

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
V.)	CASE NO. 10-00320-12-CR-W-DGK
)	
DESHAUN L. CERUTI,)	
)	
DEFENDANT.)	

**DEFENDANT CERUTI’S OBJECTIONS TO THE REPORT AND
RECOMMENDATION DENYING DEFENDANT’S MOTION TO SUPPRESS
WIRETAP EVIDENCE**

COMES NOW DeShaun Ceruti, by and through counsel, and respectfully objects to the Chief Magistrate Judge’s Report and Recommendation, filed October 9, 2012 as Document 492.

FACTUAL BACKGROUND

On April 29, 2010, the Government filed an Affidavit in Support of Application¹ for an order authorizing the interception of wire and electronic communications to and from cellular telephone number 816-799-7617. The foci of the affidavit were the communications of Juan Marron, Raul Marron, Joseph Lopez, Paul Briones, Carlos Acevedo, Griselda Zavala, Michael Santillan, John Gasca, Mario Marron, Raul Marron, Sr., Anthony Alvarez, Armando Mendez, Marcos LNU², Jason Richardson, Rob LNU, Unidentified Male Number 23, Jacob Morales, and other unknown target subjects (Document 475-2, pg 3). The Government sought to obtain information related to the distribution of controlled substances, the possession of controlled substances with the intent to distribute, the use of a communication facility to further the

¹ The Affidavit was verified by Special Agent Joseph Geraci, Drug Enforcement Administration, Kansas City District Office.

² The April 29, 2010 affidavit listed LNU, “last name unknown”, in associated with a few male target subjects.

possession of controlled substances, and conspiracy to commit the offenses in violation of Title 21, United States Code, Sections 841(a)(1), 843(b), and 846, along with aiding and abetting the listed offenses under Title 18, United States Code, Section 2 and money laundering offenses under Title 18, United States Code, Sections 1956 and 1957 (Document 475-2, pgs 3-4). Mr. Ceruti was not a listed target subject in this affidavit.

The Government alleged that normal investigative procedures had been tried and failed, appeared reasonably unlikely to succeed or were too dangerous to use. With regard to Mr. Ceruti, no search warrants were executed between April 30 and May 27, 2010, no traffic stops were conducted, agents performed no trash searches at Mr. Ceruti's residence, and no confidential informants knew Mr. Ceruti. Agents did perform an identification stop and identified Mr. Ceruti at that time. (R&R, pg 2)³

Another Affidavit in Support of Application was filed by the Government on May 27, 2010⁴. The foci of this affidavit included all of the names mentioned in the April 29, 2010 affidavit with the exception of Carlos Acevedo, Griselda Zavala, Jason Richardson, and Rob LNU, and added the names of David Montoya, DeShaun Ceruti, and Rafael Zamora. The Government sought to obtain information related to the offenses previously noted in the April 29 affidavit (Document 475-3, pg 3).

The Government returned an indictment on November 10, 2010 that charged Mr. Ceruti with Conspiracy to Distribute Five Kilograms or More of Cocaine, Fifty Grams or More of Cocaine Base, and One Hundred Kilograms or More of Marijuana in violation of 21 U.S.C. §§§

³ "R&R" refers to the Report and Recommendation issued on October 9, 2012 by the Honorable Robert E. Larsen, Chief United States Magistrate Judge for the Western District of Missouri.

⁴ The Affidavit was verified by Special Agent Kyle Beach, Drug Enforcement Administration, Kansas City District Office.

841(a)(1), 842(b)(1)(A) and (B), and 826 and one count of Money Laundering in violation of 18 U.S.C. §1956(a)(1)(A)(i) and (h). Mr. Ceruti filed his Motion to Suppress Wiretap evidence on August 31, 2012 (Doc. 466); the Government filed its response and exhibits (Doc. 475 and attachments); and the matter was heard by the Court on September 25, 2012.

ARGUMENT AND AUTHORITIES

Congress intended that the statutory authority of 18 USC §2518 be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. *U.S. v. Giordano*, 416 U.S. at 515. This is because the use of wiretaps is an extraordinary investigative device. It is not the norm.

The wiretap evidence obtained and ensuing arrests and statements should be suppressed because:

- 1. The affidavits in support of the wiretaps did not establish that normative investigative procedures had been tried and failed with regard to DeShaun Ceruti.**

“If any of these traditional investigative techniques has not been tried, the government must explain why with particularity”. *United States v. Mitchell*, 274 F.3d 1307, 1310 (10th Cir.2001).

At the suppression hearing, defense counsel asked Agent Geraci if he had employed the investigative technique of search warrants. The full conversation with regard thereto follows:

Q. Did you also -- did you ever employ the use of search warrants with regard to DeShaun Ceruti?

A. During the time of the first extension, no, the initial affidavit, we did not do any search warrants on Ceruti.

Q. Okay.

A. We were still identifying locations.

Q. So, in April and May, and even up to the period of time that the extension was ordered through June, you did not perform any search warrants with regard to DeShaun Ceruti?

A. To my recollection, no, and I believe not.

Q. Did you perform -- and I should ask why you did not perform the search warrants?

A. I don't know specifically why not. I know we did do the surveillances you're talking about. And I can't tell you why we did or did not, you know.

(Transcript of Suppression Hearing, pgs 38-39.)⁵

Therefore, the Government failed to explain why its agents did not use particular investigative techniques.

Further, the Government presented no evidence that any of the investigative techniques employed with regard to the co-defendants was, in any way, connected to Mr. Ceruti.

2. The affidavits in support of the wiretaps did not establish that those normal procedures were unlikely to succeed.

None of the normal procedures were used with regard to DeShaun Ceruti, except surveillance. It appears, based upon the testimony of the agent, that this investigation was fruitful and, therefore, the wiretap was unnecessary with regard to the prosecution of DeShaun Ceruti. The transcript of the suppression hearing in this matter reads:

Q. All right. Did you physically surveil DeShaun Ceruti?

A. Yes.

Q. And those -- that period of time was in the spring of 2010?

A. Yes. And it was prior to this extension.

Q. Okay. And during that period of time that you surveilled DeShaun Ceruti, did you believe that he was involved in drug transactions with Juan Marron?

A. Yes.

Q. And so you believed that surveillance to be something that was fruitful in your investigative attempts?

A. That's correct.

(Transcript of Suppression Hearing, pg 38, ll 5-15.)

⁵ The "Transcript" referenced herein is the Transcript of the Suppression Hearing which occurred September 25, 2012 in the Western District of Missouri before the Honorable Judge Larsen.

3. The Government did not employ minimization.

The Government did not listen to the calls in an objective manner to prevent the most innocent conversations from being viewed as those involved in the alleged drug conspiracy. In almost every call between Juan Marron and Mr. Ceruti, it seems as if Mr. Ceruti says, “What’s up with it?” The agents listening to these calls deemed this to be code language for a drug transaction. However, because the agents were seeking drug transaction material, it is more likely that they would interpret all unknown statements to be related to drug transactions. Many of the conversations, if reviewed objectively, appear innocuous. For example, here is a conversation recorded between the two parties on May 5, 2010 at 12:55 pm:

[TELEPHONE RINGS]

[BEGINNING OF CONVERSATION]

MARRON: Hello?

CERUTI: Yeah, hello.

MARRON: Yeah, what’s up cuz?

CERTUI: What’s up?

MARRON: Yeah, I just got here right now, you want to come on over.

CERUTI: Huh, I called, I damn I called; I don’t even [LAUGHS]. Hey, huh?

MARRON: I can even...

CERUTI: Yeah, I don’t even know why I called you up, for real dog. I was calling someone else.

MARRON: Oh, nay I just come home right cause a, if you want to come on by real quick.

CERUTI: All right yeah I’ll come.

MARRON: All right.

CERUTI: All right [ASIDE COMMENT: Damn!]

[END OF CONVERSATION]

(Document 475-1, pg 16)

There is no indication in the foregoing discussion that the two speakers were involved in a drug transaction. This is one of many conversations that should have been deleted or the surveillance

of which should have been aborted, as particular conversations regarding crime are to be intercepted. 18 USC §2518(3)(b).

CONCLUSION

Wherefore, for the foregoing reasons and previous arguments, Mr. Ceruti respectfully requests that the Court not accept the Chief Magistrate Judge's Report and Recommendation and, instead, grant Mr. Ceruti's Motion to Suppress. Mr. Ceruti prays for any further relief this Court deems fair and just.

Respectfully submitted,

s/Kelly M. Connor-Wilson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record by CM/ECF this 15th day of October, 2012.

s/Kelly M. Connor-Wilson
Kelly M. Connor-Wilson