

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:13-CR-150-ORL-36KRS

HUSEIN KERMAI

GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE

The United States of America, by A. Lee Bentley, III, Acting United States Attorney for the Middle District of Florida, hereby responds in opposition to the Defendant's Motion to Suppress Evidence (Doc. 52).

I. FACTS

Between December 2010 and May 2012, defendants Husein Kermali and Sikandar Kermali purchased millions of dollars' worth of stolen merchandise from Sebastian Oyegun, who at the time was a member of the United States Army. Oyegun fraudulently purchased the merchandise through the General Services Administration (GSA) Advantage Program, using the account numbers for his Army unit. The Kermalis would search the GSA Advantage website for the items they wanted, and then give Oyegun a list of items to purchase. During this period, the Kermalis met Oyegun at a number of different places to pick up the goods, including a local flea market, the parking lot of an Orlando area gym, and Oyegun's residence. As the orders became larger, Oyegun arranged for the items to be

shipped directly to the Kermalis' warehouse in Sanford, Florida.

Many of the shipments were shipped to NRK Distributors, Inc. (NRK). NRK was a Florida corporation, whose registered agent and president was Husein Kermali. The address associated with this registration was 3631 Pine Oak Trail, Sanford, Florida (Hussein Kermali's residence).

In December 2011, Oyegun began cooperating with law enforcement agents. As part of this cooperation, between January 2012 and May 2012, Oyegun conducted several controlled transactions with the Kermalis where they took delivery of what they believed to be goods that Oyegun had fraudulently obtained by using United States government funds.

During the investigation, agents confirmed through business records that the Kermalis were selling the stolen merchandise on EBay.com, and processing the payments for these sales through PayPal.com. Agents identified LUVMYLEX and MICROTECHDIST as the seller identifications used by the Kermalis. According to records obtained from these websites, agents found the Internet Protocol (IP) addresses from which these accounts had been accessed. Based upon this information, agents used records obtained from Brighthouse Networks, and determined that one of these IP addresses was located at Husein Kermali's residence. Based upon this information, agents determined that the LUVMYLEX account had been accessed from Husein Kermali's residence 104 times between August 12, 2011 and February 4, 2012, and that the MICROTECHDIST account

had been accessed from Husein Kermali's residence once on October 9, 2011.

Based in part upon the above information, on May 15, 2012, the Honorable Karla R. Spaulding, United States Magistrate Judge for the Middle District of Florida, Orlando Division, signed a warrant authorizing the search of a number of e-mail addresses and physical addresses, including the residences of Husein Kermali and Sikandar Kermali, which were separate units located in the same structure. The search warrant authorized agents to search for and seize "[a]nything that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. § 2314 (Interstate Transportation of Stolen Property).

On May 17, 2012, agents executed the search warrant for Husein and Sikandar Kermali's residences. During the search of Husein Kermali's residence agents located numerous firearms, and a large safe containing a significant stockpile of gold, silver, and palladium bars and coins. Contemporaneous to these searches, agents conducted non-custodial interviews of both Husein Kermali and Sikandar Kermali. During the interview, Husein Kermali stated that he had purchased some of the silver and gold during the same period in which they were purchasing the stolen goods from Oyegun. Neither Husein nor Sikandar Kermali, was able to specifically identify which portions of the gold, silver, and palladium were purchased with the proceeds of the transactions with Oyegun. Sikandar Kermali stated that most of the firearms were purchased with the proceeds from the sale of the stolen goods bought from Oyegun. Based upon the

interviews with the Kermalis, agents determined that the gold, silver, and palladium were co-mingled with proceeds of the charged offense, and seized the items for further accounting. Agents went through and inventoried each of the firearms with Husein and Sikandar Kermali, and seized only the weapons that the Kermalis identified as being purchased during the time in which they were purchasing the stolen goods from Oyegun. Agents did not seize items Husein or Sikandar Kermali definitively stated were purchased prior to their engagement in the offense.

II. MEMORANDUM OF LAW

A. **The affidavit supporting the search warrant contained sufficient probable cause to justify the search of Husein Kermali's residence.**

The defendant claims that there was insufficient probable cause to justify the search of Husein Kermali's residence, specifically citing to the staleness of information linking Husein Kermali's residence to the charged offenses.

In determining probable cause, the issuing magistrate is simply to make a practical common sense decision of whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

Probable cause involves the non-technical, factual and practical considerations of everyday life on which reasonable and prudent individuals, not legal technicians, act. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949). The standard for review of an issuing magistrate's probable cause determination is whether the

magistrate had a "substantial basis for...concluding that a search would uncover evidence of wrongdoing..." *Gates*, 462 U.S. at 237-238.

When the court reviews staleness challenges, there is no talismanic rule that establishes arbitrary time limitations for presenting information to a magistrate, rather each case is reviewed based on the unique facts presented. *United States v. Harris*, 20 F.3d 445, 450 (11th Cir. 1994)(court found two-year old information not stale where affidavit described a long-standing criminal conspiracy). Among the factors considered are, the maturity of the information, the nature of the suspected crime (a discrete crime or an ongoing conspiracy), the habits of the accused, the character of the items sought, and the nature and function of the premises to be searched. *Id*; see also *United States v. Hooshmand*, 931 F.2d 725, 735-736 (11th Cir. 1991)(in Medicare fraud case, information provided by ex-employee who had been employed 11-months earlier was not stale in light of the pervasive nature of the ongoing fraud).

In the current case, the search warrant affidavit indicated that NRK was the recipient of a large portion of the stolen goods. The affidavit specified that the registered address for NRK was Husein Kermali's residence. It is reasonable to expect that corporate records would be found at the registered address for the corporation. These corporate records would potentially be evidence of the charged offenses, including evidence of other potential co-conspirators. Further, the affidavit stated that the Kermalis sold the stolen goods using EBay user

names. The affidavit further specified that numerous EBay and Paypal transactions related to these user names were accessed through IP addresses originating from Husein Kermali's residence. The fact that the stolen goods were being sold using the computers at Husein Kermali's residence indicates that evidence of those sales and other activities, such as computer files and printed documents, would likely be found at the residence.

Further, according to the affidavit, the EBay seller account had been accessed from Husein Kermali's residence approximately three months prior to the date the search warrant was signed. Given the fact that this case involved an ongoing conspiracy that had lasted well over one year, the records to be sought were the type of records that a corporation would usually keep for a long period of time, and the fact that the residence was the listed corporate address for NRK, it was reasonable to believe that evidence pertaining to the offenses would still be located at the residence.

B. The search warrant was not overbroad.

The defendant claims the search warrant was overbroad, in that it did not specify the items to be seized. This argument should fail because the search warrant was as specific as possible given this particular investigation.

A description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit. *United States v. Moody*, 977 F.2d 1425, 1432 (11th Cir. 1992). A description is sufficiently

particular when it enables the searcher to reasonably ascertain and identify the things authorized to be seized. *United States v. Wuagneux*, 683 F.2d 1343, 1348 (11th Cir. 1982). In *Wuagneux*, the Eleventh Circuit noted that a line in a warrant allowing officers to seize "property that constitutes evidence of the above-enumerated offenses, fruits of the crimes named-above and property which is or has been used to commit the crimes enumerated herein..." was not overbroad. *Id.* at 1350. Furthermore, even if a search warrant falls short of the particularity requirement, suppression is unwarranted where the police act in good faith on an objectively reasonable belief that the warrant was valid. *United States v. Travers*, 233 F.3d 1327, 1330 (11th Cir. 2000); *see also United States v. Leon*, 468 U.S. 897, 918 (1984).

In this case, the warrant authorized agents to search for and seize "fruits, evidence and instrumentalities" of 18 U.S.C. § 2314 (Interstate Transportation of Stolen Property). This language is essentially identical to the language upheld by the Eleventh Circuit in *Wuagneux*. It would be an exercise in futility to attempt to delineate all of the possible forms in which criminal proceeds could be found, whether precious metals, cash, consumer goods, etc. Even if such language were included, it would necessarily have to include almost any item which money can buy. Furthermore, even if the language in the warrant was overbroad in some technical sense, the agents in this case acted in good faith reliance on the validity of the warrant.

C. Agents did not exceed the scope of the warrant.

The defendant claims that agents exceeded the scope of the warrant because they seized coins and firearms not named in the warrant. This argument is without merit, because, the coins and firearms were proceeds of the offense explicitly authorized in the warrant to be searched for and seized.

Further, an officer may seize evidence that is in plain view even without a search warrant as long as two elements are satisfied: (1) lawful access to the object seized, and (2) the incriminating nature of the object seized is immediately apparent. *Horton v. California*, 496 U.S. 128, 137 (1990). A warrant to search a specific area for a certain class of things authorizes government agents to break open locked containers which may contain the objects of the search. *United States v. Jackson*, 120 F.3d 1226, 1229-1230 (11th Cir. 1997). For example if the police are searching for cocaine, and locate weapons inside a box, seizure of the weapons is permissible. *Id.*

In this instance, the agents determined that the firearms and precious metals that were in the house constituted criminal proceeds only after speaking to Husein and Sikander Kermali and determining that the items had been purchased with the proceeds of the offense, or were co-mingled with items purchased with the proceeds of the charged offense. In fact, the agents purposely avoided seizing firearms which Sikander Kermali recalled purchasing before the inception of the

charged offense.

Further, even if this Court were to find that the warrant did not specifically authorize agents to seize the coins and firearms, the agents were specifically authorized to search for a number of documents and other items related to the offense. These documents could be stored anywhere in the residence, including Husein Kermali's safe. During their search, the coins and firearms were in plain view of the agents, and based upon the statements from the Kermalis indicating the items were proceeds of a criminal offense, the agents were justified in seizing them.

III. CONCLUSION

For the foregoing reasons, the undersigned respectfully requests that the Defendant's Motion to Suppress be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2013, 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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