UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
CASE NO: 09-10579-BB

****

UNITED STATES OF AMERICA

Plaintiff/Appellee,

vs.

TIMOTHY BECKETT,

Defendant/Appellant.

****

On Appeal from the United States District Court

For the Southern District of Florida

REPLY BRIEF OF APPELLANT

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ARGUMENT

1. The district court erred in denying the defendants' motion to suppress evidence located and seized without a search warrant

In response to the appellant's first argument, the government's argument is twofold. First, that there was no violation of ECPA, and even if there were, the statute precludes suppression as a sanction. Next, the government argues that the scope of the search of appellant's computers, hard drives, and external storage devices.

Addressing the violation of ECPA first, law enforcement may *not* obtain subscriber information from an Internet service provider without a valid search warrant, court order, or subpoena, except under those circumstances found in 18 U.S.C. § 2702, allowing disclosure "if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information." The information provided by law enforcement in this case was insufficient to for the service provider to have found and or believe *that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.*

The appellant maintains the position that where our government is intending on pursuing the information gathered for the purpose of a criminal investigation which could lead to depriving the liberty and freedom of a citizen, when such evidence is collected in violation of a federal statute, there should in fact be a Fourth Amendment protection afforded. Limits have been built into the instant statute, requiring a warrant or court order, *unless* the emergency circumstances per § 2702 are present. If the instant court finds that law enforcement failed to follow the requirements for the collection of evidence pursuant to § 2703, without a warrant or court order, then the court should also find that law enforcement violated the 'unreasonable search' provision for Fourth Amendment exclusionary purposes, and find that a remedy of exclusion should be available to the courts, in order to deter police misconduct in the future. See, e.g., Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974)

2. The district court erred in denying the defendants' motion to suppress evidence located and seized from the appellant's computer based upon a search beyond that which was authorized in the search warrant

At the hearing on the motion to suppress, directed to the issues of entering into the storage devices, the detective testified that "*Q. Is there specific*

language in the search warrant that says law enforcement can actually enter into and access the contents of those storage devices? ***A. No.****"* Because awful search warrants do not allow for a general exploratory search to be performed with the hope of discovering evidence of a crime, warrants must be directed towards specific objects in it believed to be instrumentalities by which the crime charged was to have been committed. See, eg., Gurleski v. U. S., 405 F.2d 253, 258 (5 Cir. 1968).

In the instant case, allowing law enforcement to search the hard drive and storage devices of appellant, without the permission to do so being included in the initial search warrant, amounted to allowing the execution of a warrant for a general exploratory search, rather than for what the application for, and warrant allowed, that is the seizure of the computer equipment, hardware, and software. Any further exploration of the storage devices beyond that required an application for, and issuance of, a second search warrant.

3. The evidence presented by the government was insufficient to convict appellant on this Indictment

The appellant believes that he has adequately addressed argument in his initial brief on the issue of sufficiency of the evidence, and makes no additional argument.

CONCLUSION

The appellant, Timothy Beckett, submits that based upon the above stated argument, the judgment and sentence in the instant case should be reversed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 3 day of September, 2009, by U.S. Mail to: United States Attorney's Office, Appellate Division, 99 N.E. 4th Street, Miami, Florida 33132. Counsel also certifies that the Internet upload of this brief was completed on September 2, 2009.

By _____
Jack A. Fleischman