UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
--X
UNITED STATES OF AMERICA : CASE No.: 2:23 CR 198 (MAK)

-against-

JOSEPH LAFORTE, :
Defendant :
--X

MEMORANDUM OF LAW IN SUPPORT OF MOTION[1]

I. Motion to Dismiss Counts 2 – 20: Wire Fraud and Wire Fraud Racketeering Acts of Count 1.

Defendant moves to dismiss Counts 2 – 20, and the Wire Fraud racketeering act(s) of Count 1, for failure to state an offense in the wake of Ciminelli v. United States, 143 S. Ct. 1121 (2023). In Ciminelli, the Supreme Court held wire fraud cannot be established by defrauding others out of economic information, the "right to control" basis for wire fraud. With the exception of honest services (not applicable), the Government must allege a scheme to intentionally defraud others of *tangible* assets. Thus, in United States v. Nordlicht, 2023 U.S. Dist. LEXIS 119965, 2023 WL 4490615 (E.D.N.Y. July 12, 2023), convictions for conspiracy to commit wire fraud were overturned where there was at most an intent to withhold information.

The Government's theory that JOSEPH LAFORTE[2] committed wire fraud and conspired with others to do so rests on alleged intentional deprivations of information (such as the profitability of Complete Business Solutions Group, Inc. d/b/a Par Funding [hereafter "PAR"]). The Government's theory is investors were deprived of information they would have used to determine whether to invest in PAR.

[1] To conserve space, the facts are addressed in a Declaration in Support.
[2] Hereafter "JOE LAFORTE" to distinguish him from co-defendant JAMES LAFORTE.

But under Ciminelli, defrauding investors of information no longer constitutes wire fraud. The Government must allege the defendant intentionally deprived investors of a tangible asset. See also SEC v. Govil, 86 F.4th 89, 2023 U.S. App. LEXIS 28816, *23, 28 (2d Cir. 2023) (citing Ciminelli).

The investors were not deprived of assets. Under the approach adopted by the Sentencing Commission, "individuals who receive a 'return' or break even… are not victims," United States v. Orton, 73 F.3d 331, 334 (11th Cir. 1996). Payments of interest as well as principle can be counted in determining whether there was a deprivation. In United States v. Foster, 2015 U.S. Dist. LEXIS 116185, 2015 WL 5145549 (S.D. Fl. Sept. 1, 2015), the court calculated actual loss as "the amount received from the victims ($8,305,433.71) *minus interest payments*," 2015 U.S. Dist. LEXIS 116185, *11 (emphasis added). To determine whether investors were deprived of assets, we start by calculating that out of $550,325,596 invested, $300,108,117 was paid back.[3] The question then becomes, when the alleged crime was detected—approximately July of 2020, was Par worth the difference between the amount invested and the amount repaid? The value of PAR must be credited against the amount invested. United States v. Leonard, 529 F.3d 83, 93 (2d Cir. 2008); United States v. Holmes, 2023 WL 3489320, *4, 2023 U.S. Dist. LEXIS 4311 (N.D. Ca. Jan. 10, 2023). In 2020, Par was worth between **$359,201,320** and **$507,640,488**, Valuation Estimate, ECF # 108-10, p. 3 – 4, which far exceeds the difference between the amount invested and the funds paid to investors prior to the discovery of the alleged fraud. Par, when analyzed under the correct accounting methods, rather than under a flawed analysis, was profitable at all relevant times. See Glick Declaration and Dunkleberger Review Report (attached).

[3] Amended Disgorgment Order in SEC Action.

Therefore, the investors were not defrauded out of any tangible assets.

Wherefore, the defendant moves to dismiss Counts 2 – 20 and the Wire Fraud acts of Count 1 pursuant to Ciminelli. We disagree with the Third Circuit's assertion, United States v. Kousisis, 82 F.4th 230, n. 63 (3d Cir. 2023), that their decision can be reconciled with Ciminelli, and note the Supreme Court has granted certiorari over that case. We are confident the Supreme Court will overturn Kousisis to the extent the Circuit contradicted the Supreme Court. However, Kousisis is distinguishable from the case at bar, as there: a) the fraud constituted a material breach of a contract, and b) contract rights constitute property. Kousisis, 82 F.4th 230, 244. In contrast, here, the alleged misrepresentations did not breach any contracts. Therefore, the Government cannot use contract rights as a "tangible asset" here.

II. Motion to Dismiss Count 21: Securities Fraud and Securities Fraud Racketeering Acts.

Defendant moves to dismiss Count 21, Securities Fraud and the securities fraud racketeering act(s) of Count 1 for failure to state an offense. The allegations in the Indictment do not satisfy intent to defraud, an element of securities fraud. United States v. Parker, 776 Fed. Appx. 756, note 3 (3d Cir. 2019) (citing 15 U.S.C. §§ 78j(b), 78ff(a); 17 C.F.R. § 240.10b-5.

There is a split as to whether intent to defraud requires an intent to harm. In the Fifth Circuit, intent to defraud requires "'an intent to (1) deceive, and (2) cause some harm to result from the deceit," United States v. Greenlaw, 84 F.4th 325, 339 (5th Cir. 2023) (quoting United States v. Evans, 892 F.3d 692, 712 [5th Cir. 2018]). Likewise, according to the Eighth Circuit's Model Jury Instructions, "To act with 'intent to defraud' means to act knowingly and with the intent to deceive someone **for the purpose of causing** some [**financial loss**] **[or] [loss of property**] to another **or** bringing about some financial gain to oneself or another **to the detriment** of a third party." Eighth Circuit Model Jury Instructions 6.15.77q(a) and 78j(b) –

Securities Fraud (emphasis added).[4] But see United States v. Pierre, 2024 U.S. App. LEXIS 3837, 2024 WL 676373 (2d Cir. Feb. 20, 2024); United States v. Hickey, 580 F.3d 922, 930 (9th Cir. 2009) (citations omitted). To our knowledge, the Third Circuit has not weighed in and districts have interpreted "intent to defraud" inconsistently. Compare SEC v. Cammarata, 2023 US Dist. LEXIS 154040, *28 - 29; 2023 WL 5644689 (E.D. Pa. August 31, 2023) (securities fraud's scienter element "is encompassed within the second element of wire fraud"; court had instructed that "'an intent to defraud means to act knowingly and with the intention or the purpose to deceive and to cheat in order to thereby obtain money, property, or something of value'") with United States v. Benko, 2016 U.S. Dist. LEXIS 18463, *16; 2016 WL 613599 (M.D. Pa. Feb. 16, 2016) (there is "logic to Defendant's argument, because in common parlance fraud is understood to encompass loss to one person", but rejecting defendant's interpretation); United States v. Ramsey, 2021 U.S. Dist. LEXIS 177696, 2021 WL 4244284 (E.D. Pa. September 17, 2021) (securities fraud does not require the object be money or property; alternatively, the object of the fraud was money and property).

We respectfully submit intent to defraud requires an intent to cause a detriment to a third party. If that is the case, the Indictment does not allege intent to defraud where the defendant lacked an intent to harm investors. While PAR accepted millions in investments, PAR also paid investors over $ 300 million, and the value of PAR at the time of the discovery of the alleged fraud was in the hundreds of millions of dollars. Thus, the Government has not alleged an intent to cause a detriment to another.

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[4] Attached and Available at: https://juryinstructions.ca8.uscourts.gov/instructions/criminal/Criminal-Jury-Instructions.pdf (visited on August 12, 2024)

Wherefore, defendant respectfully moves to dismiss Count 21, securities fraud, and the securities fraud racketeering act(s) of Count 1.

III. Motion to Dismiss Count 49 – Obstruction of Justice: 18 U.S.C. § 1512(c)(2)

Defendant moves to dismiss Count 49, Obstruction of Justice, for failure to state an offense. Count 49 is premised on allegedly false statements in a deposition—many of which that he did not know the answers—and on defendants allegedly coaching others on how to testify.

To be guilty of obstruction of justice under 18 U.S.C. § 1512(c)(2), there must (1) be an official proceeding, (2) which the defendant had knowledge of and (3) which the defendant corruptly (4) obstructed, influenced, or impeded.[5] "The government must prove that the defendant…had notice of the official proceeding, and that he intended or knew that his actions were likely to affect the official proceeding." Pattern Jury Instructions, District of S.C., p. 312 – 18 U.S.C. 1512 (2024) (citing Arthur Anderson LLP, 544 U.S. 696, 708 [2005]).

The deposition itself does not qualify as an "official proceeding." Pursuant to §1515(a)(1)(A), "the term 'official proceeding' means—(A) a proceeding before a judge or court of the United States, a United States magistrate… a bankruptcy judge, a judge of the United States Tax Court… of the United States Claims Court… or a Federal grand jury."

A deposition does not fit within any of the definitions of "official proceeding" under §1515(a)(1). Therefore, we respectfully submit that element is not satisfied.

Even if there had been an official proceeding, the allegations in the Indictment would not establish that JOE LAFORTE "intended or knew that his actions were likely to affect the official proceeding."[6] JOE LAFORTE's allegedly false statements were generally that he did not know

[5] Or attempt to do so, but the Indictment does not allege that JOE LAFORTE attempted to do so.
[6] Pattern Jury Instructions, District of South Carolina, p. 312 – 18 U.S.C. 1512 (2024) (citing Arthur Anderson LLP, 544 U.S. 696, 708 [2005]).

the answers to the questions he was asked. There are no allegations of fact in the Indictment that would have indicated that JOE LAFORTE would have known that denying knowledge of matters would likely have an effect on an official proceeding or that he intended these denials to have an effect on an official proceeding.

Wherefore, JOE LAFORTE moves to dismiss Count 49 - Obstruction of Justice, for failure to state an offense.

<u>IV. Motion to Dismiss Count 57: Retaliation and the Retaliation Racketeering Act(s) of Count 1.</u>

Defendant JOE LAFORTE moves to dismiss Count 57 – Retaliation, and the Retaliation Racketeering Act(s) of Count 1.

18 U.S.C. § 1513(b)(1) provides that "Whoever knowingly…causes bodily injury to another person… with intent to retaliate against any person for (1) the attendance of a **witness or party** at an official proceeding, or any testimony given or any record, document, or other object produced by a **witness**… shall be fined… imprisoned…or both." 18 U.S.C. § 1513(b) (emphasis added). Thus, one of the elements it that the retaliation be for either the attendance of a **witness or party** or for testimony or record(s), document(s), or object(s) produced by a **witness**. The Government alleges that the witnesses or parties were "Par Funding and the Receiver." Count Fifty Seven ¶ 2.

However, the allegation that retaliation was against <u>*PAR*</u> is directly contradicted by Count 1 Paragraph 101 (incorporated in Count 57), which states the retaliation was "against <u>**G.A.**</u> and the Receiver for their respective roles in the SEC lawsuit." Indictment p. 38 (emphasis added).

Thus, per the Indictment's allegation, Count 57 is not based on Retaliation against PAR, but rather on retaliation against the Receiver and the Receiver's attorney, G.A.

The Indictment does not allege G.A. was a witness or a party in the SEC Case as G.A. was neither. G.A. was an attorney for the Receiver and, as an attorney, would have been banned from being simultaneously an advocate and a witness. Since G.A. was neither a witness nor a party, he does not satisfy that element.

Under § 1513(b), the bodily injury can be against an attorney where the retaliation is against the attorney's **client** for having appeared as or given evidence as a party or witness. United States v. Stephens, 888 F.3d 385, 389 (8th Cir. 2018) (affirming where threat to attorney was with the intent to retaliate against the client "for the client's participation as a party"). Here, G.A.'s client in the SEC Case, as clearly and correctly stated in the Indictment, was the Receiver, not PAR. Indictment Count 1 ¶ 15 (page 7 of Indictment).

The Receiver was not a party to the SEC Case. Under the law, a Receiver is an officer of the court. "That receivers are officers of the court, not agents or representatives of a party, is also long established in case law," Meisel v. SEC, 97 F.4th 755, 764 (11th Cir. 2024) (citing Sterling v. Stewart, 158 F.3d 1199, note 2 (11th Cir. 1998) [same]) (other citations omitted). See also MBMK Prop. Holdings, LLC v. Wilmington Trust, N.A., 2024 Bankr. LEXIS 1499, *48 - 49; 2024 WL 3167232 (Bankr E.D. Pa. June 25, 2024) (citations omitted). But see United States SEC v. Healy, 2009 U.S. Dist. LEXIS 97505, n. 3 (M.D. Pa. October 21, 2009) (rejecting argument that receiver is not a "party" within the meaning of Fed. R. Civ. P. 26(b)(3)(A) where "Defendant failed to present…case law").

Nor are there factual allegations that the Receiver was a witness in the SEC Case. Count 57 incorporates by reference Count One ¶¶ 3 – 15, 20, 21, 23, 25, 27, 30, 32, 34 – 50, 53 – 102, and Overt Acts 1 – 74 of Count One and Count 50 ¶¶ 2 – 8. Indictment p. 113. Not one of these alleges the Receiver testified during, produced records for, or was otherwise a witness in the

SEC Case. They allege that during the February 28, 2023 conference precipitating the alleged attack, G.A. "addressed the…need for defendant JOSEPH LAFORTE and Lisa McElhone to pay outstanding rent and other expenses to the Receiver…or vacate their home," Indictment Count 1 Overt Act 72(b) (p. 55); Indictment Count 50 ¶ 8 (p. 105).

That constitutes neither testimony nor the production of records. That is a discussion by counsel of the court's Order on a motion to compel JOE LAFORTE and his wife to vacate their primary residence for non-payment of rent and expenses. SEC Case Docket #s 1484 and 1486.

Wherefore, as the Receiver was neither a party to nor a witness in the SEC Case, as the Receiver's attorney was likewise neither a party nor a witness in the SEC Case, and as Indictment Count 1 Paragraph 101 (incorporated in Count 57) unequivocally alleges that the Retaliation was against "G.A. and the Receiver," not against PAR, the allegations in the Indictment do not satisfy 18 U.S.C. § 1513(b)(1)'s element of a witness or party.

WHEREFORE, JOE LAFORTE moves to dismiss Count 57 (Retaliation) and the Retaliation Racketeering Act(s) of Count 1.

<u>V. Motion to Consolidate Actions.</u>

JOE LAFORTE moves pursuant to Fed. R. Crim. Pro 13 for an Order that this action be tried together with <u>United States v. LaForte et al.</u>, 24 CR 65 (MAK) (hereafter the "Tax Case").

Pursuant to Fed. R. Crim. Pro. 13, separate cases may "be tried together as though brought in a single indictment… if all offenses and all defendants could have been tried together in a single indictment or information." Where the cases involve multiple defendants, whether the two cases could have been joined in one indictment is governed by Fed. R. Crim. Pro. 8(b),[7] which provides in pertinent part: "The indictment… may charge 2 or more defendants if they are

[7] <u>Cf. United States v. Walker</u>, 657 F.3d 160 (3d Cir. 2011).

alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses… All defendants need not be charged in each count." Fed. R. Crim. Pro. 8(b).

Not only could the cases have been joined together, they had been joined together in one indictment until the Grand Jury returned superseding indictments in February. In the case at bar, JOE LAFORTE is charged with, *inter alia*, fraud, extortion and racketeering offenses related to schemes he allegedly participated in as the *de facto* CEO of PAR. JOE LAFORTE is also charged in the case at bar with Tax Evasion (Count 30) and with Making, Subscribing, or Filing a False Return (Counts 31 – 32) for his alleged failure to pay taxes to the IRS for his alleged profits from said schemes. In the Tax Case, JOE LAFORTE is charged, *inter alia*, with Wire Fraud (Counts 7 – 9), and Conspiracy to Defraud (Count 10), on the grounds that he allegedly failed to pay taxes to Pennsylvania on his alleged profits from the schemes charged in the case at bar. Counts 7 – 9 in the Tax Case were previously charged as Counts 30 – 32 herein; Count 10 in the Tax Case was previously Count 48 herein; Count 11 in the Tax Case was previously charged as Count 49 herein.

The charges in the Tax Case arise from the racketeering conspiracy, fraud, and other charges in the case at bar. The Third Circuit has ruled that "'[j]oinder of tax and non-tax claims is not unusual.'" United States v. Riley, 621 F.3d 312, 334 (3d Cir. 2010) (quoting United States v. McGill, 964 F.2d 222, 241 [3d Cir. 1992]).

Although we acknowledge that two additional defendants were added in the Tax Case, it would have been proper under R. Crim. Pro. 8(b) for the Government to have used a superseding indictment to add these individuals as defendants in the case at bar. Although the Government instead had the Grand Jury perform a *de facto* severance of the case into two different prosecutions, nothing required the Government to prosecute the cases separately. The Third Circuit has "repeatedly affirmed convictions of defendants who were jointly tried alongside co-defendants charged with more serious or additional crimes, so long as the jury could compartmentalize the evidence." United States v. Savage, 85 F.4th 102, 119 (3d Cir. 2023) (citing Walker, 657 F.3d 160, 168-71; United States v. Sandini, 888 F.2d 300, 304-07 [3d Cir. 1989]; United States v. Sebetich, 776 F.2d 412, 427 [3d Cir. 1985]).

Wherefore, JOE LAFORTE moves to have the trial of this action consolidated with the Tax Case "in order to 'conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial,'" Riley, 621 F.3d at 334 (quoting United States v. Jimenez, 513 F.3d 62, 82 [3d Cir. 2008], which in turn quoted United States v. Lane, 474 U.S. 438, 449 [1986]).

VI. Motion to Suppress

A. Motion to Suppress Warrantless Seizure of AOL Emails

Under the Fourth Amendment, a search and seizure are presumed to be unreasonable, that is, unconstitutional, unless conducted either pursuant to a warrant or a recognized exception to the warrant requirement.

At some point in the investigation, law enforcement seized from the Receiver a vast amount of emails, from multiple email accounts, including *inter alia*, JOE LAFORTE'S emails for the email addresses: joemack888@aol.com (hereafter the "AOL Email Address"), for joe@parfunding.com, for jmack@parfunding.com, and for joe@fastadevancefunding.com.

While the Government has not yet responded to our inquiry for information concerning how law enforcement seized emails from the Receiver, on information and belief, this was a warrantless search and seizure which the Receiver allegedly consented to.

However, even if we assumed *arguendo* that the Receiver had the authority to consent to the seizure of emails for joe@parfunding.com, for jmack@parfunding.com, and for joe@fastadvancefunding.com, the Receiver would have had no authority to consent to the seizure of emails from JOE LAFORTE'S AOL Email address. The AOL Email address was JOE LAFORTE's personal email address, which he used for both personal and work related emails.

JOE LAFORTE had a reasonable expectation of privacy in his AOL Email address.

> "Personal email…is presumed to be read only by the intended recipient, similar to personal mail, United States v. Cioffi, 668 F. Supp. 2d 385, 390 n. 7 (E.D.N.Y.) (citing United States v. Zavala, 541 F.3d 562, 577 (5th Cir. 2008); United States v. Forrester, 512 F.3d 500, 511 (9th Cir. 2008)). Courts have found privacy interest in a person's email account, United States v. Warshak, 631 F.3d 266, 266 (6th Cir. 2010); In re Search of Premises Known as: Three Hotmail Email Accounts, No. 16-MJ-8036-DJW, 2016 U.S. Dist. LEXIS 40545, at *25-26 & n.61 (D. Kan. Mar. 28, 2016) (Waxse, Mag. J.)." United States v. Nagi, 2017 U.S. Dist. LEXIS 78340, *11 (W.D.N.Y. Jan. 6, 2017).

See also United States v. Coyne, 387 F. Supp. 3d 387, 395 – 396 (D. Vt. 2018).

As it was not a PAR email account, nor one for any of the other entities under the control of the Receiver, the Receiver had no authority to consent to the seizure of emails from the AOL Email Address, nor could law enforcement have reasonably believed that the Receiver was in a position to consent to the seizure of emails from the AOL Email Address.

Wherefore, we respectfully move to suppress the emails from the AOL Email address as having been obtained without a warrant, without valid consent, and without another applicable exception to the warrant requirement.

B. Motion to Suppress Evidence from Warrants for Residences and PAR Offices.

Under the Fourth Amendment, search warrants must be supported by probable cause and the "place to be searched, and the persons or things to be seized" must be described with particularity. Probable cause requires "a fair probability that contraband or evidence of a crime will be found in a particular place," United States v. Wey, 256 F. Supp. 3d 355, 382 (S.D.N.Y. 2017) (quoting United States v. Raymonda, 780 F.3d 105, 113 [2d Cir. 2015]). Particularity requires that the warrant: (1) "identify the specific offense for which the police have established probable cause"; (2) "describe the place to be searched" and (3) "the 'items to be seized by their relation to designated crimes'", United States v. Galpin, 720 F.3d 436, 445-46 (2d Cir. 2013) (quoting United States v. Williams, 592 F.3d 511, 519 [4th Cir. 2010]) (other citations omitted).

Related to the requirements of probable cause and particularity is the rule that a warrant must not be overbroad. A warrant's "'otherwise unobjectionable description of the objects to be seized is defective if it is broader than can be justified by the probable cause upon which the warrant is based.'" Galpin, 720 F.3d at 446 (quoting 2 W. LaFave, Search and Seizure § 4.6(a) [5th ed. 2012]).

A warrant that authorizes the seizure of all electronic devices found on the premises, irrespective of whether they belong to non-suspects, is overbroad. United States v. Griffith, 867 F.3d 1265 (D.C. Cir. Court of Appeals 2017); In re Search of a Residence in Oakland, 354 F. Supp. 3d 1010, 1014 (N.D. Cal. 2019) (denying request for warrant to search and seize all electronic devices in the place to be searched as overbroad).

To obtain a warrant for an electronic device, law enforcement still has to make an individualized showing on a case by case basis: first that the subject even has a device, and then establishing probable cause to seize and to search the devices in question. Griffith, 867 F.3d at 1273. In Griffith, the D.C. Circuit Court of Appeals noted that the defendant's girlfriend also lived at the premises to be searched, meaning that the warrant to seize all electronic devices would have also allowed officers to seize the girlfriend's phone. "Yet the police unsurprisingly offered no explanation of why [the girlfriend's] devices could have been appropriately seized…

it is no answer to confer a blanket authorization to search for and seize all electronic devices. The warrant must be tailored to the justifications for entering the home. In this case, the warrant should have limited the scope of permissible seizure to devices owned by Griffith, or devices linked to the shooting." Griffith, 867 F.3d at 1276.

On July 23, 2020, law enforcement applied for a warrant to search JOE LAFORTE's primary residence, as well as multiple locations believed to belong to either PAR or affiliate(s) of PAR. Similarly to the overbroad warrant in Griffith, the affidavit in support of the warrants for JOE LAFORTE'S primary residence and for the office locations conceded, "Because several employees work at the SUBJECT PREMISES, it is possible that the SUBJECT PREMISES will contain storage media (likely in the form of cellular phones) that are predominantly used, and perhaps owned, **by persons who are not suspected of a crime.** If it is nonetheless… possible that the things described in the warrant could be found on any of those computers or storage media, **the warrant applied for would permit the seizure and review of those items as well.**" 7/23/2020 Aff. In Support of S.W. ¶ 285 (emphasis added).

This same language appears in a July 28, 2020 affidavit in support of warrants for a secondary residence of JOE LAFORTE and for an office space. 7/28/2020 Aff. In Support of S.W. ¶ 134.

(This was, according to the content of the 7/28/2020 Aff. In Support, the second application for a search warrant for the Quayside Drive residence and for the office space on PGA Blvd. On July 29, 2024, we asked the Government to produce the application for the first such warrants. As the Government has not done so, we ask that the Government be precluded from introducing evidence derived from the first warrants for the Quayside Drive residence and the PGA Blvd. office space.)

To purportedly establish probable cause for the seizure and search of all electronic devices, the law enforcement officer stated that, "Based on my training and experience, I know that persons, **in general**, often keep current cell phones, along with previously used cell phones, at their places of business or residences" 7/23/2020 Aff. In Support of S.W. ¶ 276 (emphasis added); and "I am aware that computer equipment was used to generate, store, and print documents used in the in connection with the SUBJECT VIOLATIONS…there is reason to believe that there is a computer system currently located on the SUBJECT PREMISES." Id. ¶ 281(e). The law enforcement officer also alleged that JOE LAFORTE used email and cell phones to communicate with his brother, co-defendant JAMES LAFORTE, and others,[8] and that "CBSG representatives used cell phones to communicate with merchant-debtors." Id. ¶ 288.

Other allegations include the arguments that password protecting a phone is evidence of "consciousness of guilt"[9] or that metadata might be interpreted as exculpating the user. Id. ¶282(b). (When an investigation is of white collar offenses and conspiracies, it is highly improbable that any metadata would be interpreted by law enforcement as exculpatory.)

The search warrants were issued. During the execution of the warrants on July 27, 2020, two cell phones were seized from JOE LAFORTE at PAR'S office.

We respectfully submit that a warrant authorizing the search and seizure of all devices to be found on multiple target premises, regardless of whom the devices belong to, violates the particularity requirement and is unconstitutionally overbroad.

Exacerbating that overbreadth was the description of items to be seized from the multiple premises as well as the description of items to be seized from devices. For example, the items to

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[8] Id. ¶ 288.
[9] Id. ¶ 282(b).

be seized include security system footage, despite there being no allegations that there was probable cause that security system footage would contain evidence of a crime.

Wherefore, since the aforementioned search warrants for the primary and second residences, and the various office locations were unconstitutionally overbroad, we move to suppress evidence seized in violation of JOE LAFORTE'S constitutional rights, or derived therefrom.

C. Motion to Suppress Evidence from 2023 S.W. for Residence, Vehicle and Cell Phone.

The Defendant moves to suppress evidence from the 2023 warrants for his primary residence, vehicle, and cell phone. First, these were unsupported by probable cause. The supporting affidavit alleges JOE LAFORTE was involved in an attack on G.A. based largely on having traveled with his brother when visiting counsel, and on a phone call to his brother at the conclusion, in mid-afternoon, of a virtual status conference, as if a practicing attorney were likely to leave his law office in mid-afternoon just because one of his remote appearances had concluded. This falls far short of probable cause to search the defendant's primary residence, cell phone and vehicle. Secondly, the scope of the search warrant is overbroad as it seeks, *inter alia*, tax records and other documents that would have nothing whatsoever to do with proving whether or not JOE LAFORTE was involved in the alleged assault on G.A.

Wherefore, defendant moves to suppress evidence derived from the 2023 search warrant for his primary residence, cell phone and vehicle.

D. Motion to Suppress Evidence from Warrants for JOE LAFORTE'S Apple Account.

On March 4, 2020 and again on March 21, 2023, law enforcement applied for warrants for essentially all data stored by Apple, Inc. associated with the defendant's Apple, Inc. account(s).

In the first place, the March 21, 2023 search warrant is generally based on the same allegations as the 2023 warrants for defendant's residence, cell phone, and vehicle, and is thus likewise unsupported by probable cause for the reasons discussed *supra*.

Secondly, the Apple warrants authorized the seizure from Apple of, *inter alia,* all emails, text messages, and other correspondence, photographs, and documents stored by Apple (step 1 of the warrant, the second step being when law enforcement combs through the mountains of data turned over to search for incriminating evidence). However, as some judges have recognized, the Fourth Amendment requires that *both* step one and step two must conform to the particularity requirement.

> "Once all this information is handed over to the government by Google, those files are seized for constitutional purposes. Therefore, 'step-one' of a… search warrant must also meet constitutional requirements, such as particularity." United States v. Moulder, 2022 U.S. Dist. LEXIS 151606, *12 (D. Minn. August 24, 2022) (emphasis added).

As in Moulder, there was no probable cause for Apple to disclose all of the data associated with the defendant's Apple accounts. "To hold that such a warrant is constitutional *would essentially sanction the government's use of a modern-day general warrant*, granting the government access to arguably some of the most sensitive pieces of information in an individual's life. *It is hard to imagine that such a warrant would not be abhorred by our Founding Fathers.*" United States v. Moulder, 2022 U.S. Dist. LEXIS 151606, *12 - *13 (D. Minn. August 24, 2022) (emphasis added). See also In re Info Associated With Four Redacted Gmail Accounts, 371 F. Supp. 3d 843, 845 (D. Or. 2018) ("the search warrants challenged here… are overbroad because it is unreasonable to compel a provider to disclose every email in its client's account when the provider is able to disclose only those emails the government has probable cause to search"); In re Google Email Accounts Identified in Attachment A, 92 F. Supp. 3d 944, 953 (D. Alaska 2015) (denying warrant application where the application to seize and search six email "accounts in their entirety is not tailored to its narrow probable cause showing"). But see United States v. Mathieu, 2018 U.S. Dist. LEXIS 192281 (S.D.N.Y. November 9, 2018) (concluding that warrant was not overbroad since after the seizure, the review of emails was limited to searching for relevant categories of documents).

As in Moulder, it is exceedingly difficult to imagine that the Founding Fathers would have approved of a warrant that authorized a search for all correspondence, documents, and other evidence for an eight year period. This is hardly tailoring the description of things to be seized to probable cause that *incriminating* evidence or contraband will be found.

In assessing the Apple warrants, we ask the Court to consider that seizing all of an individual's emails and text messages is the modern day equivalent of seizing every single piece of an individual's U.S. mail in an earlier age. "Given the fundamental similarities between email and traditional forms of communication, it would defy common sense to afford emails lesser Fourth Amendment protection . . . Email is the technological scion of tangible mail, and it plays an indispensable part in the Information Age . . . If we accept that an email is analogous to a letter or a phone call, it is manifest that agents of the government cannot compel a commercial ISP to turn over the contents of an email without triggering the Fourth Amendment." Warshak, 631 F.3d at 285 – 286.

Wherefore, as probable cause did not support seizing and searching, *inter alia*, all of the defendant's Apple data, and as step one of the Apple warrants directed the seizure of his entire Apple account's contents with no limitations or relation to the offenses under investigation, we respectfully submit that the warrants violate the particularity requirement and are therefore unconstitutional under the Fourth Amendment of the U.S. Constitution. The defendant therefore moves to suppress the fruits of the warrants.

E. Motion to Suppress Evidence from 2022 S.W. for Cellular Records.

Defendant moves to suppress evidence derived from the 2022 search warrant for information associated with his AT&T cell phone (Subject Phone # 1). In the first place, the warrant is overbroad, spanning through December of 2020, when JOE LAFORTE and MCELHONE's tax return for 2020 conceded they were residents of Pennsylvania and when PAR went into Receivership in July of 2020. Thus, there could not have been any probable cause to seize any data beyond July of 2020. It is also overbroad insofar as nothing in the supporting affidavit explains why there would be probable cause to believe that the subscriber information for the numbers that were in contact with defendants would have provided evidence of a crime, where the affidavit alleged that there was probable cause to seize defendant's historical location data to prove that he allegedly lied about his primary residence in certain prior fiscal years, thus defrauding the Commonwealth of Pennsylvania, and to prove whether the defendant was present at presentations to PAR investors or potential investors. Assuming *arguendo* there was probable cause to seize historical location data, this does not necessarily translate to probable cause to obtain data on whom defendant had been in contact with.

Wherefore, defendant moves to suppress evidence seized from the warrant for records for JOE LAFORTE'S cell phone.

F. Request for Franks Hearing.

Mr. JOE LAFORTE moves for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978) for determinations of fact and conclusions of law.

At this time, we are aware of at least one affirmative misrepresentation in one or more of the search warrant affidavits. The affidavit in support of one of the warrants to search JOE LAFORTE'S primary residence alleged that JOE LAFORTE had "expressed an interest in taking bags of money to Nevis as a potential place to hide money." 7/28/2020 Aff. In Support of S.W. for JOE LAFORTE Primary Residence ¶ 11. This was a reference to a July 22, 2020 recorded in person conversation between JOE LAFORTE and individuals who, unbeknownst to him at the time, were undercover. The recording directly contradicts the law enforcement affiant's characterization of the conversation. It was, in fact, one of the undercover witnesses who suggested to JOE LAFORTE that Nevis would be a good place to hide money, in response to which JOE LAFORTE stated, "You're crazy. I've never heard of the place."

As the law enforcement agent was referencing the conversation, he would have been aware that the actual recorded conversation directly refuted his allegation in the affidavit regarding what JOE LAFORTE said.

WHEREFORE, the defendant respectfully requests a hearing pursuant to Franks v. Delaware.

CONCLUSION

WHEREFORE, Defendant JOSEPH LAFORTE hereby respectfully moves for an Order:

1. Dismissing Counts 2 – 20 and the Wire Fraud Racketeering Act(s) of Count 1 for failure to state an offense;
2. Dismissing Count 21 and the Securities Fraud Racketeering Act(s) of Count 1 for failure to state an offense;
3. Dismissing Count 49, Obstruction of Justice, for failure to state an offense;
4. Dismissing Count 57 and the Retaliation Racketeering Act(s) of Count 1;

5. That trial of this action be consolidated with trial of the Tax Case;
6. Suppressing the Defendant's AOL emails as having been seized in violation of his Fourth Amendment rights;
7. Suppressing evidence from unconstitutionally overbroad warrants for the defendant's primary and secondary residences, as well as for PAR's offices;
8. Precluding evidence from the first warrants for the Quayside Drive residence and PGA Blvd. office space for the Government's failure to produce the supporting affidavits under Fed. R. Crim. Pro. 16;
9. Suppressing evidence from the 2023 search warrants for defendant's primary residence, cell phone, and vehicle for being unsupported by probable cause and overbroad;
10. Suppressing evidence from the warrants for defendant's Apple, Inc. account(s), as they violated the particularity requirement and the 2023 Apple warrant was unsupported by probable cause;
11. Suppressing evidence from the warrant for information concerning defendant's cell phone; and
12. Scheduling a hearing pursuant to Franks v. Delaware.

Dated: August 19, 2024

Respectfully submitted,

/s/ Joseph R. Corozzo
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