UNITED STATES DISTRICT COURT
EASTERN DISTRICTOF WISCONSIN

UNITED STATES OF AMERICA

PLAINTIFF,

V.

CASE NO. 17-CR-160
NOTICE OF MOTION AND MOTION TO SUPPRESS

RONALD VAN DEN HEUVEL

DEFENDANT.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS MOTION TO SUPPRESS

INTRODUCTION

On July 2, 2015, a search warrant was issued on the defendant's home and places of business. The warrant authorized the officers to search, "five locations associated with the Defendant." The warrants were performed simultaneously. Brown County detective, Sargent Mary Shatner performed the searches knowing at the time that the defendant was out of state when the warrants would be executed. In Sargent Mary Shatner's rush to secure the search warrants and execute them while the defendant was out of town, she knowingly used false information to obtain the search warrants. Once executed, by own admission, Sargent Mary Shatner, stated for the court that she 'did not know what all she had' so she shared with Agent Sara Hager, the DOJ and other governmental agencies evidence she had obtained from this illegal search. Shortly after the defendant was

indicted, Sargent Mary Shatner was let go from the Brown County Sheriffs Office. At such time, Agent Sara Hager, by and through the government, had full access to the documents, having repeatedly ignored defendant's counsel, the late Michael Fitzgerald's Motion to Return. The government took nineteen months before it began returning what District Attorney Lassee noted amounted to 'a semi load of documents' of the defendants. The Defendant is still missing 207,000 pages of documents to date needed to support his case.

ARGUMENT

THE OFFICERS USED FALSE INFORMATION TO OBTAIN THE SEARCH WARRANT.S ON THE DEFENDANT. THE OFFICIERS KNOWINGLY RELIED ON AN AFFIANT'S RECKLESS DISREGARD FOR THE TRUTH IN SUPPORT OF OBTAINING THE SEARCH WARRANTS. A FINDING OF "PROBALBLE CAUSE" FOR A SEARCH WARRANT MUST BE SUPPORTED BY SUFFICIENT CREDIBLE FACTS ALLEDGED IN A SUPPORTING AFFIDAVIT.

1. The information put forth to obtain the search warrant was that the Perini Building was used as a 'prop' by the defendant and not for sale. Evidence shows that the Perini Building was in fact for sake and that the defendant did in fact have an offer to purchase, a down payment and access to the building. Sargent Mary Shatner, then made leaps to assert erroneously that the Perini Building 'not being for sale', then Green Box in and of itself constituted a fraud. If a defendant establishes by a preponderance of the evidence that an affiant made a false statement knowingly or with reckless disregard for the truth, then that false information must be set aside. If the remainder of the affidavit is insufficient to establish probable cause, then the warrant must be voided and the fruits of the search or arrest excluded from trial. *See Franks v. Delaware, 438 U.S. 154 (1978); State v. Severn, 130 N.C. App. 319, 502 S.E.2d 882 (1998); G.S. 15A-978.* The defendant is entitled to challenge truthfulness of affidavit supporting search warrant; see also *State v. Martin, 315 N.C. 667, 340 S.E.2d 326*, The defendant is entitled to introduce evidence at a suppression hearing contesting the truthfulness of the evidence presented to the magistrate. *See G.S. 15A-978(a); State v. Monserrate, 125 N.C. App. 22, 479 S.E.2d 494 (1997)* trial court erred in excluding evidence tending to show that police inaccurately

reported informant's information to magistrate. In *Alderman v United States,* 394 **US 165 (1969),** the Court held:, 'when an illegal search has come to light, [the government] has the ultimate burden of persuasion to show that its evidence is untainted. But at the same time [the defendant] must go forward with specific evidence demonstrating taint. The trial judge must give opportunity to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree.

The courts further hold that when evidence is obtained as a result of illegal police conduct, not only must that evidence be suppressed, but also all evidence that is the "fruit" of the illegal conduct.

2. Agent Sara Hager knowingly used 'fruits from a poisonous tree' to interrogate and interview witnesses, seek information and aid the government is securing a conviction. Under a landmark 1963 Supreme Court decision — *Brady v. Maryland*, prosecutors are obligated to provide their adversaries with any evidence that could be construed as being favorable to the accused. Once Agent Sara Hager discovered that false information was used by Sargent Mary Shat er to obtain the search warrants, Agent Sara Hager had a duty to inform the prosecution and the prosecution in turn had a duty to inform the defense.

3. Agent Sara Hager had a duty to follow the law regardless of Sargent Mary Shatner's failure to do so. The defendant recognizes that a strong 'failure to train' argument could be made against Sargent Mary Shatner. The reckless manner in which Sargent Shatner executed the search warrants, as evidence by photos taken after the 'raid'; the sheer volume of evidence seized in what could only constitute a 'dragnet' approach (over 4 million documents of the defendant's were seized along with numerous filing cabinets in their entirety, of which 19 months later, 3.8 million of those documents would be returned to the defendant after having been discriminated and sent to, and shared with, third parties. These documents included, but were not limited to, over 150 medical records and personal files of employees, medical records of the defendant, a vast amount of medical records of the defendant's minor children, as well as the medical records of the defendant's deceased son and that of his wife's which was shared with the Oneida Eye. These documents were outside the scope of the search warrant and in clear violation of HIPPA A properly trained detective would have been aware of the HIPPA

law. Sargent Mary Shatner was not. Sargent Mary Shatner further illustrated her lack of training by her confiscation of attorney-client files of the defendant, defendant's family and employees of the defendant. Evidence shows that Sargent Mary Shatner was asked: 'attorney–client privilege?' To which she wrote, 'NO, TAKE EVERYTHING. Indeed, 'everything' is what Sargent Mary Shatner took. In *Winston v Lee,* 470 US 753,767 (1985) the court held that "The Fourth Amendment is a vital safeguard of the right of the citizen to be free from unreasonable governmental intrusions into any area in which he has a reasonable expectation of privacy." The employees, past and present, the defendant's family and the defendant all had a reasonable expectation of privacy with their medical records. The defendant had a reasonable expectation of privacy involving all correspondence with his attorneys that have advised him throughout his career; some dating back 35 years. Agent Sara Hager had a duty to follow the law regardless of Sargent Mary Shatner's failure and inability to do so. Agent Sara Hager, by her own account, is 'well versed in the law', yet her failure to apply that knowledge in this case begs the question, why not? Why this case? Why this defendant?

For these reasons it is the defendant's belief that the court should suppress all evidence seized as a result of the unlawful search and seizure of Mr. Ronald Van Den Heuvel and his related companies.

Dated at Green Bay, Wisconsin, this 22th day of August 2018.

RESPECTFULLY SUBMITTED,

Ron Van Den Heuvel

RONALD VAN DEN HEUVEL
DEFENDANT