UNITED STATED DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v. Case No.: 8:14-cr-217-T-33EAJ

MAHMOUD ALDISSI,
a/k/a Matt, and
ANASTASSIA BOGOMOLOVA,
a/k/a Anastasia
_____/

DEFENDANTS' JOINT REPLY TO UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANTS' JOINT MOTION TO SUPPRESS EVIDENCE ILLEGALLY OBTAINED DUE TO AN INVALID SEARCH WARRANT (DKT. 54) AND INCORPORATED MEMORANDUM OF LAW

The Defendants in the above-styled case, by and through undersigned counsel, respectfully reply pursuant to Local Rule 3.01(d) to the Government's Response (Dkt. 54) to their previously filed motion to suppress any and all evidence obtained during the execution of an illegal search warrant (Dkt. 47). In reply, undersigned state as follows:

I. BACKGROUND

Attached to the application for the Second Warrant was an affidavit in support.[1] *See* Ex. A, Application for Search Warrant signed January 29, 2014. In the second affidavit, the affiant, Special Agent Tara Jones, admitted that the Court did not initially authorize the seizure of computers in the First Warrant. *Id*. Agent Jones acknowledged that the First Warrant's Attachment B defined computers to include things beyond traditional computers (e.g., thumb drives, CDs, DVDs, etc.). Yet Agent Jones stated within the affidavit that the agents already seized, through cloning, seven laptops, two desktop computers, and one tablet computer, prior to submitting the application for the second search warrant. *Id*. Agent Jones stated that since she

[1] This affidavit was provided to the defense on October 3, 2014, after the filing of the original Motion (Dkt. 47).

was unclear of what the Court meant by "computers" in the First Warrant, she was seeking the Second Warrant. *Id.*

With regard to probable cause, the affidavit states,

> For the purpose of probable cause analysis, the government would incorporate by this reference the earlier affidavit from the original search warrant affidavit in case number 8:14-MJ-1045-TGW.

Id.

Further, in an attempt to establish probable cause, the second affidavit states that both Drs. Aldissi and Bogomolova had consented to the search of the proposed items and had also admitted to the fraud related to the Valsaraj emails.[2] Drs. Aldissi and Bogomolova made no such admissions to fraud related to Valsaraj emails. *See* Ex B–C, Interview Report of Matt Aldissi and Interview Report of Dr. Bogomolova. Further, Defendants challenge the constitutionality of any alleged consent. *See* Dkt. 45.

II. MEMORANDUM OF LAW

Both warrants issued in this case are facially deficient and lacking in probable cause. Therefore, no law enforcement officer could reasonably rely upon either and, as a result, all evidence obtained pursuant to the warrants must be suppressed. The agents' telegraphed their belief that the First Warrant was invalid and that the "consent" was not voluntary by seeking a Second Warrant on January 29, 2014, at 5:15 P.M. during the execution of the First Warrant.

Within the recently provided affidavit in support of the Second Warrant, the agents outline for the court not only their confusion, but also their actions in direct defiance of their own interpretation of the First Warrant. Agent Jones stated her belief that the First Warrant did not

[2] This statement is false information as defined in the separate pleading filed by the defense pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). *See* Dkt. 46. It should also be noted that this allegation of an admission is referencing the illegal fruit of custodial interrogations of both Dr. Bogomolova and Dr. Aldissi without the benefit of *Miranda* warnings, which the defense addresses in a separate pleading (Dkt. 45).

authorize the seizure of computers. In the next paragraph, Agent Jones described her and her agents' seizure of computers via cloning. Further, Agent Jones stated that Attachment B to the First Warrant defined computers to include other media through which electronic data is stored (e.g., thumb drives, CDs, DVDs, etc.). Pursuant to the definition of computers in the incorporated Attachment B, in contrast with the Court's written instructions not to seize computers, Agent Jones herself stated that she is not sure what the First Warrant meant by "computer." Yet her confusion did not stop her and her agents from seizing traditional computers. Her confusion instead led her to seek a separate search warrant to seize nontraditional computers in defiance of her interpretation of the limitations of the First Warrant.[3]

With regard to probable cause, the recently provided second affidavit in support of the Second Warrant merely incorporates the affidavit to the First Warrant by reference, thus demonstrating, as predicted, that it is infected with the same maladies which are detailed in the Defendants' *Franks* motion (Dkt. 46). Therefore, any evidence obtained pursuant to the probable cause determination in the second affidavit is fruit of the poisonous tree and must be suppressed. *Murray v. United States*, 487 U.S. 533, 536–37 (1988); *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963).

Further, in addition to the incorporation of the first affidavit, Agent Jones made reference to alleged admissions to fraud by both Drs. Aldissi and Bogomolova regarding Valsaraj emails. As can be plainly seen from the summaries of the interviews of Drs. Aldissi and Bogomolova (Ex. B–C), neither Defendant made any such admission to fraud. This is an intentional false statement by Agent Jones. Therefore, with regard to the Government's potential argument that

[3] It should be noted that the defense finds it suspect that this second affidavit is completely void of reference to the alleged consent to search the electronic storage devices. The defense can only interpret this omission as an admission that the consent was not voluntarily given by Drs. Aldissi and Bogomolova during their custodial interrogation without the benefit of *Miranda* warnings.

these alleged admissions established probable cause outside the confines of the first affidavit, for the reasons thoroughly explained in the defense pleading specifically addressing *Franks v. Delaware* (Dkt. 46), all evidence derived from this false statement must also be suppressed.

III. CONCLUSION

In sum, the facially defective nature of the First Warrant issued by Magistrate Judge Wilson on January 27, 2014 deemed the subsequent search and seizure of the computers and electronic media/storage devices as "warrantless." The agents were in fact so confused by the warrants' deficiency that they coerced consent from Drs. Aldissi and Bogomolova and also sought a Second Warrant, concealing from the Court that they had already coerced consent. The Second Warrant is devoid of probable cause due to the same defects as the First Warrant. The good faith exception to the exclusionary rule does not apply when a warrant is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *United States v. Leon*, 468 U.S. 897, 923 (1984). Therefore, any evidence obtained as a result of the execution of either warrant or the involuntary consent is logically considered fruit of the poisonous tree and must be suppressed pursuant the exclusionary rule. *Wong Sun*, 371 U.S. at 484.

Dated: October 17, 2014.

Respectfully submitted,

/s/ Todd Foster

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CERTIFICATE OF SERVICE

I do hereby certify that on this 17th day of October, 2014 a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Assistant United States Attorney Thomas Palermo by operation of the Court's electronic filing system.

/s/ Todd Foster
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