



monitored is being used in connection with the illegal activity. See United States v. Forte, 684 F.Supp. 1288, 1290 (E.D. Pa. 1988). Interceptions must be limited to those ordered by the court. A surveillance order must be correctly authorized and it must be correctly executed. The Government must adequately justify the extent of intrusion that it requests, and then it must limit itself to that scope once a court approves its request.

The standard for probable cause in a Title III affidavit is the same as the standard for a search warrant. See United States v. Tehfe, 722 F.2d 1114, 1118 (3d Cir. 1983). As discussed supra, probable cause is a practical, common sense decision as to whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. See Illinois v. Gates, 462 U.S. 213, 238 (1983).<sup>1</sup>

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<sup>1</sup> In evaluating a Title III probable cause affidavit, the Court must give weight to the experience of the law enforcement professionals, and the inferences and conclusions drawn by law enforcement officials from the underlying facts and circumstances. See Orelas v. United States, 517 U.S. 690, 699 (1996)(in evaluating probable cause, court must give due weight to inferences drawn from facts by law enforcement officers). The Court may rely upon a law enforcement agent's analysis and interpretation of cryptic or coded conversations in assessing probable cause. See United States v. Principe, 531 F.2d 1132, 1138 (2d Cir. 1976).

After reviewing the affidavits, the Court finds the Government had probable cause to institute electronic surveillance under Title III. Considered in their totality and examined in a common sense fashion, the affidavits submitted in connection with the Title III applications in this case are replete with details sufficient for a finding of probable cause to support the issuance of the authorizations.

In addition to establishing probable cause, the Government must also establish that each application for an order authorizing electronic surveillance include the following information: A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous. See 18 U.S.C. § 2518(1)(c). Courts interpret this "necessity" requirement in a "practical and commonsense fashion." United States v. Williams, 124 F.3d 411, 418 (3d Cir. 1997); United States v. McGlory, 968 F.2d 309, 345 (3d Cir. 1992). The Government need only lay a "factual predicate" sufficient to inform the issuing judge why other methods of investigation are not sufficient. Williams, 124 F.3d at 418; McGlory, 968 F.2d at 345.<sup>2</sup> It is sufficient if there is evidence

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<sup>2</sup> The Government's affidavits need only offer some basis for concluding that less intrusive investigative procedures are not feasible. The issuing Court, and this Court, must look at the entire affidavit, not at isolated sections or paragraphs. See, e.g., United States v. Carneiro, 861 F.2d 1171, 1177 (9<sup>th</sup>

that "normal investigative techniques...reasonably appear to be unlikely to succeed if tried." 18 U.S.C. § 2518(3)(c); Williams, 124 F.3d at 418.<sup>3</sup>

The inherent nature of drug transactions often makes electronic surveillance necessary to penetrate into the inner workings of a conspiracy and to capture evidence of the workings of the conspiracy in a form that would be admissible at trial. The Court agrees with the Government that, here, the supporting affidavits established the inadequacy of normal investigative procedures and the need for electronic surveillance. The affidavits submitted with the three wiretap applications in this case each provided a solid factual predicate to support the findings that normal investigative techniques had been tried and

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Cir. 1988) ("While it is true that some of the statements in the affidavit are mere conclusions, the facts set forth in the affidavit meet the necessity requirement when examined as a whole and in a common sense fashion.").

<sup>3</sup> Considerable discretion regarding compliance with section 2518(3)(c) rests with the judge to whom the application is made. See United States v. Garcia, 785 F.2d 214, 221-222 (8<sup>th</sup> Cir. 1986). The issuing judge's determination that the Government had made adequate use of normal investigative techniques is entitled to deference "as long as there existed a substantial basis for... [the issuing] judge to conclude" that necessity had been demonstrated. See United States v. Biaggi, 853 F.2d 89, 95 (2d Cir. 1988). In any event "[c]ourts will not invalidate a wiretap order simply because defense lawyers are able to suggest post factum some investigative techniques(s) that might have been used and were not. It is enough if the affidavit explains the prospective and retrospective failure of several investigative techniques that reasonably suggest themselves." See United States v. Atkins, 618 F.2d 366, 371 (5<sup>th</sup> Cir. 1980).

had either failed or were unlikely to succeed in achieving the Government's investigative objectives.<sup>4</sup> Specifically, the affidavits discussed the limitations of the investigative techniques that had been used to date, explained why other investigative techniques had not been used, and stated why it was necessary to undertake or to continue electronic surveillance.<sup>5</sup> Here, the Government demonstrated that there was a strong probability of ongoing illegal activities and that the full extent of these crimes could not otherwise be probed satisfactorily. See United States v. Vastola, 670 F. Supp. 1244, 1282-1283 (D. N.J. 1987); United States v. Armocida, 515 F.2d 29, 38 (3d Cir. 1975).<sup>6</sup> Where, as in this case, the use of

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<sup>4</sup> The affidavits explained that the Government could not obtain sufficient evidence through the use of grand jury subpoenas or from interviews of subjects or associates. The affidavits reasonably explained that interviews, or the use of an overt grand jury investigation, would only serve to compromise the investigation, thereby resulting in the possible destruction or concealment of evidence and the risk of harm to cooperating witnesses.

<sup>5</sup> Each of the affidavits discussed in detail the extent to which the following investigative techniques had been tried, and the limitations of those techniques in gathering sufficient evidence against Harris and other members of his organization, both known and unknown: (1) informant and cooperating witness information, (2) visual surveillance, (3) interviews and grand jury investigation, (4) search warrants and subpoenas, (5) the use of undercover agents, and (6) pen register information and telephone toll records.

<sup>6</sup> As reflected in the initial affidavits, the members of the Harris Organization were cautious, secretive and resistant to ordinary surveillance techniques. That affidavit noted counter-surveillance techniques that had been utilized by members of the

traditional investigative techniques will allow for the prosecution of only a limited number of targets who are manifestly part of a larger criminal enterprise, wiretaps are particularly appropriate and acceptable to learn the entire scope of the conspiracy and allow prosecution of all participants.

For these reasons, the Court will deny the Motion to Suppress Fruits of Electronic Surveillance.

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Harris Organization and the fact that they had observed surveillance officers following them.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,                   :           CRIMINAL ACTION  
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MICHAEL HARRIS, et al.                    :           NO. 05-CR-598

ORDER

AND NOW, this 30th day of August, 2006, upon consideration of the Defendants' Motion to Suppress Fruits of Illegal Electronic and Other Surveillance (Doc. No. 125), the Government's response thereto, it is hereby ORDERED that the Defendants' Motion is DENIED.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER,                    J.