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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Criminal Action No. 10-00320-12-CR-W-DGK**
	)	
DESHAUN L. CERUTI,	)	
	)	
Defendant.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT CERUTI'S MOTION TO SUPPRESS WIRETAP EVIDENCE

I. INTRODUCTION

Mr. Ceruti is one of nineteen defendants charged in a two count indictment, including an allegation of criminal forfeiture. Mr. Ceruti is charged by Indictment with one count of 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.§§§ 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). He currently is incarcerated while awaiting the trial of this matter.

The government's case against Mr. Ceruti is based almost entirely on audio recordings of telephone conversations intercepted by government wiretaps and surveillance conducted as a direct result of these conversations. These wiretaps were authorized by court orders issued on April 30, 2010 and May 27, 2010. Acting pursuant to these court orders, the government intercepted numerous telephone conversations allegedly involving Mr. Ceruti. For the reasons discussed below, the contents of all telephone conversations involving Mr. Ceruti, and the

evidence derived from them, should be suppressed.

II. STATEMENT OF FACTS

1. The Court ordered wiretap surveillance on telephone numbers 816-799-7617 and 816-352-7885 pursuant to orders entered on April 30 and May 27, 2010 respectively.
2. On May 19, 2010, the government alleges that Mr. Ceruti attempted to purchase controlled substances from Juan Marron by telephone.
3. On May 24, 2010, the government alleges Mr. Ceruti spoke to Juan Marron by telephone about his travel plans.
4. On May 30, 2010, the government alleges Mr. Ceruti ordered controlled substances from Juan Marron by telephone.
5. On May 31, 2010, the government alleges Mr. Ceruti spoke to Juan Marron about his travel delay.
6. On June 1, 2010, the government alleges Mr. Ceruti referred to controlled substances in a conversation with Juan Marron as "it".
7. On June 2, 2010, the government alleges Mr. Ceruti spoke to Juan Marron about the arrest of his brother.
8. The government has presented no evidence that Mr. Ceruti engaged in the sale or distribution of controlled substances.

III. ARGUMENT

A. STANDING

Under the wiretap statute, any "aggrieved person" has standing to move to suppress evidence derived from electronic surveillance. *See 18 U.S.C. §2518(10)(a).* Section 2510(11) defines an "aggrieved person" as "a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed." *See 18 U.S.C. § 2510(11)*. The government alleges Mr. Ceruti was a party to certain communications intercepted by the wiretap on Target Telephones. He therefore qualifies as an "aggrieved person" who has standing to challenge the April 30 and May 27 orders that authorized the wiretap on Target Telephones 816-799-7617 and 816-352-7885.

B. THE COMMUNICATIONS SHOULD BE SUPPRESSED BECAUSE THE AFFIDAVITS DID NOT ESTABLISH THAT NORMAL INVESTIGATIVE PROCEDURES HAD BEEN TRIED AND HAD FAILED OR REASONABLY APPEARED TO BE UNLIKELY TO SUCCEED IF TRIED OR TO BE TOO DANGEROUS

1. Applicable Law

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, codified at 18 U.S.C. § 2510, et. seq., prohibits all wiretapping and electronic surveillance except pursuant to carefully specified procedures. *See 18 U.S.C. § 2511*. "The law has dual purposes, '(1) protecting the privacy of wire and oral communications, and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized." *United States v. Moore*, (8th Cir. 1994).

The procedural step at issue in this motion is the required showing of necessity for the

wiretaps. Because wiretaps are such an invasive law enforcement technique, the necessity requirement ensures that electronic surveillance is not "routinely employed as the first step in a criminal investigation." *United States v. Giordano*, 416 U.S. 505, 515 (1974); see also, *United States v. Macklin*, 902 F.2d 1320, 1326-27 (8th Cir.1990).

To be in compliance with Title III, a wiretap application must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(1)(c). Before authorizing the requested wiretap, the issuing judge must determine that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(3)(c). "Normal investigative procedures would include, for example, standard visual or aural surveillance techniques by law enforcement officers, general questioning or interrogation under an immunity grant, use of regular search warrants, and the infiltration of conspiratorial groups by undercover agents or informants." *Senate Comm. on the Judiciary, Report on the Omnibus Crime Control and Safe Streets Act of 1967, S. Rep. No. 1097 at 101 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2190*. If the application does not contain an adequate statement concerning the use of other investigative procedures, then a wiretap order based upon that application is invalid, and any communication intercepted pursuant to that order – and any fruits of that evidence – must be suppressed. 18 U.S.C. § 2518(10)(a).

Section 2518(1)(c) requires the government to make a particularized showing in each case of the improbability of success or high degree of danger from the use of alternative investigative techniques.

Mr. Ceruti will demonstrate that, in fact, little to no investigation was done of Juan Marron's relationship with Mr. Ceruti before authorization was sought to tap Marron's phone. There is no evidence that the pen registers, physical surveillance and other claimed methods were used with regard to Mr. Ceruti. Further, there was evidence neither that the stated pre-application methods were ineffective concerning Mr. Ceruti nor put the officers in harm's way.

In such a case, where traditional methods of investigation have not been attempted, then the government must show "why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 USC §2518(1)(c).

Moreover, the government must make this specific showing of necessity every time it seeks a wiretap, and must satisfy the necessity requirement with respect to each individual suspect whose telephone it wishes to tap. Id.

C. THE COMMUNICATIONS SHOULD BE SUPPRESSED BECAUSE THE AFFIDAVITS DID NOT ESTABLISH THAT THE GOVERNMENT CONDUCTED MINIMIZATION IN THE ADMINISTRATION OF THE WIRETAP SURVEILLANCE

1. Applicable Law

Compliance with Title III requires that minimization techniques are employed by the government in administering the wiretap surveillance. "Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception." 18 USC §2518(5). The

United States Supreme Court has stated that this mandate for minimization is subject to a case analysis. In *United States v. Scott*, the Court stated that "the statute does not forbid the interception of all nonrelevant conversations, but rather instructs the agents to conduct the surveillance in such a manner as to "minimize" the interception of such conversations. Whether the agents have, in fact, conducted the wiretap in such a manner will depend on the facts and circumstances of each case." 436 U.S. 128, 140 (1978).

. In this present case, the government recorded telephone calls, purportedly between Mr. Ceruti and Juan Marron, whereby the officers interpreted terms, such as "it" to be drug related. Essentially, the government deemed these words to be code-words for drug activity. However, the alleged illicit activity is an unsupported assumption and no expert was used to interpret these so-called code words. The government failed to meet the requirements of the statute in this regard.

D. COMMUNICATIONS INTERCEPTED PURSUANT TO THE COURT'S APRIL 30 AND MAY 27 ORDERS, AND ALL FRUITS OF THOSE COMMUNICATIONS, MUST BE SUPPRESSED BECAUSE THE EXTENSION ORDERS WERE BASED ON EVIDENCE DERIVED FROM THE INVALID ORDER OF APRIL 30, 2010

Under this analysis, all observations from surveillance conducted as a result of the intercepted conversations are fruits of the illegal wiretaps, and must be suppressed. Similarly, the Court should suppress Mr. Ceruti's post-arrest statement, made within hours of his arrest, because the arrest was made pursuant to a warrant similarly based on the improperly intercepted communications. Id. The taint of the unlawful seizure leads to the exclusion of a resulting statement, notwithstanding that Mr. Ceruti may have received his Miranda rights. *See Brown v. Illinois, 442 U.S. 590, 602-3 (1975).*

IV. CONCLUSION

For the foregoing reasons, Mr. Ceruti respectfully requests that the Court suppress the content of all intercepted communications to which he was a party, in addition to all fruits of those communications.

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 31st day of August, 2012.

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