UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

-versus-

ASANTE BERKO,

Defendant.

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20-CR-328(DG)

United States Courthouse
Brooklyn, New York

December 17, 2025
10:30 a.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE DIANE GUJARATI
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

(In open court.)

THE COURTROOM DEPUTY: All rise. United States of America against Asante Berko. Is the Government ready?

MS. WEIGEL: Yes. Good morning, your Honor. Jessica Weigel and Tara McGrath from the Eastern District of New York, and joined by our colleague Katherine Nielsen from the fraud section, as well as paralegal specialist Liam McNath.

THE COURT: Good morning everybody.

MR. BOONE: Good morning, your Honor. Robert Boone for Mr. Berko, who is standing next to me. Also in court here is Mr. Boyd Johnson, Emily Gruener and Walker Schneider.

THE COURT: Good morning everyone. Everyone may be seated.

We're convened today for a conference. Before we take up other matters, I will give the parties my ruling on defendant's motion filed at ECF No. 32.

For the benefit of the court reporter I'm going to be speaking slowly. We will be here a while, get comfortable.

Defendant's motion, which is opposed, seeks dismissal of the Indictment and suppression of evidence obtained pursuant to a search warrant.

On August 28, 2025, oral argument was held on the motion.

Following oral argument, the parties filed

additional submissions and on October 15, 2025, the Court granted defendant's request for a hearing with respect to that portion of the motion that seeks dismissal of the Indictment.

On November 5, 2025, an evidentiary hearing was held on that portion of the motion that seeks dismissal of the Indictment. Specifically, on three issues the Court identified, which are: (1) the reason or reasons for initially sealing; (2) the reason or reasons for maintaining the Indictment under seal; and (3) whether defendant suffered prejudice.

On November 20, 2025, each party filed post-hearing briefing.

I assume the parties' familiarity with the record to date as it relates to the motion, including with all of the relevant submissions, each of which I have considered. I note that the parties largely agree on the applicable law governing the various issues implicated by the motion. Their principal disagreements lie in the application of the law to the facts and circumstances here.

I will address the portion of the motion that seeks dismissal of the Indictment first.

Defendant argues that the Indictment should be dismissed for two reasons: (1) because the case is barred by the statute of limitations; and (2) because defendant's Sixth Amendment right to a speedy trial was violated.

With respect to the first reason, defendant argues that the Indictment was improperly sealed and that the unsealing of the Indictment was unreasonably delayed such that the Indictment was not found until the date of unsealing, which was outside the applicable statutes of limitations. Defendant argues that the Government failed to establish that it had a reasonable and good faith basis for requesting sealing of the Indictment -- i.e., a legitimate prosecutorial purpose for sealing; that the unsealing of the Indictment was unreasonably delayed in that the Government did not exercise reasonable care in locating defendant; and that defendant suffered prejudice from the delay in unsealing the Indictment. On this last point, defendant argues that a showing of prejudice should not be required because sealing was improper and unsealing was unreasonably delayed.

With respect to the alleged violation of defendant's Sixth Amendment right to a speedy trial, defendant argues that all four factors under the Barker test weigh against the Government.

The Government argues that the Indictment was found within the applicable statutes of limitations and that defendant's constitutional right to a speedy trial has not been violated.

With respect to statutes of limitations, the Government argues that sealing of the Indictment was proper;

that maintaining the Indictment under seal was proper given that defendant was overseas and the Government made reasonable efforts to effectuate his arrest; and that therefore the Indictment was found within the applicable statutes of limitations. And the Government argues that defendant has made no showing of substantial actual prejudice that would warrant dismissal.

With respect to defendant's right to a speedy trial, the Government argues that the Barker factors do not support defendant's contention that his Sixth Amendment right to a speedy trial has been violated, including because defendant has not demonstrated particularized prejudice.

The parties disagree as to the relevant period of delay for purposes of the speedy trial analysis. Their disagreement stems from a disagreement over whether the Second Circuit's Watson case remains good law after the Supreme Court's decision in Doggett.

The Government appears to take the position that even if the relevant period of delay is as defendant asserts, there has been no speedy trial violation.

I want to confirm that I accurately summarized the parties' arguments.

Can the Government confirm that?

MS. WEIGEL: Yes, your Honor.

THE COURT: And defense counsel?

MR. BOONE: Yes, your Honor.

THE COURT: Upon consideration of the applicable law and the record before the Court, including the evidence presented at the hearing on the motion, that portion of the motion that seeks dismissal of the Indictment is denied.

As an initial matter, I note that I found the testimony given at the hearing to be credible. Both the testimony of the Government's witness, FBI Special Agent McNair, and the testimony of defendant's witness, his former counsel Carl Loewenson. The Government has requested that a portion of Mr. Loewenson's testimony be stricken as a sanction for what the Government characterizes as defendant's blatant violation of his reciprocal discovery obligations. The request to strike is denied.

On the record before the Court, I do not find that striking the testimony is warranted. The defendant's conduct does raise some concerns though. In any event, I note that Mr. Loewenson's testimony was not particularly helpful to defendant's position with respect to dismissal of the Indictment and in significant respects, Mr. Loewenson's testimony undercut defendant's arguments, including on the issue of prejudice.

With respect to the initial sealing of the Indictment in August 2020, as the parties are aware, Rule 6(e)(4) of the Federal Rules of Criminal Procedure provides in

relevant part that the magistrate judge to whom an Indictment is returned may direct that the Indictment be kept secret until the defendant is in custody or has been released pending trial. As the parties also are aware, a magistrate judge's decision to direct sealing is afforded great deference. See United States vs. Srulowitz, 819 F.2d 37 at 41, Second Circuit 1987; see also, United States vs. Southland Corporation, 760 F.2d 1366 at 1380, Second Circuit 1985.

In light of defendant's motion, the Government must demonstrate that there were legitimate prosecutorial purposes for sealing. See Srulowitz, 819 F.2d at 41. The Government has done so here.

The record reflects that at the time the Indictment was returned, defendant was not yet in custody. Indeed, he was not even in the United States. The record also reflects that the Government had well-founded concerns about risk of flight that motivated the sealing request as well as well-founded investigative concerns that motivated the sealing request.

Notably, the record reflects that the Government had concerns on both fronts in part based on the unique facts of this case, including the allegations about the involvement of, and defendant's connections to, certain officials and/or former officials of Ghana. Because of the unique facts here, some of the authority on which defendant relies in support of

the request for dismissal is not sufficiently analogous to be persuasive -- or even useful -- to the Court's analysis here. Defendant's argument that the Government failed to establish legitimate reasons for sealing the Indictment is belied by the record, including the sealing request itself, other documentary evidence, and testimony from both witnesses at the hearing. Defendant's assertion that the sealing request contained false statements is unpersuasive in light of the language of the request itself, the testimony of Special Agent McNair, and the relevant context here.

Notably, the Government did not state -- or even imply -- that there was no extradition treaty with Ghana.

Further, any suggestion that the Government was required to afford defendant the opportunity to self-surrender is unsupported by authority and is unavailing, particularly on the facts of this case. Notably, although defendant attended a proffer session with the Government in the United States, he did so only having obtained a safe passage letter. And, notwithstanding defendant's reference in briefing to defendant cooperating with the Government -- a characterization that the Government disputes -- the record does not reflect that defendant would have self-surrendered on an Indictment. Even Mr. Loewenson, defendant's counsel at the relevant time, did not say as much at the hearing.

The Government has made the required showing with

respect to the initial sealing of the Indictment.

With respect to the issue of maintaining the Indictment under seal, as the parties are aware, the length of time that an Indictment remains under seal must be reasonable. See, e.g., United States vs. Nassimi, No. 04-CR-706, 2023 Westlaw 3584409 at *3, Southern District of New York May 22, 2023; United States vs. Heredia, No. 02-CR-1246, 2003 Westlaw 21524008 at *7, Southern District of New York July 3rd, 2003; United States vs. Weiss, No. 92-CR-890, 1993 Westlaw 256707 at *4 to 6, Southern District of New York July 7, 1993.

Here, the Indictment remained under seal until defendant's arrest in November 2022. The Government does not appear to dispute that it must demonstrate that the length of time the Indictment was sealed was reasonable. The Government has made that showing here.

Although the length of delay is not insignificant, the Government's decision to maintain the Indictment under seal until November 2022 was in service of a legitimate prosecutorial objective -- namely, effectuating defendant's arrest.

Defendant's assertion that the Government did not exhibit reasonable care and lacked diligence in locating defendant post-Indictment is belied by the record. The record reflects reasonable and diligent efforts by the Government to locate and arrest defendant during the period during which the

Indictment was under seal. Those efforts include: Preparing and submitting a request to INTERPOL for a diffusion notice, which notice was issued and went out to all member countries except Iran, Sudan, Syria, Palestine and Ghana. Confirming that an arrest warrant for defendant that had been entered in NCIC remained an active arrest warrant in NCIC. Maintaining a travel alert with respect to defendant and tracking defendant's travel. Seeking travel records from the U.K. with respect to defendant. Preparing to arrest defendant after having learned of intended travel through J.F.K. airport, including by arranging for a short suspension of the diffusion notice to facilitate arrest in the United States, which would have avoided a lengthy extradition-related delay. And following up on leads concerning defendant's whereabouts, including, for example, requesting information from authorities in Angola.

Importantly, as the Government persuasively argues, on the facts here, it was reasonable for the Government not to seek defendant's extradition from Ghana. The Government has amply demonstrated that it took steps to understand and explore the possibility of extraditing defendant from Ghana and reasonably concluded that there were both significant risks to seeking extradition from Ghana and other reasonable measures available to secure defendant's arrest.

Agent McNair testified in detail about the risks,

including the risk that defendant would be allowed to flee to a country that would not extradite him or that defendant would be allowed to continue living in Ghana with the Ghanaian Government not willing to carry out the extradition request. Emails admitted at the hearing also reflect the Government's concern about seeking extradition from Ghana and efforts to understand the risks involved.

In addition, as indicated earlier, under the circumstances, it was reasonable for the Government not to afford defendant the opportunity to self-surrender. Notably, consistent with the Government's rationale for sealing, the Indictment was unsealed the day defendant was arrested -- i.e., as soon as the Government's legitimate need for delaying unsealing was satisfied.

Defendant argues that he need not show prejudice from the delay in unsealing because the Government did not have a proper reason for sealing and maintaining sealing.

In light of the Court's determination that the Indictment was properly sealed and maintained under seal until defendant's November 2022 arrest, the Court has considered whether defendant has demonstrated prejudice sufficient to warrant dismissal of the Indictment due to delay in unsealing. See Srulowitz, 819 F.2d at 40 to 41, discussing the prejudice standard in the statute of limitations context and setting forth that there must be substantial actual prejudice arising

from the decision to seal.

The Court concludes that defendant has not made the required showing. I will discuss prejudice in more detail when I discuss the speedy trial aspect of defendant's motion.

Dismissal is not warranted on statute of limitations grounds. Dismissal also is not warranted on speedy trial grounds.

As the parties are aware, and in summary, pursuant to Barker vs. Wingo, 407 U.S. 514, 1972, in evaluating an alleged violation of a defendant's constitutional speedy trial right, a Court considers four factors: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

As the Second Circuit has noted, the length of delay is a threshold inquiry; if the length of delay is sufficient to trigger a Barker inquiry, the length of delay is then considered one factor. See United States vs. Cabral, 979 F.3d 150 at 157, Second Circuit 2020.

As the Second Circuit also has noted, prejudice is the most important Barker factor. See United States vs. Aquart, 92 F.4th 77 at 99, Second Circuit 2024.

The Supreme Court has recognized presumptive prejudice resulting from excessive delay but has stated that, quote, "such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker criteria,"

closed quote. See Doggett vs. United States, 505 U.S. 647 at 655 to 56, 1992.

And, where the Government has acted with reasonable diligence, presumed prejudice -- as opposed to specific or particularized prejudice occasioned by the delay -- generally is not sufficient. See Doggett, 505 U.S. at 655 to 56; see also United States vs. Allam, No. 18-CR-681, 2023 Westlaw 8828888 at *11, Eastern District of New York December 21, 2023.

Here, defendant argues that all four Barker factors weigh against the Government and that defendant's right to a speedy trial has been violated. The Government, in contrast, argues that application of the Barker test reflects that there has been no speedy trial violation. Both parties agree that the length of delay is sufficient to trigger a Barker analysis, but the parties disagree as to the relevant period of delay to be used in connection with the Barker analysis.

In his opening brief on the motion, defendant argued that the relevant period of delay is the period between Indictment in August 2020 and trial. At oral argument, defendant took the position that the period of delay starts even earlier, namely, on the 2019 date of the complaint.

The Government argues that the relevant period of delay is the period between unsealing of the Indictment in 2022 and trial.

Upon application of the Barker test, the Court has determined that dismissal is not warranted.

The Court finds the Government's position as to the applicable period of delay to be more persuasive in light of Second Circuit precedent, but the Court reaches the same ultimate conclusion regardless of the applicable period of delay.

Here, the length of delay factor weighs in favor of defendant.

As to the reason for the delay, a significant portion of the delay was due to the extradition process in the U.K., which is not attributable to the Government. Notably, defendant contested extradition, which contributed significantly to the delay. And, even if the Court considers the entire period defendant urges the Court to consider, the Government acted with reasonable diligence throughout, including since defendant appeared here in the Eastern District of New York.

The reason-for-delay factor weighs against defendant.

The Government does not dispute that defendant asserted his speedy trial right in a timely fashion.

The assertion-of-right factor weighs in favor of defendant.

As to prejudice, defendant's speedy trial argument

relies heavily for its force on the assertion that unsealing was improperly delayed and prejudice is presumed here. But, as indicated earlier, the Court has rejected the argument that unsealing was improperly delayed and has determined that the Government acted with reasonable diligence in seeking to locate and arrest defendant. Here, defendant has not sufficiently demonstrated prejudice.

Prejudice is assessed in light of three separate interests: (1) prevention of oppressive pretrial incarceration; (2) minimization of anxiety and concern of the accused; and (3) limitation of the possibility that the defense will be impaired; and of these three, the most serious is the last. See Barker, 407 U.S. at 532.

The parties largely focus their arguments on the third interest and indeed, that is the one that appears to be most relevant here, though the Court has considered all three.

As I noted earlier, the hearing testimony of even his own witness undercuts defendant's claim of prejudice with respect to impairment of his defense. Not only was some of the testimony as to prejudice generalized, conclusory, and/or conjectural but other of the testimony indicated a lack of prejudice. When asked if the delay in defendant's arrest impacted his ability to represent defendant, Mr. Loewenson stated, inter alia, quote, "It's hard to know what evidence might have been available had we taken action earlier," closed

quote. Mr. Loewenson also offered the generalization that in his experience, quote, "as years go by, memories tend to get worse, not better," closed quote. In addition, when asked what he would have done between August 2020 and defendant's arrest if he had known that there was an Indictment, Mr. Loewenson offered the following generalized testimony, quote, "I think I would have wanted to do all the things that you do after you learn that your client's been indicted. So I would want to obtain evidence from any available source whether it's getting additional documents from any of the entities or individuals who were mentioned in the Indictment and also talk to potential witnesses," closed quote.

However, importantly, Mr. Loewenson testified that at the time he became aware of the SEC complaint having been filed, which was in April 2020, Mr. Loewenson knew that the statute of limitations had not yet run and knew there was a possibility that defendant was still under investigation by the Government. Mr. Loewenson also testified that he, quote, "knew there was a possibility that there was an Indictment under seal," closed quote. And Mr. Loewenson acknowledged that the Government was under no legal obligation to tell him in advance of the August 2020 Indictment or to tell him about the Indictment while it remained under seal.

Mr. Loewenson acknowledged the fair amount of factual overlap between the SEC complaint and the Indictment

and indicated that upon learning of the SEC complaint, he took certain investigative steps -- for example, reviewing emails cited in the SEC complaint and trying to figure out who certain anonymized individuals were. And, he received certain information from the SEC also relevant to the Indictment, including emails referenced in the Indictment.

Mr. Loewenson also testified that in February 2023, he interviewed and obtained relevant information from an individual referred to in the Indictment, who Mr. Loewenson described as, quote, "a central figure in the Indictment," closed quote. Mr. Loewenson did not indicate that there was any failure of memory by the individual he interviewed and indicated that the interview did not get deep into details due only to the limited duration of the interview. Further, Mr. Loewenson's testimony reflected that as of at least March 2023, he knew of other likely witnesses and Mr. Loewenson did not testify that he was unable to interview those individuals or that there was any failure of memory by those individuals. Mr. Loewenson also testified that there was certain investigative work that he did that he would not disclose because of work product concerns.

Defendant's argument and evidence as to alleged unavailability or potential unavailability of Ghanaian financial records falls far short of demonstrating prejudice here. Notably, defendant has not demonstrated that any

particular relevant financial records were available prior to unsealing of the Indictment in November 2022 but unavailable after unsealing.

The prejudice factor -- which, again, is the most important factor -- weighs against defendant. There has been no Sixth Amendment speedy trial violation here. Again, that portion of the motion that seeks dismissal of the Indictment is denied.

I will turn now to that portion of the motion that seeks suppression of evidence obtained pursuant to a search warrant.

Defendant seeks suppression of all evidence resulting from a search of his personal email account. The search was pursuant to the April 27, 2017 search warrant for information from Google, Inc., which was authorized by Magistrate Judge Tiscione. Defendant requests a Franks hearing if the Court does not determine on the record before it that the evidence from the search warrant is inadmissible. Defendant argues that the warrant affidavit improperly relied on a confidential human source, as to whom insufficient information was provided in the affidavit. Defendant further argues that the Government may not rely on the good faith exception here, asserting that the warrant was facially deficient and it was patently unreasonable for law enforcement to rely on the warrant.

I note with respect to terminology here that the warrant uses the term confidential human source and as the parties are aware, there has been some discussion about that term. For ease, I will use the term source.

The Government argues that the suppression request fails on the merits, asserting that the magistrate judge had ample information on which to assess the source's reliability; that the source's information was corroborated by independent records, including emails and documents that were themselves detailed in the affidavit submitted in support of the warrant application; that even omitting all of the statements of the source, the affidavit furnished probable cause; and that had the magistrate judge been informed of the information that defendant believes should have been included about the source, that would not have caused the magistrate judge to disregard the information from the source. The Government further argues that law enforcement relied on the warrant in good faith.

At oral argument, the Government conceded that certain information about the source that ordinarily would be included -- namely regarding financial motive -- was not included, and the Government attributed the omission to an oversight.

Again, I note that the parties largely agree on the applicable law governing the various issues implicated by the

motion and their principal disagreements lie in the application of the law to the facts and circumstances here. Most notably, the parties take fundamentally different positions on the importance of the source-based information to the showing of probable cause.

Have I accurately summarized the parties' arguments with respect to the suppression aspect of the motion?

MS. WEIGEL: Yes, your Honor.

MR. BOONE: Yes, your Honor.

THE COURT: The applicable law is well settled and as evident from the parties' submissions and oral arguments, is well known to the parties.

Again, the parties' principal disagreements lie not in the applicable law but in the application of the law to the facts and circumstances here. The Fourth Amendment to the United States Constitution provides, quote, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," closed quote.

A search warrant may issue upon a showing of probable cause to believe that a crime was committed and that evidence of such crime will be found in the place to be

searched. When determining whether probable cause exists, the issuing magistrate judge must make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before the magistrate judge, there is a fair probability that contraband or evidence of a crime will be found in a particular place. See Illinois vs. Gates, 462 U.S. 213 at 238, 1983; united States vs. Jones, 43 F.4th 94 at 109, Second Circuit 2022; United States vs. DiTomasso, 932 F.3d 58 at 66, Second Circuit 2019.

A magistrate judge's determination that probable cause exists is owed substantial deference by a reviewing court. The duty of the reviewing court is to ensure that the magistrate judge had a substantial basis for concluding that probable cause existed. See Gates, 462 U.S. at 238 to 239; Jones, 43 F.4th at 109; United States vs. Wagner, 989 F.2d 69 at 71 to 72, Second Circuit 1993.

As the Second Circuit has noted with respect to informants, quote, "The core question in assessing probable cause based upon information supplied by an informant is whether the information is reliable. Information may be sufficiently reliable to support a probable cause finding if the person providing the information has a track record of providing reliable information, or if it is corroborated in material respects by independent evidence. If a substantial amount of information from an informant is shown to be

reliable because of independent corroboration, then it is a permissible inference that the informant is reliable and that therefore other information that he provides, though uncorroborated, is also reliable," closed quote. See Wagner 989 F.2d at 72 to 73.

Even where a warrant is defective, suppression does not automatically follow if the good faith exception applies. Under the good faith exception, if law enforcement acted with objectively reasonable reliance on the search warrant, exclusion is not warranted. The good faith exception will not apply, however, in situations where the issuing magistrate judge has been knowingly misled; where the issuing magistrate judge wholly abandoned his or her judicial role; where the search warrant application is so lacking in indicia of probable cause as to render reliance upon it unreasonable; and where the warrant is so facially deficient that reliance upon it is unreasonable. See United States vs. Leon, 468 U.S. 897 at 922 to 923, 1984; see also United States vs. Clark, 638 F.3d 89 at 99 to 100, Second Circuit 2011; United States vs. Moore, 968 F.2d 216 at 222, Second Circuit 1992.

The exclusionary rule is designed to deter future Fourth Amendment violations. As the Second Circuit has noted, because the remedy exacts a heavy toll on the justice system, the exclusionary rule does not apply whenever suppressing evidence might provide marginal deterrence. See United States

vs. Raymonda, 780 F.3d 105 at 117, Second Circuit 2015, quoting Herring vs. United States, 555 U.S. 135 at 141, 2009.

In certain circumstances a defendant may be entitled to a hearing, pursuant to Franks vs. Delaware, 438 U.S. 154, 1978, to demonstrate that statements in a search warrant affidavit intentionally or recklessly misled the issuing magistrate judge. See United States vs. Thomas, 788 F.3d 345 at 349 note 6, Second Circuit 2015; see also United States vs. Torres-Fernandez, No. 21-19, 2021 Westlaw 4944455, at *1, Second Circuit October 25, 2021.

To show entitlement to a hearing under Franks, a defendant must make a substantial preliminary showing that (1) any alleged misrepresentations or omissions in the affidavit supporting the warrant were made knowingly and intentionally, or with reckless disregard for the truth; and (2) such alleged misrepresentations or omissions were necessary to the finding of probable cause. See Torres-Fernandez, 2021 Westlaw 4944455 at *1; United States vs. Mandell, 752 F.3d 544 at 551 to 52, Second Circuit 2014; United States vs. Rajaratnam, 719 F.3d 139 at 146, Second Circuit 2013.

To determine whether an alleged misrepresentation or omission is necessary to the finding of probable cause -- i.e., whether it is material -- a Court looks to a hypothetical corrected affidavit. If the corrected affidavit supports probable cause, the alleged misrepresentation or

omission was not material to the probable cause determination and suppression is inappropriate. See United States vs. Stitsky, 536 F. App'x 98 at 104, Second Circuit 2013, citing United States vs. Canfield, 212 F.3d 713 at 718, Second Circuit 2000.

Upon consideration of the applicable law and the record before the Court, including the parties' submissions and oral arguments, that portion of the motion that seeks suppression of evidence is denied. Suppression is not warranted. And no hearing is required on the record before the Court.

Again, I assume the parties' familiarity with the record with respect to the portion of defendant's motion that seeks suppression, including with the warrant itself and supporting affidavit.

On the record before the Court and applying the required deference, the Court concludes that the magistrate judge had a substantial basis for concluding that probable cause existed. The Court notes that defendant appears to read the affidavit overly narrowly and to discount certain of the circumstances set forth in the affidavit and inferences reasonably drawn therefrom. The magistrate judge had a substantial basis for concluding that probable cause existed given all the circumstances set forth in the affidavit before him. Notably, even absent the information from the source,

the affidavit was sufficient to establish probable cause and even had the omitted information about the source been included in the affidavit, such inclusion would not have undermined the probable cause showing.

Moreover, even if the warrant were defective, the good faith exception would apply here so as to preclude suppression. Here, the record indicates that law enforcement acted with objectively reasonable reliance on the warrant: the warrant was supported by sufficiently detailed information gleaned from a variety of sources and was authorized by the magistrate judge. Defendant has failed to demonstrate that there are any circumstances suggesting that the good faith exception should not apply here. He has failed to demonstrate that the issuing magistrate judge was knowingly misled, that the issuing magistrate judge wholly abandoned his judicial role, that the affidavit was so lacking in indicia of probable cause as to render reliance upon it unreasonable, or that the warrant was so facially deficient that reliance on it was unreasonable.

As to defendant's request for a Franks hearing, defendant has not met his burden of demonstrating entitlement to such a hearing. He has not made a substantial preliminary showing that any alleged misrepresentations or omissions in the affidavit supporting the warrant were made knowingly and intentionally, or with reckless disregard for the truth. And

he has not made a substantial preliminary showing that such alleged misrepresentations or omissions were necessary to the finding of probable cause. Again, even absent the information from the source, the affidavit was sufficient to establish probable cause and even had the omitted information about the source been included in the affidavit, such inclusion would not have undermined the probable cause showing.

In sum, defendant's motion to dismiss and to suppress, filed at ECF No. 32, is denied.

We can now turn to other matters. I don't know whether the parties want to take a short break to consult with each other, because I'm going to want to know what the parties are thinking in terms of next steps. We can also set a conference for a relatively short time from now and talk about it then, but I think it may make sense for the parties to talk to each other now.

Do the parties want a five-minute break?

MS. WEIGEL: Yes, your Honor.

MR. BOONE: Yes, your Honor. Thank you.

THE COURT: We'll adjourn for ten minutes.

(Brief recess.)

THE COURT: Let me turn to the Government to give me any update you would like to give me at this time.

MS. WEIGEL: Yes, your Honor. We've conferred with defense counsel and we've agreed that we would like to come

back before the Court optimally in the first week of January depending on the Court's availability.

THE COURT: I'm on trial that week, but I could give a date of the following Monday, the 12th. Does that work for the parties?

MS. WEIGEL: That's fine for the Government.

THE COURT: 10:00 a.m.

MR. BOONE: That works, your Honor.

THE COURT: So 10:00 a.m. on the 12th.

MS. WEIGEL: And your Honor -- sorry, your Honor.

THE COURT: Go ahead.

MS. WEIGEL: I wanted to put on the record that the Government intends to ask for a trial date at that next conference.

THE COURT: So let me hear from Mr. Boone and then we'll address that issue.

MR. BOONE: Yes, your Honor. The 12th works for us. We would like sometime to digest your opinion and also take stock of where we are with respect to discovery and potential other issues. That's the reason for the timing.

THE COURT: That's fine.

MR. BOONE: Okay.

THE COURT: In terms of the Government anticipating asking for a trial date on the 12th, what I would ask the parties to do is to put in a joint letter by the 8th

indicating dates on which counsel is not available for a trial. And you could go out as far as you want, but let's say 2026, but I don't think we need the whole year's worth of your dates but I do want to make sure that the parties are talking to each other. If there are particular dates that the parties can't do, I'd like to know about that. The Court has its own calendar as well, but I'll hear from the parties on their availability. If you're not available, tell me why. I don't need to know personal details if it's something personal, vacation, whatever it is; but if you have another trial, for instance, before another judge, that would be helpful to know. I would ask for that letter by the 8th.

If the parties have conversations between now and then and nobody anticipates asking for a trial date on the 12th, then you could just put in a letter by the 8th telling me that, and you don't need to give any dates then.

MS. WEIGEL: Will do.

MR. BOONE: Thank you, your Honor.

THE COURT: Okay. Is there anything else the parties want to raise now ahead of the next conference?

MS. WEIGEL: Your Honor, the Government would make an application to exclude time until the next status conference to allow defense counsel to continue to review discovery and potentially for the parties to engage in plea negotiations.

MR. BOONE: Fine with the defense, your Honor.

THE COURT: Okay. So I will exclude time for Speedy Trial Act purposes, the time from today until January 12, 2026. I do so under Title 18, United States Code, Section 3161(h)(7)(A). I find that the ends of justice served by excluding the time from today until January 12, 2026 outweigh the best interest of the public and the defendant in a speedy trial because that period of time will allow for the parties to engage in any discussions they may wish to engage in with each other, will allow for the defense to do the things that Mr. Boone indicated they would be doing, considering the Court's ruling and taking stock of where they are and how they want to proceed and will allow for the continued review of discovery as well. So I do find that that time period is properly excludable and I will exclude that time from today until January 12, 2026.

I asked for the letter by the eighth, but if there is anything that the parties need to raise between now and the 12th additionally, you know where to find the Court.

Is there anything else we need to take up?

MS. WEIGEL: No. Thank you, your Honor.

(Continued on next page.)

MR. BOONE: No, your Honor.

THE COURT: Thank you all.

We are adjourned. Thank you to the court reporter.

(Whereupon, the matter was concluded.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Rivka Teich
Rivka Teich, CSR RPR RMR FCRR
Official Court Reporter
Eastern District of New York