

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	*	CRIMINAL NO. 17-CR-00204
	*	
VERSUS	*	JUDGE DRELL
	*	
NATHAN BURL CAIN, II	*	MAGISTRATE JUDGE PEREZ-MONTES
TONIA BANDY CAIN	*	

UNITED STATES’ MEMORANDUM REGARDING STANDING

The United States of America submits this supplemental memorandum addressing the issue of standing pursuant to this Court’s April 20, 2018 Memorandum Order (Doc. #49). For the reasons stated below, Defendants Nathan Burl Cain, II and Tonia Bandy Cain (referred to collectively as “the Cains”) lack standing to challenge the June 8, 2016 search warrant obtained by the Louisiana Office of Inspector General for the warden’s residence located on the grounds of the Avoyelles Correctional Center.

In its Memorandum Order, this Court noted that the United States had mentioned in its opposition (Doc. #38) to the Cains’ Joint Motion to Suppress (Doc. #34) that the Cains had vacated the residence and that the search warrant application represented that the Cains had “partially vacated the residence.” These references apparently piqued the Court’s curiosity about whether the Cains had standing to challenge the June 8, 2016 search warrant, so a discussion of the circumstances and timeline of the Cains’ departure from the warden’s residence is

necessary.

The Cains correctly note in their supplemental memorandum (Doc. #50) that the Cains used the warden's residence as such during Nathan Cain's tenure as warden. The United States does not suggest that the Cains lacked an expectation of privacy during the time they resided there. However, the Cains' supplemental memorandum omits crucial dates. The Louisiana Department of Public Safety and Corrections (DPSC) placed Nathan Cain on suspension pending investigation status on April 7, 2016. Even though Nathan Cain was on suspension, the Cains were entitled to remain in the warden's residence. For whatever reason, Nathan Cain resigned on or about May 24, 2016, at which point his entitlement to state-provided housing as part of his employment with DPSC ceased. After that date, DPSC coordinated with the Cains' counsel the removal of the Cains' personal property from prison facilities, including the warden's residence. The United States is aware of no contention by the Cains to DPSC that they were entitled to remain in the warden's residence after Nathan Cain's resignation in May 2016.

Quite the contrary, the communications between the Cains' counsel and DPSC concerned the logistics for removal of the Cains' personal property, suggesting that the Cains had no intention of further residing—or any legal or contractual right to reside for that matter—in the warden's residence. For example, on June 3, 2016, prior to the execution of the search warrant, Susan Wall Griffin with DPSC wrote the Cains' counsel noting DPSC's position with respect to the removal of the Cains' personal property. **Exhibit 1.** In that letter, Griffin noted the repeated attempts to

get the Cains to remove their personal property and explicitly articulated DPSC's position relative to the Cains' rights in the warden's residence:

Most importantly, however, your client chose to voluntarily resign from his employment with the Department of Public Safety & Corrections. He dictated the timing and the terms of his resignation. While his resignation may have been motivated by an attempt to avoid disciplinary action up to and including termination, the decision was solely his. Housing on the prison grounds was a benefit of his employment and which expired with his state employment. Mr. Cain could have prior to or contemporaneously with his retirement moved his personal belongings out of the state housing. Mr. Cain chose not to do so. **Mr. Cain also could have sought authorization to stay in the Warden's house past the date of his voluntarily [sic] resignation but he did not.** Mr. Cain chose when he was changing his personal residence from the Warden's house at AVC to another location, not the Department, with the timing of his resignation, thus, no eviction notice was required.

Id. (emphasis added). The Cains did not contest Griffin's representation of DPSC's position.

The Cains cannot dispute that Nathan Cain resigned his employment with DPSC and that his entitlement to state-provided housing was contingent upon his employment as warden. It is true that the Cains had the right to remain in the residence while Nathan Cain was under investigation, but Nathan Cain, by resigning, was the one who set in motion the loss of the Cains' right to remain in the warden's residence. The Cains also did not seek authorization to remain in the warden's residence after his resignation, as Griffin mentioned in her June 3, 2016 letter.

The August 10, 2016 letter attached to the Cains' supplemental memorandum confirms DPSC's position on that point but, for some reason, the Cains misquote the

letter. The emphasized sentence as quoted by the Cains from the August 10 letter represents to this Court that “[t]hey maintain the right to remain in the Warden’s residence.” Yet, the letter actually states, “They maintained [past tense] the right to remain in the Warden’s residence.” Such a statement was correct as the preceding sentence noted that the Cains had been placed on leave pending investigation in February 2016, and they could remain in the warden’s residence while the investigation was ongoing. While this misquote was likely inadvertent, it seriously mischaracterizes the August 10 letter.

The Cains’ discussion about the warden’s residence being their home and that they had exclusive use it is accurate in general but is misleading because it is divorced from any temporal frame. In other words, the Cains’ argument would be accurate if the search warrant had been obtained prior to their resignation from DPSC and moving out of the residence. However, such was not the case. As of June 8, 2016, the date the search warrant was obtained and executed, the Cains were no longer residing in the residence and had removed some, but not all, of their personal property. The random personal property was intermingled with property improperly purchased with state P-cards, hence the Inspector General’s interest. During that time, the Cains had to make arrangements with DPSC to set foot on prison grounds.

The only plausible conclusion to be drawn is that, while the Cains at one time called the warden’s residence home, their loss of the right to state-provided housing terminated upon Nathan Cain’s resignation. The Cains in fact moved out of the warden’s residence upon his resignation and they surely could not have envisioned

their departure from the residence as a temporary situation. His resignation was very much permanent and any expectation of privacy in the residence post-resignation would be patently unreasonable; therefore, the Cains cannot satisfy their burden of demonstrating standing. *See generally United States v. Stevenson*, 396 F.3d 538, 547 (4th Cir. 2005) (“When a person no longer carries on activities in the home because he has ceased to live there and no longer keeps his belongings at his home because he has given them away, society is less willing to accept as reasonable his expectation of privacy.”); *United States v. Young*, 68 Fed. Appx. 744, 746 (8th Cir. 2003) (“There was no plain error in admitting evidence found in the second search of the residence because Young (and Anderson) had moved out by the time of the search and thus had no expectation of privacy.”).

For the reasons set forth above, the United States of America submits that Nathan Cain, II and Tonia Bandy Cain lack standing to challenge the June 8, 2016 search of the warden’s residence pursuant to the state-issued search warrant.

Respectfully submitted,

DAVID C. JOSEPH
United States Attorney

s/John Luke Walker
JOHN LUKE WALKER, LA Bar: 18077
Assistant United States Attorney
800 Lafayette Street, Suite 2200
Lafayette, LA 70501
Telephone: 337-262-6618

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CERTIFICATE

I hereby certify that on May 7, 2018, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the court's electronic filing system.

s/John Luke Walker
JOHN LUKE WALKER
Assistant United States Attorney

John Bell Edwards
Governor

JAMES M. Le BLANC
Secretary

State of Louisiana

Department of Public Safety and Corrections

June 3, 2016

Via Facsimile
Ms. Jill L. Craft
Attorney at Law
509 St. Louis Street
Baton Rouge, La. 70802

Re: *Tonia and Nathan Cain*

Dear Ms. Craft:

I am in receipt of your correspondence dated today and must state that I am baffled by the tone of your letter. As you are aware, the Department of Public Safety & Corrections has repeatedly attempted to arrange with your clients the removal of their personal property from the Warden's house at Avoyelles Correctional Center. Your clients repeatedly delayed the process.

Further, you and your clients have been advised numerous times that they were not banned from the Warden's house, merely the prison and the administrative buildings, since they were placed on suspension pending investigation status. Mr. Cain was placed in this status on April 7, 2016. He was fully aware at that time he was under administrative and criminal investigation. While Mr. Cain is believed to have removed some personal effects during this time period, it is unknown what if any personal effects remained and still remain in the Warden's house. Any failure to pack and move personal belongings since April 7, 2016 is the responsibility of Mr. Cain.

Most importantly, however, your client chose to voluntarily resign from his employment with the Department of Public Safety & Corrections. He dictated the timing and the terms of his resignation. While his resignation may have been motivated by an attempt to avoid disciplinary action up to and including termination, the decision was solely his. Housing on the prison grounds was a benefit of his employment and which expired with his state employment. Mr. Cain could have prior to or contemporaneously with his retirement moved his personal belongings out of the state housing. Mr. Cain chose not to do so. Mr. Cain also could have sought authorization to stay in the Warden's house past the date of his voluntarily resignation but he did not. Mr. Cain chose when he was changing his personal residence from the Warden's house at AVC to another location, not the Department, with the timing of his resignation, thus, no eviction notice was required.

The Department was advised by the Inspector General, the law enforcement agency spearheading the criminal investigation into the conduct of your client(s), to preserve certain property yesterday, thus, necessitating my second letter to you on June 2, 2016. Please see the attached correspondence from the Inspector General to the Department. Your inquiries about the necessity of a warrant and retrieval of their personal property must be directed to the Inspector General. When the Inspector General lifts its prohibition on all or some of the property covered in its preservation of evidence directive, the Department will arrange the transfer of the property to the Cains.

Post Office Box 94304 • Baton Rouge, Louisiana 70804-9304 • (225) 342-6743 • Fax (225) 342-3278

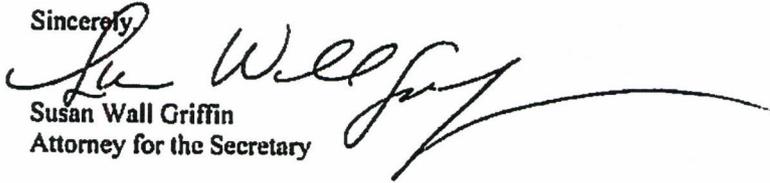
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EXHIBIT

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Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Wall Griffin", with a long horizontal flourish extending to the right.

Susan Wall Griffin
Attorney for the Secretary

C: Thomas C. Bickham, III, Undersecretary
Troy Poret, Warden
Joel Odom, Col. Internal Affairs