UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 16 CR 00064-WCG-DEJ
v.	)	
	)	Honorable William Griesbach
RON VAN DEN HEUVEL and	)	Magistrate Judge David E. Jones
KELLY VAN DEN HEUVEL,	)	
	)	
Defendants	)	

DEFENDANT KELLY VAN DEN HEUVEL'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE AND REQUEST FOR AN EVIDENTIARY HEARING

NOW COMES Defendant, KELLY VAN DEN HEUVEL, by and through her attorneys, pursuant to the Fourth Amendment of the United States Constitution and Federal Rule of Criminal Procedure 12(b)(3)(C), and hereby moves this Honorable Court to suppress all evidence obtained during the searches of 1) 2077 Lawrence Drive, Suite A De Pere, WI 54115; 2) 2077 Lawrence Drive, Suite B De Pere, WI 54115; 3) 500 Fortune Avenue De Pere, WI 54115; 4) 2107 American Boulevard De Pere, WI 54115; and 5) 2303 Lost Dauphin Road Lawrence, WI. Defendant Kelly Van Den Heuvel brings this motion on the grounds that the search warrants were overbroad and that the items seized were outside the scope of the warrants. Further, Ms. Van Den Heuvel requests that this Court order an evidentiary hearing to determine the government's derivative use of the illegally seized evidence.[1]

In support of this Motion, Defendant Ms. Van Den Heuvel states:

[1] Defendant Kelly Van Den Heuvel further moves to join in Defendant Ron Van Den Heuvel's motion to suppress evidence.

A. BACKGROUND

On July 5, 2015, a Brown County Circuit Court Judge issued five search warrants for various properties owned, occupied or rented by Defendant Ronald Van Den Heuvel. *See* Exhibits A-E attached to motion to suppress. These properties include: 1) 2077 Lawrence Drive, Suite A De Pere, WI 54115 (Ex. A); 2) 2077 Lawrence Drive, Suite B De Pere, WI 54115 (Ex. B); 3) 500 Fortune Avenue De Pere, WI 54115 (Ex. C); 4) 2107 American Boulevard De Pere, WI 54115 (Ex. D); and 5) 2303 Lost Dauphin Road Lawrence, WI (Ex. E).

The five warrants are virtually identical with respect to what law enforcement officers were authorized to search and seize. Specifically, the warrants authorized officers to search and seize: "computer storage devices, media and the digital content . . ." (Ex. A-E ¶ 1); "[a]ny other digital, electronic, or wireless device which has the capability to store, send or receive electronic data . . ." (Ex. A-E ¶ 4); and any and all "[p]apers, including but not limited to spreadsheets, binders, accounting ledgers" (Ex. A-E ¶ 5) which could relate to the crime of "theft committed in violation of Section 943.20(1)(d) of the Wisconsin Statutes and Securities Fraud under Chapter 551 Wisconsin Statutes." *See* Ex. A-E.

On July 5, 2015, officers executed the five warrants and seized numerous documents, computers and other property from the five aforementioned locations owned, operated, or occupied by Mr. Van Den Heuvel. The government estimates the total property seized amounted to five truckloads of literally millions of documents.

After the government reviewed these materials, it selected a number of documents which could be used in this criminal trial. To date, the government has produced a total of over 193,000 pages of documents that it has indicated may be used at trial and that were purportedly discovered through the execution of the Brown County search warrants.

Much of the evidence seized fell outside the scope of the already overbroad search warrants. As but one example, during the execution of the warrant for 2303 Lost Dauphin Road, (the home of the Van Den Heuvels), officers seized 1) medical records relating to Ms. Van Den Heuvel's pregnancy; 2) medical records relating to the Van Den Heuvels' children; 3) personal computers and tablets; and 4) school records relating to the Van Den Heuvels' children. These materials have literally no relevance to Mr. Van Den Heuvel's businesses and/or financial records or the evidence "of the crime of theft committed in violation of Section 943.20(1)(d) of the Wisconsin Statutes and Securities Fraud under Chapter 551 Wisconsin Statutes." *See* Ex. A.

As another example, most of the business and financial documents seized predate 2010. Such documents undoubtedly fall outside the scope of all of the search warrants since the warrants expressly authorized law enforcement to seize Mr. Van Den Heuvel's business and financial records dating from December 31, 2010 to present. *See* Ex. A-E ¶ 7.

B. ANALYSIS

1. The Brown County Search Warrants Are Unconstitutionally Overbroad

The plain language of the five Brown County search warrants demonstrates that each is facially overbroad. The Brown County search warrants permitted law enforcement to engage in unconstitutional exploratory searches of Mr. Van Den Heuvel's businesses and the Van Den Heuvel's home. These warrants failed to meet the particularity requirement of the Fourth Amendment and as a result the evidence seized from all of these warrants must be suppressed.

The Fourth Amendment requires a warrant to describe with "particular[ity] ... the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. "[T]he [particularity] requirement ensures that the search will be carefully tailored to its justifications, and will not take the character of the wide-ranging exploratory searches the Framers intended to prohibit."

Maryland v. Garrison, 480 U.S. 79, 84 (1987). It is intended to "block a general rummaging, without limit, of a person's home and property." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). To satisfy the particularity requirement, "a warrant must explicate the items to be seized only as precisely as the circumstances and the nature of the alleged crime permit." *United States v. Wenzel*, 854 F.3d 957, 961 (7th Cir. 2017).

The Brown County search warrants failed to articulate with any kind of specificity the items which officers were authorized to seize. Instead, the warrants authorized a "general rummaging" of Mr. Van Den Heuvel's business and the Van Den Heuvels' home – exactly the type of search the particularity requirement is intended to prohibit. The Brown County search warrants effectively permitted law enforcement to seize everything except the furniture at the Van Den Heuvel properties and that is exactly what they did – although, in a few instances, law enforcement took the furniture too (including telephones, computers, and the file cabinets themselves – rather than responsive documents contained within the file cabinets).

In *United States v. Conklin*, a district court found a search warrant similar to the Brown County warrants unconstitutionally overbroad. The warrant in *Conklin* authorized law enforcement to search a defendant's home for "any and all other documents, instrumentalists [sic], video recordings, audio recordings, or substances which constitute[d] evidence of the commission [of a crime]." 154 F. Supp. 732, 739 (S.D. Ill. 2016). There, the court granted the defendant's motion to suppress because the government "made no effort to prove that police did not engage in a rummaging of [the defendant's] home pursuant to the warrant's general clause." *Id.* at 740.

The warrants in this case are just as broad as the warrants in *Conklin*. The Brown County search warrants authorized officers to search and seize computers, electronics and all papers which may have constituted evidence of the commission of a crime. The warrants permitted officers to raid Mr. Van Deuvel's business and the Van Deuvels' home and seize any and all electronic devices and any paper which could have contained evidence of a crime without limitation. This amounted to an unconstitutional exploratory search which clearly violated the particularity clause of the Fourth Amendment. *See United States v. Vitek Supply Corp.*, 144 F.3d 476, 481 (7th Cir. 1998) (holding that the particularity requirement provides that "the scope of a search will be confined to evidence relating to a specific crime that is supported by probable cause."); *see also United States v. Winn*, 79 F. Supp. 3d 904 (S.D. Ill. 2015) (suppressing all evidence obtained from a defendant's cell phone because the warrant provided for the seizure of, "any or all files contained on [the defendant's] cell phone" without any limitations.).

The Seventh Circuit has recognized that warrants which authorize the seizure of particular business records are overbroad "when the particular records were not readily identifiable and police in fact seize[] all records." *United States v. Reed*, 726 F.2d 339, 342 (7th Cir. 1984) (citing *United States v. Abrams*, 615 F.2d 541 (1st Cir. 1980)). Although the Brown County warrants purported to authorize the search and seizure of Mr. Van Den Heuvel's business records from December 30, 2010 to present, officers seized records and other material well beyond this scope. Indeed, thousands of business records were seized that predated 2010. *See e.g.*, Ex. F (2008 email communications regarding loans for Mr. Van Den Heuvel's business); Ex. G (2009 Loan Documents for KYHKJG, LLC).

Furthermore, in the execution of the warrant for 2303 Lost Dauphin Road (the Van Den Heuvels' residence) officers seized medical records relating to Ms. Van Den Heuvel and the Van

Den Heuvels' children. These records have literally nothing to do with Mr. Van Den Heuvel's businesses and finances and are not relevant to "the crime of theft committed in violation of Section 943.20(1)(d) of the Wisconsin Statutes and Securities Fraud under Chapter 551 Wisconsin Statutes." *See* Ex. A. The vast amount of evidence seized outside the scope of the already overbroad search warrants reinforces the fact that the Brown County search warrants were unconstitutionally overbroad. *See Reed*, 726 F.2d at 342; *see also United States v. Calimlim*, No. 04-C-248, 2005 WL 2922193, at *8 (E.D. Wis. Nov. 4, 2005) (noting that a warrant was overbroad because there was "no meaningful limitation on the parameters of the search of [] computers seized from the residence.").

2. Suppression of All Evidence Obtained as a result of the Execution of the Brown County Search Warrants is Appropriate

The Brown County search warrants are so facially deficient that they cannot be saved by any claims of good faith by law enforcement. In *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court recognized a good-faith exception to the exclusionary rule for situations in which law enforcement officers conduct a search with an objectively reasonable belief that it is supported by a valid warrant. *See id.* at 922–23. If a warrant is so fatally flawed that it would be objectively unreasonable for an officer to rely on it, the good faith exception does not apply. *United States v. Langford*, 314 F.3d 892, 894 (7th Cir. 2002).

Here, the Brown County search warrants are so overbroad that it is unreasonable for any law enforcement officer to have a good faith basis of reliance. Indeed, nearly every single paragraph in the warrants fails to satisfy the particularity clause of the Fourth Amendment.

In *United States v. Winn*, the district court granted a defendant's motion to suppress and determined that the warrant which authorized officers to search and seize "every conceivable bit

of data generated by the use of the cell phone at any point in time" was a general warrant which could not be relied upon in good faith. *Winn*, 79 F. Supp. 3d at 926–27.

The Brown County search warrants are even more facially overbroad than the warrant in *Winn*. The Brown County warrants authorized the search and seizure of all data in any of the Van Den Heuvels' computers, tablets, hard drives and other digital devices. The warrants did not place any limitation on the types of data or files. This resulted in the seizure of millions upon millions of documents and records. As such, it is unfathomable for any law enforcement officer to have relied on such facially overbroad authorizations and the good faith exception is inapplicable.

Similarly, the Brown County search warrants cannot be saved through severance. The Seventh Circuit has held that valid portions of a warrant can be severable from invalid portions. *See Reed*, 726 F.2d at 342. In *Reed*, the warrant contained one facially overbroad authorization but also contained a number of authorizations which satisfied the particularity requirements of the Fourth Amendment, There, the Seventh Circuit found the invalid portions of the warrant could be separated from the valid portions thereby only requiring evidence seized pursuant to the invalid portions to be suppressed. *Id.* The same is not possible here. The Brown County warrants are replete with overbroad authorizations and severance is therefore not appropriate. *Winn*, 79 F. Supp. 3d at 926–27.

Accordingly, the five Brown County search warrants are fatally deficient on their overreaching authorizations. These warrants were so facially overbroad that the exceptions to the exclusionary rule are inapplicable and suppression is appropriate.

3. An Evidentiary Hearing is Warranted

Based on the foregoing, an evidentiary hearing is warranted. *See Franks v. Delaware*, 438 U.S. 154, 155–56 (1978); *see also Reed*, F.2d at 341. Ms. Van Den Heuvel has demonstrated a "substantial preliminary showing" that the Fourth Amendment requires a hearing to be held to determine whether the warrants satisfied the particularity requirements of the Fourth Amendment and whether the warrants were overbroad in their scope. *Reed*, F.2d at 341.

Ms. Van Den Heuvel also requests an evidentiary hearing to determine the derivative use the government has gained as a result of the illegally obtained evidence. *See United States v. Calandra*, 414 U.S. 338, 354 (1974) (noting that "in the usual context of a criminal trial, the defendant is entitled to the suppression of, not only the evidence obtained through an unlawful search and seizure, but also any derivative use of that evidence. The prohibition of the exclusionary rule must reach such derivative use if it is to fulfill its function of deterring police misconduct.). The sparse records the defense has received thus far indicate that federal agents were involved in these searches. In addition, the interview reports received thus far indicate that this investigation did not commence until after Brown County search warrants were executed. The only interview report received thus far that predates the Brown County search warrants is an interview of Paul Piikkila in the Spring of 2015. *See* Ex. H. Revealingly, those present for the interview included both federal law enforcement and investigators and prosecutors from Brown County. Thus, an evidentiary hearing is required to understand the taint, if any, of federal law enforcement from the impermissible Brown County search warrants.

C. CONCLUSION

WHEREFORE, Defendant Kelly Van Den Heuvel moves this Honorable Court to enter an order suppressing all evidence obtained as a result of the Brown County search warrants. Ms. Van Den Heuvel further requests that this Court grant an evidentiary hearing regarding the suppression of these materials and to determine the extent to which the government improperly made derivative use of the unlawfully seized property.

Respectfully submitted,

/s/ *Andrew Porter*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. 5 and the General Order on Electronic Case Filing (ECF), the following document:

DEFENDANT KELLY VAN DEN HEUVEL'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

was served pursuant to the district court's ECF system.

/s/ Carrie E. DeLange

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