

UNITED STATES 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.

**UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANTS'
JOINT MOTION TO SUPPRESS EVIDENCE ILLEGALLY OBTAINED DUE TO
AN INVALID SEARCH WARRANT**

The defendants seek to suppress the computer evidence obtained as a result of the execution of two federal search warrants. Dkt. 47. The motion should be denied, without hearing, based upon the attached search warrants themselves, which were perfectly valid; the good faith exception; and inevitable discovery.

On January 27, 2014, United States Magistrate Judge Thomas G. Wilson authorized the execution of a search of 108 4th Street, Belleair Beach, Florida. The search warrant, assigned case number 8:14-mj-1045TGW, is attached hereto as Exhibit A. The warrant satisfies the place and particularity requirements. The defendants misread Attachment B, which authorized in Section I, a lengthy but specific list of things to be seized, namely, records that were in either conventional physical form or electronic form. In addition, the agents relied upon the Court's authorization in good faith. *See United States v. Leon*, 468 U.S. 897 (1984).

The defendants misunderstand Judge Wilson's handwritten instruction that the warrant did not authorize the seizure of computers or cell phones. The Court authorized the agents to clone the computers on-site, thereby seizing the data on the computers, but not to take the computers themselves off-site under that warrant without returning to the Court for permission. This is not atypical of many modern search warrants, since computer forensic technology frequently allows agents to clone computers on site without removing the computers from the site.

The understanding of the agents is confirmed by the supplemental search warrant sought during the execution of the first warrant. On January 29, 2014, Judge Wilson authorized the seizure of specific electronic media in the warrant assigned case number 8:14-mj-1071TGW. This supplemental search warrant is attached hereto as Exhibit B. In the search warrant affidavit¹ for the supplemental search warrant, the affidavit states as follows:

This is a supplemental search warrant to supplement that previously granted by the Court to search the Target Location of 108 4th Street, Belleair Beach, Florida 33786. In granting the previous warrant, the Court authorized the search but not the seizure of computers, thereby authorizing the agents executing the warrant to clone/mirror image computers on site but not take the items with them, absent additional authorization of the Court.^{FN} The sole purpose of this supplemental search warrant is to seek the Court's permission to seize for cloning/mirroring certain items identified below in paragraph 4. We have been unable to successfully clone these items on site and would like the Court's permission to take them off site to

¹ The defendants mistakenly asserted that the supplemental search warrant did not have its own affidavit. Dkt. 47 at 6 ("There is no such affidavit or recorded testimony attached to this warrant."). The undersigned's records and recollection indicate that the supplemental warrant (including the affidavit) was provided to the defense with the first search warrant. In an abundance of caution, another copy was emailed to defense counsel on October 3, 2014. The existence of the affidavit can be confirmed with Judge Wilson's chambers.

clone and then return them to Aldissi and Bogomolova. For the purpose of the 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.

^{FN} In the original Attachment B, computers were defined to include things beyond traditional computers, that is, “also the other media through which electronic data is stored (e.g., thumb drives, CDs, DVDs, etc.)” In an abundance of caution, in case the Court meant computers in the same way, we are seeking this supplemental search warrant.

Exhibit B, Affidavit at 1, ¶ 2. Since Judge Wilson countersigned the agent’s affidavit, it certainly appears that the agent’s understanding of the search warrant was correct. Exhibit B, Affidavit at 3. This also indicates the agents acted in good faith in their execution of both the original search warrant and their execution of the supplemental search warrant.²

By reviewing the supplemental search warrant, the Court can determine from looking at it that it was, in fact, a valid supplemental search warrant. This is further confirmed by a review of the supplemental search warrant affidavit to it.

Finally, there is an inevitable discovery argument related to the search warrants. Many of the records – in physical and electronic form – also belonged to the two companies, Fractal Systems, Inc., and Smart Polymers. The companies would have provided these records to the government. It is unnecessary to reach this aspect of the argument because the warrants were valid, the execution of the

² The defendants have also argued that the fact that the agents also sought consent to take the items that were the subject of the supplemental search warrant is evidence of their bad faith. The defendants are burying their conclusion within their premise and, here, their premise is wrong. It is common for agents to seek consent and additional search warrants. If there are two different ways to do something, getting permission both ways, when you can, is simply prudence, not bad faith.

warrants was proper, and the agents acted in good faith.

Therefore, the motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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Ernest Peluso, Esq.
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s/ Thomas N. Palermo
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