

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’ OPPOSITION TO JOINT MOTION TO SUPPRESS

NOW INTO COURT, through the undersigned Assistant United States Attorney, comes the United States of America, who files this opposition to the Joint Motion to Suppress (Doc. #34) filed by Defendants Nathan Burl Cain, II and Tonia Bandy Cain (referred to collectively as “the Cains”) and respectfully requests that the Cains’ motion be denied.¹

Background

The instant case arises out of the improper use of state-issued credit cards at the Avoyelles Correctional Center (AVC), now known as the Raymond Laborde Correctional Center, in Cottonport, Louisiana. AVC is a prison facility operated by the Louisiana Department of Public Safety and Corrections. Certain prison employees were assigned LaCarte Purchasing Cards (referred to as “P-Cards”) for official prison business. All P-Card purchases included an “Avoyelles Correctional

¹ The motion included a supporting memorandum, Doc. #34-1; however, the Cains filed a second memorandum, Doc. #35. Any citations by the Government to the Cains’ supporting memorandum will be to Document No. 35.

Center RFP Requisition/Receiving Report” which documented the items purchased, the total cost, and the notation by the supervisors who approved the purchases.

The Louisiana Office of Inspector General started investigating allegations of the improper use of P-Cards at AVC at the Cains’ direction. A review of the RFP reports—which were maintained by the prison as part of its regular operations at not the subject of the search warrant at issue—indicated that items were purchased with P-Cards for purposes other than for official prison business. The Inspector General investigators also interviewed numerous prison employees who confirmed that improper purchases were made with P-Cards and that the Cains had been using the employees’ P-Cards for personal and otherwise improper purchases or directing prison employees to make such purchases with their assigned P-Cards.

Since Nathan Cain was warden of AVC, the Cains received housing on prison grounds in a state-owned house. The witnesses stated that numerous items purchased improperly with P-Cards were brought to the residence, instead of to the prison itself where it would be logged and stored for legitimate prison use. As the investigation progressed, the Cains resigned their positions at AVC and vacated the warden’s residence.

On June 8, 2016, Nicole S. Compton, an OIG criminal investigator, applied for and received a search warrant from Judge Kerry Spruill of the Louisiana 12th Judicial District Court for the Parish of Avoyelles. The application for the search warrant included a list of items reported by witnesses to have been purchased by the Cains but were not found at AVC. Note that all the purchases had been contemporaneously

documented in the RFP forms at the time, so the Inspector General investigators had already known of the purchases from existing records maintained at AVC. The warrant was executed the same day and, according to the return, numerous items that had been abandoned by the Cains when they vacated the residence were recovered and confirmed to have been purchased with state funds on P-Cards. The items recovered included firearms parts not requested or in custody of AVC's armory, a dog bed, high-end headphones, and a child's pink chair.

Law and Argument

The sole contention in the Cains' motion is that the search warrant was defective because the Inspector General investigators allegedly do not have the power to obtain search warrants. Therefore, since the search warrant was obtained by a state officer, it cannot be used in this federal prosecution under the "silver platter" doctrine.

A. Applicable Standard

Generally, on a motion to suppress, the defendant has to prove by a preponderance of the evidence that the evidence in question was obtain in violation of his constitutional rights. *United States v. Guerrero-Barajas*, 240 F.3d 426, 432 (5th Cir. 2001). Here the evidence in question was obtain pursuant to a search warrant, so the Government does not bear the burden of proving that the seizure was constitutional.

B. The Louisiana Inspector General has search warrant authority.

The Cains' argument starts with the premise that the Inspector General investigators are not "peace officers" for purposes of executing search warrants. In support, they cite the definition of "peace officer" contained in La. R.S. 14:112.1(B)(3). However, the Cains do not acknowledge that La. R.S. 14:112.1 codifies the crime of false impersonation of a peace officer or firefighter and that the definition of peace officer on which they rely so heavily is qualified by "As used in this Section:" The United States submits that the statutory authority under Louisiana law to seek and execute search warrants is not conditioned upon a definition contained in a different statute criminalizing the impersonation of a law enforcement officer and which expressly limits that definition to that section. In other words, La. R.S. 14:112.1 is inapposite.

The Cains wholly mischaracterize the Inspector General's authority. The Inspector General was created as part of the governor's office in 2008 and is tasked with the "prevention and detection of waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption in all departments, . . ." La. R.S. 49:220.21. The Cains correctly do not argue that the investigation of the fraud at AVC was not within the Inspector General's jurisdiction, but they rather suggest that the Inspector General's investigative purview is limited by La. R.S. 49:220.24(K) in that the Inspector General is to "notify the appropriate law enforcement agencies" upon "credible information of corruption and fraud. . . ." Memorandum at 3.

However, the Inspector General's investigative power is not remotely as limited as the Cains suggest. The Inspector General can receive complaints of waste and fraud and determine whether investigation is warranted by itself or other federal, state or local agencies. La. R.S. 49:220.24(C)(2). The Inspector General is statutorily required to investigate those complaints of waste and fraud and is authorized to recommend "when appropriate, whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted. . . ." La. R.S. 49:220.24(C)(3). When there is evidence of criminal activity, the Inspector General is required to report complaints of fraud to federal, state, or local agencies and is required to cooperate. La. R.S. 49:220.24(C)(4).

With respect to its status as a law enforcement agency, La. R.S. 49:220.24(J) provides as follows:

The office of the state inspector general is hereby **designated as a law enforcement agency and conferred all investigative powers and privileges appurtenant to a law enforcement agency under state law** as necessary and in furtherance of the authority, duties, powers, and functions set forth in this Part. These powers and privileges shall not include arrest powers but shall include access to computer systems, information maintained for the use of law enforcement personnel, and any information contained in the criminal history record and identification file of the Louisiana Bureau of Criminal Identification and Information.

(emphasis added). When the Louisiana Legislature created the Office of Inspector General in the 2008 First Extraordinary Session, subsection J was not originally included but was added during the 2008 Regular Session. Acts 2008, No. 831, § 3 (effective July 1, 2008). The Inspector General's authority extends to joint investigations with other oversight or law enforcement agencies. La. R.S.

49:220.24(L).

In effect, the Cains argue—without citing any authority—that the Louisiana Legislature did not confer search warrant authority to the Inspector General, meaning that the Cains’ argument is an exercise in statutory construction. *See generally Pociask v. Moseley*, 122 So. 3d 533, 541 (La. 2013) (“The meaning and intent of a law is determined by considering the law in its entirety and all other laws on the same subject matter and placing a construction on the provision in question that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting it.”). Nowhere in the Inspector General’s enabling statutes is there any prohibition on the authority to obtain search warrants. In fact, the Legislature expressly withheld the arrest power from the Inspector General. If the Legislature intended to withhold search warrant power from the Inspector General—a power conferred to law enforcement officers in Louisiana—it would have stated as much like it did for the arrest power. *See Jackson v. City of New Orleans*, 114 So. 3d 876, 888 n. 8 (La. 2014) (“The settled doctrine of statutory construction *Expressio Unius est Exclusio Alterius* dictates that when the legislature specifically enumerates a series of things, the legislature’s omission of other items, which could have easily been included in the statute, is deemed intentional.”). No such limitation is contained in the Inspector General’s statutes, and the applicable statutes must be applied as written. La. C.C. art. 9 (“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further investigation may be made in search of the intent of the legislature.”).

While not required by the pertinent statutes, Inspector General criminal investigators, including Nicole Compton, receive additional law enforcement certifications. For example, Compton is certified under the Louisiana Peace Officer Standards and Training Law (**Exhibit 1**), carries a firearm, and has a special officer commission from the Louisiana State Police (**Exhibit 2**). Under La. R.S. 40:1379.1, the superintendent of the state police is authorized to issue special officer's commissions. "The special officer, when performing those tasks requiring a special officer's commission, **shall have the same powers and duties as a peace officer**; provided, however, that when not performing these tasks directly related to the special officer's commission, he shall be regarded as a private citizen and his commission shall not be in effect." La. R.S. 49:1379.1(B) (emphasis added). Pursuant to Louisiana Code of Criminal Procedure Article 163, "A search warrant shall be directed to **any peace officer**. . . ." (emphasis added). Under La. R.S. 49:220.24(J), the Inspector General has all the investigative powers of a law enforcement agency. Even assuming that a credible argument could be made that Subsection J somehow did not include search warrant authority, Compton's special officer commission results in the inevitable conclusion that the search warrant was obtained by a Louisiana law enforcement officer duly authorized to do so.

Finally, the Cains further mischaracterize the Inspector General's subpoena power as a limitation on its investigative powers. Memorandum at 3-4. Quite the contrary, it is an *additional* grant of authority. La. R.S. 49:220.24(F) grants the Inspector General subpoena power to obtain sworn testimony from any person under

the same procedure for civil depositions. The statute further articulates the procedure the Inspector General must follow for such subpoenas. Louisiana law enforcement officers—such as sheriffs and police officers—do not have such authority to subpoena a person to appear before them. However, such authority is granted to the attorney general and district attorneys. La. Code Cr. P. art. 66. The Inspector General's subpoena power is an integral part of its statutory investigative responsibilities and allows the Inspector General to go directly to a judge for a subpoena without having to go through the district attorney's office. The Legislature's grant of subpoena power to the Inspector General can in no way be construed as a limitation on its investigative powers and, in any event, certainly is not indicative or remotely suggestive of a lack of authority to obtain search warrants.

Conclusion

The Inspector General clearly had authority to investigate the waste and fraud at AVC, a facility within the Louisiana Department of Public Safety and Corrections. That department's affairs clearly fall within the Inspector General's investigative jurisdiction. Louisiana law clearly states that the Inspector General has all of the investigative powers of a law enforcement agency, except for arrest powers as expressly stated. Any limitation otherwise on the Inspector General's investigative powers would be articulated in the statute; however, no such limitation is to be found and no Louisiana court has so construed the applicable statutes. For these reasons, the United States of America respectfully requests that the Joint Motion to Suppress filed by Nathan Burl Cain and Tonia Bandy Cain be denied. The United States

further submits that the issue presented in the Cains' motion presents a pure question of law for which an evidentiary hearing would be unnecessary.

Respectfully submitted,

ALEXANDER C. VAN HOOK
United States Attorney

s/John Luke Walker
JOHN LUKE WALKER, LA Bar: 18077
Assistant United States Attorney

s/David J. Ayo
DAVID J. AYO, LA Bar: 28868
Assistant United States Attorney

CERTIFICATE

I hereby certify that on February 9, 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

B 14028



State of Louisiana

Peace Officer Standards & Training Council

hereby awards the
Basic Certificate

to

NICOLE S. COMPTON

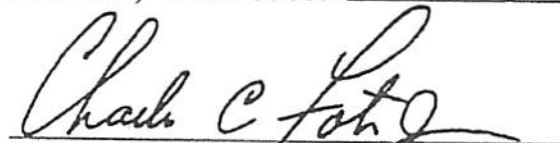
for having completed a Certified Basic Training Course
at the

LSU BASIC TRAINING ACADEMY

as provided for in the Laws of the State of Louisiana,

issued this second day of September, nineteen ninety-nine


GOVERNOR


CHAIRMAN

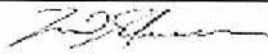
This certificate remains the property of the State of Louisiana, and is subject to be revoked at any time.

**GOVERNMENT
EXHIBIT
1**



DATE OF BIRTH 1973	HEIGHT 5-5	WEIGHT
COLOR OF HAIR BLK	COLOR OF EYES BRN	BLOOD TYPE B+

This commission is issued pursuant to
LRS 40:1379.1.


DEPUTY SECRETARY DEPT. OF PUBLIC SAFETY