

A 3424-05T5

**RECEIVED
APPELLATE DIVISION**

JUL 18 2006

**SUPERIOR COURT
OF NEW JERSEY
Superior Court of New Jersey
Appellate Division**

Appeal No. A-003424-05T5

STATE OF NEW JERSEY)

Plaintiff-Appellant)

vs.)

SHIRLEY REID)

Defendant-Respondent)

CRIMINAL ACTION: On Leave to Appeal from
an Order granting a Motion to Suppress entered
in the Superior Court of New Jersey, Law
Division - Criminal Part, Cape May County.

Sat Below: Hon. **FILED**
APPELLATE DIVISION

JUN 28 2006

J. Vincent Molitor

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

**ROBERT L. TAYLOR
CAPE MAY COUNTY PROSECUTOR
4 MOORE ROAD
CAPE MAY COURT HOUSE, NJ 08210-1601**

**J. Vincent Molitor
Assistant Prosecutor
(609) 465-1135**

Of Counsel and on the Brief

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Appeal No. A-003424-05T5

STATE OF NEW JERSEY)
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 Plaintiff-Appellant)
)
 vs.)
)
 SHIRLEY REID)
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 Defendant-Respondent)

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APPELLATE DIVISION

JUN 28 2006

S. M. Taylor
BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

**ROBERT L. TAYLOR
CAPE MAY COUNTY PROSECUTOR
4 MOORE ROAD
CAPE MAY COURT HOUSE, NJ 08210-1601**

**J. Vincent Molitor
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(609) 465-1135**

Counsel and on the Brief

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PROCEDURAL HISTORY

On February 22, 2005, the Deputy Clerk of the Superior Court of New Jersey, Cape May County, filed Indictment Number 05-02-00121-I, which charged Defendant with computer theft, N.J.S.A. 2C:20-25b. (Sa4-5).¹

On April 17, 2005, Defendant filed a motion to suppress. (Sa6-7).

On September 22, 2005, Honorable Carmen H. Alvarez granted Defendant's motion to suppress. (Sa8), (1T8-9).²

On October 19, 2005, the State moved for leave to file an interlocutory appeal. (Sa9-13).

On March 8, 2005, the Superior Court of New Jersey, Appellate Division, granted the State's motion for leave to file an interlocutory appeal. (Sa14).

¹ The State's appendix is referred to as "Sa".

² The transcript of the first hearing on Defendant's motion to suppress, dated September 1, 2005, is referred to as "1T".

The transcript of the second hearing on Defendant's motion to suppress, dated September 22, 2005, is referred to as "2T".

STATEMENT OF FACTS

On August 24, 2004, an individual accessed the Dynamic Account of Jersey Diesel via computer. (Sa1). The individual changed the password of Jersey Diesel's Dynamic Account and made a number of requests for change of address information. (Sa1). The Internet Protocol address (IP address) of the individual was 68.32.145.220. (Sa1).

On September 7, 2004, Lower Township Court Administrator Elizabeth Byrne issued a subpoena duces tecum to Comcast Internet Service. (Sa2). The subpoena duces tecum demanded any and all information pertaining to IP address 68.32.145.220. (Sa2).

On September 16, 2004, Comcast Internet Service provided the name, address, and telephone number of Shirley Reid (hereafter Defendant) in response to the subpoena duces tecum. (Sa3).

POINT I

**THIS COURT SHOULD REVERSE THE TRIAL COURT'S ORDER
GRANTING DEFENDANT'S MOTION TO SUPPRESS**

The trial court based its decision to grant Defendant's motion to suppress on three grounds: (1) Court Rule 7:7-8 does not authorize the service of a subpoena when no complaint has been issued; (2) the Lower Township Municipal Court Administrator did not have the power to issue a subpoena for an indictable offense; (3) the subpoena violated Defendant's reasonable expectations of privacy. (1T3:17-25), (1T8-9).

In State v. Dyal, 97 N.J. 229 (1984), a municipal court clerk, at the request of a police officer, prepared a subpoena that ordered a hospital to release the results of the defendant's blood test. Id. at 234. "At that time no proceeding was pending in connection with the accident, and nothing indicates that the officer made any showing of facts to support the issuance of the subpoena. Apparently, he simply asked the court clerk for the subpoena, and she complied with his request." Id. at 234. The hospital provided the blood test results to law enforcement on the date the subpoena was issued. Id. at 234. The following day, the officer issued a summons for operating a vehicle under the influence of intoxicating liquor. Id. at 234-235.

Eventually, the blood test results were used to indict the defendant for death by auto. Id. at 235.

The Superior Court of New Jersey, Appellate Division, held that so long as the officer had a reasonable basis to support his conclusion that the defendant was intoxicated, the State could use the blood test results in its case against the defendant even though there was no case pending against the defendant at the time the subpoena was issued. Id. at 240-242.

Therefore, the trial court erred when it determined that Court Rule 7:7-8 does not authorize the service of a subpoena when no complaint has been issued and the Lower Township Municipal Court Administrator did not have the power to prepare a subpoena in this case.

In State v. Domicz, 377 N.J. Super. 515 (App. Div. 2005), cert. granted, 185 N.J. 268 (2005), the Superior Court of New Jersey, Appellate Division, held that an individual has a reasonable expectation of privacy in the records of his usage of power. Id. at 544-545. However, the court observed that a warrantless search for such records to discover only the identity of the property owner, rather than the content of his records, might not run afoul of either the Fourth Amendment to the United States Constitution or Article I, Paragraph 7 of the New Jersey Constitution. Id. at 545-546.

See, State v. Jones, 179 N.J. 377, 391 (2004), (police corroborated an informant's tip by reviewing the defendant's utility records to confirm the defendant's telephone number); State v. Sullivan, 169 N.J. 204, 209 (2001), (police corroborated an informant's tip by reviewing utility records to identify the owner of the premises). "[T]here is a distinct difference between a warrantless review of utility records to ascertain the name of an occupant of property, on the one hand, and a review of records relating to the usage of power, on the other." Id. at 545.

In this case, it is clear that what the State sought to obtain through the subpoena was merely the name of the individual who was associated with IP address 68.32.145.220. The State did not attempt to discover the content of the communication made by that individual. Moreover, Comcast Internet Service provided only Defendant's name, address, and telephone number in response to the subpoena. (Sa3). Given the fact that the information disclosed as a result of the issuance of the subpoena was merely Defendant's identity, and not the content of her communications, messages, and conversations, the State contends, relying upon Domicz, Jones, and Sullivan, that the trial court erred when it determined that the subpoena violated Defendant's reasonable expectations of privacy.

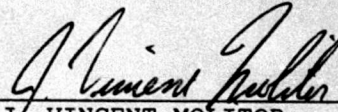
CONCLUSION

For the reasons presented above, this court should reverse the trial court's decision to grant Defendant's motion to suppress.

RESPECTFULLY SUBMITTED

ROBERT TAYLOR
CAPE MAY COUNTY PROSECUTOR

BY:



J. VINCENT MOLITOR
ACTING ASSISTANT PROSECUTOR

DATED:

July 11, 2006

Jersey Diesel

From: "Stamatelakys, Katherine" <KStamate@Mail.Donaldson.com>
To: <jersey.diesel@verizon.net>
Sent: Thursday, August 26, 2004 9:42 AM
Subject: Information you requested

Good Morning Tim,

Here is the information that our IT folks have found out about the email that came into us from your Dynamic account. Please let me know if I can help any more and I will be sending you your new access in just a bit.

The IP address of the person in question was: 68.32.145.220. This IP is owned by Comcast Cable Communications, Inc in New Jersey. As of 2:30 this afternoon, that IP resolved to 'pcp08879590pcs.riogrd01.nj.comcast.net'. A quick route to that host places them in Cherry Hill, NJ.

This session began with a sign-in at 9:57:56 AM on August 24th (2004). It appears they signed in correctly on the first attempt, indicating they knew the username and password. After logging in it appears they went directly to the Account area. They changed the password of the account and then made a number of requests for a change of address information. Their last request was at 10:07:49 AM.

From the access log it doesn't appear that they were attempting to 'hack' the system. There is nothing malformed or malicious (from a technical standpoint) in the requests.

Kate Stamatelakys
e-Commerce Specialist
Donaldson Company, Inc
email: kstamate@mail.donaldson.com
Phone: 952.887.3630
Fax: 952.887.3716

COMCAST 856 324 2061 - DANA ~~Gold~~ Gold / 856 317 7319
LEGAL - SHANNA AUSTIN 856 317 7214 / 856 317 7319

CASE ID NA 338384

Tues 8:30AM

knows who did this
needs sup.

8/27/2004

Sal

LOWER TOWNSHIP MUNICIPAL COURT
401 Breakwater Road
Erma, New Jersey 08204
(609) 886-6040

LOWER TOWNSHIP MUNICIPAL COURT
CAPE MAY COUNTY

TIMOTHY C. WILSON

Plaintiff(s)

Lower Township Police Case No. 2004-021332

vs.

Summons No(s).

SHIRLEY REED

Defendant(s)

Subpoena Duces Tecum

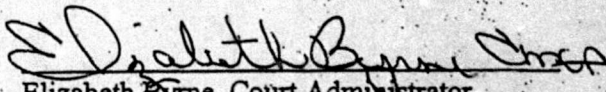
The State of New Jersey, To: COMCAST INTERNET SERVICE

You are hereby commanded to attend and give testimony before the Lower Township Municipal Court at 401 Breakwater Road, Erma, New Jersey on the 7TH day of SEPTEMBER, 2004

At 3:00 o'clock P.M., on the part of LOWER TOWNSHIP POLICE DEPARTMENT in the entitled action, and that you have and bring with you and produce at the same time and place, the following: Any and all information pertaining to IP Address information belonging to IP address: 68.32.145.220, which occurred on 08-24-04 between 8:00 a.m. and 11:00 a.m. EST. This information pertains to Comcast case #: NA338384.

Failure to appear according to the command of this Subpoena will subject you to a penalty, damage in a Civil Suit and punishment for contempt of Court.

Dated:


Elizabeth Byrne, Court Administrator
Lower Township Municipal Court

PROOF OF SERVICE

On _____, I, the undersigned, being over the age of 18, served the within Subpoena by delivering a copy thereof to the person named therein, at _____ and by tendering to such person the attendance fee of \$ _____ and mileage of \$ _____ as allowed by law.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date _____

So 2

Comcast.

Comcast IP Services
1870 Bishop's Gate Blvd
Mt. Laurel, NJ 08054
Office: 856.317.7272
Fax: 856.317.7319
www.comcast.com

September 16, 2004

VIA FACSIMILE

Detective Robert Smith, Jr.
Lower Township Police Department
401 Breakwater Road
Erma, New Jersey 08204
FAX: (609) 886-4924

Re: Subpoena
Case No.: 2004-021332
Our File #: 338384

Dear Mr. Smith:

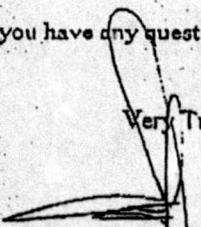
The Subpoena dated September 7, 2004 with respect to the above-referenced matter has been forwarded to me for a reply. The Subpoena requests Comcast to produce certain subscriber records pertaining to the following Internet Protocol Address: 68.32.145.220, which occurred on August 24, 2004 between 8:00 a.m. and 11:00 a.m. EST.

Based on the information provided pursuant to the Subpoena, the subscriber information obtained has been provided below:

Subscriber Name: SHIRLEY REID
Address: 121 SHADELAND AVENUE
VILLAS, NJ 08251
Telephone #: (609) 889-8166
Type of Service: Residential High Speed Internet Service
Current IP Address: 68.32.145.220
IP Assignment: Dynamically Assigned
Account Status: Active
Account Number: 01925-223616-06
E-mail Address: theprincezz@comcast.net
Method of Payment: Statement sent to above address
(No credit card numbers or account numbers on file)

If I can be of further assistance, or if you have any questions regarding this matter, please feel free to call me at (856) 317-7214.

Very Truly Yours,


Sharina Austin
Policy Abuse Legal Analyst

Sa 3

SUPERIOR COURT
CAPE MAY COUNTY
FILED

FEB 22 2005

Robert E. Coffey
DEPUTY CLERK OF THE SUPERIOR COURT

Case No. 04001367

JULY TERM 2004
NOVEMBER SESSION 2004

SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY
LAW DIVISION
(Criminal)

INDICTMENT NO. 05-02-00121-1

THE STATE OF NEW JERSEY

vs.

SHIRLEY REID,

Defendant.

Computer Theft
N.J.S.A. 2C:20-25b
2nd Degree

Sa 4


The Grand Jurors of the State of New Jersey, for the County of Cape May, upon their oath present that SHIRLEY REID, on or about September 25, 2004, in the Township of Lower, County of Cape May, and within the jurisdiction of this Court, did purposely or knowingly and without authorization alter computer software existing internally or externally to a computer system, specifically, by changing the password and shipping address belonging to Timothy Wilson t/a Jersey Diesel; contrary to the provisions of N.J.S.A. 2C:20-25, and against the peace of the State, the Government and dignity of the same.

ENDORSED A TRUE BILL

OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF CAPE MAY



 Foreperson

By: 

2nd Degree

Sas

JOSEPH C. GRASSI, ESQUIRE
BARRY, CORRADO, GRASSI, & GIBSON, P.C.
2700 Pacific Avenue
Wildwood, NJ 08260
(P) (609) 729-1333 (F) (609) 522-4927
jgrassi@capelegal.com

STATE OF NEW JERSEY

vs.

SHIRLEY REID,
Defendant.

SUPERIOR COURT OF NEW JERSEY

CAPE MAY COUNTY

LAW DIVISION - CRIMINAL

Docket No. 04001367

**CERTIFICATION IN SUPPORT OF THE
MOTION TO SUPPRESS EVIDENCE**

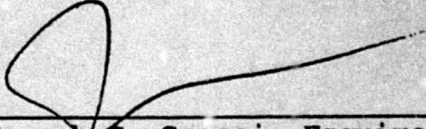
I, Joseph C. Grassi, Esquire, hereby certify as follows:

1. I am an attorney at law, licensed to practice in the State of New Jersey.
2. I am the attorney for the defendant Shirley Reid, who has been charged with computer related crimes - theft under N.J.S.A. 2C:20-25.
3. In evaluating the items received in discovery, I determined that my client's identity and personal information were obtained through issuance of a subpoena duces tecum, which is attached to this certification as Exhibit A.
4. The Lower Township Municipal Court issued this subpoena on September 7, 2004. The subpoena was issued by Elizabeth Byrne, the Court Administrator.
5. The subpoena was served on Comcast Internet Service by way of fax machine, and ordered the company to supply any and all information pertaining to IP address 68.32.124.220 regarding any use which occurred on August 24, between 8 a.m. and 11 a.m.
6. On September 16, 2004, Comcast supplied the information requested by the subpoena. The information provided by Comcast is also attached to Exhibit B.

Sa6

7. The subpoena was issued illegally, since municipal courts do not have the authority to issue investigative subpoenas in indictable matters.
8. I thereby make this certification in support of a motion to suppress the evidence obtained by that subpoena.
9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: _____


Joseph C. Grassi, Esquire
Attorney for Defendant

Dated: 5/17/05

527

ROBERT L. TAYLOR, ESQUIRE
Cape May County Prosecutor
DN 110 - Central Mail Room
Cape May Court House, NJ 08210
(609)465-1135

STATE OF NEW JERSEY,
vs. Plaintiff,
SHIRLEY REID,
Defendant.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - CRIMINAL
: CAPE MAY COUNTY
: IND. NO. 05-02-00121-I
: DOCKET NO. 04001367
:
: ORDER

THIS MATTER having been opened to the Court by Joseph Infusino, Cape May County Assistant Prosecutor, on behalf of the State, and in the presence of Joseph C. Grassi, Esquire, for defendant, Shirley Reid, and the Court having considered arguments of counsel and briefs submitted, and good cause having been shown;

IT IS on this 22 day of September, 2005,

ORDERED and ADJUDGED that any evidence supplied by the defendant's ISP as a result of ^{the case} ~~one~~ service of a Subpoena Duces Tecum be suppressed.


Carmen H. Alvarez, J.S.C.

28

04/13/07

ROBERT TAYLOR
CAPE MAY COUNTY PROSECUTOR'S OFFICE
4 MOORE ROAD
CAPE MAY COURT HOUSE, NJ 08210
(609) 465-1135

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. 05-02-00121-1

STATE OF NEW JERSEY	:	<u>Criminal Action</u>
Plaintiff, Appellant	:	NOTICE OF MOTION FOR LEAVE TO FILE AN
V.	:	INTERLOCUTORY APPEAL
SHIRLEY REID	:	NUNC PRO TUNC
Defendant, Respondent	:	
: : : : : : : : : : : :		

PLEASE TAKE NOTICE that the State of New Jersey moves for leave to file an interlocutory appeal nunc pro tunc, R.2:2-4, R.2:5-6, of the trial court's decision to suppress evidence obtained from an internet service provider by way of a subpoena duces tecum.

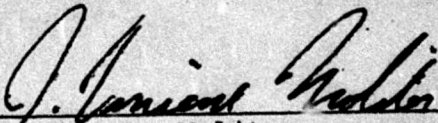
ROBERT TAYLOR
CAPE MAY COUNTY PROSECUTOR

BY: J. Vincent Molitor
J. VINCENT MOLITOR,
Assistant Cape May County Prosecutor

229

CERTIFICATION

I certify that this motion is filed in the interests of justice, in good faith and not for the purpose of delay.



J. Vincent Molitor
Assistant Cape May County Prosecutor

Dated: _____

Sa10

NOTICE OF APPEAL

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

State of New Jersey,

ATTORNEY OF RECORD

v.
Shirley Reid

NAME: J. Vincent Molitor
ADDRESS: 4 Moore Road, Cape May Court House
New Jersey 08210
(609) 465-6854

Defendant.

PHONE NO.
ATTORNEY FOR DEFENDANT: Joseph Grassi, 2700 Pacific Ave., Wildwood, N
ADDRESS: (609) 729-1333

ON APPEAL FROM: Sup. Ct. of New Jersey
TRIAL COURT/STATE AGENCY Cape May County
TRIAL/DKT. IND NO.: 05-02-00121-I
TRIAL COURT JUDGE: Hon. Carmen H. Alvarez
Civil [] Criminal [X] Juvenile []

Notice is hereby give that The STATE OF NEW JERSEY
Appeals to the Superior Court of N.J. Appellate Division, From the
Judgment [] Order [X] (Specify) []
Entered in this action on 9/22/05, in favor of Shirley Reid,
(DATE) (DEFENDANT)

If appeal is from less than the whole, specify what parts or paragraphs are being
appealed: the trial court's order suppressing evidence
obtained from the defendant's internet service provider.

Are all issues as to all parties disposed of in the action being appealed? Yes [] No [X]

If not, is there a certification of final judgment entered pursuant to R. 4:42-2:
Yes [] No [X]

Priority under R. 1:2-5 Yes [] No [X] Applicable section under the Rule.

In Criminal, Quasi-Criminal and Juvenile cases not incarcerated [X]
incarcerated [] confined at:

Give a concise statement of the offense and of the judgment, date entered and any
sentence of disposition imposed: The State charged the defendant with
computer theft, N.J.S.A. 2C:20-25.

Notice of Appeal has been served on:

NAME	DATE OF SERVICE	TYPE OF SERVICE
Trial Court Judge <u>Hon. Carmen Alvarez</u>	<u>10/19/05</u>	<u>personal</u>
Trial Court Clerk/State Agency <u>Claire Watson</u>	<u>10/19/05</u>	<u>personal</u>
Attorney General or Governmental Office under R. 2:5-1 (h) <u>Appellate Section</u>	<u>Ofc of AG</u>	<u>-Mail</u>

Other Parties:

NAME and DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NUMBER	DATE OF SERVICE	TYPE OF SERVICE
<u>Shirley Reid (through counsel)</u>	<u>Joe Grassi Esquire</u>	<u>9/22/05</u>	<u>fax</u>
(Serve this party with transcript)	<u>2700 Pacific Avenue, Wildwood, New Jersey 08260</u>		

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

10/19/05
(DATE)

J. James Proctor
ATTORNEY OF RECORD

PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:
(ALSO INDICATE IF SOUND RECORDED)

NAME	DATE OF SERVICE	AMOUNT OF SERVICE
ADMINISTRATIVE OFFICE OF THE COURTS CHIEF, COURT REPORTING SERVICES		
COURT REPORTER'S SUPERVISOR/ CLERK OF COURT OR AGENCY <u>claire Watson</u>	<u>10/19/05</u>	<u>1 copy</u>
COURT REPORTER		

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT
TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS
AND PAID THE DEPOSIT AS REQUIRED BY R. 2:5-3(d).

10/19/05
(DATE)

J. Vincent Padala
ATTORNEY OF RECORD

I HEREBY CERTIFY THAT:

- THERE IS NO VERBATIM RECORD
- TRANSCRIPT IS IN THE POSSESSION OF THE ATTORNEY OF RECORD.
- A MOTION FOR ABBREVIATION OF TRANSCRIPT HAS BEEN FILED WITH THE COURT OR AGENCY BELOW.
- A MOTION FOR FREE TRANSCRIPT HAS BEEN FILED WITH THE COURT BELOW.

X- I have ordered the transcripts

10/19/05
(DATE)

J. Vincent Padala
ATTORNEY OF RECORD

M 243-0575

ORDER ON MOTION

07/1301

STATE OF NEW JERSEY
VS
SHIRLEY REID

RECEIVED
APPELLATE DIVISION

MAR 13 2006

SUPERIOR COURT
OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. AM-000243-05T5
MOTION NO. M-001963-05
BEFORE PART: F
JUDGE(S): WEISSBARD
SAPP-PETERSON

MOTION FILED: OCTOBER 24, 2005
ANSWER(S) FILED: DECEMBER 12, 2005

BY: STATE OF NEW JERSEY
BY: SHIRLEY REID

SUBMITTED TO COURT: MARCH 08, 2006

FILED
APPELLATE DIVISION

MAR 13 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS
8th DAY OF March, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR LEAVE TO APPEAL

GRANTED (X) DENIED () OTHER ()

SUPPLEMENTAL:

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

John M. Chocho
CLERK OF THE APPELLATE DIVISION

PM 05-02-00121-I

FOR THE COURT:

Harvey Weissbard
HARVEY WEISSBARD J.A.D.

JRLC4

5014

A 3424-05T5

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal Docket No.: A -003424-05T5

STATE OF NEW JERSEY,
Plaintiff-Appellant
vs.

SHIRLEY REID,
Defendant-Respondent

CRIMINAL ACTION: On leave to
Appeal from an Order granting
defendant's motion to suppress
evidence, entered in the
Superior Court of New Jersey,
Law Division - Criminal Part,
Cape May County

Sat Below: Hon. Carmen Alvarez

BRIEF ON BEHALF OF RESPONDENT

JOSEPH C. GRASSI, ESQUIRE
BARRY, CORRADO, GRASSI & GIBSON, P.C.
2700 PACIFIC AVENUE
WILDWOOD, NJ 08260
(609) 729-1333
jgrassi@capelegal.com

RECEIVED
APPELLATE DIVISION

AUG 10 2006

SUPERIOR COURT
OF NEW JERSEY

FILED
APPELLATE DIVISION

AUG 10 2006

J. M. Ch...
CLERK

IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal No. A-003424-05T5

ON APPEAL FROM AN ORDER SUPPRESSING EVIDENCE,
ENTERED IN THE SUPERIOR COURT OF NEW JERSEY, CAPE MAY
COUNTY, LAW DIVISION, CRIMINAL PARTY

SAT BELOW
THE HONORABLE CARMEN ALVAREZ, J.S.C.

STATE OF NEW JERSEY,

Plaintiff-Appellant

v.

SHIRLEY REID.

Defendant-Respondent

CERTIFICATION OF SERVICE

I certify that five copies of the Brief on Behalf of Respondent, Shirley Reid, were mailed to John Chacko, Clerk, Appellate Division, Superior Court of New Jersey, Hughes Justice Complex, CN-006, Trenton, NJ 08625 by overnight mail on August 9, 2006.

I certify that on August 9, 2006, two copies of the Brief on Behalf of Respondent, Shirley Reid, were mailed to and served upon J. Vincent Molitor, Assistant Prosecutor, Cape May County Prosecutor's Office, 4 Moore Road, DN 110, CMCH, NJ 08210 by regular mail.

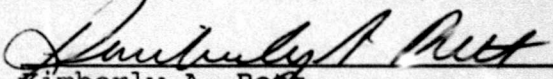

Kimberly A. Royt,
Assistant to Joseph C. Grassi, Esquire

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OTHER AUTHORITIES

Elektra Entertainment Group v. Does 1-6, Civil Action

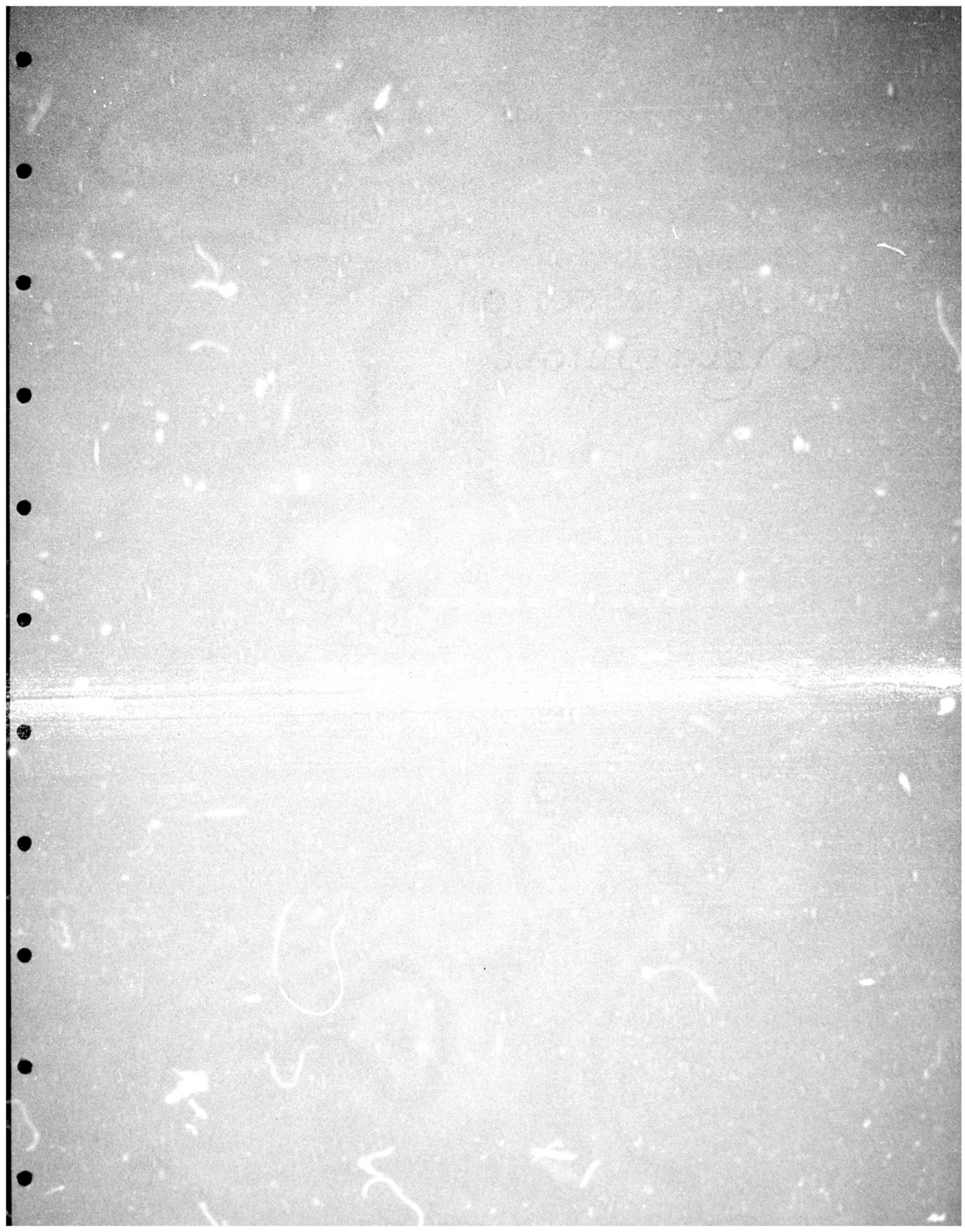
No. 1241 (E.D. Pa. October 13, 2004) 10

RULES CITED

N.J.S.A. 2C:20-25b	2, 7
Court Rule 7.1	7

RULES CITED

N.J.S.A. 2C:20-25b	2, 7
Court Rule 7.1	7



PRELIMINARY STATEMENT

The state's appeal arises from an order suppressing the identification of defendant's IP address by her Internet Service Provider to a Lower Township Police Officer in response to an office subpoena.

The subpoena was captioned in the municipal court, although no application for its issuance was made to the municipal judge, and no complaint had been filed in the municipal court, or any other court.

The trial court found that the subpoena was defective, and further found that the violation was of constitutional dimension, requiring suppression of the evidence. The state sought and was granted leave to file an interlocutory appeal of the trial court's decision to suppress.

PROCEDURAL HISTORY

On September 7, 2004, Detective Robert Smith of the Lower Township Police Department asked the Lower Township Municipal Court Administrative Clerk, Elizabeth Byrne, to issue a subpoena duces tecum. (Appendix 1) This subpoena was facially returnable on the day it was issued. Smith made no proffer to the court and there was no complaint filed against Shirley Reid at that time. This subpoena was then faxed to Shamma Austin, a Comcast employee. Comcast provided the requested information.

Based on the information gathered from this subpoena, a complaint was filed against Shirley Reid on September 25, 2004. Reid was later indicted on February 22, 2005, by the grand jury in Cape May County for computer theft, a second degree crime under N.J.S.A. 2C:20-25b. (Appendix 2)

The defendant made a motion to dismiss, based on the fact the transaction was de minimis and should not be prosecuted. This motion was denied by the court. The defendant thereafter made a motion to suppress any evidence gathered as a result of the defective subpoena.

On September 22, 2005, the Honorable Carmen Alvarez, J.S.C. granted the defendant's motion to suppress any evidence supplied by the defendant's ISP as a result of the service of the subpoena duces tecum. (Appendix 3) The Appellate Division granted the state's motion for leave to file an interlocutory appeal on March 8, 2006.

STATEMENT OF FACTS

The relevant portions of the statement of the case are as follows:

On August 27, 2004, Patrolman Charles Fitzmaurice of the Lower Township Police Department handled a walk-in complaint by Timothy Wilson regarding theft via the computer. Wilson, owner of Jersey Diesel, told police someone had broken into his computer system on August 24, 2004 and changed his shipping address and password for all of his suppliers. The shipping address was changed to an address that does not exist.

During his conversation with the patrolman, Wilson mentioned that Shirley Reid, an employee who had been out on disability leave, could have made the changes to his account. Wilson said Reid reported for work on August 24 and was not happy with the decision to place her on light duty. An argument ensued between Wilson and Reid, and Reid left the premises. Wilson added that Reid was the only person in the company that knew the company password and ID.

Wilson learned changes had been made to his password and shipping address through one of his suppliers and started to investigate the changes. He discovered the changes were made by someone with an IP address which was owned by Comcast. Wilson then contacted Comcast to determine the name of the person responsible and was informed that he needed a subpoena before Comcast would release any information.

The case was turned over to Lower Township detectives. On September 7, 2004, Detective Robert Smith of the Lower Township

Police Department went to the Lower Township Municipal Court Administrator to obtain a subpoena duces tecum. At the time the subpoena was requested, the detective did not confer with a judge or prosecutor and there was no complaint filed against Shirley Reid.

The subpoena was, however, issued to the Comcast Internet Service by Elizabeth Byrne, the court administrator of Lower Township Municipal Court. The detective then faxed the subpoena to Shamma Austin, a Comcast employee. The subpoena called for any and all information pertaining to IP address 68.32.124.220 which occurred between 8 a.m. and 11 a.m. on August 24. Of note, the return date of the subpoena was the same as the date of issue.

On September 16, 2004, Comcast responded to the subpoena and provided the detective unit with subscriber records which implicated Reid. An arrest warrant was issued by Judge David Dewese on September 29, and on October 8, Reid was arrested and charged with a computer related crime-theft pursuant to N.J.S.A. 2C:20-25b.

I. THE SUBPOENA ISSUED BY THE LOWER TOWNSHIP MUNICIPAL COURT WAS DEFECTIVE ON ITS FACE

Courts have long held that prosecutors may subpoena information or witnesses only so long as the subpoenaed information is returnable when the grand jury is expected to be seated. See e.g., State v. Stelzner, 257 N.J. Super. 219 (App. Div. 1992) and State v. Hilltop Private Nursing Home, 177 N.J. Super. 377 (App. Div. 1981). Additionally, "a prosecutor, unlike a grand jury, does not have the power to order any individual to appear before him." See State v. Foy, 146 N.J. Super. 378 (Law Div. 1976).

The subpoena issued by Elizabeth Byrne, Court Administrator of the Lower Township Municipal Court, commanded Comcast to attend and give testimony before the Lower Township Municipal Court regarding IP address 68.32.145.220 at 3 p.m. on September 7, 2004. This subpoena was issued on September 7th, which is the same day that Detective Robert Smith completed the subpoena and faxed it to Shamma Austin, a Comcast employee.

This subpoena clearly was only an attempt to find evidence and did not provide Comcast or defendant with any procedural safeguards, nor was it returnable to a grand jury or while a grand jury was in session.

The court in Cavallaro v. Jamco Property Management, 334 N.J. Super 557 (2000), explained that "the subpoena power is a significant one which must be exercised in good faith and in strict adherence to the rules to eliminate potential abuses." Additionally, in Crescenzo v. Crane, 350 N.J. Super 531 (2002),

the court held that "the power and authority to secure records is a profound one that must be exercised carefully. Failing to do so, those in violation must bear the consequences."

Therefore, the court was correct in suppressing the evidence which was gathered as a result of the defective subpoena.

II. THE LOWER TOWNSHIP MUNICIPAL COURT ADMINISTRATOR DID NOT HAVE THE AUTHORITY TO ISSUE AN INVESTIGATIVE SUBPOENA

Under Rule 7.1 of the New Jersey Court Rules, the jurisdiction of the municipal court is limited to disorderly and petty offenses, other non-indictable offenses not within the coverage of the Superior Court, violations of motor vehicles and traffic, proceedings to collect penalties, violations of ordinances, and all other proceeds granted by statute.

We are dealing with an indictable offense in this case. The defendant was charged with theft under N.J.S.A. 2C-20-25b, which is a second degree crime. The investigative report of the Lower Township Police Department dated August 28, 2004, establishes that Shirley Reid was being investigated for theft by computer. (Appendix 4)

When the detective unit requested a subpoena from the Lower Township Municipal Court on September 7, 2004, they knew they were dealing with an indictable offense. No complaint had been filed against Reid at this time. The municipal court therefore did not have jurisdiction to issue a subpoena; and the subpoena request should have been made to the prosecutor, who could have issued a subpoena to the grand jury.

In addition, the State's reliance on State v. Dyal, 97 N.J. 229 (1984), is unfounded since the detectives in the present case did not even follow the protocols set forth in that case. In Dyal, the court held that "to obtain the results of a blood test protected by the physician-patient privilege, the police should apply to a *municipal court judge* for a subpoena duces tecum". State v. Dyal, 97 N.J. 229, 232 (1984) (italics added). Even if one were to broadly construe the court's language to extend the holding in Dyal to apply to information not protected by the physician-patient privilege, the court still requires that subpoenas be judicially issued, which was clearly not the case here.

For the aforementioned reasons, the subpoena was defective and the evidence was correctly suppressed.

III. THE SUBPOENA VIOLATED THE DEFENDANT'S STATE CONSTITUTIONAL PRIVACY RIGHTS

One's expectation of privacy is an important fundamental right under the New Jersey Constitution. State v. McAllister (336 N.J. Super. 251 (App. Div. 2004)). There the court held, on state constitutional grounds (N.J.S.A. Const. Art.1, §7), that individuals have a legitimate expectation of privacy in the records of their bank transactions. The court held that to obtain banking records, the State must first obtain a search warrant based on probable cause or provide notice and a reasonable opportunity to object to the issuance of a grand jury subpoena.

Similarly, NJ courts have found a state constitutional right of privacy in the Internet. For example, in Dendrite International

v. John Doe No. 3 (342 N.J. Super. 134 (App. Div. 2001)), the court held that when a plaintiff seeks discovery from an ISP to disclose the identity of an anonymous web poster, the plaintiff must make an effort "to notify the anonymous posters that they are the subject of a subpoena" and "withhold action to afford the fictitiously-named defendants a reasonable opportunity to file and serve opposition to the application."

In the recent case of John Doe 1 v. Cahill, 884 A.2d 451 (Del. 2005), involving a defamation lawsuit, the Supreme Court of Delaware held that the plaintiff must first "satisfy a summary judgment standard before obtaining the identity of an anonymous defendant." In addition, the court stated that "the plaintiff must undertake efforts to notify the anonymous poster that he is the subject of a subpoena."

ISP privacy was also discussed in Elektra Entertainment Group v. Does 1-6, a civil action filed in the United States District Court for the Eastern District of Pennsylvania. Civil Action 04-1241 - Order filed on Oct 13, 2004. There, in a ruling regarding discovery procedures, the court created a court-directed notice regarding the issuance of subpoenas in cases involving illegal music downloading. The court ordered any ISP that receives a subpoena to identify an illegal downloader must notify the individual before disclosing his name and must give him 21 days to move to quash the subpoena.

These principles govern this case. Shirley Reid was not notified by the court or by the ISP that her identity was being subpoenaed. Had she known her privacy was being violated, she could have challenged this subpoena. Therefore, based on privacy grounds alone, the subpoena is defective and the

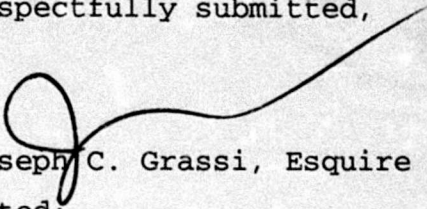
evidence gathered from the defective subpoena should be suppressed.

CONCLUSION

For the foregoing reasons, the subpoena issued by the Lower Township Municipal Court must be found to be defective and the ruling of the Honorable Carmen Alvarez, J.S.C., granting the defendant's motion to suppress must be upheld.

"Where evidence has been seized unlawfully, suppression of that evidence at trial ordinarily follows." State v. Novembrino, 105 N.J. 95 (1987). Any evidence gathered through this illegal subpoena should be suppressed.

Respectfully submitted,


Joseph C. Grassi, Esquire

Dated:

DOCKET #: A 003424 05T5 TITLE: STATE OF NJ VS SHIRLEY REID
AM NBR: AM 000243 05 CASE TYPE: CRIMINAL LAW IMPOUND: NO
CASE MGR: COLLINS RHONDA L/609-292-0001 CASE FILING DATE: 03 13 2006
L/C NBR: 05-02-00121-I TRANSCRIPT DATE: 07 13 2006 REC
L/C JUDGE: ALVAREZ CARMEN APPELLANT BRIEF DATE: 06 28 2006 FLD
COUNTY: CAPE MAY RESPONDENT BRIEF DATE: 08 10 2006 FLD
DECISION: 09 22 2005
CASP:
C/R: FINAL REVIEW DATE: 08 11 2006

WAIVER CALENDAR DATE: 11 28 2006 PART: 2006 D0
DECIDED DATE: FINAL DISP:

ATTORNEY SUMMARY

ATTY FIRM NAME	PTY TYPE	PTY STATUS	ATY STATUS	SUB DATE	PARTY NAME
CAPE MAY COUNTY PROS	AP	ACTIVE	ATY OF REC		STATE OF NEW JERSEY
BARRY CORRADO GRASSI	RS	ACTIVE	ATY OF REC		REID S

DOCUMENT LIST

DOC TYPE	DATE FILED	FILING PARTY	ATTY/FIRM
CASE INFO STATEM	10 24 2005	STATE OF NEW JERSEY	CAPE MAY COUNTY PROS ECUT
CASE INFO STATEM	03 13 2006	STATE OF NEW JERSEY	CAPE MAY COUNTY PROS ECUT
TRANSCRIPT ORDER	03 13 2006	STATE OF NEW JERSEY	CAPE MAY COUNTY PROS ECUT
LETTER OF COMMUN	05 25 2006	STATE OF NEW JERSEY	CAPE MAY COUNTY PROS ECUT
APPEL BR /APPE	06 28 2006	STATE OF NEW JERSEY	CAPE MAY COUNTY PROS ECUT
RESP BRIEF	08 10 2006	REID, SHIRLEY	BARRY CORRADO GRASSI

MOTION SUMMARY LIST

MOTION #	MOTION TYPE	ATTY/FIRM	FILED	DECIDED
M001953 05	LEAV TO APP OUTCOME: GRANTED	CAPE MAY COUNTY PROS	10 24 2005	03 13 2006
		JUDGES: HXW01 PMS01		FO

DOCKET #: A 003424 05T5

TITLE: STATE OF NJ VS SHIRLEY REID

TRANSCRIPTS/SICR*

HEARING	VOL #	# CPY	DATE FILED	HEARING	VOL #	# CPY	DATE FILED
09 01 2005	001	04	07 13 2006	09 22 2005	001	04	07 13 2006
***** END OF REPORT *****							

A 3424-05T5

OFFICE OF THE PROSECUTOR
COUNTY OF CAPE MAY

ROBERT L. TAYLOR
COUNTY PROSECUTOR

SEND TO COURT WHEN LISTING



J. DAVID MEYER
First Assistant Prosecutor

JAMES E. RYBICKI
Chief of County Detectives

4 Moore Road, DN-110
CAPE MAY COURT HOUSE
NEW JERSEY 08210-1654

Phone: (609) 465-1135
Fax: (609) 465-1347

May 23, 2006

Barbara Caldwell
Criminal Case Management
Superior Court of New Jersey
Law Division - Criminal Part
9 North Main Street
DN 202C
Cape May Court House, NJ 08210

Re: State of New Jersey v. Shirley Reid
Docket Number: A-003424-05T5

Dear Ms. Caldwell:

The State of New Jersey requests that the ~~transcript~~
in State of New Jersey v. Shirley Reid be prepared on an
expedited basis.

Thank you,

J. Vincent Molitor

J. Vincent Molitor
Assistant Prosecutor

RECEIVED
APPELLATE DIVISION

MAY 25 2006

SUPERIOR COURT
OF NEW JERSEY

FILED
APPELLATE DIVISION

MAY 25 2006

RECEIVED
APPELLATE DIVISION

MAY 25 2006

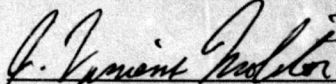
SUPERIOR COURT
OF NEW JERSEY

**ROBERT L. TAYLOR
CAPE MAY COUNTY PROSECUTOR
4 MOORE ROAD
DN-110, CENTRAL MAIL ROOM
CAPE MAY COURT HOUSE, NJ 08210-1601
(609) 465-1135**

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Plaintiff-Respondent,	:	
	:	<u>CRIMINAL ACTION</u>
vs.	:	
	:	Appeal No. A-003424-05T5
SHIRLEY REID	:	
	:	AFFIDAVIT
Defendant-Appellant.	:	

I, J. Vincent Molitor, Assistant Prosecutor, of full age, duly sworn according to law, upon his oath deposes and says:

1. On October 19, 2005, I handed a Notice of Appeal, a Criminal Information Statement, a Transcript Request Form, and a Transcript Ordering Form to the Cape May County Criminal Case Management.
2. On May 23, 2006, Ms. Ronda Collins contacted me and informed me that the transcripts for the State's appeal in State of New Jersey versus Shirley Reid were overdue.
3. On May 23, 2006, Cape May County Criminal Case Management informed me that they did not send the Transcript Request Form or the Transcript Ordering Form to a Transcriber.
4. On May 23, 2006, I submitted the attached letter to Criminal Case Management asking for Expedited preparation of the Transcripts in State of New Jersey versus Shirley Reid.


J. Vincent Molitor
Assistant Prosecutor

Sworn and subscribed to
before me this 23rd day
of May, 2006


Notary Public of New Jersey

LISA M. UMSCHIED
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 18, 2008

RECEIVED
APPELLATE DIVISION
MAY 28 2006
SUPERIOR COURT
OF NEW JERSEY

A-3424-0575

COURT TRANSCRIPT REQUEST
State of New Jersey (R.2.5-1)

SEND TO COURT WHEN LISTENING

INSTRUCTIONS for Attorney or Pro Se:

- Attach the transcript for each court reporter or court clerk who recorded a portion of the proceeding
- Attach the Appellate or Supreme Court Clerk's copy to the Notice of Appeal (R.2:5-1(f)) if an appeal

REQUESTING PARTY (Name/Address)

Robert Taylor
Cape May County Prosecutor
4 Moore Rd., Cape May Court House, N.J.

NAME(S) PLAINTIFF(S)

State of New Jersey

NAME(S) DEFENDANT(S)

Shirley Re...

FILED APPELLATE DIVISION

ATTORNEY FOR REQUESTING PARTY OR PRO SE (Name/Address)

J. Vincent Molitor, 4 Moore Road
Cape May Court House, N.J. 08210

TRIAL COURT DOCKET NUMBER

05-02-00121-I

MAR 13 2006

COURT FROM WHICH APPEAL TAKEN

Superior Court of New Jersey, Cape May Law Division, Criminal Part

NAME / ADDRESS (COURT REPORTER or COURT CLERK, if sound recorded)

TO:

Claire Watson
9 North Main Street
Cape May Court House
New Jersey 08210

RECEIVED APPELLATE DIVISION

OCT 24 2005

SUPERIOR COURT OF NEW JERSEY

It is hereby requested that you prepare for use on appeal non-appeal* an original and 0 copies of the following:

DATE(S) OF PROCEEDING	TYPE OF PROCEEDING (e.g., trial, sentencing, hearing on petition for post conviction relief)	NAME OF JUDGE
9/01/05	hearing on motion to suppress	Honorable Carmen Alvarez
9/22/05	decision on motion to suppress	Honorable Carmen Alvarez

This request includes all dates for this matter which were covered by this reporter: Yes No

TRANSCRIPT DEPOSIT ATTACHED \$ _____

J. Vincent Molitor
SIGNATURE (PRO SE PARTY or ATTORNEY REQUESTING TRANSCRIPT)

10/19/05
DATE

- CC: 1. CLERK, Appellate Division, or CLERK, Supreme Court (see INSTRUCTIONS above)
2. CHIEF, Reporting Services, Administrative Office of the Courts
3. _____ County Supervisor of Court Reporters
4. _____ (Other attorneys/Pro Se parties)

* Only the Supervisor of Court Reporters, Chief, Reporting Services, should receive copies of non-appeal transcript requests

Note: The TRANSCRIPT ORDERING INFORMATION form, CP0091 (4/8/78), must be attached to this form along with the transcript deposit to ensure the COURT TRANSCRIPT REQUEST is processed expeditiously

THIS SECTION TO BE COMPLETED BY COURT REPORTER or TRANSCRIBER (within five (5) days of receipt of request) if transcript request is correct and is being processed.

ACKNOWLEDGEMENT of Receipt of Request

Estimated # of pages _____
Estimated completion date _____
(Completion date NOT to exceed 30 days without approval of court.)

SIGNATURE (Court Reporter or Transcriber) _____ DATE _____

- Completed copies of ACKNOWLEDGMENT to:
1. Supervisor, Court Reporters
2. Chief, Reporting Services
3. Appellate Division

A 3484-0575

APPELLATE DIVISION

CRIMINAL CASE INFORMATION STATEMENT

SEND TO COURT WHEN LISTING

TITLE IN FULL:

State v. Shirley Reid

FOR OFFICIAL USE ONLY
APPEAL DOCKET
FILED: **RECEIVED**
APPELLATE DIVISION
OCT 24 2005
DATE SENT:
SUPERIOR COURT OF NEW JERSEY

APPELLANT'S ATTORNEY(S):

NAME	ADDRESS	TELEPHONE	CLIENT
Robert H. Codey Acting Cape May County Prosecutor	4 Moore Road DN-110, Central Mail Room Cape May Court House, NJ 08210	(609) 465-1135	State of New Jersey

RESPONDENT'S ATTORNEY(S):

NAME	ADDRESS	TELEPHONE	CLIENT
Joseph Grassi	2700 Pacific Avenue Wildwood, New Jersey 08260	(609) 729-1333	Shirley Reid

FILED
APPELLATE DIVISION
OCT 24 2005
[Signature]
CLERK

GIVE DATE AND SUMMARY OF TERMS OF JUDGMENT ENTERED BELOW:

Does this determination dispose of <u>all issues as to all parties</u> ?	Yes _____	No <u>x</u>
If not, has it been certified as final pursuant to <u>R. 4:42-2?</u> (If not, leave to appeal must be sought. <u>R. 2:2-4, 2:5-6.</u>)	Yes _____	No <u>x</u>
Is the validity of a statute, executive order, franchise or constitutional provision of this state questioned? (<u>R. 2:5-1(h)</u>).	Yes _____	No <u>x</u>
Is defendant presently confined?	Yes _____	No <u>x</u>
On bail?	Yes _____	No <u>x</u>
Is this an appeal of sentence only?	Yes _____	No <u>x</u>
Are there co-defendants?	Yes _____	No <u>x</u>

If so, state their names:

FILED
APPELLATE DIVISION
MAR 13 2006

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

On September 22, 2005, Honorable Carmen H. Alvarez granted the defendant's motion for suppress evidence obtained from an internet service provider

GIVE A COMPLETE LIST OF PROPOSED ISSUES THAT WILL BE RAISED ON THIS APPEAL, AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5).

Appellant Only.

Whether the trial court erred when it held that a defendant has a right to privacy in the information she willingly provided to an internet service provider?

IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as is appeal? Yes _____ No x
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes _____ No x

IF YES, STATE:

Case Name:

Docket No.

DO YOU EXPECT TO FILE A LETTER BRIEF (Rule 2:6-2(b))? Yes _____ No x

The time in which to file your brief and appendix is governed by court rule unless modified by court order. If any circumstances exist which might justify a shorter or longer period of time within which to file your brief and appendix other than that provided by Rule 2:6-11, give a detailed explanation. Your answer does not alter the time limits set forth in the Rules of Court.

Can the transcript be abbreviated pursuant to R. 2:5-3 (c) (1)? Yes _____ No x

In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form.

State of New Jersey

Name of Appellant

Date

10/19/05

J. Vincent Molitor
Acting Assistant Prosecutor, Cape May County

J. Vincent Molitor
Signature of Counsel of Record

AM 243-0575
A 3424-0575

Notice of Appeal
ORDER ON MOTION

STATE OF NEW JERSEY
VS
SHIRLEY REID

RECEIVED
SENT TO COURT WHEN LISTED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-000243-0575
MOTION NO. M-001963-05
BEFORE PART: F
JUDGE(S): WEISSBARD
SAPP-PETERSON

MAR 13 2006

SUPERIOR COURT
OF NEW JERSEY

MOTION FILED: OCTOBER 24, 2005
ANSWER(S) FILED: DECEMBER 12, 2005

BY: STATE OF NEW JERSEY
BY: SHIRLEY REID

SUBMITTED TO COURT: MARCH 08, 2006

FILED
APPELLATE DIVISION

MAR 13 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS
8th DAY OF March, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR LEAVE TO APPEAL

GRANTED (X) DENIED () OTHER ()

SUPPLEMENTAL:

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

Julia M. Chacko
CLERK OF THE APPELLATE DIVISION

CPM 05-02-00121-I

FOR THE COURT:

Harvey Weissbard
HARVEY WEISSBARD J.A.D.

JURLC4

SEND TO COURT WHEN LISTING

A-3424-0575 CRIMINAL CASE INFORMATION STATEMENT

TITLE IN FULL:

State v. Shirley Reid

FOR OFFICIAL USE ONLY

APPEAL DOCKET

FILED:

DATE SENT:

RECEIVED
APPELLATE DIVISION
OCT 24 2005
SUPERIOR COURT
OF NEW JERSEY

APPELLANT'S ATTORNEY(S):

NAME

ADDRESS

TELEPHONE CLIENT

Robert H. Codey
Acting Cape May County
Prosecutor

4 Moore Road
DN-110, Central Mail Room
Cape May Court House, NJ 08210

(609) 465-1135 State of New Jersey

RESPONDENT'S ATTORNEY(S):

NAME

ADDRESS

TELEPHONE CLIENT

Joseph Grassi
2700 Pacific Avenue
Wildwood, New Jersey
08260

(609) 729-1333 Shirley Reid

FILED
APPELLATE DIVISION

OCT 24 2005

John J. ...
ACTING CLERK

GIVE DATE AND SUMMARY OF TERMS OF JUDGMENT ENTERED BELOW:

Does this determination dispose of all issues as to all parties?

Yes _____ No X

If not, has it been certified as final pursuant to R. 4:42-2?

Yes _____ No X

(If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)

Is the validity of a statute, executive order, franchise or constitutional provision of this state questioned? (R. 2:5-1(h)).

Yes _____ No X

Is defendant presently confined?

Yes _____ No X

On bail?

Yes _____ No X

Is this an appeal of sentence only?

Yes _____ No X

Are there co-defendants?

Yes _____ No X

If so, state their names:

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On September 22, 2005, Honorable Carmen H. Alvarez granted the defendant's motion to suppress evidence obtained from an internet service provider

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Appellant Only.

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IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as is appeal? Yes _____ No x
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes _____ No x

IF YES, STATE:

Case Name:

Docket No.

DO YOU EXPECT TO FILE A LETTER BRIEF (Rule 2:6-2(b))? Yes _____ No x

The time in which to file your brief and appendix is governed by court rule unless modified by court order. If any circumstances exist which might justify a shorter or longer period of time within which to file your brief and appendix other than that provided by Rule 2:6-11, give a detailed explanation. Your answer does not alter the time limits set forth in the Rules of Court.

Can the transcript be abbreviated pursuant to R. 2:5-3 (c) (1)? Yes _____ No x

In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form.

State of New Jersey
Name of Appellant

J. Vincent Molitor
Acting Assistant Prosecutor, Cape May County

10/19/05
Date

J. Vincent Molitor
Signature of Counsel of Record