IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	
	*	
RYAN E. DALES,	*	**CRIMINAL NO. GLR-23-026**
	*	
Defendant.	*	
	*	
	*******	

GOVERNMENT'S SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER

The United States of America respectfully submits this sur-reply to briefly respond to Defendant's "Reply To Government's Opposition to Defendant's Motion For Reconsideration." ECF No. 86. The Motion should be summarily denied without hearing.

First, though styled as "Reply," Defendant makes yet another new argument[1] for the first time in connection with his Motion for Reconsideration—that there was not probable cause to support a search of Defendant's home and to seize devices in the home because, the defense says, "Dales never used his cell phone to contact Maryland Department of Labor while at the Volunteers of America." Reply at 2 (emphasis in original). This straw-man argument is beside the point and, in any event, is factually wrong.

The proper question is whether the Special Agent Gorman's Affidavit (the "Gorman Affidavit") (ECF No. 84-1) established probable cause to search Defendant's home for evidence of Wire Fraud in violation of 18 U.S.C. 18 U.S.C. § 1343 and to seize evidence of that crime. The

[1] The motion for reconsideration also contained a new argument, Motion for Reconsideration (ECF No. 76) at 6-11, which Defendant later withdrew, ECF No. 83. Defendant's repeated attempts to raise new arguments are of course procedurally improper. *See Jennings v. Frostburg State Univ.*, 679 F. Supp. 3d 240, 268 (D. Md. 2023) ("The ordinary rule in federal courts is that an argument raised for the first time in a reply brief or memorandum will not be considered." (quoting *Clawson v. FedEx Ground Package Sys., Inc.*, 451 F. Supp. 2d 731, 734 (D. Md. 2006))).

answer to that question is yes—as Judge Coulson concluded when he authorized the warrant and as the Court already concluded during the May 2024 motions hearing.

Simply put, the Gorman Affidavit was overflowing with probable cause supporting a search of Defendant's luxury apartment at the Anthem House in Baltimore City and the seizure of the items and records therein—including electronic devices (such as Defendant's phone) and various other records.[2] It set out the following facts, among others, including that:

- Defendant was in the past convicted in the District of Maryland for Bank Fraud Conspiracy in violation of 18 U.S.C. § 1349 (Count One) and Aggravated Identity Theft in violation of 18 U.S.C. § 1028A. Aff. at 8.
- On December 15, 2020, "an unemployment claim in DALES's name was submitted under the regular UI program, representing that DALES was self-employed. The 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." *Id.* at 9. That application seeking UI benefits falsely claimed that (1) Defendant's occupation was as a barber, (2) he stopped being able to provide services in April 2020, and (3) listed an email address of theycallmedales@gmail.com. *Id.* at 8-9. The DOL ultimately rejected the claim. *Id.* at 9.

[2] Defendant's claim that the "primary focus" of the search warrant "was the search for Mr. Dales' cell phone" is wrong. Reply at 1. The warrant authorized the seizure a host of records, including records concerning unemployment insurance benefits, the Paycheck Protection Program (PPP), employee/personnel records, tax records and financial records. Aff., Attachment B-2 at 1-3. Indeed, the Court, referring to Defendant, noted during the May hearing that "[I]t's more reasonable that he took the financial records with him than he would have left them at the VOA." Tr. at 33. The Court earlier inquired of defense counsel at the Motions Hearing, "Weren't they searching for other things, too? Weren't they searching for hard records as well, documents, as opposed to just the physical cell phone?" Tr. at 15. Counsel acknowledged that law enforcement was searching for such things. *Id.*

And the Court ultimately ruled that "[t]he warrant also sought records and other data on applications and IRS records. So it was just -- it was broader than just simply searching of an electronic device." Tr. at 57.

Defendant's Reply—and its cabined view of the probable cause in the Affidavit—ignores all of this.

- On July 30, 2021, Defendant reopened his claim for UI benefits seeking benefits under the PUA program and in support of the application uploaded electronically a false and fraudulent Internal Revenue Service (IRS) form for a purported business known as the "KNW Group." *Id.* at 10-12. That fraudulent IRS form included an address linked to Defendant's parents. As a result of the fraudulent application, the Maryland DOL between August and September 2021, paid Defendant $25,570 in UI funds. *Id.* at 12.
- On December 29, 2020, Dales also submitted electronically an Economic Injury Disaster Relief (EIDL) application for "Dales Drop Inc." (Dales Drop)—a purported agricultural business—belonging to Dales. *Id.* The application contained a phone number used by Defendant and the email address theycallmedales@gmail.com. *Id.* The application also falsely indicated "No" to the question of whether Defendant had within the past five years, among other things, been placed on any form of probation or parole. *Id.* at 13. The fraudulent EIDL application was ultimately denied. *Id.*
- Dales also on or around March 24, 2021 electronically submitted an application for a Paycheck Protection Program (PPP) loan to Cross River Bank on or around March 24, 2021, for a purported sole proprietorship owned by Defendant. The application asserted over $8,000 in average monthly payroll for the sole proprietorship, and sought more than $20,000 in funds for "payroll, rent/mortgage interest, utilities, and covered operations, expenditures, and covered supplier costs." The application listed a business start date of "08/2018"—a time when Defendant would have been incarcerated. *Id.* at 14. Moreover, the application included a purported IRS tax form which stated that Defendant's "principal business" was "home improvement" and that falsely answered "Yes," to the question whether Defendant did "materially participate in the operation of this business during 2019." *Id.* Defendant was incarcerated during the entirety of 2019. *Id.* The PPP application likewise listed email address theycallmedales@gmail.com.

- A review of the Apple iCloud warrant return for the account ryanedales@gmail.com—one of the cloud-based back-up accounts linked to Defendant's telephone—revealed the existence of fictitious Maryland and South Carolina driver's licenses, as well as dozens of "driver's license or mug-shot style photographs of individuals who were not DALES. Several of these photographs were also found on separate images of Driver's Licenses or State Identification (ID) cards. Some of the ID cards contained the same photo, but different Personally Identifiable Information (PII) listed on the ID." *Id.* ¶ 66; *see also id.* ¶ 65 ("Your Affiant has located the same image in at least four other identification documents: three Maryland Driver's Licenses and one South Carolina Driver's License, all containing different PII.")

All of these facts, along with the others set out in the Affidavit, established probable cause to believe that Defendant's home contained relevant electronic evidence (including Defendant's phone), in addition to other non-electronic evidence. The Court has already ruled as much:

> As indicated in this case, the Defendant allegedly used electronic device to commit and in connection with a criminal activity. Those devices or that device, including financial records, would be sought. The affiant indicated that financial records are typically kept in residences. There was specific details of the fraud scheme and the Defendant's involvement in the use of his own identifying information. As indicated, the residence was linked through the phone. And as a result, there was a link between the phone and the Defendant's residence.
>
> There 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. . . .
>
> Evidence on his iCloud account manifested of purported fraudulent documents. And although the precise dates of those documents, which were not known, the time where they arrived on the iCloud account through the phone service of December of 2020 was known.
>
> So it's not that far or that long a period of time between the existence of those incriminating items on the iCloud and the time of active service in the ongoing fraud which fails to support an ongoing scheme. . . .

> You will need to look to all of the facts and circumstances. Certainly electronic devices, unlike maybe some other evidence such as narcotics, is not likely to be stale given the nature of the electronic storage. And it's not – there's no evidence that this degrades quickly. This also includes the iCloud account.
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> The warrant also sought records and other data on applications and IRS records. So it was just -- it was broader than just simply searching of an electronic device.

Tr. at 57. And Defendant does not even try to explain how even if there were not probable cause—and there is—why the good faith exception would not apply, which it does.

Second, Defendant's also claims that the Gorman Affidavit is "invalid" because Agent Gorman supposedly "misled the Judge" by not including the fact that Defendant "did not use his cell phone in December 2020, with regard to the PPP application." Reply at 2. This argument is meritless and factually wrong. For starters, there was no December 2020 PPP application. The Gorman Affidavit notes that the fraudulent PPP application was submitted *in March 2021*—not to the DOL, as Defendant states—but instead to Cross River Bank. Aff. at 14. Further, the Gorman Affidavit does not state that the fraudulent PPP application was submitted to the DOL or electronically by phone. It states that it was submitted to Cross River Bank "online." *Id.* at 14.

The same goes for the UI application submitted on December 15, 2020. The Affidavit indicates that the application was submitted electronically in light of its reference to an IP address, but does not mention whether it was submitted by phone or computer. *Id.* at 9 ("According to MD DOL records, on December 15, 2020, shortly after DALES began residing at the VOA halfway house, an unemployment claim in DALES's name was submitted under the regular UI program, representing that DALES was self-employed. The 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."). Thus, what the affidavit established was that an electronic device—phone, computer, otherwise—was used in connection

with the fraudulent submission. It did not, contrary to Defendant's contention, state that Defendant used his phone.

Third, Defendant cites no authority in support of his contention that the Court should invalidate the warrant based on a purported "omission"—that Defendant "never used his cell phone to contact Maryland Department of Labor while at the Volunteers of America." Reply at 2. There is none. And to the extent Defendant contends suggests that any purported "omission" warrants relief under *Franks v. Delaware*, 438 U.S. 154 (1978), this argument fails. Defendant does not even attempt to make the required "substantial preliminary showing" under *Franks*. For good reason—any such attempt would have been futile and meritless. A defendant asserting a *Franks* claim on the basis of an omission must show (1) that "the omission [was] *designed to mislead* or [was] made in *reckless disregard of whether it would mislead*," *United State v. Tate*, 524 F.3d 449, 455 (4th Cir. 2008) (internal alterations and quotation marks omitted) (emphasis in original); and (2) that the inclusion in the affidavit of the omitted material would defeat probable cause, *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990).

This Defendant cannot do. Indeed, as a factual matter, the record Defendant points to indicia that Defendant *did use a mobile device cell phone to contact the* DOL[3] at the same time that Defendant was residing at the VOA. Dales resided at the VOA until June 4, 2021. Aff. at 8. The record Defendant points to indicates numerous instances in which there was "MOBILE_DEVICE" login to Defendant's claim during the time period through June 4, 2021. Ex. 1 at 2-3 (indicating "Y" under "IS_MOBILE_DEVICE" column more than 20 times during the time frame Defendant resided at the VOA). In any event, the inclusion of the purported

[3] Defendant concedes as much but relegates the concession to a footnote. *See* Reply at 3 n.3 ("Exhibit 1 shows that Dales did make contact with the Department with his cell phone.").

"omission" would have no impact on the probable cause analysis—for all of the reasons already discussed above.

The bottom line is that the Affidavit overwhelmingly established that Defendant's home contained relevant electronic evidence (including Defendant's devices), and relevant non-electronic evidence in light of, among other things, its statements concerning Defendant's criminal history, Aff. at 8, the UI fraud scheme, *id.* at 9-12, the PPP fraud scheme, *id.* at 14-15, the EIDL fraud scheme, *id.* at 12-14, the contents of Defendant's iCloud account (and its indicia of ongoing fraud and identity theft activity), *id.* at 17-18, the nature of cloud-based accounts, *id.* at 4, the numerous links between Defendant's mobile device (including its phone number) and the fraudulent PPP and EIDL applications, *id.* at 12-15, 18, Defendant's device's association with various Google and iCloud accounts belonging to him, *id.* at 15-17, the fact that Defendant's Google account, linked to his phone, contained emails with the Maryland Department of Labor regarding UI, *id.* at 15, the fact that people carry "their cellular telephone with them virtually everywhere they go," Aff. ¶ 71, and the Affidavit's inclusion of information concerning all of the ways in which mobile devices are used in connection with criminal activity, including fraud, *id.* ¶¶ 6-11.

Finally, there is a whiff in Defendant's Reply that MD DOL records concerning Defendant's fraudulent UI claim were not disclosed until October 2024. *See* Reply at 2 ("The discovery from October, 2024 provided the MD DOL record for December, 2020."). Reply at 2. Not so. While it is true that on October 22, 2024, a single document from the DOL (Exhibit 1) was disclosed to Defendant, along with other records pertaining to Defendant's identity theft schemes (including multiple victim statements), a host of records from MD DOL were produced on February 16, 2023—just like the VOA IP address information from Verizon that Defendant told the Court was not disclosed by the Government, when it in fact was. The MD DOL records provided in discovery on February 16, 2023 included: (1) the fraudulent UI application and later

submission to reopen the UI claim for claimant ID 11893651; (2) the IP address information associated with the initial December 15, 2020 submission; (3) the fraudulent IRS Schedule C letter submitted in connection with Defendant's fraudulent claim; (4) a copy of Defendant's Maryland Driver's license and social security card; and (5) a payment summary document outlining when MD DOL made payments to Defendant in connection with his claim. Any suggestion to the contrary is false.

Simply put, Defendant has not offered any basis in his Motion for Reconsideration or his Reply for the Court to revisit its earlier decision rejecting Defendant's Motion to Suppress. There was no misstatement by the Court that "materially and critically changed the specific timing of the stale evidence." Motion for Reconsideration (ECF No. 76) at 5. Nor did the Affidavit contain any "mislead[ing]" statement or material omission. Reply at 3. The Court should therefore deny Defendant's Motion for Reconsideration.

CONCLUSION

For all of the above reasons and all of the reasons set out in the Government's Response in Opposition to Defendant's Motion for Reconsideration (ECF No. 84), Defendant's Motion for Reconsideration of Denial of Motion to Suppress (ECF No. 76) should be summarily denied without a hearing.

Respectfully submitted,

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