONT

<input type="checkbox"/> DISTRICT COURT OF VERMONT	Unit No. <u>II</u>	Circuit/County <u>Ch. Henden</u>	Docket Number _____
<input type="checkbox"/> SUPERIOR COURT OF VERMONT			

State

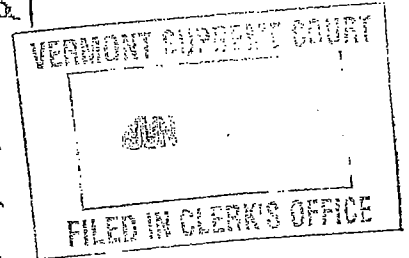
v. Search Warrants

ENTRY REGARDING MOTION

Title of Motion: State's Renewed Motion to Seal

Date Motion Filed: 6/21/11

Party Filing Motion: Plaintiff/State Morrissey
 Defendant _____
 Other _____



Date Response Filed: _____

("NONE" if None Filed)

_____ Granted Compliance by _____

Denied

_____ Scheduled for hearing on: _____ at _____; Time Allotted _____
(Date) (Time)

Other The Court needs a particularized showing to seal, not a general, it will "compromise the investigation" & disclose what info is known only to police & the perp? How will disclosure impede the investigation?

[Signature] Presiding Judge
 _____ Assistant Judge
 _____ Assistant Judge
6/21/11 Date

Date copies sent to:
 Plaintiff/State _____
 Defense _____
 Other _____

Clerk's Initials _____

SUPERIOR COURT

STATE OF VERMONT

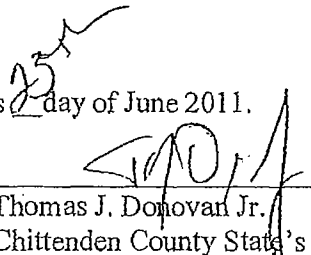
CRIMINAL DIVISION
Chittenden Unit

In Re: Search Warrants

NOTICE OF APPEAL

Now comes the State of Vermont, by and through Chittenden County State's Attorney Thomas J. Donovan Jr., to give notice that it is appealing to the Vermont Supreme Court pursuant to Rule 7(c) of the Rules for Public Access the Superior Court's Opinion and Order of June 23, 2011 denying the State's Supplemental Renewed Motion to Seal, and the Superior Court's Order denying the State's motion for reconsideration on June 23, 2011.

Dated at Burlington, Vermont on this ²⁵ day of June 2011.



Thomas J. Donovan Jr.
Chittenden County State's Attorney

STATE OF VERMONT

<input type="checkbox"/> DISTRICT COURT OF VERMONT	Unit No.	Circuit/County	Docket Number
<input checked="" type="checkbox"/> SUPERIOR COURT OF VERMONT	II	Chittenden	

V.

ENTRY REGARDING MOTION

Title of Motion: For Stay

Date Motion Filed: 6/23/2011

Party Filing Motion: Plaintiff/State TJ Donovan

Defendant _____

Other _____

Vermont Superior Court

JUN 27 2011

Chittenden Unit

Date Response Filed: _____
("NONE" If None Filed)

Granted Compliance by _____

Denied

Scheduled for hearing on: _____ at _____; Time Allotted _____
(Date) (Time)

Other

The court does not believe that the state has outlined sufficient reasons to justify sealing of the records or a stay of the order. It appears that the issues raised by the state would apply transportation insurance. See more sealed documents, 172 DA 525 (2009)
General allegations of harassment insufficient

Presiding Judge

Assistant Judge

Assistant Judge

Date

Hon. James Crucitti

Date copies sent to: 6/27/11

Plaintiff/State

Defense _____

Other Free Press

Clerk's Initials gb