

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2345

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

MOHAMED IBRAHIM KHALID,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CR H 91 214 1)

(November 14, 1994)

Before GARWOOD, JOLLY, and STEWART, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

Effective February 1, 1986, the United States imposed an embargo on trade with Libya. Based on a prior investigation into violation of this embargo, United States Customs Service agents obtained search warrants to search Mohamed Ibrahim Khalid's home and office for certain classes of documents relating to his alleged illegal business with Libya. Following execution of these search

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

warrants, the district court, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, ordered the government to return Khalid's property and to retain copies of only those documents relating to Khalid's business with Libya. There was no appeal from this order. Khalid was, subsequently, indicted on several counts of trading with Libya in violation of the embargo on trade. Thereafter, the district court (a different judge from the Rule 41(e) hearing) granted Khalid's motion to suppress all evidence seized during the searches on grounds that the warrants were facially overbroad, that the searches exceeded the scope of the warrants and therefore, the evidence was seized in violation of Khalid's Fourth Amendment rights. The government brings this interlocutory appeal seeking to reverse the district court's suppression ruling.

I

The National Oil Corporation (the "NOC"), an entity owned by the Libyan government, sent the defendant, Khalid, to Texas to manage a subsidiary of the NOC, Umm Al-Jawaby Petroleum Co. ("Umm Al-Jawaby"). Effective February 1, 1986, however, the business climate for the NOC changed drastically when the United States imposed an embargo on trade with Libya basically prohibiting any business with or in Libya. In response to this situation, Khalid formed Lexford International¹ supposedly to provide consulting

¹Lexford International was formerly Lexford Enterprises. The warrant was issued to cover documents under either name, but for

services for the NOC and Umm Al-Jawaby as they wound down operations in the United States.

Based on the affidavit of a Customs Service agent attesting to evidence of Khalid's continuing business with Libya in violation of the embargo, a magistrate judge issued two warrants for the search and seizure of several classes of items, first for Khalid's home and, second for his business.² On April 22, 1991, Customs Service

ease of reference, we will refer to Lexford International as collectively Lexford International/Lexford Enterprises.

²These identical warrants authorized the agents to search for and seize:

(1) any and all correspondence, telexes, facsimiles, contacts, records, notes, ledgers and purchase orders transmitted or received between Mohamed Khalid (Lexford International/Lexford Enterprises), Umm Al-Jawaby Oil Service Co. LTD, ACM International Inc., K.M.G. International Supply LTD., the government of Libya, or any other person or corporation acting as an agent or subsidiary of the Libyan Government, or any other person or corporation involved in transactions involving the diversion of oilfield equipment, or any other goods, services or technology from the U.S. to Libya.

(2) any and all passports in the possession of Mohamed Khalid;

(3) any and all bank correspondence, bank wire instructions, letters of credit and cashiers checks transmitted or received between Mohamed Khalid (Lexford International/Lexford Enterprises), Umm Al-Jawaby Oil Service Co. LTD, ACM International Inc., K.M.G. International Supply LTD., the government of Libya, or any other person or corporation acting as an agent or subsidiary of the Libyan Government, or any other person or corporation involved in transactions involving the diversion of oilfield equipment, or any other goods, services or technology from the U.S. to Libya.

(4) any and all recoverable and readable data existing in the hard disk drive of computers and floppy disks which relate to correspondence or business transactions between Mohamed Khalid (Lexford International/Lexford Enterprises), Umm Al-Jawaby Oil

agents executed the warrants and seized countless documents located throughout his home and office. Beginning on April 23, 1991, the district court, on Khalid's motion, held a series of Rule 41(e) hearings for the return of his property.³ As a result of these hearings, the court granted Khalid's motion to the extent the warrants were "excessively executed," which he termed a preliminary finding. The court directed the government to return the original items to Khalid but allowed the government to retain copies of the documents that related to dealings with Libya. There was no appeal taken from this order.

On December 12, 1991, Khalid was indicted on several counts related to the violation of the trade embargo with Libya. This criminal case was assigned to a different judge. On March 5, 1992, Khalid moved to suppress the evidence seized in the searches.⁴ Although the district court did not hear any testimony on

Service Co. LTD, ACM International Inc., K.M.G. International Supply LTD., the government of Libya, or any other person or corporation acting as an agent or subsidiary of the Libyan Government, or any other person or corporation involved in transactions involving the diversion of oilfield equipment, or any other goods, services or technology from the U.S. to Libya.

³A Rule 41(e) hearing is conducted by the district court on motion of a party aggrieved by an unlawful search and seizure or by deprivation of property. FED. R. CRIM. P. 41(e) (1994). The court can return property to the party entitled to lawful possession of the property. Id.

⁴Khalid joined in the motion to suppress filed on February 28, 1992, by one of his co-defendant's. This co-defendant is not a party to this appeal.

suppressing the evidence, the court took judicial notice of the transcript of the Rule 41(e) hearing. The court then granted Khalid's motion to suppress all the evidence seized from Khalid's home and office. The court held that although probable cause existed for issuance of the warrants, the warrants were nevertheless facially overbroad. The court further held that the agents seized evidence beyond the scope of the warrants. Finally, the district court denied the government's motion for reconsideration, which requested the right to present evidence and conduct an oral hearing. The government brings this interlocutory appeal from the district court's ruling suppressing all of the evidence seized during the searches.

II

We review a district court's findings of fact on a motion to suppress for clear error and its ultimate determination of reasonableness under the Fourth Amendment de novo. United States v. Hill, 19 F.3d 984, 987 (5th Cir. 1994), cert. denied, 115 S.Ct. 320 (1994).

To determine whether the district court properly suppressed all the evidence obtained during the searches, we must consider first whether the warrants were facially defective and finally whether the searches were improperly conducted through seizure of evidence outside the scope of the warrants.

A

The district court held that the warrants were facially overbroad for two reasons. First, the warrants failed to establish a time frame for the documents sought, allowing the agents to "scour the home and office for any information that might link Khalid to Libya." Second, the warrants failed to define the limitations of the seizure, permitting the agents latitude to "empty the house and office, including the garbage, in boxes and sort through it at Customs' convenience." The government contends that the warrants were not facially overbroad. The government argues that the warrants were sufficiently specific so as to meet the Fourth Amendment's requirement of particularity in describing the items seized. See U.S. CONST. amend. IV (warrant must "particularly describ[e] the place to be searched and the persons or things to be seized").

The Fourth Amendment prohibits search warrants that permit "a general, exploratory rummaging in a person's belongings." Williams v. Kunze, 806 F.2d 594, 598 (5th Cir. 1986) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 467, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564 (1971)). The description contained in the warrant must permit the searching officer reasonably to know what items are to be seized. United States v. Beaumont, 972 F.2d 553, 560 (5th Cir. 1992), cert. denied, 113 S.Ct 2384 (1993). Where, however, specific particularity is impossible, a general description of the types of items to be seized can be sufficient. Williams, 806 F.2d at 598. In this case, the warrants and accompanying attachments

sufficiently describe the types of items to be seized by the agents under the circumstances.⁵ See supra note 2. The types of items described in the warrants included generally, all passports in Khalid's possession, and all general correspondence and communication, all bank correspondence, and all correspondence on a computer hard drive and floppy disks between Khalid, Lexford International, Umm Al-Jawaby, and the Libyan government. Consequently, the warrants clearly and particularly identify general categories of items having a relation to the alleged illegal business conducted with Libya in violation of the embargo by Khalid, Lexford International, or anyone else involved in the diversion of goods from the United States to Libya. Furthermore, the failure of the warrants to specify an explicit time for the documents sought is not alone conclusive as to the validity of the warrants. The agents conducting the search could infer the time frame for the documents sought from the nature of the charges against Khalid--illegal diversion of goods from the United States to Libya in violation of the trade embargo that had been imposed in February 1986. Documents having no relation in time to the crimes

⁵The affidavits establishing probable cause to issue the search warrants were submitted to the magistrate judge for consideration, but remained sealed from that point until the suppression hearing. Because the affidavits were not attached to the warrants when executed, we will not consider the effect of the affidavits on the validity of the warrants. See Beaumont, 972 F.2d at 561 (finding affidavit may be used to clarify ambiguous warrant but "affidavit must be attached to the warrant so that the executing officer and the person whose premises are to be searched both have the information contained in the warrant").

charged would be necessarily excluded from the interest of the agents. We find that the descriptions contained in the warrants were sufficient to allow a reasonable officer to determine which items were within the scope of the warrants, even absent an explicit time limitation. Consequently, we hold that because the warrants' descriptions meet the particularity requirement of the Fourth Amendment, the warrants are facially valid. We reverse the district court's finding that the warrants are general warrants.⁶

B

We turn now to consider whether the searching agents properly executed the warrants and seized only items within the scope of the warrants.⁷ The district court held that the agents treated the warrants as general warrants and seized evidence in an "unbridled and unabashed" manner.⁸ Yet, our review of the record shows that

⁶Because we hold that the warrants are facially valid, we need not address the government's argument concerning the agents' good faith reliance on the warrants. See United States v. Leon, 468 U.S. 897, 922, 104 S.Ct. 3405, 3420, 82 L.Ed.2d 677 (1984) (holding evidence is not suppressed if officer acted in objective reliance on search warrant later found to be defective).

⁷The government contends that, assuming the warrants were facially overbroad, the district court should have severed the invalid portion of the warrants and suppressed only those items not supported by probable cause. Because we have found that the warrants were facially valid and not overbroad, we will not address the merits of severing the invalid portion of the warrants and the resulting suppression of that evidence. See United States v. Cook, 657 F.2d 730, 734 (5th Cir. 1981).

⁸The Customs' agents seized items from throughout Khalid's home and business, including a Christmas card from a bank, freshly printed business cards, Khalid's tax returns and naturalization certificate, a computer and monitor, and a package of blank

all documents seized by the agents that related to Khalid's export business were relevant to the scope of the investigation conducted and crimes charged. However, seizure of Khalid's personal effects was not authorized by the warrants.⁹

"[U]nder the `severability' doctrine, items that are illegally seized during the execution of a valid warrant do not affect the admissibility of evidence legally obtained while executing the warrant." United States v. Hamilton, 931 F.2d 1046, 1054 (5th Cir. 1991). Consequently, if a court finds that certain items were illegally seized, even though the warrant itself was not facially defective, the admissibility of the other legally seized items is unaffected.¹⁰ Hamilton, 931 F.2d at 1054.

purchase orders. Apparently, Khalid commingled many of his business and personal files making seizure of only those documents relating to his export business difficult. Additionally, the agents could not copy nor access the files contained on Khalid's computer necessitating seizure of the entire computer and monitor.

⁹We note, however, that this issue appears to be largely moot as the government has returned a majority of the seized items to Khalid, pursuant to the district court's Rule 41(e) order.

¹⁰Khalid argues that the "flagrant disregard" exception to the doctrine of "severability" should operate to exclude all evidence obtained during this search. Although this exception has been advanced by some circuits to limit the scope of admissibility when agents search with disregard for the terms of the warrant, we have not adopted such a theory. See United States v. Williams, 919 F.2d 1451, 1461 (10th Cir. 1991) (suppressing all evidence obtained in search conducted in flagrant disregard of terms of warrant), cert. denied, 499 U.S. 968 (1991); United States v. Wuagneux, 683 F.2d 1343, 1354 (11th Cir. 1982) (finding doctrine of severability applies except when officers act with "flagrant disregard" for terms of warrant), cert. denied, 464 U.S. 814 (1983). Because we find no evidence in the record to support the argument that the agents indiscriminately and randomly seized items in Khalid's

We hold that, under the rule established in Hamilton, the district court erred in suppressing all the evidence seized in the searches. The valid warrants broadly authorized seizure of basically any documents between Khalid, Lexford International, Umm Al-Jawaby, the Libyan government or any other person involved in the diversion of goods from the United States to Libya. One agent involved in the search testified during the Rule 41(e) hearings that because Khalid was involved in the transshipment of goods to Libya, the agents seized all documents relating to exports on the belief that Khalid's entire export business involved diversion of goods to Libya. We agree that the warrants authorized seizure of all documents related to Khalid's export business located in his home or office. This conclusion would seem to be the only reasonable one given the nature of the charges against Khalid and his method of concealing his alleged illegal trade with Libya. The agents, however, seized not only documents covered by the warrants concerning Khalid's export business, but also personal items falling outside the scope of the warrants. Still, Khalid presented no evidence to support a conclusion that the agents acted with total disregard for the terms of the warrant. Accordingly, only personal items seized by the agents outside the scope of the warrants should be suppressed. Consequently, we remand for a determination of which items were covered under the descriptions in

office and home, we decline the opportunity to adopt this exception.

the warrants and accompanying affidavits and thus were properly seized. In accordance with this determination, only the remaining items should be suppressed.

IV

In conclusion, we reverse the district court's judgment suppressing all the evidence seized during these searches. We hold first that the warrants facially meet all constitutional requirements but, second, that the warrants were improperly executed by the agents. Yet, we emphasize that all business records related to Khalid's export business are within the scope of the warrants, and only those items associated with Khalid's personal matters are to be suppressed. Accordingly, we remand this case to the district court to exclude only evidence seized that is not within the terms of the warrants. For the foregoing reasons, the judgment of the district court is AFFIRMED in part and REVERSED and REMANDED in part for further proceedings consistent with this opinion.

AFFIRMED in part, REVERSED and REMANDED in part.