

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,  
  
Plaintiff,  
  
v.  
  
Abdul Malik Kareem,  
  
Defendant.

No. CR-15-00707-001-PHX-SRB  
**ORDER**

At issue is Defendant’s Motion to Suppress Evidence Unlawfully Obtained (“MTS”) (Doc. 100). On November 20, 24, and December 29, 2015, the Court held an evidentiary hearing concerning Defendant’s Motion. (Docs. 135, 138, and 163, Minute Entries.)

**I. BACKGROUND**

Defendant is charged with five criminal counts: knowingly and intentionally conspiring to transport firearms and ammunition in interstate commerce with the intent to commit crimes punishable by imprisonment exceeding one year, in violation of 18 U.S.C. § 924(b) (Count 1); knowingly and intentionally transporting firearms and ammunition in interstate commerce with the intent to commit crimes punishable by imprisonment exceeding one year, in violation of 18 U.S.C. § 924(b) and 2 (Count 2); knowingly and willfully making false, fraudulent, and fictitious material statements and representations regarding the Garland, Texas attack, in violation of 18 U.S.C. § 1001(a)(2) (Count 3); having been convicted of a crime punishable by imprisonment exceeding one year,

1 knowingly possessing and affecting interstate firearms, in violation of 18 U.S.C.  
2 § 922(g)(1) (Count 4); and knowingly and intentionally conspiring to provide “material  
3 support or resources” to a foreign terrorist organization, in violation of 18 U.S.C.  
4 2339B(a)(1) (Count 5). (Doc. 158, Second Superseding Indictment at 3-6.)

5 The following facts, as recited by Defendant, are not disputed. On July 20, 2012,  
6 law enforcement officers, including Federal Bureau of Investigation (“FBI”) agents,  
7 executed a search warrant for Mr. Abubakar Hussein Ahmed’s home. Mr. Ahmed lived  
8 with Mr. Elton Simpson and Defendant. The search warrant was based on a finding of  
9 probable cause that the residence contained evidence of violations of Arizona Revised  
10 Statute (“A.R.S.”) § 13-2002A.2 (Attempted Forgery). (Doc. 100-1, Ex. 6 at 1, Maricopa  
11 County Superior Ct. Jurisdiction Special Warrant). The warrant sought indicia of  
12 occupancy and any and all electronic devices and written correspondence relating to  
13 Attempted Forgery. (*Id.* at 2.) During execution of the warrant FBI agents also  
14 interviewed Defendant, Mr. Ahmed, and Mr. Simpson. (Hr’g Ex. 14, FD 302 07/23/2012  
15 (a FBI form providing a summary of the interviews).) When the agents interviewed  
16 Defendant, he identified a Lenovo laptop as his own and stated that Mr. Ahmed  
17 sometimes used it. (*Id.*) Law enforcement seized, among other things, five computers and  
18 a thumb drive attached to the Lenovo laptop. (*See* Hr’g Ex. 14, FBI Electronic  
19 Communication 09/07/2012).

20 The lead agent on the forgery investigation, Corporal Daniel Herrmann, is also  
21 part of a Joint Terrorism Task Force branch of the FBI. He asked his FBI counterparts to  
22 review the electronic evidence found. Once the FBI had all the electronic devices, digital  
23 images of all the devices were taken. Intelligence Specialist Amy Vaughan and Corporal  
24 Herrmann ran searches of the devices to determine if Mr. Ahmed, the subject of the  
25 warrant, used the device and if there was evidence of the attempted forgery. There was  
26 testimony that the search also included some terms related to terrorism. Special Agent  
27 (“SA”) John Chiappone stated that they believed Mr. Ahmed wanted to use a forged  
28 diploma to further some terrorist scheme. Defendant’s computer contained evidence that

1 Mr. Ahmed had used it. The thumb drive attached to Defendant's computer contained  
2 various jihadist articles and videos. In 2013, the Maricopa County Attorney's Office  
3 decided not to pursue prosecution against Mr. Ahmed for Forgery. (Doc. 100-1, Ex. 11,  
4 ASU Police Department Incident Report Narrative Supplement.) The FBI returned  
5 Defendant's laptop in January 2014. At that time, Task Force Officer Jeffrey Nash  
6 interviewed Defendant about the terrorism propaganda found on his laptop and the thumb  
7 drive. Defendant said the thumb drive was not his and he did not know who it belonged  
8 to. The FBI retained a copy of the 2012 image of the Lenovo laptop. Defendant later sold  
9 the Lenovo laptop to Mr. Sergio Martinez. On May 28, 2015, the FBI obtained a search  
10 warrant authorizing them to search the 2012 image copy of Defendant's Lenovo laptop.  
11 Mr. Martinez was in possession of the Lenovo laptop in 2015. The FBI asked to conduct  
12 a search of it, and Mr. Martinez consented.

## 13 **II. LEGAL STANDARD AND ANALYSIS**

### 14 **A. 2015 Consent Search**

15 Defendant argues that the 2015 search of the Lenovo laptop, which was then in  
16 Mr. Martinez's possession, was an unlawful search and seizure. (Doc. 128, Reply to MTS  
17 ("Reply") at 10-11.) The Government argues that Defendant abandoned the laptop when  
18 he sold it to Mr. Martinez and, therefore, Defendant lacks standing to challenge the  
19 constitutionality of Mr. Martinez's consent search. (*See* Doc. 117, Resp. to MTS  
20 ("Resp.") at 9); *see Abel v. United States*, 362 U.S. 217, 241 (1960). Defendant conceded  
21 at the December 29, 2015 continuation of the evidentiary hearing that he lost any privacy  
22 interest in the 2015 laptop by selling the laptop to another person. The Court concludes  
23 that the 2015 consent search of the Lenovo laptop was not an unlawful search and seizure  
24 and any relevant evidence found during that search will not be suppressed.

### 25 **B. 2012 Search Warrant**

26 Defendant argues that the 2012 search warrant for Mr. Ahmed's home was a  
27 pretext to investigate him and was so broad as to become an unconstitutional general  
28 warrant in violation of the Fourth Amendment of the United States Constitution. (MTS at

1 10-13.) The Government argues that the search and seizure of Defendant's laptop was  
2 within the scope of the 2012 warrant. (Resp. at 9-10.)

### 3 **1. Laptop Computer**

4 Defendant argues that there was no attempt by the Government to limit the scope  
5 of the search of Defendant's computer. (Reply at 4-5.) The Court disagrees. The evidence  
6 shows that Specialist Vaughan and Corporal Herrmann used keyword searches designed  
7 to determine if Mr. Ahmed used the computer, used the computer to pursue a forgery, and  
8 to determine who he intended to defraud. SA Chiappone explained that in order to  
9 establish the elements of the forgery offense, they had to figure out who Mr. Ahmed  
10 intended to defraud, which they believed may have terrorism implications. The FD 302  
11 summarizing the laptop's search results uncovered that Mr. Ahmed used the computer,  
12 which corroborated Defendant's interview testimony and was one of the limitations  
13 found within the warrant. It appears from the testimony at the hearing that the reason a  
14 copy of the laptop image remained on file was because the FBI still has an open file on  
15 Mr. Ahmed. The Court concludes that the 2012 seizure and search of Defendant's laptop  
16 were lawful.

### 17 **2. Thumb Drive**

18 In order to challenge a search under the Fourth Amendment, the challenger must  
19 have standing. *See United States v. Salvucci*, 448 U.S. 83, 85 (1980). A person has  
20 standing when he has a reasonable expectation of privacy in the thing to be searched.  
21 *Katz v. United States*, 389 U.S. 347, 351 (1967). When a person disclaims ownership of  
22 the thing to be searched, they have abandoned the property. *United States v. Nordling*,  
23 804 F.2d 1466, 1469-70 (9th Cir. 1986) (concluding that denial of ownership objectively  
24 demonstrates an intent to abandon property). Abandonment of property removes the  
25 expectation of privacy, and therefore precludes the person from challenging the search or  
26 seizure of an item. *Id.* Here, Defendant disclaimed ownership of the thumb drive during  
27 the 2012 search and again at the 2015 interview. The Court concludes that Defendant  
28 lacks standing to challenge the search and seizure of the thumb drive.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**C. 2015 Search Warrant of 2012 Image**


Defendant argues that the search of the 2012 image of his computer for information that did not fall within the scope of the 2012 warrant constitutes an improper search and seizure. (MTS 13-14.) Defendant specifically argues that files outside of the warrant in a paper world would have been returned and therefore would not be able to be searched without execution of a new warrant, which the Government was able to bypass by keeping the image of the entire laptop on file. (*Id.*) The Government stated at the hearing that it will not offer as evidence anything found from the 2015 search of the 2012 image in its case-in-chief to attempt to moot Defendant's arguments about this search warrant. The Government mentioned that it may use the 2015 search of the 2012 image as impeachment evidence if necessary. This particular issue was not briefed or argued to the Court and the Court will not rule on the admissibility solely for impeachment purposes of anything found during the 2015 search of the 2012 image.

**III. CONCLUSION**

The Court denies Defendant's Motion to Suppress Evidence Unlawfully Obtained because the Defendant has failed to demonstrate that the 2015 consent search of the laptop or the 2012 seizure and search of his laptop were unconstitutional. Defendant has also failed to demonstrate that he retained an expectation of privacy in the thumb drive at issue. The Court does not reach to issue of the admissibility of anything found during the 2015 search of the 2012 image of Defendant's laptop offered for impeachment purposes.

**IT IS ORDERED** denying Defendant's Motion to Suppress Evidence Unlawfully Obtained (Doc. 100).

Dated this 12th day of January, 2016.

  
\_\_\_\_\_  
Susan R. Bolton  
United States District Judge