THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

PERIS DWIGHT SMITH,

Defendant.
_____/

Case No. 1:16-CR-215-02

Hon. Robert J. Jonker
Chief U.S. District Court Judge

DEFENDANT'S SECOND MOTION TO SUPPRESS EVIDENCE AND MEMORANDUM IN SUPPORT

NOW COMES the Defendant, Peris Dwight Smith, through counsel, and renews his motion to suppress certain evidence, including evidence seized from a storage unit on March 14, 2013, in accordance with a search warrant. By reference, he incorporates his earlier motion and memorandum in support of it. *See* RE. 58: Amended Brief, PageID 255. In support of his renewed motion, Mr. Smith offers the following memorandum of law.

Procedural Background

This case began on October 27, 2016, with an indictment against Latoya Durant. RE. 1: Indictment, PageID 1-5. The indictment charged five counts related to false claims and theft, essentially addressing claims for filing false tax returns. On December 1, 2016, the government filed a superseding indictment, bringing Mr. Smith into the case and charging him and Ms. Durant with the original five counts and adding four counts of aggravated identity theft and a forfeiture allegation against Mr. Smith. RE. 14: Superseding Indictment, PageID 35-45. The superseding indictment charged Mr. Smith with conspiring to make false claims (a violation of 18 U.S.C. § 286), two counts of making false claims against the United States (a violation of 18 U.S.C. § 287), two counts of theft

of government property (a violation of 18 U.S.C. § 641), and four counts of aggravated identity theft (a violation of 18 U.S.C. § 1028A(a)(1)). RE. 14: Superseding Indictment, PageID 35-43.

Authorities arrested Mr. Smith on December 7, 2016, in the Northern District of Georgia. RE. 18: Rule 5 Documents, PageID 51. On the same day, he had an initial appearance in Georgia. *Id.* He had his first appearance in the Western District of Michigan on January 3, 2017; the Court continued Mr. Smith's bond. RE. 23: Minutes, PageID 68. On January 4, 2017, the Court appointed counsel to represent Mr. Smith. The Court conducted Mr. Smith's arraignment on January 10, 2017. RE. 30: Minutes of Arraignment, PageID 79.

Mr. Smith filed his first motion to suppress evidence on March 13, 2017. RE. 56: Motion to Suppress, PageID 239. Later that day, the defense filed an amended brief in support of the motion. RE. 58: Amended Brief, PageID 255. Also on March 13, the Court entered a consent order granting an attorney substitution. RE. 60: Consent Order, PageID 271. Mr. Smith wrote to the Court on March 16, 2017, requesting that the Court allow Demetrius Smith, Mr. Smith's brother, to represent him in place of his court-appointed attorney of the time. RE. 64: Pro Se Motion to Substitute Attorney, PageID 282; RE. 76: Order on Motion to Substitute Counsel, PageID 369. The Court conducted a hearing on the motion on March 22, 2017. RE. 65: Minutes of Hearing, PageID 285. The Court ruled against allowing Mr. Demetrius Smith to represent Mr. Smith; it also ruled in favor of relieving Mr. Smith's court-appointed counsel of the time and appointing new counsel. RE. 76: Order on Motion to Substitute Counsel, PageID 369-70. On April 28, 2017, the Court appointed undersigned counsel to represent Mr. Smith. The Court then set a deadline of May 31, 2017, for undersigned counsel to address the motion to suppress, which earlier counsel had filed, and the government's pending motions in limine. RE. 78: Order, PageID 391.

Factual Discussion

Mr. Smith's cousin Taneshea Smith rented a storage space from West River Storage Suites, on Samrick Avenue in Belmont, Michigan, on December 5, 2012. *See* RE. 76: Order on Motion to Substitute Counsel, PageID 371; Affidavit for Search Warrant, Exhibit A to this memorandum. She paid cash for a year's rental of the unit. Affidavit for Search Warrant, Exhibit A to this memorandum. The management of the storage suites became concerned about the unit and emailed Ms. Taneshea Smith on February 20, 2013, to let her know they had discovered the unit was unlocked. Someone had put a lock on the unit, but the slide mechanism was not in place and engaged when the lock was put on, so the unit could be opened by a passerby. The management wrote that they would cut off the current lock and asked Ms. Smith to contact them. The owner of the storage suites decided to place an "overlock" on the unit on March 1, 2013, to secure the unit and its contents. The owner claims he entered the unit, before locking it, to check for animal infestation. After this entry into the unit, allegedly because of what he saw in the unit, the owner contacted the Kent County Sheriff's Department. Before leaving the unit, the owner took pictures of the unit's interior.

On March 2, 2013, the management at the storage suites emailed Ms. Smith to inform her that the Kent County Sheriff's Department had "overlocked" her unit. The storage suites' owner spoke further with authorities on March 7, 2013. Officer Tracey Ludwig of the Kent County Sheriff's Department and the owner of the storage suites discussed the circumstances—with the locks the owner had placed on the unit, no one would be able to enter the unit without going to the storage suites' office first. Officer Ludwig reported a lack of probable cause to seek a warrant and forwarded the incident report to the fraud unit to see if other leads existed.

Based on Officer Ludwig's report, Officer John DeGroot drafted an affidavit to seek a search warrant on March 13, 2013, and obtained a warrant the same day. The affidavit described the unit at the storage suites and alleged the following points:

- The officer's experience and current assignment to the fraud unit,
- The storage suites' owner had contacted police to report suspicious contents in the unit,
- The owner had entered the unit after the unit had been unsecured for over two weeks—the owner entered to ascertain whether animals had infested the unit,
- The owner had reported that the unit contained only a few items, including a cardboard box, a small cooler, a computer tower/hard-drive, and an open black, plastic garbage bag,
- The owner reported he could see that the garbage bag contained "numerous, possibly 100," credit cards,
- The owner secured the unit on March 7, 2013,
- No one had entered the unit since that date,
- Facility staff claim to have made several attempts to contact the unit's renter, all of them unsuccessful,
- The renter paid cash for a year's rental, which would end on November 30, 2013,
- The officer's training and experience had led him to believe that possession of a large number of credit cards indicated identity theft and/or fraud, and computers are used to store identification and/or account information and to recover and/or encode credit-card data.

Authorities, including Affiant DeGroot and Wyoming Police Department Detective Dave Cammenga, executed the search warrant on March 14, 2013. The owner of the storage suites gave the officers access to the unit. The black plastic garbage bag described in the affidavit contained paperwork, credit cards, mail related to tax filings, and packaging from cellular phones.

Legal Discussion

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV. To obtain a search warrant, authorities must have probable cause to believe they will find contraband in the place they seek to search. *See id.* A neutral and detached magistrate should make the probable-cause determination; these matters should not fall to officers "'engaged in the

often-competitive enterprise of ferreting out federal crime.'" *United States v. Smith*, 182 F.3d 473, 476-77 (6th Cir. 1999) (citation omitted). For a magistrate to perform his or her official functions, an affidavit submitted to obtain a search warrant "must contain adequate supporting facts about the underlying circumstances to show that probable cause exists for the issuance of the warrant." *Id.* at 477. Probable cause means reasonable grounds to believe authorities will find contraband; this belief may rest on less than prima facie proof, but it does require more than mere suspicion. *Id.*

A. Mr. Smith has standing to challenge the search of the storage unit.

One's qualification to claim Fourth Amendment protections depends not on property rights in the premises searched but upon whether the claimant has a legitimate expectation of privacy in the premises searched. *Garcia v. Dykstra*, 260 F. App`x 887, 892 (6th Cir. 2008). Regarding storage units, the Sixth Circuit has rejected the argument that only the person who leases a unit may raise a Fourth Amendment claim. *Id.* For Fourth Amendment purposes, it suffices that a person used a storage unit—use of the unit suffices to allow a person to claim Fourth Amendment protections. *Id.*

Securing a storage unit establishes a subjective expectation of privacy in that unit. *Id.* at 897. The Sixth Circuit recognizes this expectation as objectively reasonable. *Id.* at 898. A person "may reasonably expect that the contents of a closed, locked storage unit within a gated storage complex will remain free from public inspection." *Id.*

Mr. Smith shared the storage unit at issue with his cousin Taneshea Smith. Because of his shared use of and interest in the rental of the unit, Mr. Smith had a reasonable expectation of privacy in the unit. This shared use suffices to confer standing to challenge the Fourth Amendment violation here. *See id.* at 892-93. He need not, and does not, assert possession of the items seized during the search. He simply asserts that the officers violated his Fourth Amendment rights by entering a storage unit he used and in the lease of which he had a possessory interest. While under *Garcia*, as already discussed, he need not show more, he would also note that his e-mail address appeared on the storage

suites' rental agreement. The fact that the storage unit had somehow not been secured does not change the analysis of Mr. Smith's right to challenge entry of the unit. Any arguments related to the unit being unlocked would relate to the Fourth Amendment violation itself, which Mr. Smith will discuss below, rather than Mr. Smith's standing to bring this challenge.

Other courts that have considered the question of standing, as it relates to storage units used by people whose names do not appear on the leases for the units, have come down on the side of finding standing. In *United States v. Johns*, 851 F.2d 1131, 1135-36 (9th Cir. 1988), the court concluded that a "formalized, ongoing" agreement between defendants regarding use of a storage unit could confer on a defendant standing to challenge the search of the unit, even if the defendant's name did not appear on the lease for the unit. The *Johns* court noted that the defendant to whom the standing issues applied had admitted he owned chemicals stored in the unit and had paid portions of the unit's rent. *Johns*, 851 F.2d at 1136. Here, Mr. Smith's contact information—his email address—actually appears on the unit's lease agreement. In the Ninth Circuit "joint control" confers standing to challenge a search of a storage unit. *See, e.g.*, *Lyall v. City of L.A.*, 807 F.3d 1178, 1187 (9th Cir. 2015) (citing *Johns*). Mr. Smith's shared use of the unit with his cousin establish his standing to bring this challenge.

B. The affidavit in support of the search warrant here did not contain adequate indications of probable cause to believe officers would find contraband in the storage unit.

For a warrant to issue, probable cause must exist for the specific offense in question. *United States v. Hodson*, 543 F.3d 286, 292 (6th Cir. 2008). Probable cause means reasonable grounds to believe officers may find evidence of criminal activity; it involves less than prima facie proof but more than mere suspicion. *United States v. McClain*, 430 F.3d 299, 305 (6th Cir. 2005). Establishing probable cause requires only a probability or substantial chance of criminal activity; it does not require an actual showing of such activity. *Id.* A mere possibility that a crime could be occurring within a home,

however, does not establish probable cause. *See id.* Probable cause means more than mere speculation that a crime could be occurring. *See id.*

A reviewing court should ensure that the issuing magistrate had a substantial basis to conclude that probable cause to support issuance of the warrant existed. *United States v. Higgins*, 557 F.3d 381, 389 (6th Cir. 2009). An affidavit in support of issuance of a search warrant must contain adequate supporting facts about underlying circumstances to show that probable cause exists to justify issuance of a warrant. *United States v. McPhearson*, 469 F.3d 518, 524 (6th Cir. 2006). An affidavit must contain particularized facts that demonstrate a fair probability that evidence of a crime will be located on the premises to be searched. *Id.* The inquiry involves examination of the totality of the circumstances. *Id.*

While probable-cause inquiries inherently revolve around unique factual scenarios, a review of Sixth Circuit precedent can provide guidance. In *McClain*, the Sixth Circuit found that probable cause did not support a warrantless entry into a home (the court did not reach the exigent-circumstances argument because the first prong of the inquiry—probable cause—sank the ship). *See McClain*, 430 F.3d at 306. The *McClain* situation involved neighbors calling the police after seeing a light on in a home from which the residents had moved weeks before. *Id.* at 302. The circumstances amounted to a "suspicious incident" for the authorities. *Id.* The responding officer saw no movement in the home and no evidence of a burglary, vandalism, forced entry, or other criminal activity. *Id.* The residence's door did stand ajar. *Id.* The officer called for backup and entered the home without a warrant. *Id.* The officers who searched the house saw items they associated with a marijuana grow operation. *Id.* at 302-03.

The Sixth Circuit concluded that the officers violated the Fourth Amendment by entering without probable cause. *Id.* at 306. The court declined to apply the exclusionary rule, however, because of the unique circumstances involving issuance of subsequent warrants based on an affidavit

from an officer not involved in the initial entry. *See id.* at 308-09. The court also noted that the initial officers' entry involved no bad faith. *Id.* at 308.

The court in *United States v. Neal*, No. 13-5875 (6th Cir. 2014) (unpublished), made a similar conclusion on probable cause: the affidavit had failed to establish probable cause to issue a search warrant. In *Neal*, an agent in Knoxville, Tennessee engaged in a drug investigation that involved drafting an affidavit for a search warrant that referred to a confidential informant in Chicago offering to work with authorities in Chicago to earn a sentencing reduction for a third party. *Neal*, No. 13-5875, slip op. at 12. The Knoxville affiant stated that they believed the informant was truthful and that the informant's information was detailed and had been corroborated in numerous ways. *Id.* at 13. The affiant stated they believed the informant was credible. *Id.* These statements, however, did not rest on the affiant's personal knowledge of the informant and the court considered them conclusory. *Id.*

The affidavit also contained information on addresses the informant discussed. The affidavit stated that one address matched the informant's description and another did not exist, just as the informant had said it did not exist. *Id.* at 16. The utilities at one residence were in the defendant's brother's name and the phone number on the account matched the number the informant had given as that of the defendant's brother. *Id.* A car matching the informant's description of a relevant vehicle was registered to the defendant's brother. *Id.* The defendant and his brother had prior drug-related convictions. *Id.* Surveillance at the target home showed the brother's vehicle at the home and established that there was heavy traffic to and from the home. *Id.* at 17. Electronic tracing revealed that the informant did travel from Chicago to Knoxville. *Id.* Agents observed a vehicle registered to the defendant traveling in Tennessee on relevant dates. *Id.* A car matching that description arrived at the target home with two people in it and the driver retrieved a trunk from the vehicle and the driver and passenger went into the home. *Id.*

The corroborating information did not include observation of criminal activity. *Id.* at 17, 19. The sole incriminating fact involved the allegation of heavy traffic to and from the home. *Id.* at 17. The Sixth Circuit found a lack of probable cause. *Id.* at 21. The court did, however, apply the good-faith exception to save the evidence from the exclusionary rule. *Id.* at 22.

In *Higgins*, the Sixth Circuit again found that the warrant did not rest on probable cause. *Higgins*, 557 F.3d at 390. The affidavit in *Higgins* stated that officers had conducted a traffic stop during which the officers recovered cocaine. *Id.* at 385. The individuals who had the drugs told the officers they had obtained the cocaine from the defendant and gave the address; one of the individuals accompanied officers to the address to verify it. *Id.* The affiant stated that the defendant had two prior drug-related felonies. *Id.* Police corroboration did not, however, validate the individual's assertion that he had purchased drugs from the defendant a day earlier. *Id.* at 390-91 (the court also discussed the informant asserting he had purchased drugs the same day; the opinion is not always clear on this point, but the timing of the drug transaction did not present any legal significance). The affidavit also failed to establish a nexus between drug activity and the apartment. *Id.* The court did apply the good-faith exception to save the evidence from exclusion. *Id.* at 391.

In Mr. Smith's case, the circumstances present fewer indications of wrong doing than in these cases in which the Sixth Circuit found a lack of probable cause. The affidavit in support of the search warrant in Mr. Smith's case stated that the owner of a storage-suites business had contacted police to report suspicious contents in a unit. That owner claimed he had entered the target unit after the unit had been unsecured for over two weeks. As *McClain* establishes, a door being ajar will not defeat Fourth Amendment protections. The owner said he entered the unit to ascertain whether animals had infested the unit. The owner told police that the unit contained only a few items, including a cardboard box, a small cooler, a computer tower/hard-drive, and an open black, plastic garbage bag, and he said he could see that the garbage bag contained "numerous, possibly 100," credit cards. The

affidavit stated that the owner secured the storage unit on March 7, 2013, and that no one had entered the unit since that date. Staff at the storage facility claimed to have made several attempts to contact the unit's renter, but failed to make contact. The renter had paid cash for a year's rental. And the affiant's training and experience had led him to believe that possession of a large number of credit cards indicated identity theft and/or fraud, and that computers are used to store identification and/or account information and to recover and/or encode credit-card data.

In the realm of a probable-cause inquiry, this information amounts to very little. The affidavit establishes no police corroboration of the storage-suites' owner's assertions about the unit. The affidavit does not establish that officers ran a report on the unit's renter to try to gain more information. They did not try to establish a prior criminal history for the renter. They did not attempt to contact the renter. People rent storage units for various reasons—storage-space rental is a major industry. And people may prepay for a year's rental for various reasons, including extended travel that could put them out of touch with the storage business. Being hard to reach could be why they prepay.

The items the owner of the storage unit alleged he saw would not raise suspicion, other than possibly the alleged one hundred credit cards. But the affiant did nothing to corroborate the allegations about the credit cards or establish the reliability of the statements. The affiant did not state that he asked the owner of the storage suites why the owner thought the bag contained possibly a hundred credit cards. Nor did the affiant say he visited the storage suites and observed the site and spoke with staff at the site in person. He did not say whether he spoke with staff other than the owner at all. The affidavit simply restated uncorroborated assertions made by personnel at a storage business and made the boilerplate, essentially meaningless assertion that the affiant's training and experience led him to believe that possession of a large number of credit cards indicated identity theft and fraud, and that computers are used to store identification and account information and to recover or encode

credit-card data. *See United States v. Weaver*, 99 F.3d 1372, 1378 (6th Cir. 1998) (addressing the deficiencies in boilerplate recitations).

In *Higgins*, at least, the court discussed how a statement against penal interest may be more credible because of the stakes involved. *See Higgins*, 557 F.3d at 390. The *Higgins* case involved drug-related statements. *Id.* Even then, the Sixth Circuit rejected the idea that such incriminating statements are conclusive on their own. *See id.* In Mr. Smith's case, the storage suites' owner did *not* make a self-incriminating statement. His statements aimed to draw attention only to the users of the storage unit. While Mr. Smith does not wish to impugn the storage suites' owner, such a person could make statements to authorities out of spite toward a difficult tenant, one who had complained about services, posted a scathing review online, ruffled the feathers of other tenants, or the like. The "informant" here gave minimal information, so he did not open himself up to liability for false statements. People may call the police to report "suspicious activities" of neighbors and tenants for various reasons—legitimate and illegitimate. They may exaggerate, misidentify, and misunderstand. The point lies in the police obligation to corroborate such assertions. *See id.* Officers did not do so here.

This case does not involve a long-standing informant of known reliability reporting direct, personal observation of criminal behavior. *Cf. United States v. Allen*, 211 F.3d 970 (6th Cir. 1999). It involves an individual in the community making vague, uncorroborated statements. No police investigation followed these assertions. Nothing in the affidavit indicates any effort to establish corroboration of the allegations, much less verification of criminal wrongdoing. The affidavit failed to establish probable cause to issue a search warrant.

C. The good-faith exception to the warrant requirement does not apply here to save the evidence in question from suppression.

The good-faith exception to the warrant requirement does not apply if: "1) the supporting affidavit contained knowing or reckless falsity; 2) the issuing magistrate wholly abandoned his or her judicial role; 3) the affidavit is "so lacking in probable cause as to render official belief in its existence entirely unreasonable;" or 4) where the officer's reliance on the warrant was neither in good faith nor objectively reasonable." *United States v. Frazier*, 423 F.3d 526, 533 (6th Cir. 2005). The good-faith exception to the exclusionary rule only saves evidence from suppression under certain circumstances: it is not a perpetual trump. *See United States v. Warshak*, 631 F.3d 266, 282 n.13 (6th Cir. 2010). The good-faith exception to the exclusionary rule "should not be a perpetual shield against the consequences of constitutional violations." *Id.*

Here, the first, third, and fourth factors apply to militate in favor of rejecting the good-faith exception. The supporting affidavit contained a knowing or reckless falsity. Mr. Smith will address this factor in his separate motion for a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). The affidavit also lacked probable cause so as to render official belief in the existence of probable cause entirely unreasonable. This factor dovetails with the next: the officer's reliance on the warrant was not objectively reasonable.

In contrast to the circumstances in *McClain*, the officer who sought the search warrant in Mr. Smith's case knew of the first officer's conclusion that probable cause to support issuance of the warrant did not exist. The circumstances in this case more closely parallel Judge Clay's perspective in the latter's dissent in *Higgins*. In *Higgins*, Judge Clay dissented from application of the good-faith exception to save the evidence from exclusion. *Higgins*, 557 F.3d at 399 (Clay, J., dissenting). Judge Clay found that, for the same reasons that the warrant was not supported by probable cause, a reasonably well-trained officer would have known that the search was illegal despite the warrant. *Id.* at 400 (Clay, J., dissenting). A well-trained officer should have recognized the untested reliability of

the statements, the lack of any corroboration of the statements, much less corroboration of criminality, and the need for further questioning. *Id.*

The affidavit here qualifies as "bare bones," as described in *Weaver*. Affidavits that state suspicions, beliefs, or conclusions, without providing underlying factual circumstances regarding veracity, reliability, and basis of knowledge, qualify as bare bones. *Weaver*, 99 F.3d at 1378. Mr. Smith's case resembles the circumstances in *Weaver*, in which the Sixth Circuit concluded, "even assuming the reliability of [the informant] as an informant, our review of this affidavit reveals a paucity of particularized facts indicating that a search of the [target] residence 'would uncover evidence of wrongdoing.'" *Id.* at 1379 (citation omitted). The court held "that, when viewed in the totality of the circumstances, this 'bare bones' affidavit failed to provide sufficient factual information for a finding of probable cause." *Id.* at 1379-80.

The *Weaver* decision provides a useful foil here. In *Weaver*, a "previously reliable" informant gave police a tip about a possible marijuana sale operation. *Id.* at 1374-75. The informant alleged he had the information from someone named "Charlie." *Id.* at 1375. The officer gave the informant money with which to purchase marijuana at the target premises; the informant and "Charlie" did so, but the informant did not allege seeing evidence of a marijuana grow operation. *Id.* The affiant drove to and identified the home, ascertained the utilities account for the home was in the defendant's name, and verified the defendant's prior conviction for an explosives offense (not drugs). *Id.* The affiant prepared an affidavit for search warrant; it included much boilerplate language and the few generalized assertions the officer possessed that related to the defendant. *Id.* at 1375-76.

The court explained that, "[v]iewed objectively, [the affiant] possessed some information from a previously reliable informant regarding possible criminal activities" but possessed "no prior personal knowledge of any unlawful activity by this suspect, or at the suspect residence, other than an old conviction on completely unrelated circumstances," possessed no current personal knowledge of any

connection between the suspect and marijuana possession or distribution, had not personally seen marijuana at the target residence or conducted visual reconnaissance of the property to determine whether marijuana was likely to be present on the property, and possessed only third-party hearsay allegations about a possible marijuana grow operation on the property. *Id.* at 1380. As the court said, "[w]ith little firsthand information and no personal observations, [the affiant] should have realized that he needed to do more independent investigative work to show a fair probability that this suspect was either possessing, distributing, or growing marijuana." *Id.*

A "reasonably prudent officer" would have sought greater corroboration to establish probable cause, so the court concluded that the good-faith exception did not apply. *Id.* at 1381. The court held that "the items seized at the Weaver residence should be suppressed." *Id.* In Mr. Smith's case, the affidavit did not establish that the storage suites' owner could be considered reliable, that anything criminal was alleged at all, that anyone (the informant or the affiant) had knowledge of criminal activity by the users of the storage space, or that the affiant had visited the storage suites and observed anything or spoken with anyone personally.

At the core of the Fourth Amendment rests the security of people's privacy against arbitrary police intrusion, a basic tenant of a free society. *Id.* While the Fourth Amendment does not require officers to reinvent the wheel with each search-warrant application, they must "obtain and include sufficient particularized facts so that magistrates may perform their detached function fully informed." *Id.* The Sixth Circuit remains concerned about the threat of generalization when particular facts are necessary, and about boilerplate language in affidavits and search warrants. *Id.* The circuit expects officers to take the brief time necessary to include these particularized facts. *Id.* The affiant in Mr. Smith's case failed to do so, rendering the affidavit here bare bones and not worthy of reliance.

Conclusion

For these reasons, Mr. Smith asks the Court to suppress all evidence derived from the unconstitutional search of the storage unit in this case.

Date: June 5, 2017

SCOTT GRAHAM PLLC

By: /s/ Scott Graham
Scott Graham
Attorney for Defendant
Business Address:
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Portage, Michigan 49024
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EXHIBIT A

STATE OF MICHIGAN)
COUNTY OF) SS
KENT

SEARCH WARRANT

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

On this day John DeGroot, affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists;

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:

West River Storage Suites unit number 210, building E located at 5720 Samrick Ave NE Plainfield Township Kent County Michigan. This can further be described as a 10' by 10' storage unit with a gray overhead door and the numbers 210 above the overhead door.

and to seize, secure, tabulate and make return according to law the following property and things:

ny and all credit or debit cards, records of or applications for credit or debit card accounts, forms of identification, digital storage hardware including, but not limited to, computer hard drives, external hard drives, thumb/flash drives, compact discs and memory/SD cards, credit card reading/scanning/encoding equipment and any other evidence of identity theft or credit card fraud.

ISSUED UNDER MY HAND THIS 3rd DAY OF June, 2013.

~~JUDGE~~ / MAGISTRATE OF THE 63rd DISTRICT COURT

STATE OF MICHIGAN)
COUNTY OF) SS
KENT)

AFFIDAVIT FOR SEARCH WARRANT

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

On this day John DeGroot, affiant, now appears before the undersigned Magistrate authorized to issue warrants in criminal cases, and makes this affidavit in support of the issuance of a Search Warrant, to search the following described place:

West River Storage Suites unit number 210, building E located at 5720 Samrick Ave NE Plainfield Township Kent County Michigan. This can further be described as a 10' by 10' storage unit with a gray overhead door and the numbers 210 above the overhead door.

and to there seize, secure, tabulate and make return thereof according to law the following property or things which have been used in the commission of, or which constitute evidence of criminal conduct:

Any and all credit or debit cards, records of or applications for credit or debit card accounts, forms of identification, digital storage hardware including, but not limited to, computer hard drives, external hard drives, thumb/flash drives, compact discs and memory/SD cards, credit card reading/scanning/encoding equipment and any other evidence of identity theft or credit card fraud.

Affiant says that he has probable cause to believe that the above-listed things to be seized are now located upon said described premises, based upon the following facts:

Your affiant has been a member of the Kent County Sheriff Department for more than eight years and is currently assigned as a detective in the Investigative Division and the Metro Fraud and Identity Theft Team. Your affiant has law enforcement experience with duties including, but not limited to, road patrol officer, tactical team member, and criminal investigations.

Your affiant is currently investigating a possible credit card fraud and/or identity theft complaint involving numerous credit cards that were found in storage unit number 210 building E of West River Storage Suites in Plainfield Township Kent County Michigan. The owner of the facility, Richard Dykhouse, contacted KCSD to report that suspicious items were located in this storage unit after it was found to be unsecured for a period of over two weeks and he had checked the unit to ensure there was no animal infestation. Dykhouse reported that the unit only contained a few items which included a cardboard box, a small cooler, a computer tower/hard drive and an open black plastic garbage bag. Dykhouse further reported he could see into the open black plastic trash bag and that it contained numerous, possibly 100, credit cards. Dykhouse secured the unit with a lock from the facility on 3/7/13 and is has not been entered since.

Facility staff noted several attempts to make contact with the renter of the unit, Taneshea Latrice Smith, however they have been unsuccessful. Facility records indicate that Smith paid cash for a year rental of the unit ending November 30, 2013.

From my training and experience I believe that possession of large amounts of credit cards indicates activity of identity theft and/or criminal fraud. Computer equipment is also known to be used to store identification and/or account information and also recover and/or encode credit card information.

It is believed that by seizing the items located in this storage unit investigators may locate victims of identity theft and/or evidence of fraudulent credit card use.

WHEREFORE, your affiant verily believes the above-described item(s) will be found at the above-described property and constitute(s) evidence of a crime

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME THIS 5th DAY OF March, 2013

Issuance of a Search Warrant as prayed for in the foregoing Affidavit for Search Warrant is hereby authorized.

JUDGE / MAGISTRATE OF THE 63rd DISTRICT COURT

Hours: M-F: 12-6p
Sat : 10-3p

Customer Sign up Form

West River Storage Suites

5720 Samrock Ave NE, PO Box 264, Belmont, MI 49306

(616) 647-3200 Access code _____
(Choose 4- 10 digit)

1. Customer

First Name _____ Initial _____ Last Name _____

Company Name (If renting for your Business) _____

Street Address _____

City _____ State _____ Zip _____

Home ___-___-___ Cell ___-___-___ Work _____

Personal E-Mail _____

Driver's License # _____ Driver's License State _____ Birth Date _____

Your Vehicle Make & Model _____ Color _____ License Plate _____

Size needed 10x10 ___ 10x15 ___ 10x20 ___ 10x25 ___ 10x30 ___ Date of Move in _____

Reason for Rental _____

Referred by: Friend _____ Family _____ Internet _____ DriveBy ___ Other _____

2. Alternate Contact –

First Name _____ Initial _____ Last Name _____

Street Address _____

City _____ State _____ Zip _____

Home Phone _____ Cell ___-___-___ Work ___-___-___

E-Mail _____

3. Employer Information

Employer Name _____

Street Address _____

City _____ State _____ Zip _____

Work Phone ___-___-___ E-Mail _____

STATE OF MICHIGAN)
COUNTY OF) ss
KENT)

RETURN TO SEARCH WARRANT

I hereby certify and return, that by virtue of the within Search Warrant to me, directed, I have searched for the goods and chattels therein named, at the place therein described*

(Strike either (1) or (2), which is inapplicable)

(1) and that I have such goods and chattels before the Court, described as follows:

ITEM #	DESCRIPTION	LOCATION FOUND	BY OFFICER
1	T Bag Computer Tower	Unit 210	DeGroot
2	Back saver cover	Unit 210	DeGroot
3	Bag with credit cards/mail	Unit 210	DeGroot

(2) and that I have been unable to find such goods and chattels.

Municipal Police Officer

Sheriff Deputy Sheriff

DATED AT: 11:20 AM

this 14th day of March A.D., 20 13

ADDRESS: 5720 Samrick NE
unit 210

RETURN ON SEARCH WARRANT