

UNITED STATES DISTRICT COURT

FILED

NORTHERN

DISTRICT OF

CALIFORNIA

2010 AUG 24 P 1:

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

JOSEPH BUDDENBERG, DATE OF BIRTH: [REDACTED]

Case Number: 10-70738 HRL

I, Kyle R. Biebesheimer being duly sworn depose and say:

I am a(n) SPECIAL AGENT - FBI and have reason to believe
Official Title

that [X] on the person of or [] on the property or premises known as (name, description and/or location)

SEE ATTACHMENT A

in the Northern District of California

there is now concealed a certain person or property, namely (describe the person or property to be seized)

SEE ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

EVIDENCE, CONTRABAND, FRUITS, AND INSTRUMENTALITIES

concerning a violation of Title 18 United States code, Section(s) 43

The facts to support a finding of probable cause are as follows:

SEE ATTACHED AFFIDAVIT (incorporated herein by reference)

Continued on the attached sheet and made a part hereof:

Approved As To Form: GRANT P. FONDO AUSA

[X] Yes [] No

Signature of Affiant

Sworn to before me and subscribed in my presence,

Date: 8/24/10

at San Jose CA City State

HOWARD R. LLOYD U.S. Magistrate Judge
Name of Judge Title of Judge

Signature of Judge

ATTACHMENT A

PERSONS TO BE SEARCHED

Joseph Brien Buddenberg, date of birth [REDACTED], white male, approximate height of [REDACTED], blue eyes, reddish-brown hair, social security # [REDACTED].

ATTACHMENT B

ITEMS TO BE SEARCHED FOR AND SEIZED

DNA samples from Joseph Brien Buddenberg, in the form of buccal cells on oral swabs. The oral swabs will be collected from the inside cheek portion of the mouth to sufficiently collect buccal cells pursuant to the standard practices and procedures employed by the FBI for DNA testing.

AFFIDAVIT

I, Kyle R. Biebesheimer, a Special Agent (SA) with the Federal Bureau of Investigation (FBI), having been duly sworn, depose and state as follows:

INTRODUCTION

1. I have been a Special Agent with the FBI since April 2, 2010. Since then, I have been assigned to a domestic counter-terrorism squad in the San Francisco Division of the FBI. In this capacity, I have investigated and assisted other agents in investigating anarchist riots, sabotage by environmental extremists, and threatening conduct by animal rights extremists. Moreover, I have also been involved in the execution of search warrants dealing with narcotics and mortgage fraud. Additionally, prior to joining the FBI, I served as Deputy District Attorney for the Los Angeles County District Attorney's Office from March 2007 to October 2009. In that capacity, I tried numerous misdemeanor and felony violations of California law; handled hundreds of felony preliminary hearings, and adjudicated dozens of juveniles for assorted felony and misdemeanor conduct.

THE PURPOSE OF THE AFFIDAVIT

2. I make this affidavit in support of an application to obtain a search warrant authorizing the collection of a DNA sample for Joseph Brien Buddenberg (Buddenberg), further described in attachment "A," by collecting oral (buccal) swab samples according to the standard practices and procedures employed by the FBI for DNA testing. Based on my training

and experience, I believe that the requested DNA sample will yield evidence that Buddenberg engaged in federal crimes in violation of 18 U.S.C. § 43.

3. As set forth herein, there is an ongoing federal investigation in the Northern District of California by the FBI involving a home invasion that occurred on February 24, 2008, in Santa Cruz, California, and several other animal rights protests occurring in or about October 2007 through in or about May 2008 in Berkeley, California. This investigation led to criminal charges alleging violations of 18 U.S.C. §§ 371 and 43 against Buddenberg and three co-defendants - Nathan Pope, Adriana Stumpo, and Maryam Khajavi- that were filed in March 2009. The indictment was dismissed without prejudice by United States District Judge Ronald M. Whyte on July 12, 2010, thereby granting defense motions to dismiss the indictment based on lack of specificity. The investigation into criminal acts committed against UC Berkeley and UC Santa Cruz bio-medical researchers, and individuals associated with bio-medical research, is ongoing.
4. The information upon which this affidavit is based includes information obtained from victim/witness interviews conducted by other FBI agents and investigation by other law enforcement agents.
5. This affidavit is being submitted for the limited purpose of obtaining a search warrant for DNA evidence. I have not included each and every fact known to me and/or other law enforcement agents concerning this investigation.

SUMMARY OF THE INVESTIGATION

6. On February 24, 2008, at approximately 12:40 p.m., five to six individuals attempted to break through the front door of a private residence in Santa Cruz, California. This is the residence of L.H., a researcher at the University of California, Santa Cruz (UCSC) who uses laboratory mice in some of her research. L.H., her husband J.R., their two minor children, and two other minor children were inside the residence at the time of the attack. J.R. opened the front door of his house when it appeared that individuals were attempting to break into the home by banging on the glass, twisting the door handle back and forth, and shoving the door in its frame, as if trying to break the door down. J.R. was then assaulted outside the home by one of the individuals with a small cylindrical object and sustained a minor injury. J.R. reported to local law enforcement that approximately five of the six individuals were wearing bandanas over their faces and dark clothing. The only individual not wearing a bandana over his face was shouting through a bullhorn. When J.R. followed the individuals as they left his property, the male with the bullhorn shouted, "Go back to your murdering wife!" J.R. later described this male as follows: "White male adult in his mid 20's, of a stocky build, 5'6"-5'10" tall, 150-170 lbs. with brownish red short hair. His hair is off his forehead and cut above his ears." J.R. then described the bullhorn accordingly: "The bull horn has a section that is yellow on it."
7. After the incident, three to four individuals fled the L.H./J.R. residence on foot to a vehicle parked around the corner. J.R. followed these individuals and reported that the vehicle was a white, four-door Chevy, California license plate 5LEH590. The Santa Cruz Police determined that the vehicle was registered to D.K., the mother of Maryam Khajavi.

D.K. reported to the police that her daughter resided at 724 Riverside Avenue, Santa Cruz, California, and that she was a student at UCSC. The police then visited the premises at 724 Riverside Avenue, were not permitted entry, and told to get a search warrant.

8. At approximately 9:50 p.m. that same day, the Santa Cruz Police Department executed a search warrant at 724 Riverside Avenue. Maryam Khajavi (Khajavi), Adriana Stumpo (Stumpo), Nathan Pope (Pope), C.S. and A.T. were in the residence at the time. Khajavi, Pope, and A.T. were the only known residents of that address. Inside a backpack located in a common area of the house, police found an envelope with L.H.'s name and address handwritten on it. Also written on the envelope were the names of two other UCSC bio-medical researchers whose homes had been targeted by animal rights protesters on February 10, 2008. In addition, inside that envelope was a paper with other UC bio-medical researchers' names handwritten thereon.
9. At approximately 11:30 p.m. that same night, the Santa Cruz Police Department located Khajavi's vehicle parked along a Santa Cruz street, several blocks west of her 724 Riverside Avenue residence, and had it towed and secured. During a subsequent search of the vehicle on or about February 27, 2008, a bullhorn and several bandanas were discovered in the trunk of the car. These items generally matched the descriptions given by J.R. of the bandanas and bullhorn used during the February 24th assault at his home.
10. Earlier that same month, on February 2, 2008, an animal rights protest occurred outside the home of R.B. in Berkeley, California. R.B. is not a bio-medical researcher, but he is the capital projects manager for UC Berkeley's new laboratory. R.B. was not home at the time of the protest; however, his wife was. She reported that one of the suspects was

unmasked and held a bullhorn in hand. Thereafter, she was shown a photo lineup and positively identified Buddenberg as the unmasked male holding the bullhorn.

11. A similar incident occurred on February 17, 2008, at the home of researcher F.T. located in Berkeley, California. F.T. is a bio-medical researcher at UC Berkeley. There, an occupant took photographs of the protesters, which included Buddenberg, along with Khajavi, Pope, Stumpo, and several others. Two such photos clearly depict Buddenberg holding a white bullhorn, complete with a yellow mouthpiece (see attachment "C"). This matches the description given by J.R. of the bullhorn used by the unmasked subject outside his Santa Cruz home on February 24th, and subsequently recovered from Khajavi's vehicle days later.
12. Upon being seized, the handwritten envelope and paper found inside the residence at 724 Riverside Avenue residence were shipped to the FBI Laboratory located in Quantico, Virginia. The writings on these documents were compared against a known sample from Buddenberg. In the opinion of the examiner, the notations from both items were deemed to be from Buddenberg.
13. On December 18, 2008, Buddenberg was arrested by the Berkeley Police Department. At booking, the Alameda County Sheriff's Department described Buddenberg as follows: white male; date of birth April 6, 1984 (age 24 at the time); height 5'9"; weight 180 lbs.; hair brown. This description very closely resembles that provided by J.R. of the unmasked protester with the bullhorn in hand.
14. Moreover, on February 20, 2009, Buddenberg was arrested and processed by the FBI at 450 Golden Gate Avenue, San Francisco, California. Buddenberg's booking photo from that arrest depicts his build, and his "brownish-red short hair" (see attachment "D").

Again, this matches the same description given by J.R. of the unmasked protester with the bullhorn in hand.

15. The bullhorn recovered by the Santa Cruz Police Department was turned over to the FBI, and thereafter sent to the FBI Laboratory in Quantico for DNA analysis. On October 28, 2008, the examiner determined that the DNA thereon did not belong to Nathan Pope. Additionally, on November 8, 2009, the examiner determined that the DNA did not come from C.S., the other male present during the February 24, 2008, search of the premises at 724 Riverside Avenue, Santa Cruz. Furthermore, your affiant spoke with Jerrilyn Conway from the FBI laboratory on August 6, 2010, who added that the DNA on the bullhorn belongs to a male profile.

CONCLUSION

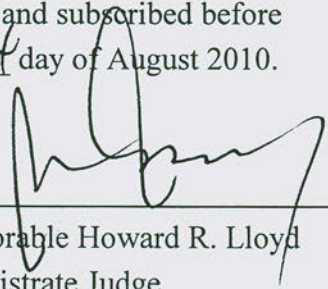
16. Based on all the facts and circumstances described above, I believe probable cause exists that Buddenberg was involved in the February 24, 2008, altercation at the L.H./J.R. residence in Santa Cruz. Moreover, I believe that probable cause exists that the collection of a DNA (oral swab) sample from Buddenberg, when compared against the DNA samples recovered from the bullhorn found in Khajavi's vehicle, will yield evidence that Buddenberg was involved in acts of force, violence, and threats involving animal enterprises, in violation of 18 U.S.C. § § 43 and 371.

17. For the above reasons, I respectfully request that a search warrant authorizing the FBI to search Joseph Brien Buddenberg, as outlined in attachment "A" to the search warrant, be granted in order to collect DNA samples from him by obtaining oral swab samples using the standard procedures developed by the FBI as described in attachment "B."



Kyle R. Biebesheimer, Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before
me this 24 day of August 2010.



The Honorable Howard R. Lloyd
U.S. Magistrate Judge

ATTACHMENT A

PERSONS TO BE SEARCHED

Joseph Brien Buddenberg, date of birth [REDACTED], white male, approximate height of [REDACTED] blue eyes, reddish-brown hair, social security # [REDACTED].

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ATTACHMENT C





ATTACHMENT D

