



Megaupload founder faces lengthy extradition battle

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:16 AM January 25, 2012

Thomson Reuters on January 25, 2012 released the following:

Reporting by Gyles Beckford and Rebecca Hamilton

“Jan 25 (Reuters) – Efforts by the United States to extradite the mastermind of an alleged Internet piracy scheme from New Zealand to face copyright infringement and money laundering charges are likely to be long and complex.

Kim Dotcom, a German national also known as Kim Schmitz, will be held in custody in New Zealand until Feb. 22 ahead of a hearing of a U.S. extradition application.

U.S. authorities claim Dotcom’s file-sharing site, Megaupload.com, has netted \$175 million since 2005 by copying and distributing music, movies and other copyrighted content without authorization. Dotcom’s lawyers say the company simply offered online storage and that he will fight extradition.

“It could take some considerable time to get through the whole thing,” said senior New Zealand lawyer Grant Illingworth, adding there were rights of appeal and procedural review to both sides.

Dotcom, 38, and three others, were arrested on Friday after a police raid at his rented country estate, reputedly New Zealand’s most expensive home, at the request of the U.S. Federal Bureau of Investigation.

Under New Zealand’s extradition law the prosecution must show there is enough evidence that would substantiate charges against Dotcom and the others accused of breaching local copyright laws.

“What the judge has to do is decide whether there is a prima facie case that would justify the person being put on trial if the offence had occurred in New Zealand,” Illingworth said.

“If the evidence doesn’t make out, what under New Zealand law amounts to a prima facie case, then the person walks away.”

A 1970 extradition treaty between the United States and New Zealand gives the U.S. 45 days from the time of Dotcom’s

arrest to request extradition. The New Zealand Extradition Act, passed in 1999, gives the United States preferential status to access a streamlined process for making its request.

The judge who refused Dotcom bail said he could not assess whether the United States had a strong enough case against Dotcom, nor whether he had a good defense.

“All I can say is that there appears to be an arguable defense, at least in respect of the breach of copyright charges,” Judge David McNaughton wrote in his judgement.

CIVIL MATTER

Copyright infringement and illegal file sharing are normally civil matters in New Zealand, but there is a provision for criminal charges and a maximum 5-year jail term for serious breaches.

Rick Shea, a partner at Lowndes Jordan in Auckland, said there were some differences between New Zealand and U.S. copyright law, in terms of knowledge, that could be an issue.

Douglas McNabb, a U.S. lawyer who specializes in extradition defense, said extraditions to the United States have to meet probable cause – the same standard that is required for making arrests in the United States.

Although the extradition hearing is not a test of guilt or innocence, McNabb said Dotcom’s lawyers may argue they should be allowed a limited discovery process to show that probable cause has not been met.

Prime Minister John Key said the issues raised were serious and New Zealand would co-operate with the U.S. authorities.

“This is the largest, most significant case in Internet piracy so New Zealand is certainly going to work with the United States authorities to allow them to extradite Kim Dotcom,” he said on TV3.

According to Shea, New Zealand has never had an extradition proceeding involving copyright law. “I wouldn’t expect this to be sorted out quickly,” he said.

AGGRESSIVE CHARGES

Anthony Falzone, Director for Copyright

and Fair Use at Stanford Law School’s Center for Internet and Society, said it was too early to comment on the strength of the case, but questioned whether some of the allegations in the indictment would actually push Megaupload outside the safe harbor provisions of the Digital Millennium Copyright Act.

The indictment “pushes some pretty aggressive theories”, Falzone said.

The most recent Supreme Court case to deal with similar issues was in 2005. In *MGM v. Grokster*, the U.S. court highlighted the importance of intent in determining if an Internet firm was liable for its users infringing copyright.

“A lot of the Megaupload case may also rise and fall on the question of intent,” said Falzone.

With *MGM*, the court found the intent of the Internet company from the beginning was to build a tool to facilitate illegal sharing.

“Maybe that’s what the Feds (FBI) think they have here, too,” said Falzone.

The case is *USA v. Kim DotCom et al*, U.S. District Court, Eastern District of Virginia, no. 1:12CR3.”

Douglas McNabb – McNabb Associates, P.C.’s

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FBI Says Hysen Sherif, Accused Terrorist Plotter, Wanted To Kill Witnesses

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:40 AM January 25, 2012

Huffington Post on January 24, 2012

released the following:

“Hysen Sherif, Accused Terrorist Plotter, Wanted To Kill Witnesses: FBI

By MICHAEL BIESECKER

RALEIGH, N.C. — A North Carolina man sentenced to prison recently as part of a homegrown terrorist ring has been accused in a federal court document of plotting to kill witnesses who testified against him at trial.

An affidavit unsealed in federal court Monday accuses Hysen Sherifi of plotting against the witnesses from his jail cell. Authorities say an FBI informant posing as a hit man met with Sherifi’s brother and a female friend and accepted \$5,000 and a photo of an intended victim.

FBI agents have arrested the brother, Shkumbin Sherifi, and Nevine Aly Elshiekh, a school teacher. Now in federal custody at the New Hanover County Jail, each is charged with a felony count of use of interstate commerce facilities in the commission of murder-for-hire.

Hysen Sherifi, 27, was sentenced to 45 years in prison earlier this month in what prosecutors described as a conspiracy to attack the Marine base at Quantico, Va., and targets abroad. Five others, including construction contractor Daniel Patrick Boyd, have been sentenced to federal prison terms for terrorism charges related to raising money, stockpiling weapons and training in preparation for jihadist attacks.

No charges have been filed at this time against Hysen Sherifi related to the new plot, according to a search of a federal court database.

Shkumbin Sherifi and Elshiekh await a scheduled first appearance Friday in federal court in Wilmington. The two have applied for court appointed lawyers, who have not yet been assigned.

The U.S. Attorney’s Office in Raleigh has released no information about those arrested.

In a 10-page affidavit filed under seal Friday, FBI Special Agent James Langtry writes that he developed a source as a confidential informant inside the New Hanover County Jail near Wilmington, where Hysen Sherifi was sent after a jury convicted him in October.

The informant soon befriended Sherifi, who requested help in hiring someone to kill three people who had testified against him at his trial, according to the affidavit. Sherifi specified that he wanted the witnesses beheaded and that he would be provided photos of the severed heads as confirmation of the deaths, according to the document.

FBI agents said in the document that they arranged for a second informant to pose as a hit man and monitored Sherifi during a series of jailhouse visits with Elshiekh.

Following a Dec. 21 visit at the jail, Elshiekh left a voicemail on the fake hit man’s cell phone, identifying herself as “Hysen Sherifi’s friend,” according to the affidavit. It added that the FBI observed and recorded subsequent meetings between Elshiekh and the fake hit man, during which she provided names, addresses and photos of those targeted and \$750 in cash toward the first murder.

Agents also observed Elshiekh meeting with Shkumbin Sherifi, who met with the FBI’s fake hitman on Jan. 8, the court document said. According to the affidavit, the brother traveled from Raleigh to Wilmington to provide the hit man another \$4,250 in cash.

The affidavit provides no information about the nature of the relationship between Hysen Sherifi and Elshiekh, but a woman with that same name was quoted in media reports from last year’s terrorism trial in New Bern. The names of the witnesses allegedly targeted were redacted from the affidavit.

Nevine Elshiekh is listed as a special education teacher on the website for Sterling Montessori Academy, a charter school in Mooresville. Bill Zajic, the school’s executive director, did not return

a message from the Associated Press on Tuesday.

No one answered the phone at Elshiekh’s Raleigh home Tuesday.

The Sherifi brothers and other family members emigrated from Kosovo following the wars that ravaged the former Yugoslavia in the 1990s. A call to the Sherifi family home in Raleigh on Tuesday was not returned.

Hysen Sherifi and others arrested in the terrorism conspiracy were members of the Islamic Association of Raleigh, the largest Muslim congregation in the Triangle. Several members of the mosque also routinely made the 4-hour round trip for the trial in New Bern to support the accused, who they described as innocent men being railroaded by overzealous federal authorities.

Messages to the media contact listed for the mosque were not returned.”

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FBI Arrests Four East Haven Police Department Officers

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:46 AM January 25, 2012

Yale Daily News on January 25, 2012 released the following:

“BY JAMES LU
STAFF REPORTER

Federal Bureau of Investigation agents arrested four East Haven Police Department officers early Tuesday morning after they were indicted for systematic mistreatment of Latino residents.

The indictment accuses the four officers, including one sergeant, of over 30 “overt acts” in a conspiracy against Latinos, and the charges levelled against them include three counts of excessive force, three counts of false arrest, three counts of obstruction of justice and four counts of conspiracy against rights. Tuesday’s arrests came after a three-year investigation by the United States Department of Justice, which documented what Janice Fedarcyk, assistant director-in-charge of the FBI’s New York office, called a “four-year pattern of egregious behaviour.”

“The four police officers charged today allegedly formed a cancerous cadre that routinely deprived East Haven residents of their civil rights,” Fedarcyk said at a Bridgeport press conference on Jan. 24 following the arrests. “The public should not need protection from those sworn to protect and serve. In simple terms, these defendants behaved like bullies with badges.”

Unsealed in Bridgeport, Conn., Tuesday, the indictment alleges that EHPD officers John Miller, Dennis Spaulding, David Cari and Jason Zullo conducted unlawful searches and seizures and assaulted people already handcuffed.

The officers also attempted to prevent civilians from videotaping police on duty

and filed false reports to cover up their actions, according to the indictment.

“There is no place for excessive force in a police station or on the streets,” U.S. Attorney for Connecticut David Fein said at the press conference. “There is no place for false statements in police reports. No person is above the law, and nobody — even a person arrested for a crime — is beneath its protection.”

The federal indictment documents a conspiracy involving the four officers and other EHPD officers that waged a campaign of harassment and intimidation against witnesses and other officers who tried to investigate or report misconduct about the abuses.

Assistant Attorney General Thomas Perez, who heads the Justice Department’s Civil Rights Division, said at the Bridgeport news conference that the officers had abused their power and created a “climate of fear” within the community. He said the indictment was consistent with a separate Justice Department report released last month that found widespread police discrimination against Latinos in East Haven.

Fein said more arrests could be made as the investigation continues. His office’s indictment already implicates an unnamed “Co-conspirator 1” for refusing to provide the East Haven Board of Police Commissioners with an arrest report involving Cari and dismissing the commission’s request to investigate Miller’s alleged misconduct.

Fred Bow, the chairman of the East Haven Board of Police Commissioners, told the New Haven Register that those actions were taken by EHPD Chief Leonard Gallo.

But the chief’s attorney, Jonathan Einhorn, told the Register that “it’s obvious” from the indictment that Gallo is “Co-conspirator 1” and that it was

“unfair” to make such allegations when no charges have been made.

East Haven Mayor Joseph Maturo Jr. told the News Tuesday afternoon that he stood by his 50-person police department, which has launched an internal investigation into the four charged officers.

“It’s certainly very unfortunate that our police department has to go through something like this,” Maturo said, “I stand by our police department from top to bottom.”

All four officers pleaded not guilty in U.S. District Court in Bridgeport on Tuesday afternoon, and three were released on bond. Zullo was not immediately able to post bond and remains in custody.”

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Federal Judge Orders Defendant to Decrypt Laptop

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:33 AM January 25, 2012

CNN on January 25, 2012 released the following:

“By David Kravets, WIRED (WIRED) — A judge on Monday ordered a Colorado woman to decrypt her laptop computer so prosecutors can use the files against her in a criminal case.

The defendant, accused of bank fraud, had unsuccessfully argued that being

forced to do so violates the Fifth Amendment’s protection against compelled self-incrimination.

“I conclude that the Fifth Amendment is not implicated by requiring production of the unencrypted contents of the Toshiba Satellite M305 laptop computer,” Colorado U.S. District Judge Robert Blackburn ruled Monday (.pdf).

The authorities seized the laptop from defendant Ramona Fricosu in 2010 with a court warrant while investigating financial

fraud.

The case is being closely watched (.pdf) by civil rights groups, as the issue has never been squarely weighed in on by the Supreme Court.

Full disk encryption is an option built into the latest flavors of Windows, Mac OS and Linux, and well-designed encryption protocols used with a long passphrase can take decades to break, even with massive



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computing power.

The government had argued that there was no Fifth Amendment breach, and that it might “require significant resources and may harm the subject computer” if the authorities tried to crack the encryption.

Assistant U.S. Attorney Patricia Davies said in a court filing (.pdf) that if Judge Blackburn did not rule against the woman, that would amount to “a concession to her and potential criminals (be it in child exploitation, national security, terrorism, financial crimes or drug trafficking cases) that encrypting all inculpatory digital evidence will serve to defeat the efforts of law enforcement officers to obtain such evidence through judicially authorized search warrants, and thus make their prosecution impossible.”

A factually similar dispute involving child pornography ended with a Vermont federal judge ordering the defendant to decrypt the hard drive of his laptop.

While that case never reached the Supreme Court, it differed from the Fricosu matter because U.S. border agents already knew there was child porn on the computer because they saw it while the computer was running during a 2006 routine stop along the Canadian border.

The judge in the Colorado case said there was plenty of evidence — a jailhouse recording of the defendant — that the laptop might contain information the authorities were seeking.

The judge ordered Fricosu to surrender an unencrypted hard drive by February 21. The judge added that the government is precluded “from using Ms. Fricosu’s act of production of the unencrypted hard drive against her in any prosecution.””

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