

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2018 APR -9 AM 11:51

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: *g*

UNITED STATES OF AMERICA

v.

MARK CONDITT

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A-18-M-207

MOTION TO DISMISS COMPLAINT AND FOR LIMITED UNSEALING OF ORIGINAL COMPLAINT AFFIDAVIT

Comes now the United States of America, by and through the undersigned Assistant United States Attorney for the Western District of Texas, and pursuant to Rule 48 of the Federal Rules of Criminal Procedure, hereby files its Motion to Dismiss Complaint and For Limited Unsealing of the Original Complaint Affidavit in the above-captioned case. In support of its motion, the Government would respectfully show the Court the following:

I. Request for Dismissal

On March 20, 2018, at approximately 10:47 PM, the Government submitted an Affidavit in support of a Criminal Complaint and Arrest Warrant alleging that Mark Conditt committed a violation of Title 26 United States Code § 5861. On that same day, at 11:03 PM, this Court issued the Arrest Warrant for Conditt.

Law enforcement has confirmed to the Government that Mark Conditt has been deceased since approximately 1:59 AM on March 21, 2018.

Because the Defendant is now deceased, the Government requests that the Complaint be dismissed.

II. Request for Limited Unsealing of Complaint Affidavit

For the following reasons,¹ the Government respectfully requests that the original Complaint Affidavit in this case remain sealed, and that a redacted version of the Complaint Affidavit, attached hereto under seal, be unsealed and made part of the public record:

a. The law enforcement investigation regarding Conditt's criminal activities is ongoing. The original Complaint Affidavit filed in this case contains information about sensitive law enforcement techniques and methods that, if released publicly, could hinder law enforcement's effectiveness, both generally and in this specific case. Furthermore, the original Complaint Affidavit contains details about explosive device components and construction which, if revealed, could not only jeopardize the ongoing investigation in this case, but also pose a threat to public safety.

b. The original Complaint Affidavit contains several references to individuals who provided information to law enforcement. If such references were made public, it could have a chilling effect on information provided by informants and witnesses to law enforcement, both generally and in this case. Additionally, publicizing those references could jeopardize the legitimate privacy rights of those individuals. Finally, because Court rules and federal law limit the personal identifying information that may be released in public court documents, certain details, such as the street names and numbers of residential addresses, have been redacted in the attached Complaint Affidavit.

¹ Given the public nature of this document, the Government is able to refer to some information only generically. If necessary to the Court's determination of this motion, at the Court's request, the Government will provide additional details to the Court in a supplemental sealed filing.

c. Paragraph 19 of the original Complaint Affidavit contains information that our office is advised is subject to disclosure restrictions under federal law. Although certain disclosure exceptions exist for such information, it is not believed that an exception exists in this case at this time.

While the Government acknowledges the public's qualified right of access to judicial records, *see United States v. Sealed Search Warrants*, 868 F.3d 385, 390–96 (5th Cir. 2017), the Government believes that those interests are outweighed in this case by the following interests favoring nondisclosure, as summarized above: the possible chilling effect on information provided by informants and witnesses to law enforcement; the potential hindrance to an ongoing law enforcement investigation if certain details are revealed at this time; the potential hindrance to law enforcement if certain investigative techniques or explosive device-making techniques are made public; innocent third parties' rights to privacy; and disclosure restrictions related to certain protected records and to personal identifying information, as imposed by law and the rules of this Court.

For the above reasons, the Government requests that the original Complaint Affidavit in this case remain sealed until further order of the Court, and that the attached redacted version of the Complaint Affidavit be unsealed and made part of the public record.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

By: _____/s/_____
MICHAEL C. GALDO
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA

v.

MARK CONDITT

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A-18-M-207

ORDER

Came on this date to be considered Government's Motion to Dismiss Complaint and for Limited Unsealing of Original Complaint Affidavit in the above styled cause, and after considering the same, the Court is of the opinion that it should be granted. Accordingly,

IT IS ORDERED that the complaint in the above-styled cause is **DISMISSED WITHOUT PREJUDICE**;

IT IS FURTHER ORDERED that the arrest warrant in the above-styled cause is **WITHDRAWN**;

IT IS FURTHER ORDERED that the Government's proposed redacted Complaint Affidavit, attached under seal to the Government's motion, is hereby **UNSEALED**;

IT IS FINALLY ORDERED that the original unredacted Affidavit in support of the Criminal Complaint in the above cause is to remain **SEALED** until further order of this Court, for the reasons stated in the Government's motion and for the reasons stated below.

THE COURT FINDS that the public's presumptive qualified right of access to judicial records requires unsealing of the majority of the original Complaint Affidavit in this case. However, the Court further finds that, with respect to the redacted portions of the Government's proposed Complaint Affidavit, the public's right of access is outweighed by interests favoring nondisclosure.

These interests include the possible chilling effect on information provided by informants and witnesses to law enforcement; the potential hindrance to an ongoing law enforcement investigation if certain details are revealed at this time; the potential hindrance to law enforcement if certain investigative techniques are made public; innocent third parties' rights to privacy; and disclosure restrictions related to certain protected records and to personal identifying information, as imposed by law and the rules of this Court.

SIGNED this _____ day of _____, 2018.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A - FILED UNDER SEAL REC FILED

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2018 APR -9 AM 11:51

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 9

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION FOR A COMPLAINT**

I, REYNALDO ALATORRE, JR., being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), United States Department of Justice, and have been so employed since July 2001. Prior to my employment with the ATF, I was employed as a Border Patrol Agent for approximately four years. As a result of my training and experience, I am familiar with firearms and with Federal Firearms Laws, including Title 26 offenses concerning destructive devices. I have also discussed this investigation with other ATF Special Agents with specialized experience in Destructive Devices (explosive device(s)) and Destructive Device investigations.

2. This affidavit is intended to show only that there is sufficient probable cause for the requested arrest warrant and does not set forth all of my knowledge about this matter. The investigation described below is at its preliminary stages and facts continue to develop. I responded to the scene on March 2, 2018 as well as the scene of the second explosive device on March 12, 2018. I also responded to the scene on March 18, 2018. I am relying on my observations of the scenes as well as the facts and information gathered from other law enforcement described below. All facts are relayed in sum and substance.

3. As a result of my training, my experience relating to these statutes, and the experience of senior Special Agents and investigators, I believe that there is probable cause that Mark Conditt committed the following offenses:

Title 26 United States Code § 5861: It is unlawful for any person to possess a firearm (defined as including a Destructive Device) that is required to be registered with the National Firearms Registration and Transfer Record and is not so registered or to transfer a firearm (including a Destructive Device) to a person to whom the firearm is not registered.

PROBABLE CAUSE

4. Your Affiant is familiar with the information contained in this affidavit, either through personal investigation or through reports and discussion with other law enforcement officers, who have participated in and have contributed their investigative efforts in this matter.

5. On March 2, 2018, at approximately 6:55 am, at [REDACTED], Austin, Texas [REDACTED] in the Western District of Texas, an explosion occurred on the front porch of the single story brick residence, resulting in the death of Anthony S. House. Analysis of this explosive device by the ATF lab determined that the powder found inside the device was [REDACTED] powder.

6. On March 12, 2018 at approximately 6:44 am at [REDACTED], Austin, Texas [REDACTED] in the Western District of Texas, an explosion occurred inside the residence, resulting in the death of a 17-year old victim and injuries to an additional victim. Preliminary analysis of the explosive device revealed that it utilized [REDACTED] of the triggering mechanism.

7. On March 12, 2018 at approximately 11:50 am at [REDACTED], Austin, Texas [REDACTED] in the Western District of Texas, an explosion occurred outside of the residence,

sending one person to the hospital with injuries. Based on communications from the victim, the package containing the explosive device may have had the address "[REDACTED]" written on it. Preliminary analysis of the explosive device revealed that it utilized [REDACTED] of the triggering mechanism.

8. On March 18, 2018, sometime before 9:00 pm, an explosion occurred near the block of [REDACTED] and [REDACTED], located in the neighborhood of Travis Country, Travis County, Texas—a location within the Western District of Texas. Two individuals were injured. A witness was interviewed who resided in the area of the explosion. [REDACTED] stated that when [REDACTED] returned to [REDACTED] home at approximately 8:25 pm [REDACTED] saw a "Drive Like Your Kids Live Here" yard sign with red backing and white letters that had not been present when [REDACTED] left [REDACTED] home. Preliminary analysis of the explosive device revealed that it utilized a [REDACTED] of the triggering mechanism. I believe, based on interviews with the witness and the preliminary analysis of the scene, that the sign was utilized to facilitate the concealment of the explosive device.

9. On March 20, 2018, at approximately 12:45 am, at the FedEx processing center in Schertz, Texas, a package in FedEx custody exploded. At approximately 7:00 am on March 20, 2018, a package was located at the FedEx facility located near the Austin, Texas airport at [REDACTED] McKinney Falls Pkwy. The package was addressed [REDACTED] located in Austin, Texas. That package was x-rayed and an explosive device was found inside. Law enforcement was able to render the device safe. Preliminary analysis of the device revealed that it consisted of a [REDACTED] casing with [REDACTED] inside surrounded by [REDACTED]. The device utilized [REDACTED] trigger. The trigger was designed to ignite the device creating an explosion when [REDACTED] package was opened.

10. Information from FedEx revealed that both packages discovered on March 20, 2018 were sent by the same individual at a FedEx location in Austin, Texas on Brodie Ln on March 18, 2018. Video footage was recovered from the FedEx and revealed that a single white male individual shipped both packages. He was wearing gloves and a hat in the store. He paid in cash. It appeared that he was wearing a wig. The FedEx clerk was interviewed by law enforcement who dealt with the customer who sent the packages. The clerk stated that the customer was in his mid 20s, was wearing gloves, had a pasty white complexion, was wearing a green shirt and blue jeans, and was wearing a hat and a wig. When the customer left, the clerk saw him get into a red truck. The clerk was shown a stock photograph of a 2002 red Ford pickup truck and the clerk said it was consistent with the vehicle that the customer got into. A [REDACTED] store in the same shopping center as the FedEx had exterior cameras that showed a red pickup truck with extended cab similar in appearance to a Ford Ranger in the parking lot approximately 10 minutes prior to the time the customer was in the FedEx.

11. The investigation is continuing for all of these incidents and this information continues to develop as the investigation continues, but law enforcement believes these explosions were likely caused by Destructive Devices. Law enforcement has assessed that the explosive devices shared commonalities, such as the delivery method, contents of the explosive device, and the manner of detonation. All six explosive devices used [REDACTED] Law enforcement believes all six devices are linked.

12. Multiple other individuals were investigated for potential links to these Destructive Devices. None of those persons were deemed likely to be involved. Our investigation is ongoing.

13. On or about February 27, 2018, a customer purchased several items at [REDACTED]

store located at Austin, TX. The items included Battery Holder With Snap Connector. Preliminary analysis of the explosive devices revealed that all six explosive devices utilized a Battery Holder With Snap Connector. The customer utilized a U.S. Bank credit card issued to Mark Conditt, who according to Texas Department of Public Safety driver's license records, resides at Pflugerville, TX. Conditt has a 2002 Red Ford Ranger with an extended cab registered to him. Video footage recovered from showed that the customer looked to be Mark Conditt.

14. On or about March 13, 2018, at approximately 6:30 pm a red truck arrived at in Round Rock, Texas. A white male walked into the store and purchased several signs, including a "Drive Like Your Kids Live Here" sign consistent with the sign the witness reported seeing related to the March 18, 2018 explosion. Also, the person purchased a 6 pack of work gloves consistent with the gloves seen in the FedEx video from March 18, 2018. The white male seen on video footage is similar in appearance to a photograph I have viewed of Mark Conditt. That customer paid with cash.

15. with multiple contacts with Mark Conditt was interviewed on March 20, 2018. was shown a single photo of Mark Conditt and identified the photograph to be Mark Conditt. was then shown the video footage from March 13, 2018, discussed in detail above. told law enforcement that the photograph looked like Mark Conditt when asked how confident he/she was, said he/she was "98%" confident that the customer in the footage was Mark Conditt. was shown the footage of the red pickup truck, discussed above, and told law enforcement

¹ There is no criminal history for

that the truck looks like Conditt's truck. When asked how confident he/she was, [REDACTED] replied "70%."

16. According to Facebook pages viewed by other agents, [REDACTED] "liked" the [REDACTED] Facebook page—the same [REDACTED] where the explosive device discussed above was addressed to.

17. Law enforcement took [REDACTED] photographs of [REDACTED] Pflugerville, Texas on March 20, 2018. Law enforcement also conducted physical surveillance of the address. A red 2002 Ford Ranger pickup truck was observed at the home. The [REDACTED] footage revealed multiple items in the bed of the pickup truck. I have seen the [REDACTED] exterior camera footage of the red pickup truck and I believe that the items in the bed of the truck in that footage are consistent with the items captured in the [REDACTED] photographs of the truck at [REDACTED], discussed above.



[REDACTED] Therefore, there is no currently available data placing the phone utilizing number [REDACTED] at either at the scene of the explosions or at [REDACTED]—nor is their data placing the phone utilizing number [REDACTED] at locations other than the scene of the explosions or [REDACTED]. Phone call records for [REDACTED] show that between March 12, 2018 and March 20, 2018 the phone utilizing number [REDACTED] [REDACTED] made calls to a [REDACTED] company—preliminary analysis of the explosive devices

revealed that wiring utilized in the device was consistent with wiring used on [REDACTED]

19. [REDACTED]

20. The address of Mark Conditt on his driver's license and vehicle registration differ between [REDACTED] and [REDACTED]. Investigators have determined that they are the same location.

21. In my training and experience and that of other experienced ATF agents with expertise in Destructive Device making and explosives, I know and have learned that Destructive Device manufacturers often research their targets using the internet and electronic means. Destructive Device-makers often research methods of constructing Destructive Devices, as well as information related to motive for using explosives, using the internet and other electronic devices. Furthermore, I have learned that in this case there is some evidence that Mark Conditt has used the internet to look up the FedEx location where two of the devices were mailed from, as described above. Additionally, I know that electronic devices often contain records of location and that information would be relevant evidence in this case.

22. Based on my training and experience, I know that anyone who manufactures or deals in explosives must be licensed by ATF to do so, and that the storage of explosives in a residence or vehicle is in violation of licensing and storage requirements defined by law.

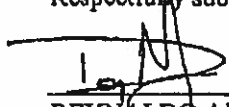
Furthermore, I know that due to the volatile nature of explosive materials, their improper manufacture and storage poses an extreme danger to the individual/dealer, as well as nearby residents and their property. Finally, there have been numerous documented instances of similar clandestine unlawful explosive operations in buildings wherein there have been fatalities and substantial property damage.

23. ATF Explosives Enforcement Officer [REDACTED] examined the evidence recovered from the first device recovered on March 2, 2018 and confirmed it to be a Destructive Device.

24. Your Affiant knows through his training and experience that per the National Firearms Act of 1934 destructive devices are required to be registered in the National Firearms Registration and Transfer Record.

25. Based on the above, I respectfully submit that there is probable cause to believe that Mark Conditt violated Title 26, United States Code, Section 5861.

Respectfully submitted,


REYNALDO ALATORRE, JR.
Special Agent
ATF

Subscribed and sworn to before me
on March 20, 2018:


HON. MARK LANE
UNITED STATES MAGISTRATE JUDGE