

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO: 8:05-Cr-475-T-27TGW

THOMAS SPELLISSY

and

STRATEGIC DEFENSE INTERNATIONAL, INC.

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**DEFENDANTS THOMAS SPELLISSY AND STRATEGIC DEFENSE  
INTERNATIONAL, INC.'S JOINT Renewed MOTION to SUPPRESS**

The Defendants, THOMAS SPELLISSY and STRATEGIC DEFENSE INTERNATIONAL, INC. (SDI) (hereinafter jointly referred to as "Defendants") by and through the undersigned attorneys, and pursuant to the Fourth Amendment to the United States Constitution that protects against unreasonable searches and seizures renews the move to suppress the evidence seized at Defendants' house. The law requires that search warrants be based on probable cause determined by a neutral magistrate.

**Background**

1. Before the court is Defendants' Motion to Suppress Results of Search (Dkt. 21), the Government's Response in opposition (Dkt. 22) and the Defendants' Reply (Dkt. 25). The Court conducted an evidentiary hearing on April 18, 2006 pursuant to Franks v. Delaware, 438 U.S. 154 (1978). The parties filed supplemental briefs after the hearing (Dkts. 39, 40, 41). Upon consideration of the evidence and testimony presented, Defendants' Motion to Suppress Results of Search (Dkt. 21) was denied (Dkt 44-1).
2. This case presents an unsettling example of a search warrant issued by a judge who was presented an affidavit with misstatements of fact, statements made in

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reckless disregard for the truth and omissions of favorable, material facts. Notwithstanding, absent the false and reckless statements, and even considering the material omissions, the affidavit establishes probable cause that Spellissy violated 18 U.S.C. § 207(a)(2) (Dkt 44-1, page 2).

3. At the Franks hearing, Special Agent Calvert arrived with a binder full of materials that he creatively used in crafting his Probable Cause Affidavit. This binder was entered into evidence at the hearing. (Dkt 38).
4. Defendants correctly contend that, contrary to Calvert's averment, no "documents" describe Spellissy as the PEO-SP through December 31, 2004. During the Franks hearing, Calvert testified that he relied on several documents within a binder provided to him by the Inspector General's office in drawing this conclusion. (Gov. Exh. #1). Although he identified three specific documents in the binder when asked to identify the documents from which he "learned that Spellissy was the PEO-SP through December 2004, not one of those documents identify Spellissy as the PEO-SP through December 31, 2004. When confronted with that, Calvert hedged. Realizing that there were no documents identifying Spellissy as the PEO-SP, Calvert vaguely referred to "some other," unspecified documents which he could not produce from the binder. Calvert's demeanor when confronted with this misstatement suggested to this Court that he was less than candid in his testimony, supporting Defendants' contention that he either had deliberately misrepresented Spellissy's status to the Magistrate or recklessly disregarded the truth, which he was unable to explain (Dkt 44-1, pages 4-5).
5. Defendants contend that the most egregious misrepresentation in Calvert's affidavit is his characterization of Spellissy as the PEO-SP for SOCOM "to his retirement on December 31, 2004." By all accounts, that statement was false. Spellissy was not the PEO-SP for SOCOM after July 2004. After July 2004, he was succeeded by Captain Rowland Huss. It is undisputed that Spellissy relinquished all procurement authority to Captain Huss on July 31, 2004, a fact Captain Huss testified was well known at MacDill (Dkt 44-1, page 5).
6. Ultimately, Calvert acknowledged that he "made the leap" that Spellissy was the PEO-SP until December 31, 2004, even though he knew that Captain Huss had succeeded Spellissy as PEO-SP on July 31, 2004. More importantly, for purposes of the validity of his affidavit, Calvert confirmed that he let the Magistrate "assume" Spellissy was the PEO-SP during the time he was working for NAMMO:

**Question:** November 27, December 4th, never. You just said he was PEO-SP and just let it go and then packed an affidavit with all sorts of things that he said in November - - late October, November and December of 2004, and let the magistrate assume he's the PEO-SP, and he's on the take from a foreign corporation, right?

**Answer:** Yes

This telling acknowledgment by Calvert demonstrates, at a minimum, a reckless disregard for the truth. Moreover, in this instance, his testimony confirms that he purposely represented that Spellissy was the PEO-SP through December 31, 2004, knowing that to be untrue. Yet, he allowed the Magistrate Judge to assume that Spellissy remained on active duty with full procurement authority while at the same time working for NAMMO, a Department of Defense contractor. This misrepresentation of Spellissy's active duty status permeates the entire affidavit, as evidenced by the final relevant paragraph: "This e-mail appears to indicate that Spellissy was employed by NAMMO prior to his retirement date of December 31, 2004." (Dkt 44-1, page 5-6)

7. The Court said "In sum, it was reckless for Calvert to represent that Lt. Col. Econom had advised Spellissy that § 207 prohibited him from representing NAMMO for two years, without including an accurate reference to the qualifying restrictions in §207. He had a copy of the letter and was admittedly aware of its content. The statement will therefore be redacted for purposes of evaluating whether the affidavit established probable cause (Dkt 44-1, page 11).
8. Defendants contend that "the real thrust of this affidavit is that Colonel Spellissy is alleged to have secretly been working for NAMMO, a foreign entity, while on active duty." (Dkt. 39, page 2). That may very well be an accurate description of Calvert's affidavit. According to Calvert, he believes Spellissy was illegally employed by NAMMO before his retirement on December 31, 2004, and within the two years after his termination from the service. Calvert's affidavit mirrors this theory of criminal culpability in paragraphs 7 through 10. Regardless of what Calvert personally believed and whether he was correct in that belief, however, the issue before this Court is whether his affidavit, with the intentional and reckless misstatements redacted, and even considering the omissions of fact Defendants complain are material, establishes probable cause that Spellissy violated § 207(a) (1) or (2) (Dkt 44-1, page 11).

9. Lt. Col. Econom also addressed Spellissy's pre-retirement employment, advising: "You should also be aware that you may begin new employment prior to retirement. . . . [T]he JER requires you to obtain the prior approval of your supervisor if this employment is with a prohibited source. You must complete an off-duty employment application." Spellissy had in fact completed the off-duty). Employment application and obtained the express approval, based on the recommendations of Dr. Uhler and the Judge Advocate's office, of SOCOM's Unit Commander to be employed as the President of Strategic Defense International, which would "involve working for a firm . . . that is engaged, or is endeavoring to engage, in business . . . with an agency of the Department of Defense." (Dkt 44-1, page 11, footnote 7)
10. Mr. Don Jones [Program Manager for USSOCOM Ammunition] was unavailable for the Motion to Suppress Hearing interviews, Motion to Suppress Hearing and the trial because he was deployed to Iraq (Dkt, 147 Exhibit A). Mr. Jones hired Colonel (Ret) Spellissy to go with him on the trip to Sweden, Norway and Germany. (Dkt 38)
11. In the affidavit for the search warrant, Special Agent Robert Calvert from the Defense Criminal Investigative Service stated in paragraph 11 of the affidavit "Your affiant learned from a taped interview conducted on March 2, 2005, between Col. Robert Rupp, Deputy Inspector General, SOCOM, and Don Jones, Program Manager, PEO-SP, Jones stated that approximately one or two weeks before their departure in November, 2004, for the meeting in Norway, Spellissy made the following comment to him: "I'm there not as a consultant, I'm there as a NAMMO rep." "Defendants were never given this tape and this alleged statement is contradictory to the evidence presented in Calvert's binder, Government Exhibit 1 from the Franks hearing or Dkt 38. In Dkt 147, Exhibit C, Trip Report, paragraph 4. B. (2) from Calvert's binder clearly states that "COL (Ret) Tom Spellissy was a Consultant to PM SOF Ammo" in Norway. The Motion to Compel the taped interview was denied (Dkt 148).
12. The Court found "When a search warrant affidavit contains, as Calvert's affidavit does, intentional misrepresentations and statements made in reckless disregard for the truth, and omits material facts critical to probable cause, the question is whether, after deleting the misstatements and including the material omissions, the affidavit is sufficient to establish probable cause. Franks v. Delaware, 438 U.S. 154; US v. Kirk, 781 F.2d 1498, 1502 (11th Cir. 1986). Excluding the false and reckless statements discussed, probable cause for a 5 207(a)(2) violation remains on the face of the affidavit. Section 207 prohibits a former officer, for two

years after termination of service, regardless of the officer's title or authority, from representing a contractor before the Department of Defense with respect to a particular matter which the officer knows or should know was pending before the officer during the last year of his service, which involved a specific party. Based on the facts in Calvert's affidavit, there was probable cause to believe that when Spellissy represented NAMMO during the meeting concerning the 70mm rocket warhead with the government in Norway, he had reason to know that the 70 mm rocket warhead listed in Dr. Uhler's procurement letter was a NAMMO product and that it had been a matter under his official responsibility as PEO-SP during May 2004, contrary to the prohibitions in 18 U.S.C. § 207(a). Accordingly, it is **ORDERED AND ADJUDGED** that Defendants' Motion to Suppress Results of Search (Dkt. 21) is **DENIED** (Dkt 44-1, page 12-13).

### **Witness has come forward**

13. Mr. James Rooney, the former President of Nordic Ammunition Company, Inc USA (NAMMO Inc) and President of Rooney Group International, Inc (RGI) has submitted an affidavit pertaining to the 70mm meeting between Mr. Jones and the Program Manager of NAMMO, Norway. Mr. Rooney was in Norway and attended the 70mm program meeting. Defendants were a consultant to Rooney Group International, Inc. Mr. Rooney clearly states that Defendant Spellissy was **not present** for the 70mm program meeting because of conflicts of interest issues. He also states that Special Agent Calvert nor the Assistant United States Attorney, Mr. Robert O'Neill never contacted him to discuss the 70mm program meeting in Norway. See Exhibit A, Rooney Affidavit.

### **Argument**

14. Mr. Rooney's affidavit is the final piece of information that unequivocally proves that there was no probable cause for Special Agent Calvert to search Defendant Spellissy's residence for a Title 18, U.S.C. § 207 (a) and (b) or § 208 (a) violation. No one testified at the Franks hearing that Defendant Spellissy was actually present during the 70mm program meeting. The Court inferred from the testimony and Calvert's affidavit that Defendant Spellissy was present at the meeting when NAMMO's 70mm program warheads were discussed, when in fact he was not. The Court erred by failing to recognize this material fact and that error is clear error, therefore the Court can not substantiate its findings in paragraph 12 with the information provided by Mr. Rooney to the Court.

**WHEREFORE** the Defendants move this Honorable Court for an order to suppress the evidence found at Defendants' residence because there was no probable cause to conduct the search.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been furnished by Electronic Filing to Sheryl L. Loesch, Clerk of the Court, U.S. District Court, Middle District of Florida, located at U.S. Courthouse, 801 N. Florida Ave., #223, Tampa, FL 33602-3800, and that e-mail notification of this filing will be sent to all interested persons on this 30<sup>th</sup> day of November, 2007.

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