

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ADEDAYO ILOORO, and
CHRIS RECAMIER,

Defendants.

21 Cr. 746 (MKV)

**GOVERNMENT’S MEMORANDUM OF LAW IN OPPOSITION TO
THE DEFENDANTS’ MOTION TO SUPPRESS**

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum in opposition to defendants Adedayo Ilori and Chris Recamier's motion to suppress physical evidence recovered from the trunk of a vehicle that both Ilori and Recamier had been present in around the time of their October 2021 arrests.

FACTUAL BACKGROUND

From at least in or about August 2020 through their arrests in October 2021, the defendants were involved in a scheme to utilize the stolen identities of real people to fraudulently claim millions of dollars in Covid-19 relief loans guaranteed, or extended, by the Small Business Administration ("SBA"). The defendants successfully obtained more than \$1 million and attempted to obtain more than \$9.5 million in this scheme. During the course of this scheme, the defendants made multiple loan applications and claimed the identities of multiple identity theft victims. The defendants represented that they ran companies that, together, employed more than 230 employees and paid approximately \$3.2 million in wages on a monthly basis. The defendants also submitted falsified tax and bank documents in connection with these loan applications. Many of these applications were submitted in the name of a particular victim ("Identity Theft Victim-1"); another was submitted in the name of a second victim ("Identity Theft Victim-2"). The representations on these applications were all lies and the defendants utilized the fraudulently obtained proceeds for their own benefit, including for cryptocurrency investments, securities, cash withdrawals, and personal expenses.

During his involvement in this scheme, Ilori faced separate fraud, identity theft, and money laundering charges in this District in case 20 Cr. 378, which proceeded before Judge Lewis J. Liman. On April 8, 2021, contemporaneous with his continued submission of fraudulent loan applications, Ilori pleaded guilty in case 20 Cr. 378 to one count of conspiracy to commit mail and

wire fraud, in violation of 18 U.S.C. § 1349. Sentencing was initially scheduled for October 13, 2021; however, Ilori was re-arrested on October 8, 2021 for violating the conditions of his pretrial release, and sentencing was adjourned. On March 3, 2022, Ilori was sentenced to a top-of-the-Guidelines sentence of 63 months' imprisonment. Recamier was also involved in the fraud conduct giving rise to the charges in case 20 Cr. 378, but Recamier was not identified and charged until the instant prosecution. By the time of their arrests in this case, law enforcement officers were aware of Ilori's pending fraud case and Recamier's involvement in it.

In addition to the Covid-19 relief loan fraud and identity theft scheme charged here, Ilori and Recamier were simultaneously engaged in a number of other fraud and identity theft schemes which took place prior to their arrests in October 2021. For example:

- In or about summer 2021, Ilori rented an apartment located in Bushwick, New York, using a fake identity. In connection with this application, Ilori submitted a fake driver's license under a stolen identity, which included Ilori's photograph.
- In or about September 2021, Ilori and Recamier leased a 2021 Mercedes Benz S580 sedan, valued at more than \$100,000 (the "Car"). In leasing this vehicle, the defendants utilized the stolen identity of Identity Theft Victim-2, as well as the identity of a company that would be the Car's supposed owner ("Company-1"). The defendants submitted a social security card in Identity Theft Victim-2's name; a Pennsylvania driver's license claiming Identity Theft Victim-2's name, but including a photograph of Recamier; and bank cards in Identity Theft Victim-2's name. The defendants also submitted supposed proof of insurance in Company-1's name. (See Ex. A, at 9, 22-24, 32, 44-45.)¹
- In summer and fall 2021, Ilori made personal purchases using bank cards in the name of Identity Theft Victim-1.

¹ The Government respectfully requests leave to file Exhibits A, C, and D under seal because they include the personally identifying information of Identity Theft Victim-2, Ilori, and Recamier.

In investigating the defendants' COVID-relief-loan fraud, law enforcement obtained a warrant, authorizing the location tracking of a cellular phone that the defendants had provided on multiple fraudulent loan applications ("Phone-1"). Law enforcement conducted physical surveillance, where they observed both Ilori and Recamier in the same approximate location as Phone-1. Law enforcement also identified a particular IP address used to access an investment account that received fraud proceeds correlated to a particular apartment located in Long Island City, Queens (the "LIC Apartment"). Surveillance further established that both defendants could be observed in the area of the LIC Apartment. Records obtained from the LIC Apartment's management company indicated that the LIC Apartment had been rented under the identity of yet another victim, and that the defendants had submitted a driver's license claiming that victim's name but depicting Recamier's photograph. On October 7, 2021, law enforcement observed Ilori, in the vicinity of the LIC Apartment, entering the Car and driving away.

On October 7, 2021, Magistrate Judge Peggy Kuo, of the Eastern District of New York, signed a search warrant, authorizing law enforcement to search (a) the LIC Apartment and (b) Ilori's person and the area in his immediate control. On October 7, 2021, at approximately 9:45 p.m., law enforcement officers executed the search at the LIC Apartment. Recamier was present at the LIC Apartment, and law enforcement officers placed him under arrest. Following his arrest, Recamier was provided with his *Miranda* rights, waived those rights, and engaged in an audio-recorded interview with law enforcement.²² During this interview, Recamier made the following statements, among others and in substance and in part:

²² A transcript of this post-arrest interview is attached as Exhibit B. If the Court wishes, the Government can provide the Court with copies of the audio recordings.

- Recamier identified Ilori as the person who maintained counterfeit ID cards and bank cards in the names of identity theft victims. (Ex. B, at 15-16.) Recamier stated that he believed Ilori kept these counterfeit ID and bank cards in the Car. (Ex. B, at 44-45.)
- Recamier stated that the cellular phones used by he and Ilori during the course of the scheme belonged to Ilori. (Ex. B, at 48.)
- Recamier confirmed that he and Ilori leased the Car, using Identity Theft Victim-2's identity. (Ex. B, at 17-19.)
- Recamier estimated that he and Ilori had fraudulently used the identities of 15 to 20 people. (Ex. B, at 27.)
- Recamier agreed with a characterization of his criminal relationship with Ilori being that Ilori was the leader and Recamier was his subordinate. (Ex. B, at 39.)
- Recamier acknowledged that, beyond basic living expenses, Ilori did not share fraud proceeds with Recamier. (Ex. B, at 53-56.)

On October 8, 2021, at approximately 10:15 a.m., Ilori left his Queens home and entered the Car, which was parked outside. Law enforcement officers approached and executed the search warrant, as it pertained to Ilori's person and the area within his immediate control. From Ilori's person, law enforcement recovered, among other things, a key to the LIC Apartment, bank cards in the name of Identity Theft Victim-1, and three cellular phones. From the Car's passenger compartment, law enforcement recovered, among other things, an additional cellular phone. Law enforcement also searched the Car's trunk, recovering, among other things, an additional cellular phone; ID cards in the name of identity theft victims, including Identity Theft Victim-2, and bearing Recamier's photograph; and bank cards in the name of identity theft victims, including Identity Theft Victim-2.³

³ An independent warrant was subsequently obtained to actually search the cellular phones recovered from the Car's Trunk, which has not been challenged by the defendants.

Following these searches, Ilori was placed under arrest for violating the terms of his pretrial release. Judge Liman ordered Ilori detained the same day for his pretrial release violations. Also, on October 8, 2021, Recamier was presented on the basis of a criminal complaint and ordered detained. The phones recovered from the search of Ilori's person and the Car contained additional evidence of the fraud scheme, including emails concerning loan applications and investments in the names of identity theft victims, including Identity Theft Victim-1, and communications concerning the sale of stolen identities.

On December 9, 2021, a Southern District of New York grand jury returned Indictment 21 Cr. 746 (MKV), charging the defendant in six counts, with major fraud against the United States, in violation of 18 U.S.C. § 1031; conspiracy to commit wire and bank fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; aggravated identity theft, in violation of 18 U.S.C. § 1028A; and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). (Dkt. No. 6.)

On May 12, 2022, Ilori filed the instant motion (Dkt. Nos. 25-27), which Recamier sought to join on May 13, 2022 (Dkt. No. 28).

ARGUMENT

The defendants seek to suppress the physical evidence recovered from the Car's trunk as violative of the Fourth Amendment. The defendants' claims are meritless and should be denied without a hearing. First, they lack standing to challenge the seizure of items from the Car's trunk. Second, in any event, the search and seizure was proper under the automobile exception.

I. The Defendants Lack Standing

A. Applicable Law

“It has been clear for a generation that ‘Fourth Amendment rights are personal rights . . . [that] may not be vicariously asserted.’” *United States v. Haqq*, 278 F.3d 44, 47 (2d Cir. 2002) (quoting *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978)). Accordingly, a defendant’s Fourth Amendment rights are violated “only when the challenged conduct invaded his legitimate expectation of privacy rather than that of a third party.” *United States v. Payner*, 447 U.S. 727, 731 (1980); *see also United States v. Villegas*, 899 F.2d 1324, 1333 (2d Cir. 1990). Ultimately, the Fourth Amendment inquiry is “whether defendant has established a legitimate expectation of privacy in the area searched.” *United States v. Chuang*, 897 F.2d 646, 649 (2d Cir. 1990) (citing *United States v. Rahme*, 813 F.2d 31, 34 (2d Cir. 1987)). This threshold question involves two separate inquiries: (1) whether a defendant has demonstrated a subjective expectation of privacy in the places and items that were searched; and (2) whether that expectation was one that society accepts as reasonable. *Id.* It is axiomatic that “the proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.” *Rakas*, 439 U.S. at 130, n.1; *see also Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980).

“The law is clear that the burden on the defendant to establish [Fourth Amendment] standing is met only by sworn evidence, in the form of affidavit or testimony, from the defendant or someone with personal knowledge.” *United States v. Montoya-Eschevarria*, 892 F. Supp. 104, 106 (S.D.N.Y. 1995) (citations omitted); *see also United States v. Ulbricht*, No. 14 Cr. 68 (KBF), 2014 WL 5090039, at *6 (S.D.N.Y. Oct. 10, 2014). An attorney’s declaration is insufficient to make the requisite showing. *See Montoya-Eschevarria*, 892 F. Supp. at 106. The Second Circuit has also made clear that a defendant does not have standing to challenge a search “merely because

he anticipate[s] that the Government will link the objects recovered in that search” to him “at trial.” *United States v. Watson*, 404 F.3d 163, 166-67 (2d Cir. 2005).

B. Discussion

The defendants here lack standing to contest the search of the Car.

First, by their own terms, the defendants do not establish standing to challenge the search of the Car’s trunk. Recamier filed no declaration at all. For his part, Ilori’s declaration specifically disclaims ownership of the Car. (See Dkt. No. 27 ¶¶ 3, 4.) Nowhere in his declaration does Ilori attempt to assert a possessory interest that would establish a reasonable expectation of privacy in the Car. *See, e.g., United States v. Shuai Sun*, No. S4 18 Cr. 905 (LTS), 2020 WL 529274, at *2 (S.D.N.Y. Feb. 3, 2020) (holding that non-owner driver of a car had no standing because there was no evidence that defendant had reasonable expectation of privacy in the vehicle, including a right to exclude others).

Second, the Car was obtained through the fraudulent provision of Identity Theft Victim-2’s identity and credit reporting. The Car would never have been obtained by the defendants but for these fraudulent pretenses, and the Car was thus stolen. A person present in a stolen vehicle has no standing to challenge the search of that vehicle. *See Byrd v. United States*, 135 S. Ct. 1518, 1529 (citing *Rakas*, 439 U.S. at 141 n.9); *see also United States v. Tropiano*, 50 F.3d 157, 161-62 (2d Cir. 1995). For “[n]o matter the degree of possession and control, the car thief would not have a reasonable expectation of privacy in a stolen car.” *Byrd*, 135 S. Ct. at 1529. For “wrongful presence at the scene of a search would not enable a defendant to object to the legality of the search.” *Rakas*, 439 U.S. at 141 n.9.

The facts in this case are analogous to *United States v. Johnson*, where the defendant’s girlfriend leased a storage space, at the defendant’s direction, using an identity theft victim’s

identity. *See* 584 F.3d 995, 1001 (10th Cir. 2009). The Tenth Circuit concluded that the defendant lacked standing to challenge the search of the storage unit, given the fraudulent manner in which the storage unit was obtained. *See id.*, at 1004; *see also, e.g., United States v. Caymen*, 404 F.3d 1196, 1200 (9th Cir. 2005) (upholding finding that defendant lacked standing to challenge search of laptop obtained by fraud); *United States v. Soto*, 779 F. Supp. 2d 208, 217-18 (D. Mass. 2011) (holding that defendant lacked standing to challenge search of automobile, in part because the automobile had been fraudulently obtained by the defendant using a third-party's identity).

Because the defendants obtained the Car through fraud, they have no reasonable expectation of privacy in the Car and cannot challenge the search.

Finally, the defendants' possession and use of the automobile was additionally unlawful because neither defendant had a valid driver's license at the time they used the Car. This is an independent basis for the defendants' lack of standing to challenge the search. The Second Circuit has held that a driver of a rental car who does not possess a valid license has no reasonable expectation of privacy in, and thus no standing to contest a search of, the rental car because the driver's possession and use of the vehicle was unlawful. *United States v. Lyle*, 919 F. 3d 716, 729 (2d Cir. 2019).

At the time of the search, Ilori's driver's license was suspended, after he had incurred approximately twenty-three violations implicating his ability to legally drive. (*See* Ex. C.) And Recamier's driver's license was expired. (*See* Ex. D.) At the time of the search, law enforcement approached the Car when Ilori was in the driver's seat, preparing to operate a car that he had no right to do so. Law enforcement had also observed Ilori illegally operating the Car the day before. As the defendants' use of the car was unlawful, and Ilori's presence in the vehicle was thus

wrongful, they have no reasonable expectation of privacy in the Car or its contents. *See Lyle*, 919 F.3d at 729.

II. The Search and Seizure of Items from the Car’s Trunk Was Permissible Under the Automobile Exception

A. Applicable Law

The Fourth Amendment protects against “unreasonable searches and seizures.” Warrantless searches or seizures are generally impermissible, “subject only to a few specifically established and well delineated exceptions.” *United States v. Howard*, 489 F.3d 484, 492 (2d Cir. 2007) (internal quotation marks omitted).

It is black letter law that a law enforcement search of a vehicle is permissible under the “automobile exception” to the Fourth Amendment warrant requirement “if probable cause exists to believe the vehicle contains contraband or other evidence of a crime.” *United States v. Gaskin*, 364 F.3d 438, 456 (2d Cir. 2004). Law enforcement officers may “conduct a warrantless search of a readily mobile vehicle where there is probable cause to believe that the vehicle contains contraband.” *United States v. Navas*, 597 F.3d 492, 497 (2d Cir. 2010). The Second Circuit has explained that the exception requires only a “fair probability” that contraband or evidence of a crime will be found. *Gaskin*, 364 F.3d. at 457 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)); *see also Florida v. Harris*, 568 U.S. 237, 243 (2013) (probable cause for a search exists “when the facts available to [the officer] would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present.”) (internal quotation marks, brackets, and citations omitted).

The Second Circuit has recognized that “experience and training may allow a law enforcement officer to discern probable cause from facts and circumstances where a layman may

not.” *Gaskin*, 364 F.3d at 457. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. *United States v. Pascual*, 502 Fed. Appx. 75 (2d Cir. 2012); *United States v. Ross*, 456 U.S. 798, 825 (1982).

B. Discussion

Here, the law enforcement officers searching the Car’s truck had more than probable cause to believe it would contain contraband and evidence of crime. At the time of the search: (1) law enforcement had been investigating a wide-scale fraud and identity theft scheme; (2) the officers identified both Recamier and Ilori as being involved in this scheme; (3) the scheme involved the possession of multiple fraudulent drivers licenses and bank cards; (4) Recamier had confessed to his and Ilori’s involvement in the fraud scheme; (5) Recamier identified Ilori as the person who maintained the fake identification and bank cards used in the scheme; (6) Recamier stated that he believed Ilori stored these fake identification and bank cards in the Car; (7) Recamier identified Ilori as the person who maintained the cellular phones used in furtherance of the scheme; and (8) Recamier’s statements to law enforcement officers were corroborated by the recovery of bank cards in the name of Identity Theft Victim-1 and three cellular phones on Ilori’s person. These factors, among others, gave law enforcement more than probable cause to believe that the Car contained contraband and evidence of a crime. The officers thus appropriately relied on the automobile exception to search the Car’s truck. This probable cause was justified: the search resulted in even more contraband and evidence of the defendants’ fraud and identity theft offenses.

CONCLUSION

For the reasons set forth above, the defendants' motion to suppress should be denied in its entirety.

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Respectfully submitted,

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