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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>JEFFREY S. BURUM,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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Nos. 14-55640
14-56282

D.C. No. 5:11 cv-01570- SJO-OP

MEMORANDUM*

Appeals from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Argued and Submitted April 7, 2016
Pasadena, California

Before: TASHIMA, SILVERMAN, and GRABER, Circuit Judges.

Jeffrey Burum appeals the district court’s orders denying his Federal Rule of Criminal Procedure 41(g) motion for the return of property and granting the government’s motion for an order authorizing provision of seized hard copy documents to state prosecutors. We have jurisdiction under 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

reverse the order denying the Rule 41(g) motion and remand for further proceedings. We vacate the order authorizing provision of hard copy documents to state prosecutors, and dismiss as moot the appeal from that order.

I.

In 2011, the government initiated a federal investigation against Burum for suspected political corruption and bribery. As part of the investigation, the government executed search warrants at Burum's residence and office building and seized 52 digital devices and 37 items of non-digital evidence. The government ultimately concluded its investigation without filing any federal charges against Burum. However, a state grand jury indicted Burum based on similar allegations. The state criminal case is currently pending.

Burum filed several motions in district court to compel the government to return his property and/or to conduct an appropriate scope and attorney-client privilege review of the seized evidence. The government eventually returned all of Burum's original property but retained copies of the evidence. In May 2012, the government turned over to state prosecutors at least two disks that were seized pursuant to the federal warrants. Burum then filed a Rule 41(g) motion for the return or destruction of all copies of his property retained by the government. Without holding an evidentiary hearing, the district court declined to exercise

equitable jurisdiction over the motion; alternatively, it denied the motion on the merits. The government then filed a motion requesting the district court's authorization to turn over all seized hard copy documents to the state prosecutors, which the court granted. Burum appeals both orders.

II.

Under Rule 41(g), a court may exercise its equitable jurisdiction to grant a motion for the return of property by a "person aggrieved by an unlawful search and seizure of property or by the deprivation of property." Fed. R. Crim. P. 41(g); *see Ramsden v. United States*, 2 F.3d 322, 324 (9th Cir. 1993). The court must receive evidence on any factual issue necessary to decide the motion. Fed. R. Crim. P. 41(g). This court reviews a district court's decision to exercise its equitable jurisdiction under Rule 41(g) for an abuse of discretion. *Ramsden*, 2 F.3d at 324. A district court's decision not to hold an evidentiary hearing on a motion to suppress is also reviewed for an abuse of discretion. *Ctr. Art Galleries-Hawaii, Inc. v. United States*, 875 F.2d 747, 754 (9th Cir. 1989).

III.

The district court declined to exercise equitable jurisdiction over Burum's Rule 41(g) motion without holding an evidentiary hearing. We conclude that this was an abuse of discretion.

The district court ruled on the motion without resolving several outstanding factual disputes on which Burum's motion depends, including whether the government conducted an adequate review of the seized digital data to determine whether those data were within the scope of the search warrant, whether the government destroyed out-of-scope and privileged evidence, and which evidence the government has turned over to the state prosecutors.

We therefore reverse the order denying the Rule 41(g) motion and remand for further proceedings. On remand, the district court shall conduct an evidentiary hearing to determine: (1) which documents (including copies) the government still has in its possession; (2) whether those documents fall within the scope of the search warrants; (3) whether those documents are protected by the attorney-client privilege; and (4) based on the court's findings on scope and privilege, which documents the government is required to return or destroy.

Because the court's findings on remand will necessarily affect what evidence the government may provide to the state prosecutors, we vacate the order authorizing the wholesale provision of documents to state prosecutors, and dismiss as moot the appeal from that order without reaching the merits.

In No. 14-55640, the order of the district court is **REVERSED and REMANDED.**

In No. 14-56282, the order of the district court is **VACATED** and the appeal is **DISMISSED.**

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
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TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk