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Courts for the District of Columbia

Case 1:11-MJ-1000
Assigned to: Magistrate John M. Facciola
Assigned Date: 12/29/2011
Description: Search and Seizure Warrant

AFFIDAVIT MADE IN SUPPORT OF APPLICATION FOR WARRANTS

1. I am Paul J. Moloney, a sworn Special Agent of the United States Drug Enforcement Administration (DEA) assigned to DEA's Washington Division Office in the District of Columbia. After being sworn, I do hereby aver, depose, and state under oath that the following is true:

2. I make this common affidavit to apply for three warrants: two warrants to search two bank safety deposit boxes and a third warrant to seize funds that are proceeds of crime and that now are on deposit in a bank account. I state my qualifications as a federal law-enforcement officer and the authority for the Court to issue these warrants later in this affidavit.

SUMMARY: On December 6, 2011, a grand jury of this Court indicted Marc A. Gersen (Gersen) and three other co-defendants for unlawfully conspiring to distribute and possess with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846, in United States v. Gersen *et al.*, No. 1:11-cr-00353-RBW. In the past two months, Gersen has leased two safe deposit-type boxes at bank branches in the District of Columbia, one first leased on or about November 22, 2011, at the PNC Bank branch on 1913 Massachusetts Avenue, N.W. On or about October 26, 2011, Gersen leased an Express Storage Box at PNC Bank branch at 1405 P Street, N.W. Further, on or about September 26, 2011, Gersen opened a personal checking account at PNC bank, number 1530-9738, for which he is the sole signatory. Mr. Gersen opened the account with a cash deposit of $5,000.00, almost all of which was in $20.00 bills.

Before his arrest on December 1, 2011, which led to the indictment, Gersen was a student at a local law school, and had no signs of regular, lawful income from employment. On November 28, 2011, police searched Gersen's residence in the District of Columbia and seized suspected GHB, a controlled substance, as well as paraphernalia commonly used in the sale of illegal drugs, including methamphetamine.

On December 1, 2011, police arrested Gersen near a hotel in the 1600 block of Rhode Island Avenue, N.W., Washington, D.C., after seizing more than 600 grams of suspected methamphetamine from a hotel room with which he was associated. After arresting Gersen, police seized from his personal effects keys to the two safety deposit boxes mentioned above.

I. PARTICULAR DESCRIPTION OF PLACES TO BE SEARCHED AND THINGS TO BE SEIZED:

3. I seek authority to search the following two places:

(1-1)

(A) PNC Bank Safe Deposit Box A-352, located at 1913 Massachusetts Avenue, N.W., Washington, D.C;

(B) Express Storage Box, also identified as PNC Bank Safe Deposit Box 040593293, located at 1405 P Street, N.W., Washington, D.C.

4. I also seek authority to seize the funds now on deposit in the following account:

(A) PNC account bearing number 1530-9738, which is maintained in the name of Marc A. Gersen, and held at the PNC Bank Branch at 1913 Massachusetts Avenue, N.W., Washington, D.C.

5. In addition, when searching the two safety deposit boxes, I seek authority to seize:

(a) controlled substances, including narcotics and drugs, which are possessed without lawful authorization;

(b) paraphernalia for using controlled substances and drugs; and,

(c) documents, papers, records, and photographs evidencing the unlawful use or sale of controlled substances.

(d) United States currency in cash and any other items that are precious metals or gem-stones and are in quantities indicating the proceeds of unlawful drug-trafficking and ledgers, bank records, or other documents evidencing financial gain from illegal drug-sales.

II. GROUNDS FOR FINDING OF PROBABLE CAUSE TO SEARCH:

6. Since late October and early November 2011, the Metropolitan Police Department (MPD) and DEA have been investigating a number of persons engaged in the unlawful possession and distribution of the controlled substance methamphetamine. In the course of the investigation, MPD officers and DEA agents have gathered evidence of such crimes by Marc Avery Gersen and other persons who have unlawfully conspired to sell methamphetamine in the District of Columbia. I have taken part in this investigation and worked closely with other DEA agents on the case and with the MPD vice officers assigned to it. As a result of the investigation, law enforcement agents arrested

Gersen and three other men in connection with the criminal possession of more than 600 grams of suspected methamphetamine seized from a hotel room in the 1600 block of Rhode Island Avenue, N.W., Washington, D.C. On December 7, 2011, a grand jury of this Court indicted Gersen and the other three defendants on the charge of unlawful conspiracy to distribute and possess with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846. Gersen currently is held without bond pending trial by order of the Honorable Reggie B. Walton, the presiding judge in the case.

7. On or about November 28, 2011, MPD obtained a warrant to search Gersen's rsidence in Washington, D.C. The affidavit made in support of application for the warrant described in detail defendant Gersen's use of the residence to facilitate the distribution of methamphetamine. Pursuant to the warrant, officers seized documents, quantities of a substance suspected to be the controlled substance GHB (or one of its several analog substances), paraphernalia, and materials known to be used in the packaging of controlled substances for retail distribution. At the time the warrant was executed, the residence was unoccupied.

8. On or about December 1, 2011, MPD officers learned that several of defendant Gersen's associates were distributing methamphetamine from a hotel in Northwest Washington, D.C. Thereafter, a witness with authority to consent to a search of the room, consented to police entering and searching this specific hotel room. During the search of the room, among other things, officers seized: approximately 600 grams of a white-colored crystal substance suspected to be methamphetamine; documents; digital scales; packaging materials; liquid suspected to be GHB and a handwritten ledger prepared by Gerson's co-defendant. Contained within the ledger were references to Gersen and other known traffickers in methamphetamine as well as notations your

affiant recognized as references to drug quantities and common prices for various amounts of controlled substances. While the officers were searching the hotel room, Gersen telephoned to the room and asked whether it was safe to come to the room. A police officer answered the phone and told Gersen that it was safe. Officers then stopped Gersen as he was walking toward the front entrance door to the hotel. Among the items seized from defendant Gersen's personal effects were two keys each identical to those known to be used to secure locks on safe deposit boxes.

9. On or about December, 2011, other agents and I interviewed a Cooperating Source ("CS"), who provided information regarding defendant Gersen's and his co-conspirators drug-related activities. The information related by the CS had been corroborated by the observations made by investigators, statements of other witnesses, subpoenaed records, and documents seized as evidence in this investigation.

10. In or about November 2011, the CS began to purchase eight-ball (3.5 gram) quantities of methamphetamine from two individuals he/she knew were associates of defendant Gersen. On numerous occasions since November 2011, the CS purchased methamphetamine from these individuals during meetings at defendant Gersen's residence in Northwest Washington, D.C. In one or more conversations with these individuals, the CS came to believe that defendant Gersen had supplied the methamphetamine. In each transaction, the CS exchanged $300 in cash for an eight-ball of methamphetamine.

11. In the course of the investigation, I have learned that Gersen opened an account at the PNC Bank Branch at 1913 Massachusetts Avenue, N.W., Washington, D.C., in September 2011. I have personally reviewed records for the PNC account bearing number 1530-9738, which is a personal checking account with Gersen identified as the sole signatory. Further examination of bank records

reveals that Gersen has leased a safe deposit box at the PNC Bank branch on Massachusetts Avenue and an Express Storage Box at the 1405 P Street, N.W., Washington, D.C., branch.

12. The safety deposit box at the branch on Massachusetts Avenue is numbered 040-502-0A352 and was leased by Gersen on November 22, 2011. Gersen is identified as the sole signatory on the account and identified himself as a Georgetown Law student. A review of accompanying documents reflects that Gersen accessed the box on two occasions: November 22 and 30, 2011. I should note that I have information that suggests that it is possible that Gersen might have removed money from this box on the later occasion in anticipation of his need to retain legal counsel. Thus, although I submit that the facts suggest that there will be evidence and possibly proceeds of Gersen's methamphetamine crimes, there is also a basis to suspect that all or nearly all funds in the box were removed from it on or about November 30, 2011.

13. The box at the branch on P Street is numbered 040593293 and was leased by Gersen on October 26, 2011. This box is described by the bank as an "Express Storage Box," which as explained in a copy of the lease identifying Gersen as the only financially liable party, the bank does not control signature access in the manner it would for a safety deposit box.

14. In reviewing documents relating to Gersen's PNC Bank checking account, I found an account statement for September – October 2011. A review of that statement reflects $5,000 was deposited into the account on September 26, 2011. On October 7, 2011, $880 was deposited into the account. The deposit slip accompanying the statement reflects that the $880 consisted of two check deposits each drawn in the amounts of $450 and $430. The cancelled checks, which also accompanied the records, reflected that the funds were drawn from a bank account of a person I refer to here as "A." I know his name but do not wish to reveal it at this time. The Gersen account

statement for October – November 2011 reflected two $450 deposits made on October 21 and 26, 2011; copies of two cancelled checks reflect that these deposits were each drawn from an account at another bank maintained by "A." The November – December 2011 statement reflects two deposits, each occurring at an ATM at 1913 Massachusetts Avenue, N.W., Washington, D.C., in the amounts of $450 and $675 on November 10 and 15, 2011 respectively.

III. AFFIANT'S AUTHORITY TO APPLY FOR AND EXECUTE WARRANT AND RELATED QUALIFICATIONS AS A SWORN LAW ENFORCEMENT AGENT:

15. I am "an investigative or law enforcement officer" of the United States within the meaning of Title 18, United States Code Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for the offenses enumerated in Section 2515 of Title 18, United States Code. Further, as a DEA agent, I am a federal law enforcement officer who may serve warrants issued under the authority of the United States and who may make seizures of property subject to forfeiture to the United States. This authority is granted in 21 U.S.C. § 878.

16. I have been a DEA special agent since 1997. I am currently assigned to Enforcement Group Forty-six at the Washington Division Office, located in the District of Columbia. During my employment in law enforcement, I have investigated and assisted in the investigation of hundreds of narcotics violators. I have previously participated in investigations which have led to the arrest and conviction of narcotics dealers. I have received training and experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, surveillance, undercover operations, operations involving cooperating sources, and a variety of other investigative tools available to law enforcement officers. In the course of my training and experience, I have become

familiar with the methods and techniques associated with the distribution of narcotics, the laundering of proceeds derived from the sale of narcotics, and the organization of drug conspiracies. In the course of conducting these investigations, your Affiant has been involved in the use of the following investigative techniques: interviewing informants and Cooperating Sources; conducting physical surveillance; conducting short-term and long-term undercover operations, including reverse undercover operations; consensual monitoring and recording of both telephonic and non-telephonic communications; analyzing telephone pen register and caller identification data; conducting court-authorized electronic surveillance; preparing and executing search warrants which have led to substantial seizures of narcotics, firearms, and other contraband. These investigations have included the identification and seizure of laundered proceeds of the illegal activities described above

17. Based on my training and experience, I know that individuals who attempt to conceal proceeds of drug trafficking often utilize safety deposit or other secure boxes located at a financial institution. These boxes allow the trafficker to secure cash within the environment of a financial institution without having to comply with the reporting requirements set-forth in the Bank Secrecy Act. These reporting requirements, as described below, requires any financial institution that engages with a customer in a currency transaction (*i.e.* a deposit or withdrawal) in excess of $10,000.00 to report the transaction to the Internal Revenue Service on FINCEN Form 104 (formerly Form 4789), Currency Transaction Report ("CTR"). By placing the funds directly into the secure box, the trafficker will circumvent the reporting requirement while gaining the benefits of a secure location of the bank.

18. I also know that traffickers also utilize safety deposit boxes and other secure boxes at a financial institution to conceal other items including, but not limited to: financial instruments;

jewelry; valuable pieces of artwork; passports; weapons. For reasons identical to those listed above, traffickers utilize these boxes to secure these items within the environment of a bank in order to prevent their identification and seizure should law enforcement search their residence. In addition, these traffickers will utilize a safety deposit box to secure those items of value from theft by the inherently corrupt individuals with who they conduct their illegal business.

IV. AUTHORITY FOR ISSUANCE OF WARRANT:

19. Issuance of search warrants generally is authorized by Federal Criminal Procedure Rule 41. Further, 21 U.S.C. § 879 also authorizes issuance of search warrants relating to offenses involving controlled substances. I am applying for the seizure warrant under the laws authorizing forfeiture by both civil and criminal processes. In the law popularly known as The Controlled Substances Act (CSA), 21 U.S.C. § 801, *et seq.*, the section authorizing civil forfeiture, 21 U.S.C. § 881(a)(6), property is subject to forfeiture to the United States if it is "moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, . . . proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate" any violation of Title II of Pub.L. 91-513, which is the law commonly called the Controlled Substances Act, as amended, codified at 21 U.S.C. §§ 801, *et seq.* Similarly, the CSA section on criminal forfeiture, 21 U.S.C. § 853(a)(1), makes subject to forfeiture any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of the said violation of a CSA violation.

20. A warrant to seize a funds subject to forfeiture also is authorized under both the civil and criminal forfeiture laws. The civil drug-related forfeiture law, 21 U.S.C. § 881(b), states that any property subject to forfeiture may be seized in the same manner set forth in 18 U.S.C. 981(b). This

latter section authorizes seizures to be made "pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure," which is Rule 41. Similarly, 21 U.S.C. § 853(f) authorizes the government to request a seizure warrant upon a showing of probable cause and that a protective order will not suffice to assure the property's availability for forfeiture in a criminal proceeding. Because the property to be seized here is funds in a bank account, unless these are seized by a warrant, it can easily be made unavailable for forfeiture. Under the same rationale as "automobile" or "Carroll" exception to the rule requiring search warrants, I submit that a seizure warrant should issue upon probable cause because no lesser protective order will ensure these funds' availability to later forfeiture.

21. Because I make this affidavit only to show probable cause to search two safety deposit boxes and to seize funds in a bank account, I have not included in it everything I know about the facts and evidence in this matter. What is in this affidavit, I learned either through personal knowledge and investigation, or by reading documents and speaking to other law enforcement officers. In preparing this affidavit, I received information from other DEA agents, and officers of the Metropolitan Police Department (MPD) in Washington, D.C. I also have used information from cooperating individuals, evidence of controlled purchases of illegal drugs, physical surveillance, and other information gathered during the course of this investigation.

22. Therefore, I respectfully pray that this Court issue a warrants to search (A) PNC Bank Safe Deposit Box A-352, located at 1913 Massachusetts Avenue, N.W., Washington, D.C; and (B) Express Storage Box, also identified as PNC Bank Safe Deposit Box 040593293, located at 1405 P Street, N.W., Washington, D.C., along with a warrant to seize the funds now on deposit in PNC account bearing number 1530-9738, which is maintained in the name of Marc A. Gersen, and held

at the PNC Bank Branch at 1913 Massachusetts Avenue, N.W., Washington, D.C. .

FURTHER THAN THIS, affiant sayeth not.

Paul J. Moloney
Special Agent
Drug Enforcement Administration

Subscribed and sworn to before me this 29th day of December, 2011.

John Michael Facciola
United States Magistrate Judge