

**APR 19 2005**

**PATRICK FISHER**  
Clerk

**PUBLISH**

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

No. 03-3132

JAMES RICCARDI,

Defendant-Appellant.

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**APPEAL FROM THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF KANSAS**  
**(D.C. No. 2:02-CR-20060-JWL)**

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James R. Wyrsh, Wyrsh Hobbs & Mirakian, P.C. (J. Justin Johnston, Wyrsh Hobbs & Mirakian, P.C., with him on the briefs), Kansas City, Missouri, for Defendant-Appellant.

Kim M. Berger, Assistant United States Attorney (Eric F. Melgren, United States Attorney, District of Kansas, Paul R. Almanza, Trial Attorney, United States Department of Justice, Washington, D.C., Nancy Landis Caplinger, Assistant United States Attorney, Topeka, Kansas, with her on the briefs), Kansas City, Kansas, for Plaintiff-Appellee.

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Before **MURPHY**, **ANDERSON** and **McCONNELL**, Circuit Judges.

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**McCONNELL**, Circuit Judge.

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The district court held that the warrant to seize and examine Mr. Riccardi's computer failed to satisfy the Fourth Amendment's particularity requirement, but that the law enforcement officers acted in good faith in executing the warrant. Mr. Riccardi agrees that the warrant failed the particularity requirement, but he challenges the district court's application of the good faith exception. We agree with the district court.

The Fourth Amendment mandates that "no Warrants shall issue . . . without particularly describing the place to be searched." U.S. Const. amend. IV. "The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search the specific areas . . . , the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987); *see also Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985); *United States v. Campos*, 221 F.3d 1143, 1147 (10th Cir. 2000).

In *United States v. Leary*, 846 F.2d 592 (10th Cir. 1988), we set out the general standard for evaluating when the Fourth Amendment's particularity requirement has been met. There we explained:

A description is sufficiently particular when it enables the searcher to reasonably ascertain and identify the things authorized to be seized. Even a warrant that describes the items to be seized in broad or generic terms may be valid when the description is as specific as the

circumstances and the nature of the activity under investigation permit. However, the fourth amendment requires that the government describe the items to be seized with as much specificity as the government's knowledge and circumstances allow, and warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized.

*Id.* at 600 (internal quotations and citations omitted). In *United States v. Carey*, 172 F.3d 1268, 1271 (10th Cir. 1999), this Court applied the particularity requirement to the search of computer files. As summarized in a subsequent decision:

The underlying premise in *Carey* is that officers conducting searches (and the magistrates issuing warrants for those searches) cannot simply conduct a sweeping, comprehensive search of a computer's hard drive. Because computers can hold so much information touching on many different areas of a person's life, there is a greater potential for the "intermingling" of documents and a consequent invasion of privacy when police execute a search for evidence on a computer. . . . Thus, when officers come across computer files intermingled with irrelevant computer files, they may seal or hold the computer pending approval by a magistrate of the conditions and limitations on a further search of the computer. . . . Officers must be clear as to what it is they are seeking on the computer and conduct the search in a way that avoids searching files of types not identified in the warrant.

*United States v. Walser*, 275 F.3d 981, 986 (10th Cir. 2001) (internal quotations and citations omitted). Our case law therefore suggests that warrants for computer searches must affirmatively limit the search to evidence of specific federal crimes or specific types of material. *See id.*; *Campos*, 221 F.3d at 1147.

The warrant in this case was not limited to any particular files, or to any