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October 17, 2016

Honorable Kevin McNulty
United States District Judge
United States Post Office and Courthouse
Federal Square
Newark, New Jersey 07102

Re: United States v. Ravelo
Crim. No. 15-576 (KM)

Dear Judge McNulty:

Please accept this letter brief in lieu of a more formal submission in opposition to defendant Keila Ravelo's ("the defendant") motion to suppress evidence recovered from her cellular telephone ("the Phone"). For the reasons set forth below, the United States respectfully submits that the Court should deny the defendant's motion.

Statement of Facts

On December 22, 2014, Internal Revenue Service ("IRS") Special Agent ("SA") Cheryl Matejicka, former IRS Supervisory Special Agent ("SSA") Linda Masessa ("Masessa"), and other law enforcement officers executed the arrest of the defendant. Law enforcement conducted the arrest at the defendant's home pursuant to a Court authorized arrest warrant.

Law enforcement initiated the arrest by knocking on the front door of the defendant's home. Transcript of September 19, 2016, Suppression Hearing ("Tr."), 6:2-3. The defendant's husband and co-conspirator, Melvin Feliz ("Mr. Feliz"), answered the door. Tr. 6:3. Law enforcement placed Mr. Feliz under arrest.

SA Matejicka and former SSA Masessa proceeded up two flights of stairs. Tr. 6:2-14; 67:3-12. Upon reaching the top of the second set of stairs, law enforcement observed the defendant. Tr. 6:15-17; 67:18-22. At that time, law enforcement officers placed the defendant under arrest and put her in handcuffs. Tr. 6:18-25; 68:11. Law enforcement also secured the home. Tr. 70:10-11.

The defendant thereafter asked to use the bathroom. Tr. 7:3. In response, law enforcement officers removed the defendant's handcuffs and let her use the bathroom. Tr. 7:4-15; 70:10-71-1. The defendant was not immediately handcuffed after using the facilities because the house was secured and she needed to get dressed. Tr. 25:4-7; 53:3-5; 71:12-13. In addition, the defendant was not immediately handcuffed because she had been compliant, SA Matejicka did not view her as a threat, and law enforcement remained in close proximity to the defendant. Tr. 53:6-13.

SA Matejicka then told the defendant that she needed to get dressed and retrieve her passport. Tr. 7:14-15. In response, the defendant, accompanied by SA Matejicka and former SSA Masessa, walked into her bedroom. Tr. 7:16-19. This room had been previously checked by law enforcement and was determined to be secure. Tr. 71:17-22.

Upon entering her bedroom, the defendant picked up the Phone from the nightstand next to the bed. Tr. 8:1-2. The Phone was in plain view on top of the nightstand. The defendant then appeared to unlock the telephone. Tr. 8:3-4. Upon seeing this, SA Matejicka told the defendant that she was not allowed to make any telephone calls. Tr. 8:8-10; 75:4-5. In response, the defendant stated that she wanted to provide her attorney's telephone number to one of her sons. Tr. 8:11-13.

The defendant, still accompanied by law enforcement, then entered her walk-in closet. Tr. 8:15-19. Once inside the closet the defendant placed the Phone down. Tr. 8:22. SA Matejicka picked up the Phone in order to respond to the defendant's request to provide the attorney's number to one of the defendant's sons. Tr. 9:1-2; 32:10-14. SA Matejicka then asked the defendant for the Phone's code. Tr. 9:6-7. The defendant willingly gave the Phone's code to SA Matejicka. Tr. 9:8-9.

SA Matejicka entered the code that was provided by the defendant, which allowed SA Matejicka to unlock and access the Phone. Tr. 9:10-11. Once the Phone was unlocked SA Matejicka observed on the face of the Phone that the e-mail application was open and that there was an e-mail either to or from Gary Friedman. Tr. 9:12-14. The name "Gary Friedman," and the underlying communication, were significant to SA Matejicka as Mr. Friedman was potentially the defendant's co-conspirator in the crimes at issue in this case. Tr. 9:16-17, 10:17-19. Specifically, law enforcement believed that, among other things: (1) the defendant had obtained documents from Mr. Friedman's law firm that the defendant used to cover up her crimes; and (2) the sham companies the defendant and her husband created in furtherance of their fraud had made two payments to Mr. Friedman. Tr. 12:12-13:2-4.

SA Matejicka neither opened the e-mail nor asked the defendant to open the e-mail. Tr. 10:20-23. Instead, SA Matejicka, with the defendant's help, looked for and found the attorney's telephone number. Tr. 10:24-11:12. SA Matejicka then gave the Phone and the code to IRS SA Daniel Garrido. Tr. 11:11-14.

Legal Argument

1. Law Enforcement Properly Seized the Phone

Law enforcement properly seized the Phone. The Fourth Amendment bars "unreasonable searches and seizures." U.S. Const. amend. IV. A warrantless seizure is presumptively unreasonable. See Horton v. California, 496 U.S. 128, 133 (1990). Nonetheless, "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006). One such exception is that a law enforcement officer can seize evidence in plain view without a warrant so long as certain requirements have been met. "The rationale of the plain view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search' within the meaning of the Fourth Amendment – or at least no search independent of the initial intrusion that gave the officers their vantage point." Minnesota v. Dickerson, 508 U.S. 366, 375 (1993).

Under the "plain view" exception, law enforcement officers may seize an item during a warrantless search if: (1) the officers were lawfully in the position from which the evidence could be seen; (2) the incriminating character of the evidence was immediately apparent; and (3) the officers had a lawful right of

access to the object itself. Horton, 496 U.S. at 136; United States v. Stabile, 633 F.3d 219, 241 (3d Cir. 2011). Concerning non-contraband evidence, the Third Circuit has stated that plain view seizure is proper where law enforcement officers were properly on premises, discovery was inadvertent, and the incriminating nature of the evidence was immediately apparent. United States v. Scarfo, 685 F.2d 842, 845 (3d Cir. 1983).

A. Law Enforcement Officers Were Lawfully Present in the Defendant's Home on the Date of Her Arrest

Law enforcement officers were lawfully present in the defendant's home on the date of her arrest. It is uncontested that on December 22, 2014, officers arrested the defendant inside her home. Further, law enforcement observed and arrested Mr. Feliz when he opened the door. It is likewise uncontested that the arresting officers had an arrest warrant for both the defendant and Mr. Feliz. The officers were thus lawfully present in the defendant's home pursuant to the warrants for her and her husband's arrests. United States v. Pelletier, 469 F.3d 194, 199 (1st Cir. 2008).

B. The Incriminating Character of the Evidence was Immediately Apparent

The second element of the "plain view" exception – that the incriminating nature of the evidence be immediately apparent – is also satisfied. The "incriminating character" of evidence is immediately apparent if "there is probable cause to associate the [seized] property with criminal activity." Texas v. Brown, 460 U.S. 730, 741-42 (1983). Importantly, this standard does not require the officers to have "near certainty" that items in plain view are contraband or evidence of a crime. Brown, 460 U.S. at 741. Nor does the standard require an "officer to 'know' that items are evidence of a crime, but 'merely requires that the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items may be contraband . . . or useful as evidence of a crime . . . ." Brown, 460 U.S. at 742.

In this case the incriminating nature of the evidence on the Phone was immediately apparent. At the time of SA Matejicka' s observation, SA Matejicka was aware that Mr. Friedman was possibly the defendant's co-conspirator. This belief was based in part on that fact that in 2012 the defendant's employer questioned invoices from one of the two companies the defendant and Mr. Feliz caused to be created (the "Vendor") in furtherance of their criminal activity. To cover up her crime, the defendant submitted documents to her employer that she claimed were from the Vendor and represented work-product generated by the Vendor. However, metadata

associated with those documents indicated that the documents were authored not by the Vendor but by an individual who worked at Mr. Friedman's firm. See Tr. 12:15-20. The belief was also based on records that showed that at least two payments were made to Mr. Friedman from bank accounts associated with the Vendor and a second company that the defendant and Mr. Feliz caused to be created in furtherance of their fraudulent activity. Tr. 13:2-4. The payments Mr. Friedman received from the Vendor and the second company used in the course of the fraud totaled approximately $100,000. Law enforcement, on the date of the arrest, was not aware of any legitimate reason for these payments from the companies. Moreover, it would be unusual for a vendor who purports to provide law firms with litigation support services to make significant payments to the head of New York law firm by issuing checks in his name. Therefore, the fact that there was an e-mail, whether to or from Mr. Friedman, was evidence that at a minimum: (a) confirmed the defendant's knowledge of Mr. Friedman, the person from whom law enforcement believed she obtained documents to cover up her criminal activity; (b) demonstrated that the relationship between Ms. Ravelo and Mr. Friedman was personal in nature, as the defendant had previously resigned from her law firm; and (c) showed that the defendant had a relationship with Mr. Friedman independent of any relationship her husband Mr. Feliz had with Mr. Friedman. Thus, even without knowing the content of the email communication, it was immediately apparent to law enforcement that the communication itself was incriminating evidence.

C. The Officers had Lawful Access to the Phone and the Discovery was Inadvertent

Law enforcement had lawful access to the Phone and inadvertently discovered the evidence. As stated above, law enforcement entered into the defendant's home and arrested her pursuant to Court-authorized arrest warrants. Law enforcement, after arresting the defendant, granted her request to use the bathroom. Tr. 7:3. Since the home had been cleared, *i.e.*, rendered safe, they let her do so without handcuffs. Tr. 7:4-15; 70:10-71-1.

SA Matejicka then instructed the defendant to get dressed. The defendant was not immediately handcuffed after using the bathroom because she needed to get dressed and the house was secure. Tr. 25:4-7; 53:3-5; 71:12-13. Further, law enforcement remained in close proximity to the defendant and did not view the defendant, who had been compliant, as a threat. Tr. 53:6-13.

In response to SA Matejicka' s instruction to get dressed, the defendant led law enforcement into her bedroom. Tr. 7:16-19. This room had been

previously checked by law enforcement and was determined to be secure. Tr. 71:17-22.

Once inside her bedroom, the defendant walked directly to her bedside nightstand and picked up the Phone. Tr. 8:1-2. The Phone was on top of the nightstand. Thus, unlike looking through drawers of a desk or reaching into a clothing pocket, law enforcement could see there was no immediate physical risk in the defendant picking up the Phone. Due to the Phone's size, it was unlikely that the defendant, who had been compliant, would use the Phone as a weapon or that the Phone contained anything that could be used as a weapon.

The defendant then appeared to unlock the Phone. Tr. 8:3-4. Observing the defendant's actions, SA Matejicka told the defendant that she was not allowed to make any telephone calls. Tr. 8:8-10; 75:4-5. This was for good reason. Permitting a defendant to make a telephone call raises several safety concerns. First, law enforcement is unable to corroborate who a defendant is calling prior to and possibly even during a call. Second, unlike a defendant taking actions (walking, picking up a phone) in front of law enforcement, law enforcement would be unable to observe or control what a called individual did during or after the call. For instance, a called individual might try to destroy evidence or cause other people to arrive at the arrest location, thereby disrupting law enforcement's efforts to conduct a lawful arrest without incident. Although there is no specific evidence that those situations would have occurred here, SA Matejicka properly prohibited the defendant from placing a telephone call to maintain control and security of the arrest scene.

The defendant replied that she wanted to provide her attorney's telephone number to one of her sons. Tr. 8:11-13. To facilitate her request, SA Matejicka asked the defendant, after she was dressed, for the code to the Phone. Tr. 9:6-7. The defendant, without objection, willingly gave the code to SA Matejicka. Tr. 9:8-9. The defendant, an attorney by training and practice, was well-aware that her attorneys would be contacted following her arrest even if they were not immediately contacted by her sons.

SA Matejicka used the code and unlocked the Phone. Tr. 9:10-11. This act was taken solely at the defendant's request to obtain her attorney's telephone number. After the Phone was unlocked, SA Matejicka observed the information about an e-mail either to or from Mr. Friedman. This was a surprise to SA Matejicka; it was in no way the result of any act on her part to

obtain evidence.[1]

In sum, law enforcement therefore properly seized the Phone under the "plain view" exception to the Fourth Amendment.

2. The Inevitable Discovery Doctrine Warrants Denial of the Defendant's Motion

As set forth above, law enforcement lawfully seized the Phone. Even if the Phone was not lawfully seized based upon the plain view doctrine, the Court should admit evidence recovered from the Phone under the inevitable discovery exception to the exclusionary rule. Evidence obtained by unconstitutional means should not be suppressed "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police." Nix v. Williams, 467 U.S. 431, 447 (1984). In the present matter, law enforcement lawfully viewed on the Phone information about an e-mail between the defendant and Mr. Friedman. If law enforcement had not seized the Phone after inadvertently viewing this incriminating information, the United States would have either stationed law enforcement personal inside the defendant's home to guard the Phone or requested that defense counsel maintain the Phone while the United States obtained the appropriate search and seizure warrant. This eventuality is beyond doubt as the United States showed its intent -- it did obtain a search warrant from the Court. Thus, defendant's suppression motion should be denied under the doctrine of inevitable discovery.

3. The Court Should Completely Disregard the Testimony of Michael Feliz

Finally, the Court should disregard the biased and non-credible testimony given by Michael Feliz, the sole defense witness. Michael Feliz testified that he loves the defendant, his mother. Tr. 101:2-4. He also stated that it was important for her not to go to jail because he wants his mother to be around for

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[1] Indeed, as SA Matejicka stated during her testimony before this Court, IRS agents did not seek to have a search warrant authorized in advance of their arrival at the defendant's residence to effectuate the defendant's arrest. Tr. 13:12-14:4. There is no allegation or evidence that law enforcement unlawfully opened any drawers, searched any desks or cabinets, or looked through any documents in the defendant's home on the date of her arrest in the hope of discovering evidence. Similarly, there is no allegation or evidence that law enforcement seized anything other than the Phone from the defendant's home. As such, the notion that law enforcement maliciously and illegally search the Phone is not credible or consistent with the facts.

him. Tr. 102:20-25. Michael Feliz further stated that he receives not only emotional support but also significant financial support from his mother. Tr. 101:5-102:1. Michael Feliz, as many sons may do, testified with a bias and the goal of keeping his mother out of jail.

In light of this bias, it is not surprising that Michael Feliz provided testimony that he himself did not even believe to be true. Specifically, Michael Feliz testified on direct examination that there were "sixteen about, a dozen" law enforcement officers who entered the home on the date of the arrest. Tr. 91:20-24. On cross examination, AUSA Urbano asked how Michael Feliz arrived at the number sixteen. Michael Feliz responded that he "was told that number yesterday." Tr. 103:11-12. When AUSA Urbano asked who told him the number, Michael Feliz responded "the attorneys." Tr. 103:13-14. When Mr. Urbano further questioned him, Michael Feliz stated that he "thought there were more" agents in the home. Tr. 103:15-16. There is but one conclusion to reach – Michael Feliz, out of love for his mother and hoping to keep her out of jail, testified not based on his memory or knowledge, but to information, including contrary information, provided to him by others.

Even where Michael Feliz did not expressly admit his testimony was inaccurate, his testimony is not believable. For instance, Michael Feliz testified that law enforcement allowed him to retrieve the Phone from his mother's bedroom after he asked "politely". Tr. 96:8-10. Michael Feliz, though, did not testify that any law enforcement officer accompanied him during this supposed retrieval. This testimony is contradicted by other testimony, including his own. Indeed, Michael Feliz stated that law enforcement remained with him in the living room. Tr. 104:1-4. He also testified that law enforcement officers were not respectful to him. Tr. 103:24-25. Further, the testimony of SA Matejicka and former SSA Masessa demonstrates that law enforcement accompanied the defendant wherever she went and also accompanied Michael Feliz's brother downstairs to the living room. Thus, Michael Feliz asks the court to accept as true a version of events where disrespectful law enforcement agents, agents who were always maintaining control over him in the living room and others throughout the home, allowed him to go unaccompanied to retrieve the Phone simply because he asked "politely". The United States submits that the Court should see the testimony for what it is – alleged facts stated by a loving son who hopes to keep his mother out of prison.

In addition, Michael Feliz testified that the code needed to access the Phone was never said out loud while law enforcement was in the defendant's home. Tr. 99:1-3. The evidence, though, indicates otherwise. Drug Enforcement Administration ("DEA") SA Robert Bowe was assigned to this matter

because of the possibility that law enforcement might come across potentially privileged materials. On December 30, 2014, SA Bowe took possession of the Phone. He used the code to unlock the Phone and obtain the serial number for the Phone. Additionally, he wrote the code on a container into which he put the Phone. The only testified to facts that result in SA Bowe having the code are those testified to by SA Matejicka and former SSA Masessa. Thus, the fact that SA Bowe knew the Phone's code on December 30, 2014, corroborates the testimony of SA Matejicka and refutes the testimony of Michael Feliz.

In sum, the testimony of Michael Feliz should be wholly dismissed as biased, intentionally contradictory to his own knowledge and memory, and not credible in light of the facts and evidence in this case.

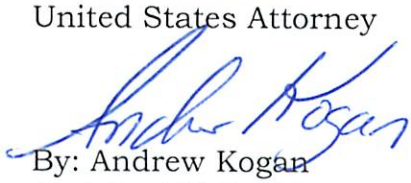
Conclusion

For all the reasons set forth above, law enforcement properly seized the Phone. Accordingly, the United States respectfully submits that the Court should deny the defendant's suppression motion.

Thank you for your consideration.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney



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