

U.S. v. Sanjar et al.

(5th Cir. 2017) 876 F.3d 725

Issues

(1) Did a search warrant describe the evidence to be seized with sufficient particularity? (2) Did the affidavit establish probable cause to believe that all of the documents to be seized constituted evidence of a crime?

Facts

A company named Spectrum Psychiatric Services was a community mental health center and Medicare provider in Texas. For six years, Spectrum billed Medicare for over \$90 million for providing its patients with an intensive level of mental health care known as “partial hospitalization” or PHP. Medicare patients can qualify for PHP treatment only if, among other things, they suffer from an acute mental illness, they meet with a physician daily and receive twenty hours of treatment weekly. Because PHP treatment is so comprehensive, Medicare reimburses providers at a higher rate than alternative treatments.

For six years, Spectrum billed Medicare over \$90 million for PHP services. And most of these bills were fraudulent because federal investigators found that (1) not all Spectrum’s PHP patients were suffering from an acute mental illness, and (2) Spectrum was not providing patients with the level of care required for PHP. For example, patients testified that they spent their time watching movies, listening to music, and playing bingo. In addition, agents determined that Spectrum employees received cash kickbacks from group-home operators who funneled patients to them.

In the course of their investigation, agents obtained a warrant to search Spectrum’s medical offices for, among other things, “documents constituting patient files.” These files contained incriminating evidence that was used against Spectrum’s physicians and staff at trial for Medicare fraud. They were convicted.

Discussion

The defendants claimed that the patient files should have been suppressed because the warrant was defective. Specifically, they claimed that the description of the evidence to be seized was overbroad because the affidavit did not establish that “all” patient files were evidence of the scheme.

It is settled that a search warrant may be deemed invalid if the description of the evidence to be seized is (1) not “particular,” or (2) “overbroad.”¹ A warrant is deemed “unparticular” or “general” if it contained no meaningful restriction on where officers may search or what they may search for; e.g., a warrant to search for “all evidence,” “stolen” property.² This is usually a fatal defect. In contrast, a warrant is “overbroad” if

¹ **Note:** The terms “overbroad” and “unparticular” are often confused. See *Millender v. County of Los Angeles* (9th Cir. 2010) 620 F.3d 1016, 1024 [“We read the Fourth Amendment as requiring ‘specificity,’ which has two aspects, ‘particularity and breadth.’”]; *U.S. v. SDI Future Health, Inc.* (9th Cir. 2009) 568 F.3d 684, 702 [“The district court only made one inquiry, which explicitly conflated particularly and overbreadth.”].

² See *U.S. v. Kimbrough* (5th Cir. 1995) 69 F.3d 723, 727 [“The Fourth Amendment prohibits issuance of general warrants allowing officials to burrow through a person’s possessions looking for any evidence of a crime.”].

the supporting affidavit failed to demonstrate probable cause to search for one or more items of listed evidence.³ It is not clear whether the defendants contended that the language “all patient files” was insufficiently particular, overbroad, or both. In any event, the court ruled that the description satisfied the particularity requirement because it “provided sufficient notice of what items the agents could take.”

The more difficult issue was whether the affidavit established probable cause to believe that *all* patient files contained incriminating documents. Plainly, it did not. That was because the agents could not possibly have known what information each file contained or that all files contained incriminating information. This is, however, a common problem in complex fraud cases, and the courts have addressed it by adopting the so-called “permeated with fraud” rule whereby a warrant may authorize the seizure of an entire category of documents if the affidavit established probable cause to believe that all or substantially all of the documents in that category constituted evidence. As the Ninth Circuit observed, a “warrant authorizing the seizure of essentially all business records may be justified when there is probable cause to believe that fraud permeated the entire business operation.”⁴ Applying this rule to the facts in *Sanjar*, the Fifth Circuit ruled the warrant was not overbroad since the affidavit established probable cause that “fraud and kickbacks infected the entire PHP program.”

Comment

The “permeated with fraud” rule will ordinarily not be applied if, despite proof of widespread fraud, the description could have been—but wasn’t—written in a more restrictive way. Thus, the warrant in *Sanjar* was arguably defective because it authorized a search of *all patient files* instead of *all files of patients enrolled in the PHP program*. Although the court did not discuss this problem, it would not have changed the result since the only files that were used against the defendants at trial were those pertaining to patients in the PHP program. POV

Date posted: March 21, 2018

³ See *People v. Hepner* (1994) 21 Cal.App.4th 761, 773-74 [“[T]he concept of breadth may be defined as the requirement that there be probable cause to seize the particular thing named in the warrant.”]; *Thompson v. Superior Court* (1977) 70 Cal.App.3d 101, 110 [“in no event can the description in the warrant be broader than that justified by the supporting affidavit”]; *U.S. v. SDI Future Health, Inc.* (9th Cir. 2009) 568 F.3d 684, 702 [“Breadth deals with the requirement that the scope of the warrant be limited by the probable cause on which the warrant is based.”].

⁴ *U.S. v. Smith* (9C 2005) 424 F.3d 992, 1006. Also see *People v. Hepner* (1994) 21 Cal.App.4th 761, 778 [medical practice in which about 90% of patient files were of fraud was “permeated with fraud”]; *In re Grand Jury Investigation* (9th Cir. 1997) 130 F.3d 853, 856 [“a generalized seizure of business documents may be justified if the government establishes probable cause to believe that the entire business is merely a scheme to defraud or that all of the business’s records are likely to evidence criminal activity”].