IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND
RECOMMENDATION

v.

03-CR-51-S

LAWRENCE L. OLSON,

Defendant.

REPORT

Defendant Lawrence Olson is charged in a three count indictment with possessing handguns after conviction of a crime punishable by more than a year in prison, possession of marijuana with intent to distribute it, and a forfeiture claim against his house, in which the marijuana was found. Before the court for report and recommendation are Olson's motion to dismiss Count 1 (dkt. 23), supplemental motion to dismiss Count 1 (dkt. 40), motion to dismiss Count 3 (dkt. 24) and motion to suppress evidence (dkt. 27).

For the reasons stated below, I am recommending that this court deny the first motion to dismiss Count 1; grant the second motion to dismiss Count 1 unless the government first returns a superseding indictment, in which case Olson's motion is moot; deny the motion to dismiss Count 3; and deny the motion to suppress evidence.

I. Motions to Dismiss Count 1

A. Section 922(g)(1) and the Commerce Clause

Olson argues that simple possession of a firearm that previously traveled in interstate commerce cannot be a federal crime because the act of possession does not affect interstate commerce. Olson recognizes that the Court of Appeals for the Seventh Circuit has rejected this argument, most recently in *United States v. Lemons*, 302 F.3d 769 (7th Cir. 2002). Olson contends that the Supreme Court's recent interpretations of the Commerce Clause in other types of cases call the Seventh Circuit's decisions into question. Olson acknowledges that this court is obliged to follow circuit precedent so that he cannot expect relief at the district level. Olson has preserved his point. This court should deny Olson's motion.

B. Insufficiency of the Predicate Crimes

Count 1 charges that Olson knowingly possessed five firearms after having been convicted "of a crime punishable by imprisonment for a term exceeding one year." The quoted language comes directly from 18 U.S.C. § 922(g)(1). The evidence presented to the grand jury on this point consists of the following exchange between the questioning AUSA and the answering case agent:

> Q: Was [Olson] a felon on March 5th of 2003?
>
> A: He was. Prior to March 5th, 2003, Mr. Lawrence Olson was convicted of two felony convictions.
>
> Q: And was one of those in 1996?

> A. Correct. He was convicted in 1996 for felon in possession [*sic*] of THC, or more commonly referred to as marijuana, and he also had a second felony conviction for the same – for a second offense for possession of THC in 1998.

See Dkt. 4, Exh. 1, at 7.

Olson points out that in 1996 the Wisconsin law prohibiting the possession of marijuana, Wis. Stat. § 961.41(3g)(e), provided a penalty of not more than six months' imprisonment. Section 961.48 provided a double penalty for a second offense, which would have raised the possible term of imprisonment on Olson's second conviction to 12 months. Since neither crime was punishable by imprisonment for a term *exceeding* twelve months, the government did not present evidence to the grand jury establishing probable cause for an element of a §922(g)(1) offense.

The government conceded the point in a July 9, 2003 letter and will seek a superseding indictment to correct this error when the grand jury convenes on July 16, 2003. Since it appears that the only change will be the use of a different prior conviction as a predicate for Count 1, the return of the superseding indictment less than 30 days before the scheduled jury trial would not run afoul of 18 U.S. § 3161(c)(2). *See United States v. Rojas-Contreras*, 473 U.S. 231,237 (1985); *United States v. Hemmings*, 258 F.3d 587, 592 (7th Cir. 2001). This court will arraign Olson on the superseding indictment at the final pretrial conference on July 18, 2003 and give both sides a chance to be heard on whether the ends of justice require a continuance; the court's position, however, is that trial on all charges against Olson will begin July 28, 2003.

II. Motion To Dismiss Count 3

A. Failure To State an Offense

Count 3 is a § 853 forfeiture count which charges that

> As a result of the offenses charged in Count Two of this indictment, the defendant, Lawrence L. Olson, shall forfeit to the United States . . . his right, title and interest in all property, real and personal, involved in the above-listed offense, and all property traceable to such offense, including but not limited to the following: . . ."

Count 2 charges Olson with possessing marijuana with intent to distribute it.

21 U.S.C. § 853 provides that any person convicted of such a drug offense shall forfeit to the United States "any property constituting or derived from any proceeds the person obtained . . . as the result of the such violation" and "any of the person's property used . . . in any manner or part, to commit or to facilitate commission of, such violation."

As a basis for dismissal, Olson alleges a fatal lack of correspondence between Count 3 and § 853. The statute says "constituting or derived from any proceeds ... obtained ... as a result of such violation," but the charge says "property traceable to such offense." The statute says "used . . . to commit, or to facilitate the commission of such violation," but the charge says "involved in the above-listed offense." Olson contends that the terms used by the government in Count 3 are not sufficiently synonymous with the terms used in § 853. Indeed, says he, they are "unclear and ambiguous," dkt. 30 at 2, and they fail to provide him notice of the reason why the government is asserting the his property is subject to forfeiture, dkt. 36 at 1.

Olson reads F.R.Cr.P. 7(c)(1) and (2)[1] conjunctively to argue that a criminal forfeiture count must meet the same requirements as any other charge in an indictment. The rule for criminal charges is that they must state all of the elements of the offense, inform the defendant of the nature of the charge so he can prepare a defense, and be sufficiently specific to enable the defendant to plead jeopardy as a bar to future prosecution. *See United States v. Agostino*, 132 F.3d 1183, 1191 (7th Cir. 1997); *United States v. Spears*, 965 F.2d 262, 279 (7th Cir. 1992).

The government disagrees, arguing that Rule 7(c)(1) and 7(c)(2) are to be read disjunctively, and that pursuant to Rule 7(c)(2) all that is required in the indictment is notice that Olson has an interest in the property that is subject to forfeiture pursuant to § 853. F.R.Cr.P. 32.2(a) is to the same effect, stating that a court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment contains notice to the defendant that the government will seek forfeiture of property as part of any sentence in accordance with the applicable statute. As a fallback position, the government contends that if Rule 7(c)(1) applies here, Count 3 passes muster.

---

[1] Rule 7(c)(1) provides that

> "the indictment . . . must be a plain, concise, and definite written statement of the essential facts constituting the offense charged . . .."

Rule 7(c)(2) provides that

> No judgment of forfeiture may be entered in a criminal proceeding unless the indictment . . . provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

I agree with the government that Rule 7(c)(2) actually controls here. Rule 7(c)(1) does not apply because *in personam* forfeiture is not a crime, it is a criminal sanction to be proved by a preponderance of the evidence. *See United States v. Vera*, 278 F.3d 672, 673 (7th Cir. 2002); *see generally United States v. Gilbert*, 244 F.3d 888, 918-19 (11th Cir. 2001). Rule 7(c)(2) acknowledges this distinction by requiring no more than that the government provide notice to Olson that it seeks forfeiture of his property pursuant to § 853. The government has done this and Olson now is fully aware that his residence could be forfeited if he is convicted of the predicate crime charged in Count 2. Olson's additional rights regarding this forfeiture attempt are protected by the procedures outline in Rule 32.2. Nothing more is required.

Even if Rule 7(c)(1) were to apply to a criminal forfeiture, Olson would not be entitled to dismissal. I agree with Olson that it would have been clearer for the government to have tracked the language of § 853 in Count 3, and I cannot discern any good reason not to have done so here (or in the future).[2] But the terms used by the government are not unclear or ambiguous and they can fairly be deemed synonymous with the statutory terms

---

[2] Although the government is notoriously fond of elements-only charges, rarely would there be a measurable downside to supplementing a forfeiture count with a nexus sentence. For instance, in this case, if the government's theory is that Olson facilitated his March 5, 2003 possession of marijuana with intent to distribute it by storing three pounds of marijuana in his house, why not just say so?

This segues to a related point: the grand jury heard that a witness has reported buying marijuana from Olson at his house around 1000 times over the past twelve years. This indicates that Olson frequently used his house to facilitate marijuana sales. However, these sales cannot be a basis for the *in personam* criminal forfeiture noticed in Count 3 because they are not part of the violation charged in Count 2. To obtain forfeiture of Olson's house on the basis of the thousand sales, the government would have to initiate a civil *in rem* forfeiture proceeding. If the government contends otherwise, the parties should obtain *in limine* direction from Judge Shabaz on this point.

for which they were substituted. "The test for validity is not whether the indictment could have been framed in a more satisfactory manner, but whether it conforms to minimal constitutional standards." *United States v. Agostino*, 132 F.3d at 1191. So, although Count 3 did not *have* to comply with Rule 7(c)(1), it *did* comply. Notwithstanding Olson's claims to the contrary, Count 3 sufficiently states all the elements of a § 853 offense.

Count 3 also provides enough information for Olson to discern the nature of the charge so that he can prepare a defense. The forfeiture Count vests only if Olson is convicted of Count 2, which charges him with possessing marijuana on one day last March. Olson has a copy of the case agent's grand jury testimony in which he reports that on March 5, 2003, agents found three pounds of marijuana in a safe located in the house identified in the forfeiture count. This gives Olson enough information to defend against the charge. (As noted in footnote 2 of this order, it does not appear that the government can seek forfeiture on the basis of Olson's alleged myriad sales of marijuana from the house because those sales are not connected to Count 2).

Finally, I don't see how "jeopardy" attaches to the seizure of a house under § 853 because the statute is a penalty provision, not a separate crime. If Olson successfully defends against Count 2, or is convicted of Count 2 but successfully defends against forfeiture, then the government cannot seek *in personam* forfeiture of Olson's house a second time on the basis of his alleged possession of three pounds of marijuana on March 5, 2003. (This would not, however, prevent the government from seeking forfeiture in the future on some other legitimate basis. That issue is not before the court).

The bottom line is that the court should deny this portion of Olson's motion to dismiss Count 3.

B. Duplicity

Olson presents a one-paragraph argument that the government cannot charge alternate and distinct grounds for seizing his property. The government responds that a forfeiture count is not a separate offense, it is a special notice required by the rules concerning a particular type of punishment sought by the government on an underlying drug offense. *See Libretti v. United States*, 516 U.S. 29, 39(1995); F.R.Cr.P. 32.2(a). Olson replies that this begs the issue: he's still entitled to know the government's theory of forfeiture and to obtain a unanimous verdict. Olson has a point, but it is not sufficient to obtain dismissal of Count 3. It is not duplicitous to plead in the conjunctive and prove in the disjunctive. *See United States v. Durman*, 30 F.3d 803, 810 (7th Cir. 1994). The court will instruct the jury on the need for unanimity when reaching a verdict on the forfeiture count. Therefore, there is no need to dismiss Count 3 on any claim of duplicity.

III. Motion To Suppress Evidence

Olson argues that the search warrant issued by the Circuit Court for Rock County was not supported by probable cause and that it cannot be saved by the good faith doctrine. I deal with each argument in turn.

A. Probable Cause

1. The warrant affidavit

Olson has attached a copy of the search warrant affidavit to his motion (dkt. 27) and it speaks for itself. By way of synopsis, on March 5, 2003, Inspector Bambi Tomas of the State Line Area Narcotics Team (SLANT) swore out the challenged affidavit, seeking a warrant to search Olson's home for drugs and guns. Inspector Tomas provided four types of information intended to establish probable cause.

First, Inspector Tomas stated that she began a drug investigation of Olson about four months earlier in November 2002 and that "a concerned citizen" had reported that Olson sold marijuana out of his home and that he stored large quantities of the drug in his outbuildings and the junked vehicles on his property. The implication is that Inspector Tomas opened her file on Olson as a result of the citizen report, but she doesn't say this.

Second, Inspector Tomas reported that on the same day of her warrant application, Olson's nephew, Joseph Olson ("Joseph"), attempted to steal Olson's marijuana supply. Joseph had been arrested by the county sheriff on charges of party to the crime of armed robbery and aggravated battery. Tomas interviewed Joseph, who told her that he had gone to Olson's house to "rip off his stuff," which he clarified to mean marijuana. Joseph stated that he was going to steal Olson's keys in any way it took and break into Olson's safe where he kept large quantities of marijuana. Joseph stated that he had seen about one pound of marijuana in Olson's bedroom two days earlier on Monday, March 3, 2003 at about noon.

Joseph also reported that Olson had several guns at his residence and that he was a convicted felon (although Tomas did ask to search for firearms in her warrant request).

Third, Inspector Tomas reviewed "confidential intelligence records" in the SLANT office and "found several reports relating to possible drug trafficking involving Lawrence Olson."

Fourth, Olson's criminal history revealed several arrests and convictions for possession with intent to deliver THC, possession of THC and cocaine, and possession of drug paraphernalia. Most of the arrests and convictions were between 1990-95, with an arrest for possession of THC (2nd/subsequent offense) on July 31, 2002.

The Rock Count Circuit Court issued the warrant. In executing it the agents found and seized the guns and drugs charged against Olson in this case.

2. Analysis

A court that is asked to issue a search warrant must determine if probable cause exists by making a practical, common-sense decision whether given all the circumstances, there exists a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001), quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1982). To uphold a challenged warrant, a reviewing court must find that the affidavit provided the issuing court with a substantial basis for determining the existence of probable cause. In the Seventh Circuit, this standard is interpreted to require

review for clear error by the issuing court. Reviewing courts are not to invalidate a warrant by interpreting the affidavits in a hypertechnical rather than a common sense manner. *Id.*

Put another way, a court's determination of probable cause should be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the court reasonably could conclude that the items sought to be seized are associated with the crime and located in the place indicated. Doubtful cases should be resolved in favor of upholding the warrant. *United States v. Quintanilla*, 218 F.3d 674, 677 (7th Cir. 2000), quoting *United States v. Spry*, 190 F.3d 829, 835 (7th Cir. 1999), *cert. denied*, 528 U.S. 1130 (2000).

The Supreme Court has declined to define "probable cause" precisely, noting that it is a commonsense, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 695 (1996) citations omitted. Despite the lack of a firm definition, the Supreme Court tells us that probable cause to search exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Id.* at 696, citations omitted. Probable cause is a fluid concept that derives its substantive content from the particular context in which the standard is being assessed. *Id.*, citations omitted. "Probable cause requires only a probability or a substantial chance of criminal activity, not an actual showing of such activity." *United States v Roth*, 201 F.3d 888, 893 (7th

Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. 213, 244 (1983); *see also United States v. Ramirez*, 112 F.3d 849, 851-52 (7th Cir. 1997)("all that is required for a lawful search is *probable* cause to believe that the search will turn up evidence or fruits of crime, not certainty that it will," emphasis in original). Although people often use "probable" to mean "more likely than not," probable cause does not require a showing that an event is more than 50% likely. *See United States v. Garcia,* 179 F.3d 265, 269 (5th Cir. 1999); *see also Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting) (probable cause exists somewhere below the 50% threshold).

Where informants are involved in establishing probable cause, the Seventh Circuit suggests that a court assess their credibility by considering four factors: (1) firsthand observation by the informant, (2) the degree of detail provided by the informant, (3) corroboration of the informant's information by the police, and (4) testimony by the informant at a probable cause hearing. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001); *see also United States v. Koerth*, 312 F.3d 862, 866 (7th cir. 2002). As is routine in federal court, in this case the fourth factor disappears immediately; however, no one factor is dispositive in the credibility analysis, and a deficiency in one may be compensated by a strong showing of another. *United States v. Brack*, 188 F.3d 748, 756 (7th Cir. 1999).

Olson compares the affidavit in this case to that found deficient by this court in *United States v. Koerth*, 312 F.3d 862. The comparison reveals similarities, *and* differences. In *Koerth,* this court concluded (and the government conceded on appeal) that probable cause was not established by an arrested drug dealer snitching on his source in great detail

with recent information when the self-incriminating nature of his information was weak, the police did not present the informant to the court for a demeanor review, and the police did absolutely nothing to corroborate the informant's story. *See* Report and Recommendation, dkt. 23 at 6-7, *United States v. Koerth*, 01-CR-52-C ("This leaves prong three: police corroboration of Savage's information. There is none. . . . [T]he agents presented to the court . . . Savage's seven bald assertions and nothing else.")

In the instant case, as in *Koerth*, we have a newly-arrested informant providing bald assertions without having been presented to the court; but we also have at least some corroboration of his statements, and the self-incriminating nature of the informant's statements is more complex.

Dealing with the self-incrimination point first, there are distinctions between Joseph Olson's situation and that of most other informants reported in the cases. Joseph was not some street informant getting paid or working off a beef, nor was he a newly-arrested drug dealer who wanted to curry instant favor by narking on his supplier. He had just been arrested for the armed robbery and aggravated assault of his own uncle. Would it actually help him with the police or the D.A. to admit that his motive was to rip off his uncle's marijuana? Perhaps, but not necessarily: a robbery suspect who admits his motive was to steal drugs exposes himself to an additional and higher level of scrutiny and investigation as a possible drug dealer. This would be self-inculpatory, not exculpatory.

Even so, maybe Joseph *was* motivated to speak by a hope to curry favor with the authorities by telling about his uncle, drugs and guns. If so, an allowable inference

(certainly not the only one) was that Joseph, "in an attempt to strike a bargain with the police, had a strong incentive to provide accurate and specific information rather than false information about [Olson's] illegal activity." *Koerth*, 312 F.3d at 870. If Joseph wasn't looking for a deal, then his confession that he committed violent crimes in order to rip off someone else's drug stash could be viewed as simply compounding his problems. The shot-himself-in-the-foot nature of his confession would enhance its reliability.

The information Joseph actually provided was relatively fresh and detailed, and as Olson's nephew, the court could surmise that he was in a position to know of what he spoke. *See, e.g., United States v. Johnson*, 289 F.3d 1034, 1039 (7th Cir. 2002) ("[W]e have often repeated that first-hand observations by a CI support a finding of reliability"); *United States v. Leidner*, 99 F.3d 1423, 1430 (7th Cir. 1996) ("Even if we entertain some doubt as to an informant's motives, his explicit and detailed description of the alleged wrongdoing, along with a statement that the event was observed first hand, entitles his tip to greater weight than might otherwise be the case").

Then we have the minimal corroboration offered by Inspector Tomas. Just like in *Koerth,* the affiant had a lot more information that she could have shared but did not. First, there's the "concerned citizen" who reported that Olson sold marijuana and stored it in his outbuildings and junked cars. This isn't much, but it's already more than the police presented to the court as corroboration in *Koerth*. Did Inspector Tomas know the identity of her source? Had this source explained the basis of his/her knowledge? Did the source admit to having bought marijuana from Olson in the past? There must have been something

more, because Inspector Tomas went to the trouble of opening a file on Olson in November 2002, four months before the search. Inspector Tomas should have explained these details but she did not. So, the weight of this information is minuscule.

Second there's the almost inscrutable reference to confidential SLANT reports. What did they say? How detailed and recent were they? What source(s) provided the information and how reliable were they? Again, Inspector Tomas should have explained these details, but she did not. Telling a court "I know something you don't know" is not a sure-fire way to establish probable cause for a search warrant. Even so, this pea-sized nugget of information showed that there was some sort of additional corroboration out there, however minimal.

Finally, Inspector Tomas provided Olson's criminal history, which showed some older drug convictions and a recent drug arrest. A record check by itself is not enough to corroborate an informant's statements. *United States v. Peck*, 317 F.3d 754, 757 (7th Cir. 2003). Even so it has some value; so, we have a third small fleck of corroborative information.

This combination of factors might be enough to support the warrant, but if this court finds probable cause, then it is encouraging unnecessarily lax police work. The warrant affidavit could have–and should have–been more detailed, but government agents are not going to provide more detailed affidavits unless the courts make them. "Teaching moments" have their place in fourth amendment jurisprudence. *See Koerth* 312 F.3d at 869 (police

executing searches are charged with a knowledge of well established legal principles as well as an ability to apply the principles to the facts).

Today's question, however, is whether the information actually presented to the court by Inspector Tomas was enough to establish probable cause, and doubtful cases should be resolved in favor of upholding the warrant. *United States v. Quintanilla*, 218 F.3d at 677. Considering the nature and content of Joseph's statements along with the minimal corroboration provided by the police from three marginal sources, I conclude that Inspector Tomas's affidavit met the low threshold of probable cause.

Even if it did not, Olson cannot prevail on his motion because the warrant would be rescued by the good faith exception to the exclusionary rule.

B. Good Faith

In *United States v. Leon,* 468 U.S. 926 (1984) the Court held that:

> In a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.
>
> * * *
>
> We have . . . concluded that the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination. Deference to the magistrate, however, is not boundless.

Having so stated, the Court then held that

> In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.

Id. at 926 (1984).

Such determinations must be made on a case-by-case basis with suppression ordered "only in those unusual cases in which exclusion will further the purpose of the exclusionary rule." 468 U.S. at 918. When the officer's reliance on the warrant is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule because it is

> painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. . . . This is particularly true . . . when an officer acting with objective good faith has obtained a search warrant from a judge . . . and acted within its scope. . . . Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the [court's] error rather than his own cannot logically contribute to the deterrence of Fourth Amendment violations.

Id. at 920-21, internal quotations omitted.

The Court noted the types of circumstances that would tend to show a lack of objective good faith reliance on a warrant, including reliance on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or reliance on a warrant so facially deficient that the officer could not reasonably presume it to be valid. *Id*. at 923. The Court observed that "when officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time." *Id*. at 924. *See also Arizona v. Evans*, 514 U.S. 1, 11-12 (1995)(reaffirming the Supreme Court's reluctance to suppress evidence obtained in good faith but in violation of a defendant's Fourth Amendment rights).

In *Koerth*, 312 F.3d at 866, the panel employed its own two-step analysis: first, did the warrant affidavit provide the court with a substantial basis to rule that there was probable cause? If so, then it followed that the officer's actions were reasonable. If not, then the court must ask a second question: could the officer reasonably have believed that the facts set forth in her affidavit were sufficient to support a court's finding of probable cause?

Here, there was a substantial basis for the Rock County Circuit Court to rule that there was probable cause. I have concurred, albeit hesitantly, that there was probable cause; but even if both courts are incorrect, the fact that they even reached this conclusion demonstrates that at a minimum Inspector Tomas supplied enough information to provide a substantial basis for the state court's issuance of the warrant. Under *Koerth*, this is enough to establish good faith.

Even if we take the analysis to step two, Olson does not prevail. It was not unreasonable for Inspector Tomas to believe that the facts she presented in her affidavit would support the court's finding of probable cause. She had what appeared to be a statement against interest by Joseph that put a pound of marijuana in Olson's house two days earlier, and Joseph was so convinced that the marijuana still was in the house's safe that he beat up his own uncle to get it. Joseph's statements dovetailed with the "concerned citizen's" tip, the SLANT intelligence reports, and Olson's criminal history. Whatever the deficiencies of Inspector Tomas's affidavit, it was not bare bones. Doing exactly what she was supposed to do, Inspector Tomas collected her information, presented it to the court and

got her warrant. Although the Seventh Circuit in *Koerth* imputes some legal knowledge to agents seeking search warrants, the Supreme Court made it clear in *Leon* that the issuing court is the actual gatekeeper. Once the court issues the warrant, an agent should be able to rely on it unless her affidavit was so deficient that it merits the "bare bones" label. The warrant application was not so lacking in indicia of probable cause as to render reliance on the warrant issued by the court unreasonable. At that point, there was literally nothing more Inspector Tomas could have done in seeking to comply with the law. *Leon*, 468 U.S. at 921.

Accordingly, this court should deny Olson's motion to suppress evidence.

RECOMMENDATION

For the reasons stated above, I recommend that this court:

1) Deny Olson's first motion to dismiss Count 1;

2) Grant Olson's second motion to dismiss Count 1;

3) Deny Olson's motion to dismiss Count 3; and

4) Deny Olson's motion to suppress evidence.

Entered this 11th day of July, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge