

Attachment [2]

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 V.) CASE NO.: CR-00-170-N
)
 BRADLEY JOSEPH STEIGER)

MOTION FOR NEW TRIAL
BASED ON NEWLY DISCOVERED EVIDENCE

COMES NOW the Defendant, Bradley Joseph Steiger, by and through his undersigned counsel, and hereby submits this *Motion for New Trial Based on Newly Discovered Evidence*. As grounds for granting this motion, Defendant would show the following:

1. On November 9, 2000, Bradley Joseph Steiger was charged in a six-count Indictment with various offenses relating to the sexual exploitation of minors.
2. On December 12, 2000, Dr. Steiger filed a Motion to Suppress challenging the search warrant affidavit and subsequent search of his home. The court held an evidentiary hearing on the motion on January 5, 2001.
3. Following the hearing, Dr. Steiger filed two Supplemental Motions to Suppress, and on March 15, 2001, the court held a second evidentiary hearing on the issues raised in these new motions. At issue was whether an anonymous source, while acting as an

agent of the government, illegally searched Dr. Steiger's computer and illegally seized photographs and other information which he then sent to the Montgomery Police Department.

4. On March 23, 2001, the Magistrate Judge recommended that the motions to suppress be denied and held that the Fourth Amendment was not implicated because the anonymous source, known only as Unknown User, was acting as a private citizen and not as an agent of the Government.

5. Dr. Steiger objected to this recommendation, and on April 4, 2002, the court held a third hearing regarding the motion to suppress.

6. Following this hearing, Dr. Steiger filed another Memorandum in Support of Motion to Suppress and would file two more briefs in response to the Government's Reply.

7. On June 7, 2001, The District Court Judge issued a Memorandum Opinion and Order in which he overruled Dr. Steiger's objections and adopted the Magistrate Judge's recommendation that the motions to suppress be denied.

8. Trial of Dr. Steiger began on July 16, 2001. On that date, Dr. Steiger filed a Renewed Motion to Suppress Based on Newly Discovered Evidence as well as a Motion to Quash for Just Cause. He filed a Supplement to the Motion to Quash the following day.

9. In short, the motions alleged that the Government, and specifically, the case agent, FBI Agent Margaret Faulkner, had information that Unknown User was or had been in the United States, and had not been in Turkey as alleged by the Government. Such

information, argued Dr. Steiger, tended to show that not only had Unknown User been identified by the Government, but also that he had been acting at its direction and with its approval. If correct, this would have supported Dr. Steiger's argument that the search and seizure of his computer files violated the Fourth Amendment because Unknown User was acting at the behest of law enforcement.

10. The Government, however, vehemently denied having any knowledge that Unknown User had ever been anywhere but in Turkey. The prosecutor stated:

Your Honor, there is one point I wanted to make in discussing this matter with Agent Faulkner. I asked her to be extremely careful in making sure that the government had everything that we needed to provide to the Court. And one of the things that she pointed out to me was that on the document that we provided to the defense there are some highlighted things involving the numbers. A few of those were checked. I asked her to retrieve those items. And they showed that they were all contacts in the country of Turkey: that all of those things, the three or four that were actually followed through on. There was a list of perhaps thirty or thirty-five. And I asked her to retrieve that data. And each of those contacts did prove to be an Istanbul, Turkey contact.

And the reason I did that, Your Honor, is the government has really dutifully attempted to ascertain whether there is any information that this person was somewhere other than the country of Turkey. And I have not seen it and Agent Faulkner has not seen it. All of the information that we got from the police department is consistent with that, along with these contacts that were made with their representatives in Ankara, Turkey. The government can state that we have not seen anything to indicate that this person is other than was represented as a citizen of Turkey. There is no contact that we have been able to ascertain that shows he has any contact with

the government or any police agency.

(Trial Transcript, pages 287-288).

11. These motions were denied by oral order of the Court.

12. On July 19, 2001, Bradley Steiger was found guilty of five counts of the Indictment.

13. Following the filing of post-trial motions, the Court granted a Judgment of Acquittal with respect to two of the counts, and on October 25, 2001, Dr. Steiger was sentenced to 210 months imprisonment on the remaining three counts.

14. On November 1, 2002, Judge Williams, Senior United States District Court Judge for the Eastern District of Virginia, issued a written opinion in the case of *United States v. Jarrett*, 2002 WL 31496302 (E.D.Va.). In that case, the court considered another case involving Unknown User and FBI Agent Margaret Faulkner. Again Unknown User had sent an e-mail message and photographs to the Montgomery Police Department, this time involving the defendant, William Jarrett. Judge Williams concluded that Unknown User and Agent Faulkner had engaged in a “‘pen-pal’ type correspondence” and that Unknown User was indeed acting as an agent of the Government. (A copy of this opinion is attached as Exhibit A).

15. Also in the *Jarrett* opinion, the District Court Judge made the following finding of fact:

At some point in the FBI’s attempt to determine the identity of Unknownuser **early in the Steiger investigation**, the FBI

obtained a United States phone number for Unknownuser. Agent Faulkner called the phone number and was connected to a voicemail service. Agent Faulkner left two voice messages for Unknownuser, asking him to contact the FBI. Unknownuser did not respond to the voicemail messages at that time, but a later email message in which Unknownuser commented on Agent Faulkner's accent shows that Unknown User did in fact receive the voice messages.

(Exhibit A, page 3) (emphasis added). This finding of fact showS that Agent Faulkner did not testify truthfully regarding her knowledge of Unknown User's identity and her attempts to locate him.

16. Transcripts from the two evidentiary hearings held in the *Jarrett* case have been requested, and the office of undersigned counsel expects to receive them no later than next week. Therefore, Dr. Steiger requests that he be allowed to supplement this motion following receipt of those transcripts.

17. The Eleventh Circuit has held that, in order for a motion for new trial based on newly discovered evidence to be granted, the defendant must show: that the evidence is newly discovered; that the defendant exercised due care to discover the evidence; that the evidence is material and not merely cumulative or impeaching; and that the evidence was of such a nature that a new trial would probably produce a different result. *United States v. Schlei*, 122 F.3d 944, 991 (11th Cir. 1997). Dr. Steiger meets this test for granting his motion for a new trial.

18. Dr. Steiger did not know that Agent Faulkner had phoned Unknown User at a phone number in the United States until after she had testified in the *Jarrett* case. There

were multiple instances throughout the suppression hearings and during the trial where she was asked about her contacts with Unknown User and whether she had any information which would indicate he was somewhere other than Turkey. She denied having any such information. That Dr. Steiger was diligent in his efforts to obtain this information cannot be denied. He filed over a dozen motions addressing this issue and requested and was granted three evidentiary hearings on the matter. Dr. Steiger simply was not told the truth by Agent Faulkner and the Government did not produce any documents which would have revealed this information, although such documents were requested.

Although this evidence could be used to impeach Agent Faulkner, it is not merely impeaching and it was material to the suppression issue. The central concern regarding the suppression issue was whether Unknown User was working for or at the behest of law enforcement. Knowing that the Government knew where he was and had called him at a phone number within the United States, and then concealed this information, shows that the relationship between the FBI and Unknown User was more extensive than Agent Faulkner admitted. Had the defense known this United States phone number, then obviously it would have known which city and state Unknown User was in and would have had a means for possibly discovering his or her true identity. In preventing us from doing so, Agent Faulkner obstructed defense counsel's ability to investigate this case and robbed Dr. Steiger of his constitutionally protected right to due process of law. Had Dr. Steiger been able to use this evidence to prove that Unknown User was acting as a government agent, the suppression

motion would have been granted.

19. In order to establish the facts as set forth in this motion, Dr. Steiger respectfully requests that the court set this matter for an evidentiary hearing at a date following the filing of a supplement to this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of November, 2002, served a copy of the foregoing upon the following, by placing a copy of the same in the U.S. mail, postage prepaid and properly addressed:

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