

ORIGINAL FILED

JUN 9 1999

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN THE MATTER OF THE APPLICATION :  
OF THE UNITED STATES OF AMERICA :  
FOR AN ORDER AUTHORIZING THE :  
SURREPTITIOUS ENTRY INTO THE :  
PREMISES OF MERCHANT SERVICES OF :  
ESSEX COUNTY, LOCATED AT 149 :  
LITTLE STREET, BELLEVILLE, NEW :  
JERSEY, FOR THE PURPOSE OF :  
CONDUCTING A SEARCH FOR EVIDENCE :  
OF VIOLATIONS OF TITLE 18, U.S.C. :  
§§ 371, 892-894, 1955 AND 1962 :

Mag. No. 99-4061ORDER

Application under oath having been made before me by Ronald D. Wigler, Assistant United States Attorney for the District of New Jersey, for an order pursuant to Rule 41(b) of the Federal Rules of Criminal Procedure and the All Writs Act, 28 United States Code, Section 1651, to permit Special Agents of the Federal Bureau of Investigation ["F.B.I."] to: (1) search for and seize key related information from Nicodemo S. Scarfo's computer in the TARGET LOCATION by deploying recovery methods which will allow the Government to read and interpret data that was previously seized pursuant to a search warrant on January 15, 1999, as well as those to be seized under this present Court Order; (2) search for and seize business records in whatever form they are kept (e.g., written, mechanically or computer maintained and any necessary computer hardware, including computers, computer hard drives, floppy disks or other storage disks or tapes as necessary to access such information, as well as, making

an exact copy of the hard drive to preserve configuration files, public keys, private keys, encrypted files and other information that may be of assistance in interpreting the password) -- including address and telephone books and electronic storage devices; ledgers and other accounting-type records; banking records and statements; travel records; correspondence; memoranda; notes; calendars; and diaries -- that contain information about the identities and whereabouts of conspirators, betting customers and victim debtors, and/or that otherwise reveals the origin, receipt, concealment or distribution of criminal proceeds relating to illegal gambling, loansharking and other racketeering offenses, and all of which are fruits, instrumentalities and/or evidence of violations of 18 U.S.C. § 371 (conspiracy), §§ 892-94 (extortionate credit transactions), § 1955 (illegal gambling business) and § 1962 (RICO); and (3) deploy recovery methods which will capture the necessary password(s) and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive or on removable media; and full consideration having been given to the matters set forth therein, the Court finds:

1. There is probable cause to believe that Nicodemo S. Scarfo has committed and continues to commit offenses in violation of Title 18, U.S.C. §§ 371, 892-94, 1955 and § 1962.
2. There is probable cause to believe that in the TARGET LOCATION there is evidence of business records of Nicodemo S. Scarfo's illegal gambling business and loansharking operation.
3. There is probable cause to believe that Nicodemo S.

Scarfo's computer, located in the TARGET LOCATION, is being used to either store business records of Scarfo Jr.'s illegal gambling business and loansharking operation, or facilitate Scarfo Jr.'s illegal gambling business and loansharking operation, and that the above-mentioned records have been encrypted.

4. There is probable cause to believe that admissible evidence of commission of the offenses described above will be discovered by capturing the key related information and encrypted file(s) necessary to decrypt the encrypted computer files.

5. There is probable cause to believe that deployment of recovery methods which will capture the necessary key related information and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive or on removable media may require surreptitious entry into the premises (by breaking and entering, if necessary).

6. Normal investigative procedures to decrypt the codes and keys necessary to decipher the "factors" encrypted computer file have been tried and have failed.

7. The seizure and retrieval of key related information and encrypted file(s) ordered pursuant to this Order do not involve captured communications protected under Title 18, United States Code, Sections 2510 et seq..

8. The TARGET LOCATION is located in the rear one-room, lowest-level office of a two-to-three story commercial and residential building on the southeast corner of the intersection of Washington Avenue and Little Street, whose main entrance faces

Washington Avenue and whose walls have light-brown siding except for the walls of the rear lowest level, which have a white stucco like material; Merchant Services' office has a silver metal door with darkened glass facing Little Street, a single window on both sides of that door and a large white sign bearing, among other things, "Merchant Services of Essex County" and "149 Little Street," over that door.

WHEREFORE, IT IS HEREBY ORDERED THAT Special Agents of the F.B.I., state and local law enforcement officers who have been deputized by the F.B.I. and individuals operating under contract with the Government under the supervision of the F.B.I. supervising agent, deploy recovery methods which will capture the necessary key related information and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive in the TARGET LOCATION or on removable media.

IT IS ORDERED FURTHER that Special Agents of the F.B.I., state and local law enforcement officers who have been deputized by the F.B.I. and individuals operating under contract with the Government under the supervision of the F.B.I. supervising agent, search for and seize business records in whatever form they are kept (e.g., written, mechanically or computer maintained and any necessary computer hardware, including computers, computer hard drives, floppy disks or other storage disks or tapes as necessary to access such information, as well as, making an exact copy of the hard drive to preserve configuration files, public keys, private keys, encrypted files and other information that may be

of assistance in interpreting the password) -- including address and telephone books and electronic storage devices; ledgers and other accounting-type records; banking records and statements; travel records; correspondence; memoranda; notes; calendars; and diaries -- that contain information about the identities and whereabouts of conspirators, betting customers and victim debtors, and/or that otherwise reveals the origin, receipt, concealment or distribution of criminal proceeds relating to illegal gambling, loansharking and other racketeering offenses.

IT IS ORDERED FURTHER that Special Agents of F.B.I., state and local law enforcement officers who have been deputized by the F.B.I. and individuals operating under contract with the Government under the supervision of the F.B.I. supervising agent, be authorized to enter the TARGET LOCATION surreptitiously, covertly, and by breaking and entering, if necessary, in order to deploy recovery methods which will capture the necessary key related information and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive in the TARGET LOCATION or on removable media.

IT IS ORDERED FURTHER that Special Agents of F.B.I., state and local law enforcement officers who have been deputized by the F.B.I. and individuals operating under contract with the Government under the supervision of the F.B.I. supervising agent, be authorized as many surreptitious physical entries into, and surreptitious physical/electronic searches of, the TARGET LOCATION and the computer, and information available there,

within a 30 day period as may be necessary to deploy, maintain, utilize and remove the means used to effect the recovery method. This 30-day time period shall commence from the earlier of the day on which the investigative or law enforcement officers first deploy recovery methods which will capture the necessary key related information and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive or on removable media or 10 days after the Order is entered.

IT IS ORDERED FURTHER that Special Agents of F.B.I., state and local law enforcement officers who have been deputized by the F.B.I. and individuals operating under contract with the Government under the supervision of the F.B.I. supervising agent, be authorized to retrieve such key related information and encrypted file(s) through electronic means.

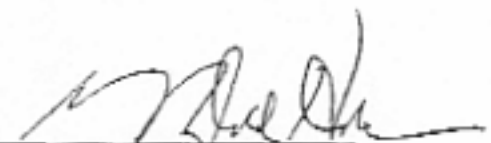
IT IS ORDERED FURTHER that this Order require that it be executed as soon as practicable, and that the Order terminate upon attainment of the authorized objectives or at the end of 30 days from the earlier of the day on which the investigative or law enforcement officers first deploy recovery methods which will capture the necessary password(s) and encrypted file(s) whether they are stored on Nicodemo S. Scarfo's computer hard drive or on removable media or 10 days after the Order is entered.

IT IS ORDERED FURTHER that there be a delay of notification of this Court Order, as well as, Court Order - Mag. No. 99-4061-01, filed May 8, 1999, since this present Court Order would supplement, if not, supersede the May 8, 1999 Court Order and any



such notice would prevent execution of this current Court Order.

IT IS ORDERED FURTHER that this Application, Affidavit, Order and all documents relating thereto be sealed until further order of the Court because the investigation is continuing and could be seriously compromised by the premature disclosure of the information contained herein.

  
HON. G. DONALD HANEKE  
United States Magistrate Judge

Dated: June 9, 1999

Time: 345pm