

STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET
CUMCD-CR-13-1576
WSB-CUM-6/17/2013

STATE OF MAINE,

v.

DECISION

MICHAEL SCHWARTZ,

Defendant.

FINDINGS

1. The Cumberland County Sheriff's policy F-130 states that outgoing mail from inmates shall not be read or censored except when a reasonable belief exists that the correspondence contains information related to criminal activity or security. *See State's Exhibit A, page 2, paragraph A(3).*
2. Jean Coleman works for the Cumberland County Sheriff as a receptionist-records clerk. For several years she has been designated by Capt. Steven Butes, the head of security and operations at the Cumberland County Jail, as a "second set of eyes" to inspect and search outgoing inmate mail for evidence of criminal activity.
3. In August 2012, Ms. Coleman inspected an envelope sent by inmate Michael Schwartz to a private person outside the jail.
4. The envelopes provided to jail inmates are very thin. The writing paper supplied to the inmates is either white or yellow lined. It is easily visible through the thin envelopes.
5. Ms. Coleman looked for the lined paper through the envelope and did not see it. Instead she saw what looked to be an official form. She then saw the form referred to "unemployment."

6. Ms. Coleman was immediately suspicious. Ms. Coleman knew that inmates are not eligible for unemployment insurance if they have not been able to search for work, which most inmates cannot do. Ms. Coleman also knew that if an inmate sent a job search form directly to the Labor Department, the department would know it had come from an inmate. Jail rules require that all outgoing mail have a return address on the envelope for the county jail.
7. Ms. Coleman reasonably believed that Mr. Schwartz was sending a fraudulent work search log to a private person who could then forward it to the Labor Department in an envelope not showing the jail as Mr. Schwartz's return address.
8. Ms. Coleman opened Mr. Schwartz's envelope, read the contents and discovered a fraudulent work search log prepared by Mr. Schwartz.
9. Ms. Coleman then forwarded the mail to its addressee and notified Blaine Richardson, who investigates unemployment fraud for the State of Maine.

DISCUSSION

The case law submitted by the State and even by Mr. Schwartz establishes that the sheriff's policy is constitutional. *See Stow v. Grimaldi*, 993 F.2d 1002, 1004 (1st Cir. 1993); *United States v. O'Rourke*, 2000 U.S. Dist. Lexis 8064, 2000 WL 761659 (D. Me. April 19, 2000).

Mr. Schwartz argues that Ms. Coleman violated the sheriff's policy and the constitution by opening his envelope without a reasonable belief. In fact Ms. Coleman was being overly cautious. Under the policy and the law, she did not have to try to determine the existence of criminal activity by peering through the envelope. She had the right to open the envelope and briefly inspect what was inside. If she saw evidence of wrongdoing, as she did, then she could read the material and confiscate it for

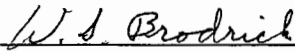
examination by her superior. If she did not find evidence of wrongdoing after a brief inspection, then she would simply seal the envelope and send it on its way.

Whichever procedure Ms. Coleman followed, once she determined that the envelope contained an unemployment form prepared by a prisoner; she had reasonable belief that a crime was in progress and she acted appropriately.

The clerk shall make the following entry on the docket, by reference:

Defendant Michael Schwartz's motion to suppress is denied in all respects.

DATED: June 17, 2013



William S. Brodrick
Active-Retired Justice, Superior Court

STATE OF MAINE
vs
MICHAEL T SCHWARTZ
CUMBERLAND COUNTY JAIL
PORTLAND ME 04101

CRIMINAL DOCKET
CUMBERLAND, ss.
Docket No CUMCD-CR-2013-01576

DOCKET RECORD

DOB: 08/12/1979

Attorney: VERNE PARADIE
PARADIE SHERMAN & WORDEN
11 LISBON ST SUITE 202
LEWISTON ME 04240
APPOINTED 03/13/2013

State's Attorney: JULIA SHERIDAN

Filing Document: INDICTMENT
Filing Date: 03/07/2013

Major Case Type: FELONY (CLASS A,B,C)

Charge (s)

1	FORGERY		03/10/2012 PORTLAND
Seq 8508	17-A 703(1)(A-1)(2)	Class C	
GORHAM	/ CUM		
2	THEFT BY UNAUTHORIZED TAKING OR TRANSFER		03/10/2012 PORTLAND
Seq 8427	17-A 353(1)(B)(4)	Class C	
GORHAM	/ CUM		
3	MAKING FALSE STATEMENT - UNEMPLOYMENT		03/10/2012 PORTLAND
	FRAUD		
Seq 856	26 1051(1)	Class D	
GORHAM	/ CUM		

Docket Events:

03/08/2013 FILING DOCUMENT - INDICTMENT FILED ON 03/07/2013

03/08/2013 Charge(s): 1,2,3
HEARING - ARRAIGNMENT SCHEDULED FOR 03/13/2013 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/08/2013 OTHER FILING - NOTICE OF JOINDER FILED BY STATE ON 03/07/2013
JAMES TURCOTTE , ASSISTANT CLERK
JOINED WITH KANE 13-1560

03/14/2013 Charge(s): 1,2,3
HEARING - ARRAIGNMENT HELD ON 03/13/2013
PAUL E EGGERT , JUDGE
DA: JULIA SHERIDAN
DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS TAPE #4804

03/14/2013 Charge(s): 1,2,3
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 03/13/2013

03/14/2013 BAIL BOND - CASH BAIL BOND SET BY COURT ON 03/13/2013
PAUL E EGGERT , JUDGE
\$5,000. CASH

03/14/2013 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 05/14/2013 at 08:30 a.m. in Room No. 7

03/14/2013 TRIAL - JURY TRIAL SCHEDULED FOR 06/24/2013 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

03/14/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 03/13/2013

03/14/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 03/13/2013
PAUL E EGGERT , JUDGE
COPY TO PARTIES/COUNSEL

03/14/2013 Party(s): MICHAEL T SCHWARTZ
ATTORNEY - APPOINTED ORDERED ON 03/13/2013

Attorney: VERNE PARADIE

05/14/2013 HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 05/14/2013
JEFF MOSKOWITZ , JUDGE
DA: ROBERT ELLIS
CASE CONTINUED TO 5-16-13 @ 8:30 A.M.

TAPE 4958

05/14/2013 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 05/16/2013 at 08:30 a.m. in Room No. 7

05/16/2013 HEARING - DISPOSITIONAL CONFERENCE HELD ON 05/16/2013
JEFF MOSKOWITZ , JUDGE
Attorney: VERNE PARADIE
DA: JULIA SHERIDAN
CONF HELD, OFFER MADE. MOTION FILED

05/16/2013 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/16/2013

05/16/2013 Charge(s): 1,2,3
HEARING - MOTION TO SUPPRESS SCHEDULED FOR 06/11/2013 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

06/06/2013 Charge(s): 1,2,3
HEARING - STATUS CONFERENCE HELD ON 05/31/2013
ROLAND A COLE , JUSTICE
Attorney: CLIFFORD STRIKE
DA: JULIA SHERIDAN

VERNE PARADIE PARTICIPATED BY PHONE. TRIAL ON CR-13-1576 JOINED WITH 13-1560 TO PROCEED TO TRIAL ON 6/24. DOCKET 12-6129 JOINED WITH 12-6114 TO BE RESET.

06/12/2013 Charge(s): 1,2,3
HEARING - MOTION TO SUPPRESS HELD ON 06/11/2013
WILLIAM BRODRICK , JUSTICE
DA: JULIA SHERIDAN
TAPE #5064

06/12/2013 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 06/11/2013
WILLIAM BRODRICK , JUSTICE

06/19/2013 Charge(s): 1,2,3
MOTION - MOTION TO SUPPRESS DENIED ON 06/18/2013
WILLIAM BRODRICK , JUSTICE
COPY TO PARTIES/COUNSEL