UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
V.	*	**Cr. No. GLR-23-026**
RYAN DALES	*	
Defendant	*	
For: RYAN DALES	*	

DEFENDANT'S MOTION FOR RECONSIDERATION OF DENIAL OF MOTION TO SUPPRESS

RYAN DALES, by his undersigned counsel, respectfully submits this motion to reconsider the Court's denial of his motion to suppress evidence seized on January 20, 2023, and to grant that motion and as grounds states:

INTRODUCTION

On January 20, 2023, law enforcement from several sectors executed a search warrant on the premises at 900 East Fort Avenue in Baltimore. On October 10, 2023, defendant filed a motion to suppress the various items seized in the search, asserting that the affidavit supporting the search warrant lacked probable cause with regard to timeliness and any nexus between the crimes alleged and the placed searched.

The affidavit in support of the search warrant alleged crimes related to fraudulent COVID loans, such applications occurring on December 15 and 29, 2020 and March 24, 2021 (the "COVID loans" or "COVID applications").[1] The last payment for any of

[1] There were actually two searches of 900 East Fort Avenue on January 20, 2023. After entry for the COVID loan fraud warrant, officers assert that drugs and guns were in plain view during the search. They stopped the fraud search and proceeded to obtain a second warrant to search for guns and drugs. The motion to suppress concerns only the

these loans, per the affidavit, was made by September, 2021. It is undisputed that no activity related to these alleged offenses occurred after September, 2021, sixteen months before the search in January, 2023. No other crimes are alleged in the search warrant affidavit.[2] The search warrant sought information related to the PPP and EIDL frauds.

The fraudulent COVID loan applications are alleged in count one of the superseding indictment filed in May, 2023. ECF 35.

Many incriminating items were discovered in the search, including drugs, guns and, relevant here, driver's licenses with Mr. Dales' photo but another person's name. Using these newly found documents, investigation after the search disclosed the alleged us of these records to commit other, commercial fraud against various private companies. These allegations are contained in counts five through eight of the second superseding indictment and are alleged to have occurred in August and September, 2022, a year after the COVID loan activity ended. Because these items were discovered in the January 20, 2023, search, allegations about these offenses were not included in the search warrant affidavit for the January search.

On May 3, 2024, this Court held a hearing on the motion. After hearing from the parties, the Court denied the motion from the bench.

THE HEARING ON MAY 3, 2024

At the beginning, and then at the end, of the hearing, instead of the single Government fraud allegation in the search warrant affidavit, the Court included the

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absence of probable cause in affidavit for the first search; of course if the first search is suppressed, any subsequent search relying on the first would also be suppressed.

[2] The affidavit does reference iCloud photos of false identification documents but does not provide the dates of those images. More importantly, the affidavit does not allege that the documents were ever used in any offense.

subsequent identity fraud allegations as if they were part of the January, 2023, affidavit. The Court began: "A warrant was executed on January 20, 2023. The warrant actually was applied for and issued two days earlier. Inside the warranted affidavit it alleges through the agent that there was reason to believe that evidence of a criminal fraud would be present at the individual location. There were two investigations of fraud." Tr.at 4.[3] (emphasis added). The Court, still referring to the contents of the January, 2023, affidavit, listed the two investigations: "One related to a -- an identity sort of fraud, an insurance fraud, and a pandemic fraud scheme. In one of the fraud schemes the Defendant identified himself through identification -- don't worry about -- I'm not worried about the furrowed brows, if I make a mistake you guys are going to tell me. And then in the second -- one of the other frauds there were other individuals' identities that were assumed for the purposes of obtaining Government monies. In addition, there was a second fraud that was related to actually defrauding other institutions that were not Government controlled." *Id*., at 4-5. (emphasis added). While the "second fraud" is alleged in the second superseding indictment, it is not, in fact, alleged as a crime in the January, 2023, affidavit.

At the end of the hearing, the Court continued to refer to the "second fraud" as part of the support for probable cause in the affidavit at issue. While rendering its ruling, the Court stated "[t]here's sufficient evidence within the affidavit itself that the cell phone was used by this Defendant at the location, although there is some time that did pass between the two alleged fraudulent acts. It's noteworthy that the Defendant was indeed on

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[3] The full transcript is attached hereto as Exhibit 1.

supervised release for a fraud-related crime and committed this act while -- at least one of these acts while he was on supervised release." *Id*., at 55. (Emphasis added). This statement by the Court contributed to the Court's finding of an "ongoing" fraud, well past September, 2021: "[t]here was an assertion within the affidavit that the crime, if not direct and express, was ongoing. The Defendant was on supervised release for a fraud. He committed one fraud while in VOA and then within a relatively -- what this Court considers a relatively short period of time, connected in another fraud. *Id*., at 56. (Emphasis added).

As a result, the Court found a sufficient nexus in time between the "ongoing" frauds and the January 20, 2023, search.

ARGUMENT

I. The affidavit does not allege probable cause for crimes committed in 2022[4]

The search warrant affidavit makes clear both the crimes it alleges and the details of those crimes. In paragraph 15, it states "Based on your Affiant's investigation, and the facts set forth in this affidavit, I submit probable cause exists to believe that violations of Wire Fraud (18 U.S.C. § 1343) (the TARGET OFFENSE)…" ECF 58-1, p. 5. The affidavit then details the investigation into the target offenses:

> 29. Based on my investigation to date, I have identified various UI, EIDL, and PPP applications submitted in the name of DALES and purported businesses that he allegedly operated or controlled beginning in or about December 2020 when he began residing at the halfway house and continuing

[4] The point of this motion for reconsideration is to ask the Court to reconsider its ruling in light of statements made by the Court regarding multiple areas of fraud alleged in the affidavit when only one was actually alleged. Therefore, all of the defendant's prior arguments regarding staleness and nexus are not repeated herein, but although not listed herein, the defendant incorporates in this memorandum all prior arguments made with regard to this motion.

> thereafter. These UI, EIDL, and PPP applications contained false statements and misrepresentations regarding DALES, his employment, and purported businesses. At times, the applications included fabricated documents, including fake and fraudulent Internal Revenue Service (IRS) tax records.
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> 30. All loan applications and supporting documents were submitted by DALES to MD DOL or the SBA (or through SBA authorized lenders) electronically via the internet, causing interstate wire communications to be sent in furtherance of the scheme to defraud. They are discussed in turn below.

ECF 58-1, pp. 29-30. The only crimes investigated, alleged, or "discussed below" in the affidavit, *i.e.*, the specific target offenses, involve the COVID loans and not any other offenses, such as identity theft.

The critical aspect of the defendant's motion with regard to staleness was that the last criminal act alleged in the affidavit occurred in September, 2021, when payment was made due to one of the fraudulent COVID applications. No criminal acts are alleged after that date with regard to the crimes identified in support of the search warrant.

Obviously, the timing argument is vastly different had the affidavit alleged offenses that occurred a year later, in September, 2022. That date would put the most recent criminal allegation only about four months before the search. By importing the subsequently charged counts into the January, 2023, affidavit, the Court materially and critically changed the specific timing of the stale evidence.

Without this "second" investigation being part of the January, 2023, affidavit, the affidavit fails, both on staleness and nexus grounds. As for staleness, when only the COVID loan applications are considered, the latest act regarding these offenses occurred, per the affidavit itself, in September 2021, sixteen months before the search, with no illegal activity in the interim. And, because the COVID applications were claimed to be filed from the VOA, search of a different address, with no evidence of any illegal activity

whatsoever occurring there cannot meet the nexus requirement for search warrants that the affidavit must show that " 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, 238 (1983). Thus, "[i]n determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched." *Zurcher v. Stanford Daily,* 436 U.S. 547, 556 & n. 6, 98 S.Ct. 1970, 1976-77 & n. 6, 56 L.Ed.2d 525 (1978)." *United States v. Lalor*, 996 F.2d 1578, 1582 (4th Cir. 1993). "In this and other circuits, residential searches have been upheld only where some information links the criminal activity to the defendant's residence." *Lalor*, at 1583. Without the critical allegation seeking to connect the IP address to VOA, the affidavit fails to even suggest that electronic evidence could be in Mr. Dales' phone 16 months later.

II. The affidavit fails to provide any source or validity to its conclusion that the IP address used in the COVID loans was associated with the Volunteers of America nad therefore fails the requirements of the *Spenelli-Aquilar* analysis[5]

Although the COVID loans were filed using Dales' name and personal information, those facts alone do not support a finding that Dales filed the claim; particularly in a case that otherwise alleges identity theft; it is patent that someone other than Dales could have used his information. What connects Dales to the filings, and the only evidence that connects him to the filings, according to the affidavit, is the alleged

[5] This second argument was not presented in the defendant's prior arguments on this motion. Nevertheless, the Court is asked to address this issue because if the Court agrees that the affidavit failed to meet the requirements of *Aquliar-Spenelli*, in the interests of justice, the affidvat is insufficient and the motion must be granted.

relationship between the IP address associated with the filings and Dales' residence at the time of the filings.[6]

To support its claim of probable cause, the affidavit simply states that "[t]he IP address used for the application was 165.117.248.240, which resolved Volunteers of America, 5000 East Monument Street in Baltimore the halfway house where DALES was residing at the time." ECF 58-1, para. 31, p. 9. The affidavit provides no basis for this assertion, no indication as to the origin of the information or whether it was even obtained from a legitimate source.[7] Cases in which law enforcement tries to attach an IP address to a location involve the issuance of a subpoena to the relevant phone carrier that serves the IP address. *See, e.g.*, *United States v. Axelrod*, Case No. WDQ-10-279 (D.Md. 2011, ECF 48 at p. 2; *United States v. Perez*, 484 F.3d 735 (5th Cir. 2007) and *United States v. Stanley*, Cr. No. 11-272 (W.D. Pa. 2012), ECF 42 at p. 4. The instant affidavit contains no information that a subpoena was ever issued.

If this unsupported allegation is removed from the affidavit as unsubstantiated, nothing left connects the filings of these applications to the VOA, or Mr. Dales. As a result, this fully critical, and only, connection between Dales residence in 2020 and the

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[6] "An IP address is a number assigned to a modem when it connects to the internet. Every modem that connects to the internet has a unique IP address." *United States v. Stanley*, Crim. No. 11-272 (W.D.Pa. Nov. 11, 2012), at p. 2.

[7] Discovery in this case, by undersigned counsel' careful review, does not provide any source for the affiant's allegation that the IP address "resolved" to the VOA.. There is but one document that lists Mr. Dales and any IP address, titled "Ryan Dales IP address.pdf" with no identifying source of the document and, more importantly, it simply lists the IP address and nothing connecting that IP address to the VOA, nor any identification as to where this single document came from. Regardless, the suppression motion depends only on the four corners of the affidavit, even if the affiant had other information not provied to the Magistrate Judge.

location from which the loan applications were filed must be examined like any other unsuipported anonymous tip information under the *Aguilar-Spinelli* analysis.[8]

Saying that the IP address belongs to the VOA without any confirming information as to its validity or source is the functional equivalent of an anonymous tip in which someone says "Mr. Jones is selling drugs from his house." Failure to validate in any way an anonymous tip renders the search warrant invalid. *Spinelli*. And, in such circumstances, *Leon* does not apply to permit introduction of the evidence seized from any resultant search. *See, e.g., United States v. Sanders*, 59 F.4th 232, 238 (6th Cir. 2023), *United States v. Helton*, 314 F.3d 812, 822 (6th Cir. 2003). This failure is particularly troubling here because law enforcement had access to Dales' phone records prior to the search; if those records showed Dales' phone accessing the IP address, (or even using his phone at the time the applications were filed) that information would undoubtedly been included in the affidavit. That the affidavit not only does not include such information, but is vague deliberately about the source of the IP address identification make *Leon* even more inapplicable here.

Aguilar set forth the requirement for evaluating a search warrant affidavit that contains an unsupported allegation of "fact":

> Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, was "credible" or his information "reliable."[5] Otherwise, "the inferences from the facts which lead to the complaint" will be drawn not "by a neutral and detached magistrate," as the Constitution requires, but instead, by a police officer "engaged in the often

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[8] *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969).

> competitive enterprise of ferreting out crime," or, as in this case, by an unidentified informant."

Aguilar, 378 U.S. at 114-115 (citations omitted). Thus, with regard to the affidavit's statement that the IP address "resolved" to the VOA, the Supreme Court requires that "the magistrate must be informed of some of the underlying circumstances from which" the affiant concluded that the IP address in fact connected to VOA, and that the information "was 'credible' or his information 'reliable.'" Without such information, the quality of the information cannot be assessed by a "neutral and detached magistrate", but only by the police officer engaged in the "often competitive enterprise of ferreting out crime."

As a result, the instant affidavit fails to meet Supreme Court standards. In *Spinelli*, the Court set out the legal consequences of failing to give a detached Judge sufficient information as to the credibility, or source, of the affiant's statements:

> In *Aguilar,* a search warrant had issued upon an affidavit of police officers who swore only that they had "received reliable information from a credible person and do believe" that narcotics were being illegally stored on the described premises. While recognizing that the constitutional requirement of probable cause can be satisfied by hearsay information, this Court held the affidavit inadequate… [in part because] the application failed to set forth any of the "underlying circumstances" necessary to enable the magistrate independently to judge of the validity of the informant's conclusion that the narcotics were where he said they were.

Spinelli, at 412-413. The instant affidavit contains no information that the affiant had received reliable and credible information regarding the IP address. Because the affidavit failed to set forth any of the underlying circumstances "necessary to enable the Magistrate independently to judge the validity" of the IP location information, the affidavit was therefore "inadequate."

Even if the affiant had offered his own personal opinion that the IP information was reliable, there is nothing in the affidavit "in support of this conclusion." *Aguilar*, at 416. Like the rejected affidavit in *Aguilar*, the instant affidavit "does not contain a sufficient statement of the underlying circumstances from which the [affiant] concluded that the IP address "resolved" to VOA. The Magistrate Judge was "not told how the [affiant's] received his information—it is not alleged that the informant personally observed" any phone records. "Moreover, if the [affiant] came by the information indirectly, he did not explain why his sources were reliable." *Id*., at 416. Like the failed affidavit in *Aguilar*, the affiant "offered the magistrate no reason in support of this conclusion" that the IP address resolved to VOA.[9] *Id*.

The next step in the *Aguilar-Spinelli* analysis is to assess whether the affidavit provides probable cause without the unsubstantiated IP address allegation. Here, the affidavit fails completely. Without connecting the IP address to VOA, the affidavit also fails to connect the COVID applications to anywhere that Mr. Dales lived at the time of the applications. Without connecting the IP address to VOA, the affidavit does not even offer a suggestion that Dales' cell phone was involved in the applications.

Without an legitimate, identified source of the allleged connections between the IP address used and the VOA, the affidavit fails to provide a Magistrate Judge with sufficent information to evaluate that assertion. When this alleged connection is removed, the affidavit becomes merely a statement that Mr. Dales lived at the VOA in December, 2020, and then lived at 900 East Fort Avenue over two years later. Such an affidavit cannot

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[9] In other cases, police officers obtain IP addreses direct;ly from the phone company via subpoena. See, *e.g.*, *Stanley, infra*, where a subpoena was issued to Comcast and that information was provided directly in the affidavit. *Stanley*, at 2.

provide probable cause for the search and cannot "reasonably" be relied on by a law enforcement officer such that *Leon* does not apply to resurrect the invalid searc because "no reasonably well trained officer should rely on the warrant. Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Brown v. Illinois*, 422 U. S., at 610-611 (POWELL, J., concurring in part); see *Illinois v. Gates, supra*, at 263-264 (WHITE, J., concurring in judgment)." *Leon*, at 923.

CONCLUSION

WHEREFORE, RYAN DALES moves this Honorable Court to reconsider it denial of his motion to suppress and grant his motion.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th of October, 2024, a copy of the foregoing was served electronically by ECF to: Office of the United States Attorney, 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201 and all defense counsel.

_____/s/_____
Richard Bardos