

Challenges Around Prosecuting Financial Crimes

OECD Latin America Academy for Tax Crime and
Financial Investigation

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Overview

- Proving Intent and Where to Look for Evidence;
- Defenses;
- International Evidence; and
- Case Study

Common Law Legal System

- The laws governing a case are based on both legal precedent, created by judges, and statutory laws, created by legislatures;
- Usually an adversarial system, where the judge acts as an impartial referee between opposing parties to a case;
- A jury may determine the facts, and a judge will decide the law to be applied;
- There is an active role for prosecutors and defense attorneys;
- Victims have a role as witnesses and may have rights as a victim to receive information and limited participation – however, victims are not a party in criminal cases;
- The U.S. and the U.K. are examples of common law systems

Civil Law Legal System

- Most of the law is statutory law created by legislatures and not by judges following precedent;
- Usually an inquisitorial system, where an investigating judge is actively involved in investigating the facts of a case;
- Juries are rarely used; a judge or panel of judges will decide the facts and the law to be applied;
- Prosecutors and defense attorneys may play a more limited role;
- Victims may be parties and have rights regarding their involvement, which may include having their own attorneys and filing the initial charges;
- In many civil law systems, victims may bring civil claims, e.g., for monetary damages, in the context of a criminal prosecution.
- Many European countries, including France and Germany, and a number of North, Central and South American countries, like Mexico and Brazil, are examples of civil law systems.

Investigation Challenges

PROVING INTENT AND WHERE TO LOOK FOR
EVIDENCE

Intent for US Tax Crimes

- Willfulness has been defined by the courts as a voluntary, intentional violation of a known legal duty. Cheek v. US, 498 U.S. 192 (1991)
- Subjective standard: defendant not required to have been objectively reasonable in misunderstanding of law.
 - Knowledge of the defendant, not the reasonable person. However, jury may consider reasonableness of the defendant's asserted beliefs in determining whether the belief was honestly or genuinely held.

Intent for US Tax Crimes

- “Ignorance of the law is no defense,” unless Congress decrees. In tax cases, ignorance of law is a defense.
- In the US, affirmative defense of taxpayer to assert that she did not know what her duties were under the law, or that she believed that she was in compliance with the law. Even if that belief is outrageous and unreasonable.
- As long as that belief is true, in their heart of hearts, it can be a defense to a tax charge. It does not mean, however, that jury has to believe the story.

Intent for US Tax Crimes

Subjective Standard Circumstantial Evidence

- Willfulness is rarely subject to direct proof and must generally be inferred from the defendant's acts or conduct.

INSTRUCTION NO. 42

Proof of Knowledge or Intent

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.



Proving Intent and Where to Look for Evidence

- Previously reported income of the same type or consistent pattern of underreporting
- Accountant (or attorney) advised the TP or failure to supply accountant with accurate and complete information
- Background, education and experience of TP
- False statements to agents; false exculpatory statements
- False documents, entries, invoices, or keeping a double set of books or hiding, destroying or “losing” books?



Proving Intent and Where to Look for Evidence

- Other financial documents: Bank Loans, Mortgages
- Placing property, bank accounts or a business in nominee name
- A “deal too good to be true”
- Unreasonableness of defendant’s claims, based in part, on all of the above (objective unreasonableness may be used to prove subjective knowledge) – COMMON SENSE
- Use affirmative acts to show knowledge of duty (If no duty, why hide it from the IRS?)



Proving Intent and Where to Look for Evidence

- Filing a false tax return which omits income or overstates deductions
- Concealing income from return preparer
- Keeping double set of books
- Using false identification information
- Dealing in currency
- Lying to Revenue Agent or Special Agent during audit or investigation
- Creating phony invoices for false expenses
- Sending income to a shell corporation disguised as business expense
- Using nominee bank accounts
- A false W-4 filed prior to the prosecution years, but maintained over several years
- Removal of assets from the reach of IRS
- Placing assets in the names of nominees
- Dealing in currency
- Causing receipts to be paid through and in the name of others
- Causing debts to be paid through and in the name of others
- Paying creditors instead of the government
- Signing and submitting false financial statements to the IRS (ie: Forms 433-A)

Proving Intent and Where to Look for Evidence

- 1) Filed Tax Returns
- 2) Bank Records
- 3) Accountant
- 4) Third Party Clients, Customers, and Other Payors
- 5) Subpoena Defendant's Corporation or Partnership Books and Records (P/L, GL)
- 6) Search Warrants
- 7) Revenue Agent/Audit Files/Collection Files
- 8) IRS Records

Proving Intent and Where to Look for Evidence

- **Revenue Officer Files (Collection)**
 - Electronic database tracks efforts to contact TP and collect payment
 - Correspondence and other documents
- **Revenue Agent Files (Examination)**
 - Shows audit history, including information used to render assessment
 - Examination worksheets – detailed history of efforts to get cooperation from TP, including contacts with TP
 - Correspondence – Notice to TP

Proving Intent and Where to Look for Evidence

• Third Parties

- Employer/Business/Customers: Evidence of income and efforts to evade (ie: paying in cash, nominee)
- DMV
- Property Records
- Employer/Business/Customers: Evidence of income and efforts to evade (ie: paying in cash, nominee)
- DMV/Property Records
- Bank accounts
- Loan applications
- Books and records

One of the nicest ways to grab a jury's attention and which clearly shows a defendant's willfulness...LIFESTYLE – Spent more money on luxury purchases than was reported





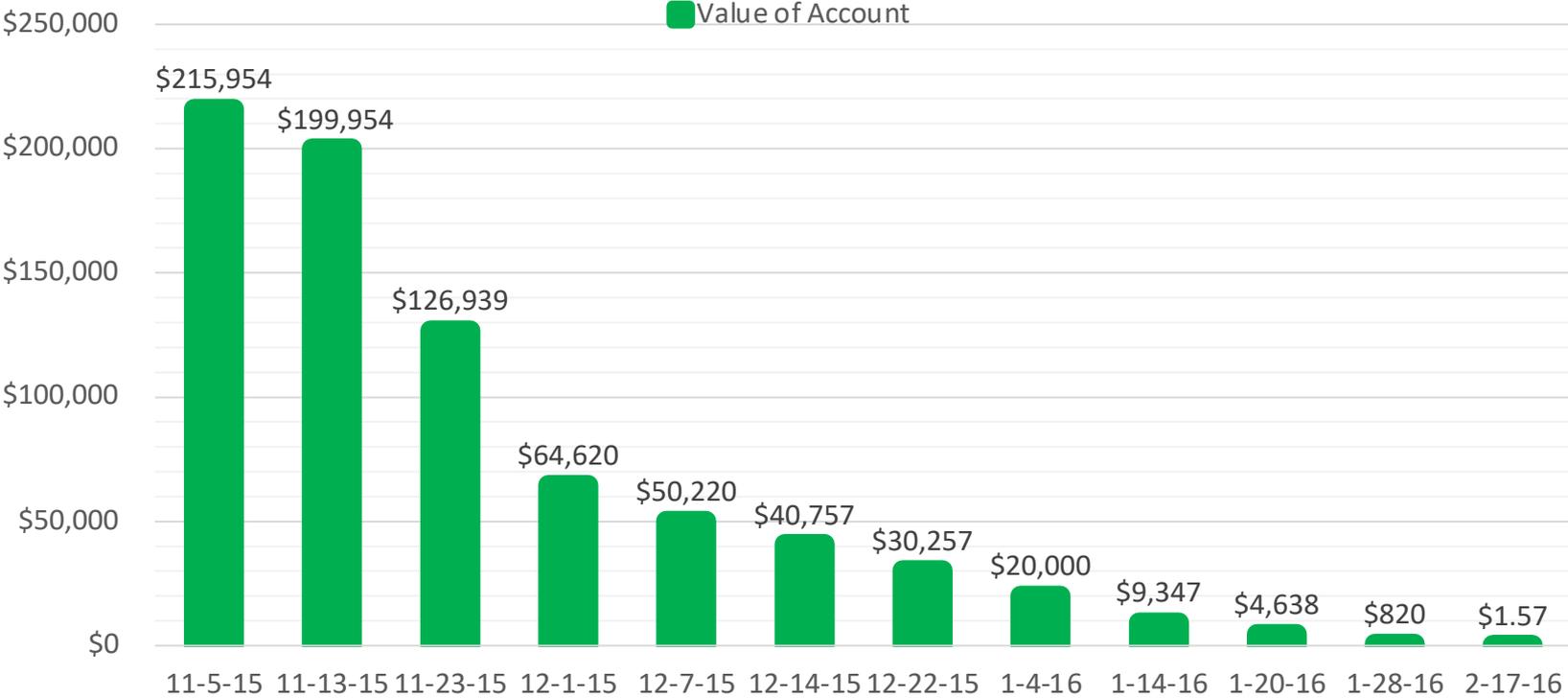




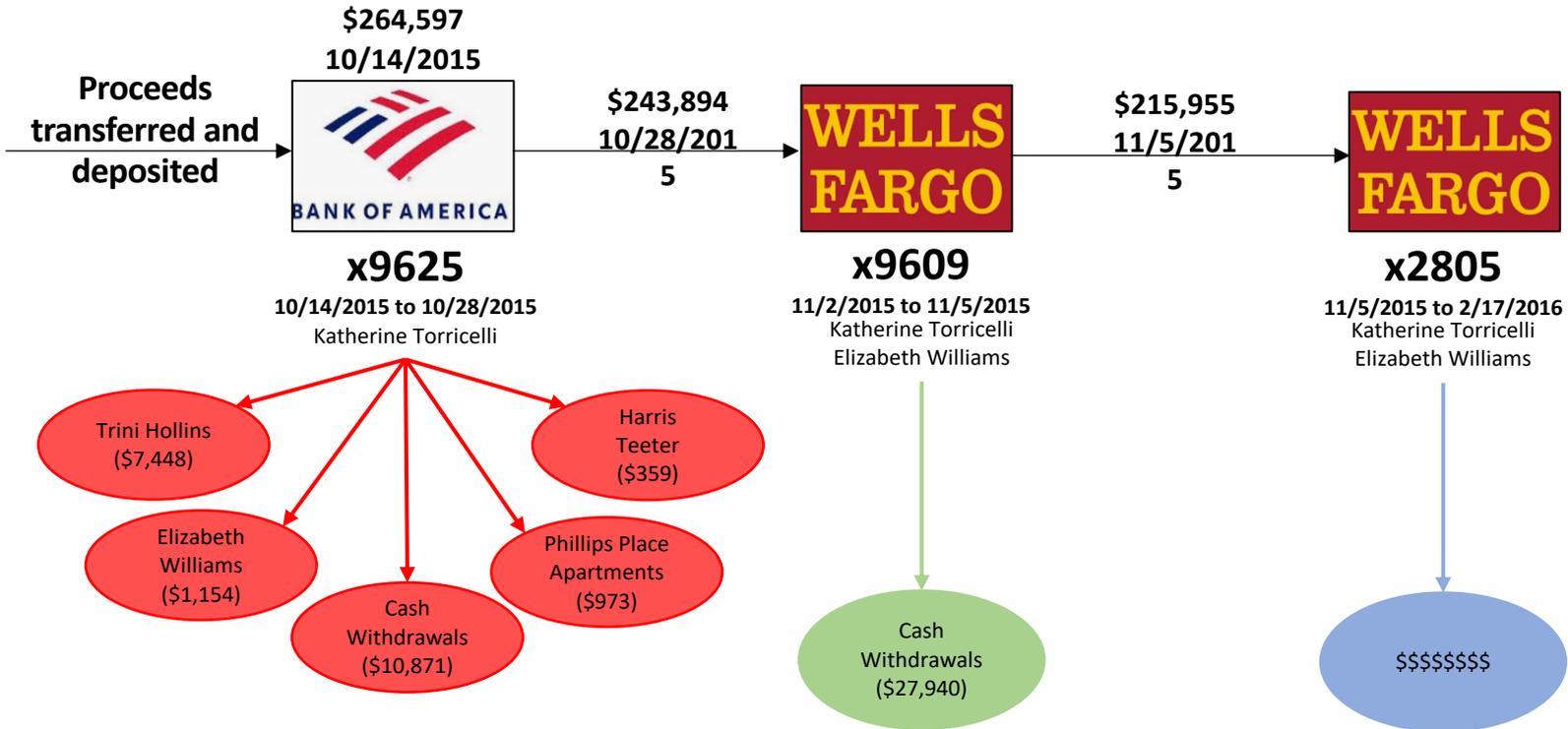
IRS Notices and Correspondence 2015 - 2019

2/16/15	Changes made and you owe \$xxxx
10/21/15	Withholding allowance limited letter sent
11/30/15	You didn't file a return
1/19/16	IRS authority to change withholding
1/19/16	The information you supplied does not support a change to your withholding
7/23/18	You didn't file a return
12/10/18	You didn't file a return
12/30/19	You didn't file a return

Balances in Wells Fargo Account x2805



MONEY LAUNDERING CONSPIRACY – Financial Transactions



Investigation Challenges

DEFENSES – HOW TO REBUT THEM



Defenses



- Reliance on Professional – Accountant, Attorney, Promoter
- Non-tax motive for affirmative act, dual purpose.
 - Offshore bank account in the name of a corporation that doesn't do any business. Claim deposits are affirmative acts. Defendant claims that he was hiding money from his wife in divorce proceeding
 - Used as an explanation for lack of intent, however, as long as you prove that he willfully violated his known legal duty, you have carried your burden.

Defenses

Disagreement With the Law Is No Defense

- Although ignorance and misunderstanding of the law may be asserted to foreclose a finding of willfulness on the part of the defendant, disagreement with the constitutional validity of the tax laws may not.



Defenses



Good Faith Belief/Deliberate Ignorance

- A good-faith misunderstanding of the law or a good faith belief that one is not violating the law – Subjective standard
- Defense that the defendant was ignorant of the law or of facts which made the conduct illegal.
- However, if the defendant deliberately avoided acquiring knowledge of a fact or the law, then the jury may infer that he actually knew it and that he was merely trying to avoid giving the appearance of knowledge.

Investigation Challenges

INTERNATIONAL EVIDENCE

INTERNATIONAL ATTACHÉS



Mutual Legal Assistance Treaties (MLATs)

- Submitted through and with assistance of OIA
- Start early – long process
- Frequently requires translation of request and responses
- Know The Treaties
- Can only use evidence for offenses listed in MLAT request
- In the US - Tolling of Statute of Limitations

Tax Treaties & Tax Information Exchange Agreements or “TIEA”

- Submitted via the Exchange of Information (“EOI”) Office at IRS
- Can be quicker than MLATs, but use limited to tax offenses
- Can follow-up tax treaty/TIEA with MLAT, requesting permission to use for non-tax offenses
- Start early – identify account open/close dates if possible – provide taxable period covered by the request (ex. The United States is investigating tax offenses related to the 1989 through 2019 tax periods)
- Can get evidence from unlikely countries, i.e., Russia
- Notification may be given to account holder/beneficial owner (important if not overt)

Letters Rogatory

- Court-to-court request for assistance
- Used where we have no treaty
- Papers submitted to district court under the All Writs Act (28 USC 1651), then transmitted to foreign country via State Department

Egmont Requests

- Law enforcement to law enforcement through “financial intelligence units” (Egmont Group through FinCEN)
 - <https://www.fincen.gov/resources/international/egmont-group-financial-intelligence-units>
 - <https://egmontgroup.org/en/membership/list>

Investigation Challenges

CASE STUDY – UNITED STATES v. MAGANA

Theft of US Mail, Bank Fraud, and Aggravated Identity Theft

Investigation

- Late 2018 – USPS received mail theft complaints
 - Primarily affluent neighborhoods in South Charlotte, Davidson, Gastonia, Fort Mill, SC
- Personal mail stolen from residential mailboxes during early morning hours
- Personal checks and credit card convenience checks stolen and negotiated

Investigation – Good Samaritan

- Early morning hours, walking dog
 - Previously reported other mail theft defendants
- Observed dark-colored Mercedes Benz E-class
- Using her cellphone she videoed vehicle and captured partial NC tag
 - Queried NC databases
 - Match
- Erik Magana was known by USPS
 - Previously suspected of forging credit card convenience checks into bank accounts

Tracker Warrant

- Obtained a tracker warrant for the installation of a GPS tracking device on vehicle
- Monitored the vehicle over the course of a week, including live surveillance
 - Traveled through residential neighborhoods in South Charlotte typically between midnight and 6 am
 - Stopped at addresses known to have had mail stolen
 - Returned to his apartment

Example of Tracker Warrant



Example of Tracker Warrant

The screenshot displays the LINXUP vehicle tracking software interface. The top navigation bar includes the LINXUP logo, a search bar, and icons for Home, Reports, Alerts, Maintenance, Settings, and Help/Support. The main area features a map with a blue route and a red speed alert icon. A pop-up window for the alert reads: "Alert: Speeding 31 mph E of 70 mph Speed limit is 40 mph 17021 Webster 40 W (Owens Hill), MO 65085, USA". The right sidebar shows a "Route Meter (Drive Profile)" with a safety score of 77 and a top speed of 77 mph. The left sidebar lists various trackers and their statuses.

Trackers List:

- All Trackers (14)
- K7 3 - Stopped
- K7 Solar - Stopped
- Brian Gohring... (Driver 27) - Stopped
- Bryan McDrea... - Stopped
- Chris Peckham... (Driver) - Stopped
- DESHO Plug... (Small USB) - Offline
- Diel Soap (Data Logger) - Stopped
- Erik Hovest... (ICM) - Stopped
- Eric Cahill (Explosion Manager) - Stopped
- Esoundier MS... - Offline
- Mosh Mini - Offline
- Ryan Blaker (B2 Jobbox) - Stopped
- Ryan Cole (Logbook Driver) - Stopped
- Scott Larkie - Stopped

Route Meter (Drive Profile):

- From: 05/06/19 12:00 AM
- To: 05/06/19 11:59 PM
- Distance: 22 miles
- Duration: 3 hour 23 minutes
- Safety Score: **B** 77
- Top-Speed: 77
- Alerts: 0

Alert Details:

- Alert: Speeding
- 31 mph E of 70 mph
- Speed limit is 40 mph
- 17021 Webster 40 W (Owens Hill), MO 65085, USA
- Buttons: UPDATE SPEED LIMIT, RECONFIRM THIS LOCATION

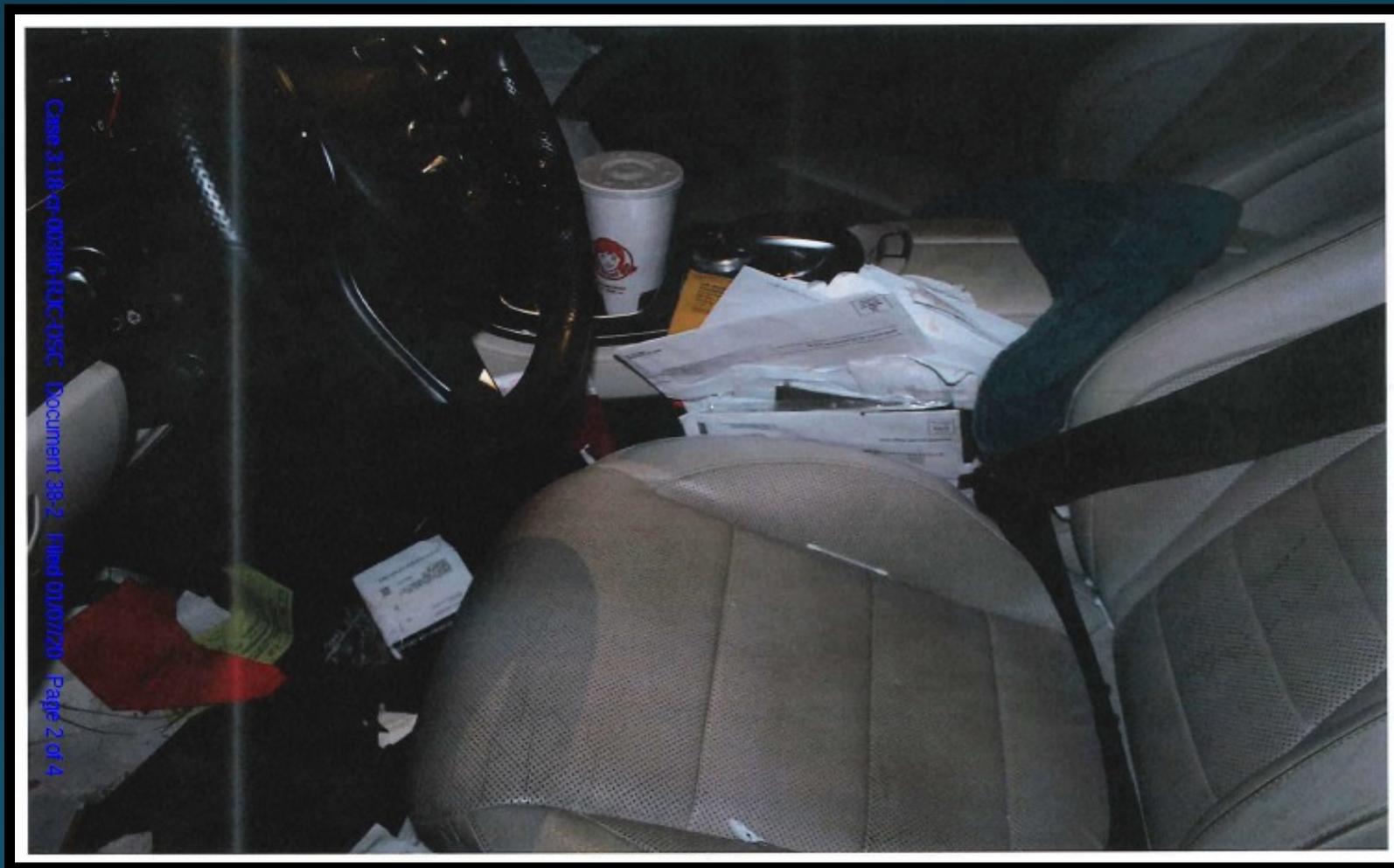
Other Evidence

- Mail dumps found and recovered in cul-de-sacs and neighborhoods
 - Within one of the “dumps” was a receipt with Magana’s name
- Bank surveillance video captured deposits and withdrawals
 - Deposited stolen credit card convenience checks into his own bank account and into bank account of another individual
 - Large cash withdrawals prior to bank determining checks were stolen

Complaint and Search Warrant on Apartment and Vehicle

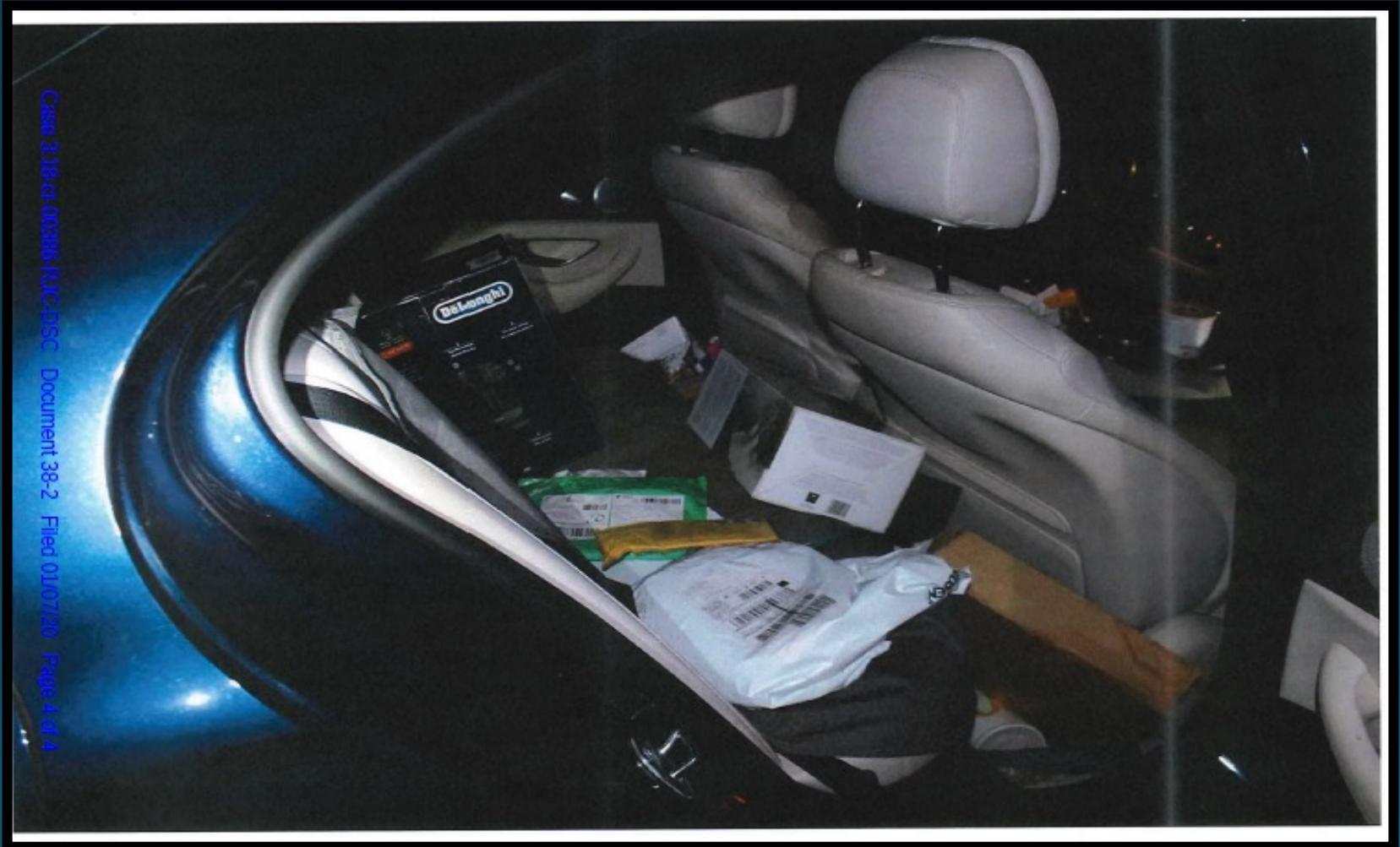
- Live surveillance
- Caught in the act
- Arrested on a Complaint
- Search warrants executed
- Largest recovery of stolen mail by USPS in the last 15 years

Vehicle



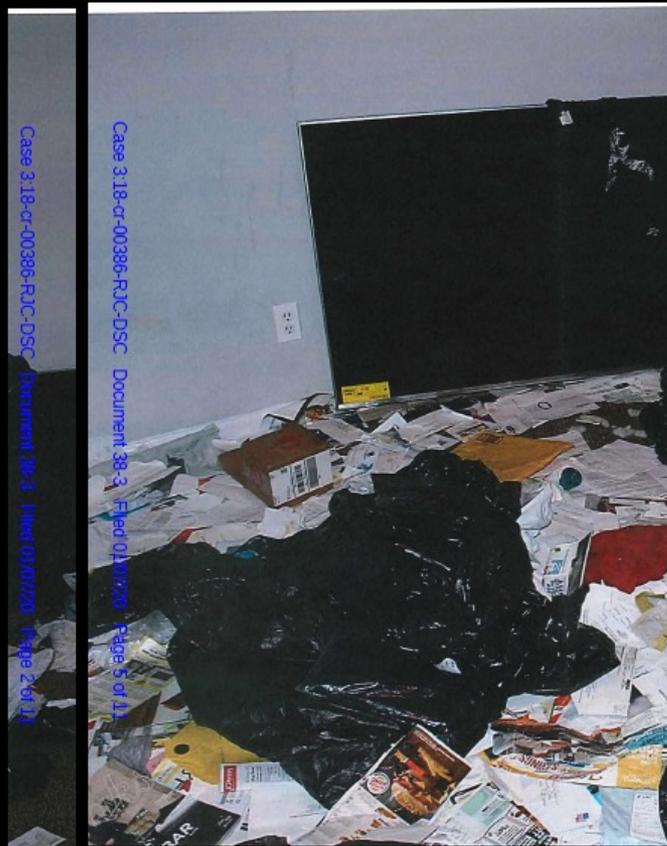
Case 3:18-cv-00310-HJC-DSC Document 38-2 Filed 07/07/20 Page 2 of 4

Vehicle



Case 3:18-cr-00398-PJC-JSC Document 38-2 Filed 01/07/20 Page 4 of 4

Apartment



Case 3:18-cr-00386-RJC-DSC Document 38-3 Filed 01/07/20 Page 2 of 11

Case 3:18-cr-00386-RJC-DSC Document 38-3 Filed 01/07/20 Page 5 of 11



Case 3:18-cr-00386-RJC-DSC Document 38-3 Filed 01/07/20 Page 7 of 11



SPORTS
EAT TO HEAL

Indictment

- After Complaint, Magana was detained
- Indictment returned
 - Charged with Mail Theft (18 USC 1708)
 - Charged with Aggravated Identity Theft (18 USC 1028A) committed in relation to bank fraud (18 USC 1344)
- Plead guilty to Indictment

Sentencing – 42 Months in Prison

- Intended loss: \$546,713
 - Catalogued checks and credit cards seized during the search warrants
 - Credit cards: USSG allows for implied loss of \$500/card
 - Dozens of checks, including \$233,000 IRS refund check, business and vendor payments
 - Checks negotiated at SunTrust and Wells Fargo
 - Also found merchandise, passports, Hamilton tickets
 - Challenges in ascertaining full scope of loss because of unsanitary conditions
 - Thousands of pieces of mail soiled by bugs, maggots, dog feces. Could only catalogue the recipient.
 - Found more than 1,300 individual victims

Case 3:18-cr-00386-RJC-DSC Document 38-1 Filed 01/07/20 Page 3 of 4

\$8,754.10	Check on B.J.B. or H.B. account for \$1,842.14	IRS \$1
\$1,644.48	Check for \$18. Check on LM, LLC for \$180	Ta C.V
\$5,764.45	Check on CS Partners account for \$16.95. Check on C Builders & Development account for \$562.50	Ch ac \$1 BO \$4
\$237,845.72	IRS Refund Check for \$233,127. Check on CI Companies account for \$4,718.72	Ch Re ac Ch ac
\$1,424.33	Check on DESR, LLC account for \$1,424.33	
\$5,063.36	Check on Prudential account for \$1,098.22. Check on PNC account for \$3,965.14	
\$29,023.72	Check on C.A. account for \$16,605.55. Check on G.C. Sr. Rev Living Trust account for \$506. Check on M.E. account for \$1,221.92. Check on K.K. account for \$10,690.25	
\$50,979	Check on CAR, Inc. account for \$29,145.00. Check on S.B. account for \$21,834.00	
\$4,625.00	Check on F.G. account (deposited into D.C. account) for \$4,625.00	

Relevant Conduct Spreadsheet
US v. Erik Magana 3:18-cr-00386-RJC

\$28,900	Check on F.G. account (deposited into D.C. account) for \$4,900	Check on F.G. account (deposited into D.C. account) for \$5,000	Check on F.G. account (deposited into D.C. account) for \$5,000	Check on F.G. account (deposited into D.C. account) for \$5,000
\$43,779	Check on T.W. account for \$4,900	Check on T.W. account for \$4,999	Check on M.T. account for \$9,300	Check on T.W. account for \$15,000
\$501,212.87				
	Access Devices			
\$500	Bank account statement for F.B., Jr.			
\$500	R.W.'s checkbook			
\$3,000	AAA receipts with account numbers for M.K.G. and D.G. Statement for new credit cards for S.H. and J.M. Statement for new credit cards for A.S. and E.R.			
\$2,000	Convenience check (blank) and new credit card statement for L.M.			
\$2,500	Convenience check (blank) and new credit card statement for V.R.			
\$14,000	Convenience check (blank) and new credit card statement for M.P.			
\$3,500	Convenience check (blank) and new credit card statement for T.L.			
\$9,500	5 credit cards			
\$5,000	28 credit cards			
\$5,500	7 credit cards			
\$45,500	19 credit cards			
\$546,713.00	10 credit cards			
	11 credit cards			

Case 3:18-cr-00386-RJC-DSC Document 38-1 Filed 01/07/20 Page 4 of 4

QUESTIONS?