

1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 2 COUNTY OF WAKE SUPERIOR COURT DIVISION
 3 18 CVS 3463

4 IN RE:)
)
 5 MATTER OF SEARCH WARRANT)
 EXECUTED ON MARCH 9, 2018 AT THE)
 6 RESIDENCE OF FRANK EDWARD)
 CALABRO, JR., 1431 PAULONIA WAY,)
 7 McLEANSVILLE, NC 27301)

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10 Wake County Civil Superior Court

11 October 24, 2018

12 The Honorable Rebecca W. Holt, Presiding

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15 APPEARANCES:

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I N D E X

WITNESSES

(For the State)

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Shawn Pruett	19	42	54	

EXHIBITS

(For the State)

<u>Number</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
1	Print out of parts of Planet Millionaire website	39	39

1 MR. CUMMINGS: Your Honor, counsel for Mr. Calabro
2 is here. I don't know how long we anticipate that taking.

3 THE COURT: I don't either.

4 MR. CUMMINGS: I suppose we could get started with
5 it.

6 MR. McLOUGHLIN: Good afternoon, Your Honor. Jim
7 McLoughlin from Moore and Van Allen for Mr. Calabro. My guess
8 is the state has indicated it might put on a witness and it
9 might take a little while.

10 THE COURT: All right. Well, I would say --

11 MR. CUMMINGS: I don't know whether you had a chance
12 to read through the file.

13 THE COURT: I did. And I read the brief.

14 MR. CUMMINGS: And if there was a question about
15 anything on the inventory, the investigator is here to describe
16 what those items are, if there was some question about that.

17 THE COURT: All right.

18 MR. CUMMINGS: But it's -- I will let them proceed
19 and we will see where we go.

20 THE COURT: Give me just a minute. I left the file
21 in chambers.

22 (Whereupon, there was a pause while the file was
23 retrieved.)

24 THE COURT: All right. I have retrieved the file
25 which includes the memorandum. And I have, as I indicated, had

1 a chance to review the file and the memorandum. And so I am
2 ready to hear.

3 MR. McLOUGHLIN: Thank you, Your Honor.

4 Again, I am Jim McLoughlin from Moore and Van Allen
5 in Charlotte for Mr. Calabro.

6 I would like to address the motion in three pieces
7 that I think help the analysis. The first is to deal with
8 currency and precious metals.

9 Second is those documents, be they paper or
10 electronic, that are not responsive to the search warrant.

11 And third, those documents, be they paper or
12 electronic, that are responsive.

13 So, if one looks at the case law, Your Honor, there
14 is a dearth of North Carolina case law, but as we cited
15 in the brief, there are a number of federal circuit cases and
16 district court cases that are instructive.

17 The sum of those cases is simply stated that when an
18 individual, particularly when an individual has not been
19 charged and there is no proceeding against the individual, it
20 is a balancing between the interests of the government in
21 continuous -- in continuing possession of wherever the items
22 are versus the interest of the individual.

23 And in this instance, what we have at the outset is,
24 first, I want to be clear that Mr. Calabro was reserving all
25 challenges both to the warrant and to its execution.

1 But what is clear from the inventory is that this
2 was, in effect, a strip search of Mr. Calabro's home to the
3 point where the agents found two dimes in his -- in a little
4 cup on his dresser and they took them. There is virtually
5 nothing, paper currency, precious metals, they did not take.

6 It is also clear from the face of the affidavit
7 supporting the search warrant that Mr. Calabro operated his
8 business from his home, and therefore in taking every piece of
9 paper and every electronic device, they rendered it practically
10 impossible for Mr. Calabro to operate or do anything that
11 required reference to any business record.

12 With that in mind, one then goes to the assertions
13 of the government so far. As we sit here as recently as
14 yesterday afternoon, no proceedings have been brought against
15 Mr. Calabro.

16 We inquired as late as yesterday afternoon of the
17 Department of the Secretary of State what agency or authority
18 is investigating Mr. Calabro. The response we received was
19 that they were not authorized to tell us who that was.

20 What we do know is originally when we filed this
21 motion, we were told that we should speak to the U.S.
22 Attorney's Office in the Western District of North Carolina,
23 particularly Mr. Ryan, Dan Ryan, and we did that to talk about
24 the return of the property and were very quickly told that the
25 U.S. Attorney's Office was not going to be pursuing an

1 investigation.

2 So as we stand here today, we don't know whether
3 there is an investigation. We don't know who might be
4 conducting it. And we don't know what, if any, steps the
5 government has taken to review or copy any of the materials
6 because the government has refused to engage with us on those
7 subjects with the exception of providing Mr. Calabro certain
8 paper documents that he -- we begged for so he could file his
9 tax returns.

10 If we look at the interest asserted by the
11 government at this point, it is that he is under investigation.
12 And so, the interest in investigation is does the possession
13 facilitate the investigation? Does the possession facilitate
14 the presentation of evidence?

15 First, with respect to the precious metals, whether
16 they are responsive to the search warrant or not, the fact of
17 the matter is that it is elementary that cash, gold coins,
18 silver coins, can be photographed, and serial numbers taken, so
19 that any presentation of evidence or further investigation can
20 use those substitutes as evidence or for investigative
21 purposes.

22 I would note the mere fact that those items are on
23 the search warrant as items does not make their seizure proper.
24 There must be a connection between those items and the alleged
25 impropriety which the government cannot show because there as

1 North Carolina and federal law holds, the mere proximity of
2 money or precious metals in Mr. Calabro's home and his home
3 office doesn't mean anything about the source of those funds.

4 But even if we assume they are responsive and at
5 this point or at some point were properly held, after seven
6 months, it is very -- it is absolutely elementary that the
7 government can again copy, will engage in a stipulation -- we
8 have been rebuffed -- and have any use for that because they in
9 and of themselves does not facilitate an investigation.

10 This, for example, is not a drug case where one
11 wants to dust the cash to see if it has got cocaine on it.
12 This is the sale of securities allegedly that are in our
13 instance not securities, but we'll save that for another day.

14 So if you balance that de minimis interest of the
15 government, you look at a number of the federal cases, and
16 Robinson, Eleventh Circuit, 1984, for example, says that in
17 that case the seizure of \$8,800 was a material and substantial
18 burden on the individual from whom it was taken.

19 The monies here and the precious metals are a very
20 very substantial burden on Mr. Calabro. And again, balanced
21 against a de minimis evidentiary interest on the part of the
22 government, they should be returned forthwith.

23 And again, a stipulation as to authenticity, serial
24 numbers, is something we are happy to do.

25 Then we talk, Your Honor, about the paper and

1 electronic documents that are not responsive to a search
2 warrant. The government, as you can see from the inventory,
3 again took every electronic device in the home. Telephone, a
4 variety of flash drives and computers.

5 In the subsequent seven months, it was well within
6 the capability of the government of North Carolina, be it the
7 department, during the Secretary of State, Security Division,
8 or some other entity that they won't tell us about, to make
9 forensic copies of those electronic devices and photocopies of
10 the paper.

11 And with respect to paper, if it was non-responsive,
12 immediately return it. If it was electronic, they could make
13 copies, if for some reason they claim they couldn't return the
14 originals, but they should have returned the original
15 non-responsive documents.

16 And with respect, for example, to a flash drive which
17 has a much more limited storage and it is a much less
18 complicated device to copy, those flash drives should have been
19 returned within weeks. We are now at seven months.

20 With respect to a computer which may be more
21 complicated to do a forensic copy or a cell phone, I can copy
22 my iPhone by plugging it in to my laptop in five minutes using
23 iTunes and have a copy. A forensic copy of Mr. Calabro's
24 telephone would not have taken very long.

25 But the point there is there is a constitutional

1 obligation on the state to distinguish between non-responsive
2 documents and responsive documents. And so far as we can tell,
3 the state has done absolutely none of that in the last seven
4 months.

5 Then you get to what is arguably -- and it doesn't
6 matter whether it's on a computer or not -- the federal cases
7 impose an obligation upon the government to take reasonable
8 steps in a reasonable time to make copies.

9 Then you get to the responsive documents, be they
10 paper or electronic. Copying any responsive paper is a
11 ministerial task that could have been done very very quickly.
12 And again, Mr. Calabro was prepared to enter a stipulation with
13 respect to authenticity or even discuss the question of whether
14 with respect to the paper, he got the copies and they got the
15 originals.

16 With respect to the electronic devices, again,
17 forensic copies would have -- is the appropriate step. The
18 last time we were before a court it was three weeks and the
19 court said it was too soon. We are now at seven months.

20 Mr. Calabro, when you think about the burden, has
21 not had a computer or a cell phone for seven months. That
22 means that his cell phone with the pictures and pictures of his
23 children, of his family, of any personal information, all of
24 which would be non-responsive, he has not had access to. The
25 same with any such information on computers or flash drives.

1 With respect to the responsive materials, again, Mr.
2 Calabro would stipulate to a forensic copy. It would be no
3 burden on the government and they could return those devices.
4 The government has again refused to engage with us.

5 If you look at the cases, the Roe and Roe case I
6 think is useful because in Roe and Roe the government argued,
7 the federal government argued that it had an evidentiary
8 interest and potential forfeiture interest in the property in
9 that case and the court very quickly disposed of the
10 government's argument saying in that case the potential
11 contraband was easily sampled, easily photographed and easily
12 processed so that they could have whatever evidentiary use they
13 wanted and within four months of the seizure, the court ordered
14 the return of the alleged contraband.

15 If you look at Tamura, in that case, the Ninth
16 Circuit addressed the question of a refusal to return and said
17 it was improper for the government in that case to hold in that
18 case paper documents hostage until the subject entered into a
19 stipulation without authenticity where those paper documents in
20 that case were not responsive. The government in that case
21 took the -- made the argument to the court that they had to
22 keep the non-responsive documents because they couldn't
23 separate them out. And the court said of course under the
24 standard rules of evidence and admissibility of evidence in a
25 courtroom, that argument was nonsense.

1 I would submit to you if the government in this case
2 makes the argument that they can't separate non-responsive from
3 responsive, and they cannot make a forensic copy of responsive
4 documents on computers, flash drives or otherwise because
5 somehow that affects their evidentiary obligations or rights,
6 the position that the Ninth Circuit took which was highly
7 skeptical and indeed rejected that argument should be the
8 Court's decision here.

9 Again, in U.S. versus 608 Taylor Avenue, the Third
10 Circuit addressed these issues and in that case it was seized
11 cash. And ultimately in that case the court said it needed to
12 remand the case for fact finding. But it made very clear that
13 in that case it was cash. They said the government could
14 photocopy it and enter into a stipulation about it with
15 absolutely no interference in their investigation and potential
16 prosecution.

17 Similarly, if you look at Shea and Gabriel, Third
18 Circuit case, addresses these same issues.

19 And so, Your Honor, what you come down to at the end
20 of it is a reasonableness standard. And here, if you look at
21 both the burden on Mr. Calabro, purely financial, for the fact
22 that he does not have access to these financial resources, as
23 well as the harm to his business versus again this evidentiary
24 or investigative right with the government --

25 THE COURT: Tell me if you would a little bit about

1 his business and the harm to his business that this seizure has
2 caused.

3 MR. McLOUGHLIN: Well, Your Honor, let us just
4 assume for the moment that tomorrow the federal government
5 walked into this courtroom and took every piece of paper in the
6 courthouse and then said continue on with your business
7 affairs.

8 THE COURT: Well, my question was more tell me about
9 his business and how taking these items has impacted his
10 business. Tell me about his business.

11 MR. McLOUGHLIN: Well, Your Honor, Mr. Calabro
12 operates in a number of businesses, most of which have to do
13 with marketing both his personal services and various -- some
14 of them have been described in the affidavit as multi-level
15 marketing. Some of them have been described as marketing
16 tools.

17 And if you go on his website he, you know, offers
18 these services and recommendations of software and a variety of
19 other things.

20 And his business depends on his client list, what
21 services or other things customers have paid for, what money
22 they have paid to him or not paid to him.

23 THE COURT: So --

24 MR. McLOUGHLIN: None of those records are available
25 to him.

1 THE COURT: Let me slow you down a little bit. The
2 client list, payment records.

3 MR. McLOUGHLIN: Those are examples, Your Honor,
4 yes.

5 THE COURT: Okay. I am just trying to get a
6 picture.

7 MR. McLOUGHLIN: His marketing materials. He, you
8 know, prepares letters. He has sent out materials to people.
9 History of correspondence, history of communications. All of
10 that would have been in those computers.

11 At this point, Your Honor, as his counsel, I don't
12 know what everything is on those flash drives and those
13 computers. And quite frankly, Mr. Calabro is not in a position
14 given the volume of those electronic devices to give me a
15 listing so that I can give you an accurate dissertation as to
16 exactly what he does not have.

17 In this instance, the government for seven months
18 has refused to engage with us.

19 And I would argue to Your Honor that that refusal to
20 engage shifts the burden to the government, particularly the
21 amount of time that has taken. The general standard is in the
22 first instance the burden of proof is on the movant to show
23 burden on him.

24 After seven months, in these circumstances, we would
25 assert that the burden of proof has shifted to the government

1 to show a), that it needs it; and b) that Mr. Calabro doesn't,
2 because I don't have access to it.

3 THE COURT: All right. So what is that based on,
4 the shifting of the burden?

5 MR. McLOUGHLIN: It is a), the passage of time.

6 THE COURT: But, I mean, a case, or this is just --

7 MR. McLOUGHLIN: Your Honor, if you can -- I would
8 read the Second Circuit's decision in Ganias. Ultimately, that
9 was vacated on different grounds because the Second Circuit
10 panel en banc said that there was a good faith exception
11 applied.

12 But if you look at the Ganias decision in the Second
13 Circuit and read that one and also if you look at Shea versus
14 Gabriel, the position is that -- the general discussion is
15 where there is no pending proceeding against the individual,
16 after a period of time that is unspecified, then the burden on
17 the government increases as to its need for these materials.

18 And at least I believe in the Robinson case, the
19 court said where there is no pending proceeding against this
20 individual -- and that is Robinson versus Taylor case, the
21 Robinson case, that where there is no pending proceeding, you
22 should treat the individual as an innocent bystander.

23 And after seven months, again, where we don't even
24 know who is investigating, we would submit to Your Honor that
25 that burden has, in fact, shifted to the government.

1 If you think about other materials that Mr. Calabro
2 would need, Your Honor, if he is marketing either products or
3 services over the internet, all of his marketing materials with
4 respect to products or services would be on all of those
5 computers.

6 Again, all of his financial records are on those
7 computers or on the flash drives.

8 If you look at his cell phone, his contacts list,
9 his personal photographs, his personal data, anything that he
10 downloaded from the web from a source that he finds useful in
11 exercising a business is on those computers. It is on those
12 flash drives.

13 And so one, we would argue that in this instance,
14 where there is a more limited taking with respect to a
15 business, one can have a discussion about do you need that
16 particular item or do you need this particular item, or do you
17 need the other, where, in fact, the government comes in and
18 takes every piece of paper and every device of an individual's
19 home office so that he has no more business electronics or
20 personal electronics, that the burden and the substantial
21 burden both on him as an individual and as a business isn't,
22 frankly, *res ipsa*.

23 THE COURT: All right. Thank you.

24 And I think we jumped right in. This is In re:
25 Matter of Search Warrant Executed on March 9, 2018, at the

1 residence of Frank Edward Calabro, Jr, 1431 Paulonia Way,
2 McLeansville, North Carolina 27301. The file number is 18 CV
3 3463.

4 MR. McLOUGHLIN: And Your Honor, with apologies, you
5 asked about a case. I would like to just refer to the court,
6 with respect to papers -- I think that with respect to cash,
7 that is a different issue -- if you look at Ganias and you look
8 at that opinion, the court has an extensive discussion of the
9 issue of taking of papers.

10 And the court notes that the framers had a
11 particular abhorrence for the practice of the British
12 government at the time of going into people's homes with a
13 general warrant and taking all of their papers and books in an
14 effort to find evidence of criminal activity.

15 And to quote the Second Circuit, the framers
16 abhorred this practice believing that (quote) "papers are often
17 the dearest property a man can have" (closed quote) and that
18 permitting the government to sweep away all papers whatsoever
19 without legal justification would destroy all comforts of
20 society, citing Entick versus Carrington, 95 English Reports
21 807, 817-18, C.P. 1765.

22 The court went on to say that the Fourth Circuit
23 restricts the government's ability to remove all of an
24 individual's papers for later examinations because it's
25 generally unconstitutional to seize any item not described in a

1 warrant.

2 And as it said, while it might be impractical for
3 agents to occupy an individual's home or office or seize an
4 individual's computer for the long period of time necessary to
5 copy it, (quote) "It is now also unnecessary. Today
6 advancements in technology enable the government to create a
7 mirror image of an individual's hard drive which can be
8 searched as if it were the actual hard drive but without
9 interfering with the individual's use of his phone, computer,
10 or files."

11 The point, Your Honor, there is that papers,
12 business records are not ancillary to the purposes of the
13 Fourth Amendment here. They are central.

14 The last thing I would note in this regard is what
15 we have here is the government, as a couple of the federal
16 cases talk about, and that would be the Taylor Avenue case,
17 U.S. vs. 608 Taylor Avenue, in essence doing a practical
18 pre-conviction forfeiture.

19 Of course, in North Carolina, forfeiture is not In
20 rem. It is In personam.

21 And so, there is a strong presumption here, I think,
22 that the objective of the government with respect to the
23 currency certainly and the precious metals is if they can hold
24 them long enough, they might figure out a way either to charge
25 Mr. Calabro which might allow them to hold them, or they might

1 persuade some federal authority to go into some kind of
2 non-criminal forfeiture.

3 That is, as the federal cases say, after a
4 reasonable period of time, a de facto forfeiture that is
5 prohibited not just by the Fourth Amendment and due process
6 under the Fourteenth Amendment, it is also prohibited by the
7 fact that in North Carolina there is no such forfeiture and you
8 cannot circumvent the fact that the legislature declined to
9 create such a statutory mechanism simply by taking currency and
10 precious metals and locking them up.

11 THE COURT: All right. I would be glad to hear from
12 the government.

13 MR. CUMMINGS: If I might approach the clerk and get
14 something stapled.

15 Your Honor, with respect to the specific items that
16 counsel has referred to, I think that an explanation from --
17 and by the way, this matter is being investigated by
18 investigators and forensic analysts under the direction of Mr.
19 Haislip who is a special prosecutor at the Secretary of State.

20 So it is being investigated, and I would ask to have
21 Investigator Pruett sworn and so that he can discuss the
22 matters that are on the inventory list.

23 THE COURT: All right. Investigator Pruett, if you
24 will step around. There is a Bible up there. Place your left
25 hand on the Bible and raise your right.

1 Shawn Pruett, called as a witness,
2 having been first duly sworn, on his
3 oath, testified as follows:

4 MR. CUMMINGS: May I proceed?

5 THE COURT: I just want to make sure -- so you are
6 referring to the inventory?

7 MR. CUMMINGS: Yes, Your Honor.

8 DIRECT EXAMINATION BY MR. CUMMINGS:

9 Q. Would you state your name and occupation, please, sir?

10 A. My name is Shawn Pruett; and that is S-h-a-w-n
11 P-r-u-e-t-t.

12 Q. And how are you employed?

13 A. I am a special agent in charge with the Department of
14 the Secretary of State.

15 Q. How long have you been in that position?

16 A. I have ben a special agent in charge for approximately
17 three years. Total with the Secretary of State as a special
18 agent prior to that. Added all together, 16 years.

19 Q. Were you in law enforcement prior to that?

20 A. I was.

21 Q. What capacity?

22 A. Six years as a local law enforcement officer. I was a
23 member of the Raleigh Police Department.

24 Q. Okay. Now, the search warrant in question and the
25 items that were seized pursuant to that search warrant is
 something that one of your co-workers applied for, is that

1 correct?

2 A. That is correct, sir.

3 Q. Were you present when the search warrant was served?

4 A. I was.

5 Q. And are you familiar with the items on the
6 inventory?

7 A. I am.

8 Q. And are you familiar with the -- because, with respect
9 to some of these items on here, it involves a certain kind of
10 business or transactions.

11 Through your investigation into this case, are you
12 familiar with the kind of transactions that were involved in
13 this?

14 MR. McLOUGHLIN: Objection to form, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS:

17 A. Yes, sir. If you mean the kinds of businesses that it
18 appears that the -- that Mr. Calabro was involved in?

19 Q. Yes, sir.

20 A. Okay. He is a -- Mr. Calabro will tell you that he is
21 a marketing tutorer, if you will. He trains people on
22 marketing techniques. He calls himself an affiliate marketer
23 and his expertise, he will tell you, is -- and I say he will
24 tell you because I have spoken with him directly -- his
25 expertise is --

1 MR. McLOUGHLIN: I would object, Your Honor, for the
2 record, with respect to anything that was said by or allegedly
3 said by Mr. Calabro as hearsay, first, if it's going to be
4 admitted for the truth of the matter asserted.

5 And second, that with respect to any discussion with
6 the government, he has a Fifth Amendment right, and any such
7 discussions would have been in violation of his Fifth Amendment
8 rights.

9 THE COURT: Do you want to rephrase your question?

10 MR. CUMMINGS:

11 Q. Where did this discussion take place with Mr.
12 Calabro?

13 A. The one that I was just referring to took place in his
14 home at the time of the execution of the search warrant.

15 Q. And at the time that you spoke with him, was he under
16 arrest?

17 A. He was not.

18 Q. Was he free to go?

19 A. Absolutely.

20 Q. And did you ever tell him that he had to stay?

21 A. Absolutely not. As a matter of fact, Mr. Calabro --
22 we told him that he was not under arrest, that we were not
23 going to detain him.

24 This is what we do with all search warrants. If he
25 was within the house during that time, he would have to stay

1 where we can see him and watch him. But other than that, he
2 was free to leave.

3 And for the first time in 21 years of law enforcement,
4 I actually let the man take a shower while we were there
5 because he claimed he needed to do so that he could leave to go
6 to a dental appointment at a later point in time, which he did,
7 in fact, leave for.

8 Q. Did your discussion with him occur prior to or after
9 the dental appointment?

10 A. Prior to.

11 Q. Okay.

12 MR. McLOUGHLIN: Your Honor, I would renew the
13 objection on hearsay, number one, and number two, I don't
14 believe that the circumstances here excuse the -- or allow the
15 admission of these statements because my understanding is that
16 it was a virtual SWAT team that walked into Mr. Calabro's home
17 and for a large number of people to be -- law enforcement
18 officers to be standing in the -- surrounding him and his
19 daughter, there is an element of coercion there and I don't
20 believe he was Mirandized even though he was under criminal
21 investigation.

22 And so unless this witness can say he personally
23 gave this man a Miranda warning and the man waived, in addition
24 to the hearsay, I believe the -- his statements would not be
25 admissible.

1 THE COURT: Mr. Cummings, are you offering these
2 statements for the truth of the matter?

3 MR. CUMMINGS: No, Ma'am. I am just offering them
4 for whatever they may be worth with respect to the items that
5 were seized.

6 THE COURT: All right. The objection is overruled.

7 MR. McLOUGHLIN: Your Honor --

8 THE COURT: Your exception is noted for the record.

9 MR. CUMMINGS:

10 Q. And so Mr. Calabro was explaining to you what his
11 occupation was and what his types of businesses -- what his
12 business involved?

13 A. Yes, sir. And he also explains this online to the
14 public as well; that he is a trainer for -- trains people in
15 how to be an internet affiliate marketer.

16 So what this means basically is understanding the use
17 of websites, social media, mass e-mailings to market different
18 things to individuals on the internet.

19 To that end, he runs a website called
20 planetmillionaire.(dot)com which is kind of the hub of his
21 internet enterprise or his internet activity.

22 Within -- within planetmillionaire.(dot)com, there
23 are certain sections where anybody can go to view a video, for
24 example, of how he trains people on affiliate marketing and how
25 to market with the internet.

1 But in -- those videos then end up all going into
2 something that Mr. Calabro was actually selling to someone.

3 And so you may watch a video on how to use e-mails
4 for marketing. By the end of that video, he is then walking
5 you into either a MLM, a pyramid-type scheme, or in some cases
6 Ponzi schemes.

7 MR. McLOUGHLIN: Objection. This witness is not
8 qualified to allege or testify that Mr. Calabro is leading
9 people into a Ponzi scheme or a pyramid scheme, a) without a
10 significant amount of predatory information or testimony or
11 evidence with respect to that conclusion; and b), he is, I
12 would argue to the court, that he is also unqualified to draw
13 that conclusion under Daubert as to what is or is not a Ponzi
14 scheme or pyramid marketing scheme. And there is absolutely no
15 factual predicate laid for this conclusion and allegation and I
16 would move to strike it.

17 THE COURT: Isn't part of the affidavit that is
18 prepared for the search warrant indicating that this was a
19 Ponzi scheme?

20 MR. McLOUGHLIN: When you say "this", Your Honor,
21 no, I don't believe so. The allegations in the search warrant
22 are broken down into USI Hack which the search warrant
23 affidavit alleges is an unregistered security. I don't believe
24 it says it is a Ponzi scheme. That is the issue here.

25 ` The search warrant affidavit makes reference to

1 zeke rewards which was a Ponzi scheme, but for the record,
2 there is nothing in the search warrant affidavit as to Mr.
3 Calabro's real role other than saying he was in some way
4 associated with it and Mr. Calabro has never been charged
5 civilly or criminally with respect to zeke rewards.

6 THE COURT: All right. My understanding is that
7 this testimony is offered that they were investigating these
8 particular beliefs of this business. Obviously, Mr. Calabro
9 has not been charged or convicted, but I am going to sustain
10 that part of the objection and just ask to just move on to the
11 what was seized.

12 MR. CUMMINGS:

13 Q. Without the use of certain general terms, can you
14 explain kind of business that he was involved in and did you
15 have any further discussions with him about that?

16 A. Mr. Calabro -- specifically, to USI Tech, Mr. Calabro
17 confirmed to us that he was paid a 10 percent referral fee or
18 commission from USI Tech to get persons to come into USI Tech
19 or to buy into the investment program.

20 MR. McLOUGHLIN: Objection. Move to strike.

21 THE COURT: Objection is overruled. Move to strike
22 is denied.

23 MR. CUMMINGS:

24 Q. With respect to USI Tech, were there some documents
25 recovered, ledger sheets respect to that -- with respect to

1 that entity?

2 A. Yes, sir, there were.

3 Q. Are those part of the ones that were returned to him
4 for purposes of his tax returns?

5 A. Generally speaking, yes. The 2000 -- Mr. Calabro's
6 attorneys requested a box that had been labeled 2017 for his
7 tax purposes.

8 We found that box, and yes, there were many ledger
9 items and notes within that box referring to USI Tech.

10 Q. And can you -- when you referred those ledger sheets,
11 were you able to determine anything from them? Did they have
12 dates on them or amounts of things?

13 A. They did. There were -- Mr. Calabro is very good at
14 accounting or taking notes, if you will.

15 MR. McLOUGHLIN: Objection. Move to strike about an
16 opinion on Mr. Calabro being good at anything.

17 THE COURT: Overruled.

18 THE WITNESS:

19 A. Mr. Calabro's, what we assumed to be his own
20 handwriting on these things that we have that we seized, would
21 state or there were written out so that you could see how much
22 revenue he was pulling in from the commissions from USI Tech,
23 where he then sent the money or what appeared to be
24 cryptowallets that he sent money to or from.

25 But yes, there was quite a bit that you can glean from

1 that information.

2 Q. And -- go ahead.

3 A. Based on a limited analysis of his -- of the
4 information that was within specifically box 2017, for the
5 three months from September 17 to January 18, or I guess the
6 last quarter, he had, according to his own records, had pulled
7 in about 2.3 million dollars from the various things that he
8 was doing.

9 Our forensic accountants took a closer look at it and
10 determined that out of that 2.3 million dollars, that 96
11 percent of that 2.3 million dollars came from the sale of USI
12 Tech.

13 MR. McLOUGHLIN: Objection. Move to strike.

14 THE COURT: Grounds?

15 MR. McLOUGHLIN: He didn't do the -- this
16 individual did not do this analysis. There is no way I can
17 cross-examine about the accuracy or the reliability of that
18 analysis.

19 THE COURT: All right. Overruled.

20 MR. CUMMINGS:

21 Q. I am going to go back just a little bit. When you
22 were first speaking with Mr. Calabro, you discussed websites
23 and businesses he was in?

24 A. Yes.

25 Q. One of those websites had the terms or the wording

1 planet millionaire?

2 A. Yes, sir. Planetmillionaire.(dot)com.

3 Q. Have you reviewed that website and looked at it?

4 A. On several occasions, yes, sir.

5 Q. What was -- what kind of business or what was the
6 interaction that you saw on that website?

7 A. Again, planetmillionaire.(dot)com links to various
8 social media accounts that appear to be owned by Mr. Calabro or
9 run by Mr. Calabro.

10 Planetmillionaire.(dot)com has information and videos
11 that allege to teach you how to be an affiliate marketer.

12 Planetmillionaire.(dot)com has a specific area that is
13 called affiliate offerings which is where Mr. Calabro would
14 send potential investors to different offerings that are being
15 held by or around the world on the internet and that they would
16 sign up to those offerings under his name so that he would then
17 be able to get a fee for referring persons into those
18 investments.

19 Q. This is all being investigated because -- well, what
20 licenses to offer or dealing to security or security
21 transactions or offerings did Mr. Calabro have?

22 A. Right. Mr. Calabro has none. There is a requirement
23 for a securities license to offer or sell a security, and Mr.
24 Calabro does not have such a license nor has he ever had such a
25 license.

1 As well as the security itself, there are certain
2 registration requirements either at the federal and/or the
3 state level to which none of those were met for USI Tech or any
4 of the other -- any of the other programs that we were looking
5 at.

6 Q. If we could get back to the inventory, the first thing
7 is a cardboard box labeled 2017. Is that what was copied and
8 given to Mr. Calabro?

9 A. Yes, sir.

10 Q. Or his lawyers?

11 A. The contents of that box were copied and sent to Mr.
12 Calabro's attorneys in pdf format.

13 Q. The cardboard check dated June 2015 from the upstairs
14 office, what was that?

15 A. That is a large replica check of monies that he was
16 allegedly awarded from one of the investment programs that was
17 allegedly paying him for the fees of him bringing in
18 individuals into the program.

19 He used this -- this check was behind him in a lot of
20 videos so that if you were looking at a video and online, you
21 would see that check and the amount -- which I can't recall
22 right now -- but it was pretty substantial.

23 Q. The next two are assorted documents and files from
24 under or beside the laptop desk in the upstairs office?

25 A. Yes, sir.

1 Q. What were those? Are those some kind of ledgers?

2 A. They were copies of ledgers and other material that
3 referred to USI Tech. It referred to several other investment
4 programs.

5 It -- there was also information concerning -- I
6 believe within those there was information concerning bank
7 accounts and other types of accounts. This is an
8 cryptocurrency account.

9 Q. What is a cryptocurrency account?

10 A. Cryptocurrencies are the -- are the -- have become --
11 well, I don't know if I want to say in the mainstream, but they
12 have become popular lately. They are a form of currency, if
13 you will, that exists on the internet.

14 They use a cryptographic hash in order to make sure
15 that everything that occurs is cryptographically hashed by
16 thousands and thousands of computers out there that are all
17 looking at the same ledger. They are all looking at what is
18 happening with cryptocurrency.

19 In this way, there is a distributed ledger that is
20 kept on the internet that allows people to know -- and not only
21 people who have the currency, but also someone else to know
22 whether or not -- how much money they have, if you will, and
23 how to do transactions.

24 MR. McLOUGHLIN: Your Honor, objection. Move to
25 strike. Again, this is a matter of some expertise and there is

1 nothing establishing that this witness under Daubert is
2 qualified to testify about cryptocurrencies or ledgers or
3 anything with respect to that.

4 THE COURT: All right. The objection the overruled.

5 MR. CUMMINGS:

6 Q. There were clipboards with assorted documents from the
7 wall of the upstairs office. Can you describe what was on
8 those clipboards?

9 A. He was using that -- he had these right above the
10 computer and they looked like they were tracking the activity
11 of his various -- the various programs that he was involved
12 with.

13 Q. Okay. And then there are assorted documents from the
14 top of a black filing cabinet. Are you familiar with those?

15 A. Yes, sir. Those were more of the same as the -- very
16 similar to the ones on the desk or beside and under the desk
17 that we just discussed.

18 Q. And two bitcoin gold coins from black metal filing
19 cabinet?

20 A. Yes, sir. They appeared to be gold coins, but they
21 were -- they have a bitcoin stamp on them, if you will,
22 although I must point out that as far as I know, there is no
23 such thing as a physical bitcoin coin.

24 Q. And there is \$8,000 in cash from a black filing
25 cabinet?

1 A. Yes, sir.

2 Q. Legal pad from the desk upstairs master bedroom?

3 A. Yes, sir.

4 Q. Did you review that?

5 A. Yes. On that legal pad there appears to be notes
6 referencing -- I think there was some contact information on
7 there, but there also appeared to be notes referencing how
8 to -- there appeared to be his crib notes for doing tutorials,
9 for teaching people things.

10 Q. And then there is cash from the wooden jewelry box, is
11 that correct?

12 A. Yes, sir.

13 Q. And then cash from a metal cash drawer?

14 A. Correct.

15 Q. And then the next five, from the 28 rolled plastic
16 coins down to the 2.5 gram gold bar which is eighth from the
17 bottom --

18 A. Yes, sir.

19 Q. -- those are all precious metals or coins, is that
20 correct?

21 A. Yes, sir.

22 Q. The Galaxy back-up power, was that taken to be able to
23 fire up one of the other computers?

24 A. That's correct, yes, sir.

25 Q. And then there is a crystal ward in a -- crystal award

1 in a blue box. What is that from?

2 A. That is an award that states that Mr. Calabro was a
3 leading salesperson for an investment program that was called
4 Traffic Hurricane. So I believe that Traffic Hurricane awarded
5 Mr. Calabro the award for his efforts at selling.

6 Q. Have you tried to determine what Traffic Hurricane
7 is?

8 A. Yes, sir. I am familiar with Traffic Hurricane.

9 Q. What is Traffic Hurricane?

10 A. Traffic hurricane is an online program in which
11 several persons got involved with -- it -- a lot of lawsuits
12 came out of it and there were allegations that it was a Ponzi
13 scheme.

14 Traffic Hurricane, to my knowledge, went offshore or
15 stopped operating within the United States at some point.

16 Q. All right. And then there is a legal pad from a
17 wooden small table in the upstairs bedroom. Have you reviewed
18 that?

19 A. I am sorry. I lost our place.

20 Q. Right below crystal. It's supposed to be award, but
21 it says crystal ward?

22 A. Yes, sir. Yes, I have.

23 Q. What is involved in that?

24 A. Again, there is -- I think there was contact
25 information, but there are also notes for his, what I assume to

1 be, his training programs or tutorial type notes.

2 Q. Okay. And then we have notebook, wristbands and
3 business cards. Was that kind of logo kind of things that one
4 might distribute?

5 A. Exactly. We understand that Mr. Calabro does -- also
6 does in-person seminars, I guess, is the proper term, and he
7 had several things with his logo on it as well as business
8 cards.

9 Q. And then the other two boxes of assorted documents
10 from the garage, are they similar to the ones that were
11 delivered to Mr. Calabro before his 2017 tax returns, but were
12 just previous years?

13 A. Exactly. They were 2015 and 2016, but very similar to
14 what we had given in the 2017 box.

15 Q. And then there are two laptops at the bottom of that
16 page, is that correct?

17 A. Yes, sir.

18 Q. And then the remaining items on page 2 of the
19 inventory, with the exception of the last item, all appear to
20 be digital devices of one type or another; either storage
21 devices or otherwise?

22 A. That is correct.

23 Q. Now, directing your attention to the fourth one down
24 on that second page, the Ledger Nano S cryptocurrency hardware
25 wallet?

1 A. Yes, sir.

2 Q. What is that?

3 A. That is a hardware -- it looks very similar to what
4 most people would consider to be a USB thumb drive. It is a
5 hardware storage device that specializes or is optimized to
6 hold cryptocurrencies in a physical location.

7 Cryptocurrencies can be held or at least the -- the
8 right to use cryptocurrencies for any particular amount of
9 value can be held online and it can be held at an online
10 marketplace, if you will, or it can be held in physical -- in
11 your physical possession in one of these hardware wallets.

12 MR. McLOUGHLIN: Objection. Move to strike.

13 THE COURT: Overruled.

14 MR. CUMMINGS:

15 Q. Is that protected in any way?

16 THE COURT: Motion to strike is denied.

17 MR. CUMMINGS:

18 Q. Is it password protected in any way?

19 A. They usually are, yes. And there is another -- there
20 are other passwords that are associated with it to where if you
21 were to lose your cryptocurrency wallet, that you could
22 actually rebuild it at another location that is virtually on
23 the internet where you could make trades with whatever value
24 was represented in that wallet previously.

25 And most cases, that is -- there is a 24 word

1 passphrase -- I am not sure I want to call it passphrase,
2 because the words don't even have to relate to each other in
3 any kind of a sentence or paragraph, but there are 24 words
4 that would allow you to rebuild the rights associated with the
5 value on that hardware device if you were to lose it.

6 MR. McLOUGHLIN: Objection. Move to strike.

7 THE COURT: Overruled. Denied.

8 MR. CUMMINGS:

9 Q. Have all the forensic examinations of these various
10 storage devices and computers and otherwise been completed?

11 A. No, sir.

12 Q. So, we don't know yet whether this 24 word password is
13 contained in any of those devices?

14 MR. McLOUGHLIN: Objection.

15 THE COURT: Overruled. He may answer, if he knows.
16 Go ahead.

17 MR. McLOUGHLIN: Your Honor, assumes a fact not in
18 evidence which is that, in fact, this particular nano ledger in
19 fact has such a 24 word rebuild or password and that this
20 witness has not testified that it has one.

21 THE COURT: Right.

22 MR. McLOUGHLIN: So we can't assume that it is.

23 THE COURT: All right. Overruled.

24 THE WITNESS:

25 A. Could you repeat the question, sir?

1 Q. Let me phrase it another way. Are there -- this
2 particular item that you were talking about, this
3 cryptocurrency hardware wallet, if anyone had the password, is
4 that something that if you have the password, you can recreate
5 it?

6 A. If you have the 24 words, yes, you can go to another
7 point on the internet in Tokyo, for example, and recreate that
8 hard wallet.

9 MR. McLOUGHLIN: Objection.

10 MR. CUMMINGS:

11 Q. What can one do once --

12 THE COURT: Wait just a second. Overruled. Denied.

13 MR. CUMMINGS: Sorry.

14 THE COURT: Ask the question.

15 MR. CUMMINGS:

16 Q. Once a hardware wallet is recreated and if one had the
17 password, what would -- would that allow access to the funds in
18 it?

19 A. Yes, it would allow you access to the funds to make
20 transactions with those funds.

21 Q. Deposits to banks, convert them to currency?

22 A. Yes.

23 Q. When was the last time that you looked at Mr. Calabro
24 or what appears to be Mr. Calabro's Planet Millionaire, Frank
25 Calabro, Jr.'s World of Self Economy and Prosperity?

1 A. The website, the last time I looked at it was actually
2 this morning.

3 Q. Okay.

4 MR. CUMMINGS: May I approach the witness?

5 THE COURT: You may.

6 MR. CUMMINGS:

7 Q. I am going to hand you that and ask you if you can
8 identify that?

9 THE COURT: Has it been marked in any way?

10 MR. CUMMINGS: It's marked as State's Exhibit 1,
11 Your Honor.

12 THE WITNESS:

13 A. Yes, sir. This is a print out of the -- of parts of
14 the Planet Millionaire website that I printed out earlier this
15 morning.

16 Q. Did you try to respond to that in any way, open it
17 up?

18 MR. McLOUGHLIN: Objection to form.

19 THE COURT: Sustained.

20 MR. CUMMINGS:

21 Q. Did you access that website?

22 A. I did look into the website, yes, sir, and a couple of
23 of different pages on the website.

24 Q. Are those attached?

25 A. They are.

1 Q. Is that website active?

2 A. Absolutely.

3 MR. CUMMINGS: And I would move to introduce that,
4 State's Exhibit 1?

5 THE COURT: Any objection?

6 MR. McLOUGHLIN: Yes, Your Honor. I do object. I
7 have not had the opportunity to review this and I don't know
8 what sections or editing has been done with respect to this
9 document.

10 There is nothing in the document that indicates what
11 links were gone through to get to it, and I think there is a
12 lack of predicate with respect to the selections of this --
13 from this website which may or may not be misleading.

14 THE COURT: Overruled.

15 MR. CUMMINGS: And I would say, Your Honor, that
16 this is offered for the limited purpose to respond to the
17 defendant's allegation that he is not able to conduct business
18 based on what was seized from him back seven months ago.

19 THE COURT: All right. It is accepted into evidence
20 for the limited purpose at this hearing as has been described.

21 MR. CUMMINGS:

22 Q. When you you visited this website previously, were you
23 able to look at videos?

24 A. Yes, sir.

25 Q. Was there ever a time when -- and having been in Mr.

1 Calabro's house, were you able will to recognize the background
2 of the video?

3 A. Yes, sir.

4 Q. What did you recognize it to be?

5 A. The -- there were a couple of locations within the
6 house that were -- that I recognized as background areas on
7 different videos on the website.

8 There was one upstairs -- he had -- the area is
9 referred to as his office. We refer to it as such. He does as
10 well, or he did as well that day. It's kind of an open area.
11 Off to the left there is a room that could be a bedroom, but is
12 actually set up kind of as a mini studio in which you can put a
13 camera and then have someone talking on the camera. That
14 background there I recognize from the website.

15 And then there is outside on his back deck area, he
16 has some websites -- or excuse me -- some videos he made out
17 there as well.

18 Q. Some of those videos that you viewed, did you hear his
19 voice?

20 A. Yes, sir.

21 Q. Did you recognize that voice?

22 A. Yes, sir.

23 Q. And did you see him physically, that is see his face
24 within the background?

25 A. Yes, sir.

1 Q. And in particular in any of those videos was there a
2 display of some kind of large table?

3 A. Yes, sir. There are tables in most of the videos.

4 Q. And was there -- and I neglected to bring the video
5 down here, but there is a particular video with a table. Is it
6 covered in currency?

7 A. It is.

8 Q. About how big is that table?

9 A. According to Mr. Calabro's statements on the video,
10 that table is 8 foot by 40 inches or so.

11 Q. And what is it covered in?

12 A. \$100 bills.

13 Q. Is that part of the video?

14 A. Yes, sir.

15 Q. And when you were viewing the videos, did you ever
16 have occasion to see any precious metals in the background or
17 anything like that?

18 A. Yes, sir. In one of the videos, he refers to what
19 appears to be silver and silver coins in -- right there on the
20 table with him. He actually lifts them and says this is
21 silver.

22 Q. And is that a video that is accessible on the
23 internet?

24 A. Yes, sir.

25 Q. Through his Planet Millionaire?

1 A. Yes, sir.

2 MR. CUMMINGS: All right. Thank you.

3 THE COURT: All right. Cross-examination, Mr.
4 McLoughlin.

5 MR. McLOUGHLIN: Yes. Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. McLOUGHLIN:

7 Q. Special Agent Pruett, if we can go first to the
8 inventory?

9 A. Yes, sir.

10 Q. The first item, cardboard box labeled 2017 with
11 assorted documents from the upstairs office. There are
12 documents in that box that do not relate to USI Tech, are there
13 not?

14 A. That's correct.

15 Q. The second box, cardboard -- excuse me -- the
16 cardboard check dated June 2015 from upstairs office. Is that
17 check from USI Tech?

18 A. No. No, it's not, sir.

19 Q. You took it anyway, didn't you?

20 A. Oh, yes, sir.

21 Q. It wasn't within the scope of the search warrant as a
22 document or record or other item referencing the office, the
23 offer, purchase or sale of a security as that term is defined
24 in NCGS 78A-211 by, for, from, or on behalf of USI Tech, Planet
25 Millionaire, Frank Calabro, or any other --

1 THE COURT REPORTER: Mr. McLoughlin, I can't get that
2 when you are reading like that.

3 MR. McLOUGHLIN: Let me rephrase the question.

4 Q. With respect to that cardboard check, is it related to
5 the sale or purchase of an unregistered security on behalf of
6 USI Tech, Planet Millionaire, Frank Calabro, or any other
7 unnamed person or entity?

8 A. Yes, sir.

9 Q. What entity?

10 A. Traffic Hurricane.

11 Q. And the cardboard box labeled 2017 with assorted
12 documents and from the upstairs office, are all the documents
13 in that box related, in your belief, to the sale of
14 unregistered securities?

15 A. All of those documents, no, sir. Those documents,
16 many of them are related. There are also documents there that
17 are related to the potential proceeds of the sale of
18 unregistered securities.

19 Q. And the assorted documents and files from file cabinet
20 under laptop desk in the upstairs office and assorted documents
21 and files from file cabinet beside the laptop desk in the
22 upstairs office, were any of those documents outside the scope
23 of the search warrant?

24 A. Not to my knowledge, no.

25 Q. So have any of those documents been copied by let's

1 call it the investigation, whomever is conducting it, or the
2 investigators?

3 A. We are conducting an investigation, the State of North
4 Carolina, Secretary of State's office.

5 Q. Has the Secretary of State's office copied any of
6 those documents?

7 A. Yes, sir.

8 Q. Have you copied all of the documents?

9 A. If we are talking about the paper documents, then yes,
10 yes, sir.

11 THE COURT: All right. Just so I am clear, we were
12 going down item by item, and right now when you are asking that
13 question. Are you referring to a particular item or are you
14 referring to all the paper documents?

15 MR. McLOUGHLIN: Yes, Your Honor. I am just
16 referring to the item number 3 and item number 4, assorted
17 documents and files from the file cabinet under the laptop desk
18 in the upstairs office and assorted documents and files from
19 file cabinet besides the laptop desk in the upstairs office.

20 THE COURT: All right. So your response, Agent
21 Pruett, is that the documents, the paper documents in those two
22 items have all been copied?

23 THE WITNESS: Yes, Ma'am, they have.

24 THE COURT: All right.

25 MR. McLOUGHLIN:

1 Q. And Special Agent Pruett, the documents on the ten
2 clipboards from the wall of the upstairs office, have they been
3 copied?

4 A. Yes, sir.

5 Q. And the assorted documents from the top of the black
6 filing cabinet, have they been copied?

7 A. Yes, sir.

8 Q. Have the -- moving down, has the legal pad from the
9 wooden table, small left upstairs room been copied?

10 A. I am sorry. Where are we?

11 Q. It's under the crystal award?

12 A. Yes, sir, it has.

13 Q. And the notebook, wristbands, business cards from the
14 brick iron container in front dining room, have is they been
15 copied?

16 A. Well, the notebook has and we obviously have copies of
17 the business cards.

18 Q. And the two boxes of assorted documents from the
19 garage, have they been copied?

20 A. Yes, sir.

21 Q. In fact, you have copied all of the paper documents
22 that were taken from Mr. Calabro's home, haven't you?

23 A. I would say that is a correct statement, yes.

24 Q. And are any of those documents that you have copied
25 not related to what you allege to be the sale of an

1 unregistered securities, but within the scope of the search
2 warrant?

3 A. Those documents were taken from that residence because
4 they appeared to us to be within the scope of the search
5 warrant.

6 Q. That wasn't my question. As we sit here today, are
7 there documents that you have in the possession of the
8 Secretary of State's office that you believe are not within the
9 scope of the search warrant?

10 MR. CUMMINGS: Objection. That is a legal
11 conclusion at this point.

12 THE COURT: Well, I think you -- I am going to
13 sustain and ask you to rephrase your question, please.

14 MR. McLOUGHLIN:

15 Q. Special Agent Pruett, at the time the search warrant
16 was executed, did you and the other agents who executed that
17 search warrant make determinations at the time about what
18 documents you believed were responsive to the search warrant?

19 A. Yes, sir. In a white collar crime case, it's very
20 difficult to know exactly at the scene because we have a deluge
21 of documents, obviously.

22 So at the scene, before they are secured, there is a
23 determination made by one of the agents that this appears to be
24 within the scope of the search warrant.

25 Q. And as you sit here today, having investigated this

1 matter for the last seven months, in addition to whatever
2 investigation you did before the execution of that warrant, it
3 is your belief, is it not, that some of the documents in the
4 possession of the Secretary of State are not responsive to the
5 search warrant, isn't that correct?

6 A. If I may --

7 Q. It's a yes or no, sir, and then you can answer however
8 you like, but it starts with a yes or no?

9 A. It starts with a yes or no? You are asking me, is it
10 correct that I believe there are documents that are not
11 responsive to the search warrant? Was that the question?

12 Q. That are in the custody of the Secretary of State?

13 MR. CUMMINGS: I am going to object.

14 THE WITNESS:

15 A. To my knowledge, it's not --

16 THE COURT: Wait.

17 MR. CUMMINGS: I am going to object. Whether or
18 not it is responsive to the search warrant is a decision that
19 is not up to an investigator. It's something that the court
20 should decide based on seeing the documents.

21 THE COURT: Well, he has testified that at the time
22 that they were seizing these documents, they seized documents
23 that they believed were responsive to the search warrant.

24 And I think the question is since that time, have
25 they come to the belief that there were certain documents that

1 were seized that were not responsive since they have had a
2 chance to go through them. Is that what you are trying to get
3 at?

4 MR. McLOUGHLIN: Yes, Your Honor.

5 THE COURT: All right. Answer that question.

6 THE WITNESS:

7 A. If a document is a notebook or -- excuse me -- say a
8 note pad, then the answer is no.

9 If a document is one or two sheets of paper within
10 that note pad, then the answer is yes.

11 That is why I am having trouble trying to answer.

12 THE COURT: All right.

13 MR. McLOUGHLIN:

14 Q. Has the Secretary of State's office or the
15 investigators made a copy of any of the electronic devices that
16 were taken from Mr. Calabro's home?

17 A. Our digital forensics laboratory, yes, they have.

18 Q. Has a digital forensic copy been made of all of the
19 electronic devices from Mr. Calabro's home?

20 A. Devices, yes, sir. What has not been made yet are --
21 well, let me retract that. What has not been made copies of
22 yet are the thumb drives and some CDs. So storage type devices
23 are still to be copied; however, yes, every computer that was
24 seized and every phone that was seized, forensic copies have
25 been made.

1 Q. So to be clear, if I go to the chrome USB stick with
2 key ring from black filing cabinet, has that been copied?

3 A. No, sir. I do not believe it has as of yesterday.

4 Q. Why hasn't it been copied?

5 A. It has not been -- the digital forensics laboratory
6 has not been able to get around to that particular item.

7 Q. The Sandisk Cruzer 8 gigabyte from the black cabinet
8 under the laptop desk, has that been copied?

9 A. Same answer; no, sir.

10 Q. The Ledger Nano S cryptocurrency hardware wallet, has
11 that been copied?

12 A. No, sir.

13 Q. Has the Asus K601 laptop from the brown tote been
14 copied?

15 A. Yes, sir, I believe it has.

16 Q. Has the Asus X550Z laptop from the desk in the master
17 bedroom been copied?

18 A. Yes, sir.

19 Q. Has the red verbatim USB drive in the second drawer of
20 the black cabinet been copied?

21 A. Not to my acknowledge as of yesterday.

22 Q. Has the black Sandisk Cruzer USB drive p-l-c-s, (sic)
23 second drawer, has that been copied?

24 A. Same answer; so, no.

25 Q. Has the white USB flash drive event music in the

1 Lenovo laptop been copied?

2 A. Not to my knowledge, no, sir.

3 Q. Has the Canon G7X sd card from the upstairs office
4 been copied?

5 A. No, sir.

6 Q. With respect to the gold bars and the silver coins,
7 what record has the Secretary of State's office investigators
8 made of those items?

9 A. What record?

10 Q. Yes, sir?

11 A. They are on an inventory sheet and -- well, the
12 evidence and inventory sheet that was returned with a search
13 warrant as well as our internal evidence sheets.

14 Q. Have any photographs been taken of those items?

15 A. Yes.

16 Q. They have all been photographed, haven't they?

17 A. Yes. Yes, sir.

18 Q. And the \$50,000 in cash from the white Nissan
19 Frontier, what has the Secretary of State's office done to make
20 a record of that cash?

21 A. Those -- the \$50,000 in cash has also been
22 photographed.

23 Q. In fact, all of the cash has been photographed, hasn't
24 it?

25 A. Yes, sir.

1 Q. Now, the excerpts from Mr. Calabro's website that you
2 have put into evidence, did you go back to check to see if any
3 of those entries are different than they were eight months
4 ago?

5 A. You mean what is being displayed on his website, is
6 that the question, sir?

7 Q. Yes, sir.

8 A. Generally, there are a couple of things that are the
9 same, yes, but yes, the majority of these offerings are
10 different than what they were eight months ago.

11 Q. Now --

12 THE COURT: Let me make sure I understand before you
13 leave that topic.

14 When you say the offerings are different, I mean,
15 you have referred to videos before. Are those videos
16 different?

17 THE WITNESS: Yes, Ma'am. Some of the videos have
18 changed, yes, ma'am.

19 THE COURT: All right. I am sorry. Go ahead, Mr.
20 McLoughlin.

21 MR. McLOUGHLIN: Thank you.

22 Q. And to be clear, you took every electronic device in
23 Mr. Calabro's home except for televisions, isn't that
24 correct?

25 A. No, that is not correct.

1 Q. What electronic devices did you leave?

2 A. Anything that was associated with his daughter.

3 Q. Okay.

4 THE COURT: With what?

5 THE WITNESS: His daughter.

6 MR. McLOUGHLIN:

7 Q. And what electronic devices were associated with his
8 daughter?

9 A. At least, to my knowledge, or what I can remember, at
10 least a laptop was identified as hers and we had her come in
11 there and speaking with her determined that she was not
12 associated with USI Tech or any security.

13 Q. How old is his daughter?

14 A. I don't know her age, but she is a young adult; 19 or
15 20, I would guess.

16 Q. And, of course, her laptop -- well, strike that. You
17 took every electronic device that you believed was associated
18 with Mr. Calabro from his home, didn't you?

19 A. If it was within the scope of our search warrant, yes,
20 sir, we took it.

21 Q. Was there any electronic device other than a
22 television determined by you to be outside the scope of the
23 search warrant at the time?

24 A. I am sure that a radio, I would probably have said,
25 that is outside the scope, but I cannot remember all of the

1 electronic devices in the man's home.

2 Q. Is there any computer, cell phone, flash drive, or
3 device, electronic device for the storage of information that
4 you did not take?

5 A. Not to my knowledge.

6 Q. And with respect to the flash drives that we have
7 talked about, these storage devices, the North Carolina
8 forensic lab, during the last seven months, could have copied
9 them, couldn't they?

10 A. They have the capability, yes, sir.

11 Q. And if they were ordered to return the devices to Mr.
12 Calabro say in ten days, in the next ten days, they could copy
13 them, couldn't they?

14 A. We --

15 Q. They might have to go to the front of the line, but --

16 A. We would have to rearrange probably their
17 priorities -- and this is a guess, not knowing how long it
18 takes because I don't know the total of this -- but yes, I
19 would guess that ten days, yes.

20 Q. Now, with respect to the currency that was taken that
21 has been photographed, is there any evidentiary use of that
22 cash that you claim can't be satisfied by the photographs you
23 have taken and the stipulation offered by Mr. Calabro?

24 MR. CUMMINGS: Objection.

25 THE COURT: Sustained.

1 MR. McLOUGHLIN:

2 Q. Mr. Pruett, it is correct that the United States
3 Attorney's office for the Western District of North Carolina
4 declined to investigate Mr. Calabro, isn't it?

5 A. We did not -- jurisdictional issues, yes. That is
6 correct.

7 Q. Is there any prosecutor's office, either state or
8 federal, not the Department of Secretary of the State, any
9 prosecutor, county prosecutor, federal prosecutor, state
10 prosecutor, who is currently prosecuting an investigation
11 against Mr. Calabro, to your knowledge?

12 A. Is there any? Yes, sir. There are other
13 investigations going on.

14 Q. Other than the investigation by the Department of
15 Secretary of State?

16 A. That is correct.

17 Q. Who is that?

18 A. I am not at liberty to say, sir.

19 MR. McLOUGHLIN: I have no further questions, Your
20 Honor.

21 THE COURT: All right. Redirect.

22 REDIRECT EXAMINATION BY MR. CUMMINGS:

23 Q. How was the \$50,000 in cash from the white Nissan
24 Frontier, how was that packaged?

25 A. It was in a -- it was wrapped up in a towel.

1 Q. Were the bills loose?

2 A. There were some sort of bands, I guess, on the bills,
3 but yes, but in general they were loose, but they were wrapped
4 up inside a single towel.

5 Q. What were the denominations?

6 A. I think there were hundreds, but I think there were
7 some less than one hundred, too, but I can't tell you that I
8 know for sure right here now.

9 Q. Now, based on your investigation and your knowledge of
10 how cryptocurrency is transacted, is there any item of the
11 digital type devices whether computers or storage devices
12 that -- anything that you seized that is not capable of holding
13 the kind of information that would allow somebody to trade that
14 currency?

15 MR. McLOUGHLIN: Objection, Your Honor. First, it
16 calls for a conclusion that this witness is not technically
17 qualified to give.

18 And second, the issue is irrelevant. The trading of
19 technocurrencies is not against -- cryptocurrencies is not
20 against the law.

21 THE COURT: I am going to ask you to rephrase the
22 question. I am going to overrule the -- well, I am going to
23 sustain the objection to that question.

24 But, I mean, are you trying to ask him if there is
25 something that can be returned that wouldn't allow Mr. Calabro

1 to go and then reconstruct this digital currency? Is that -- I
2 am just trying to figure out --

3 MR. CUMMINGS: Yes, Ma'am. I will try to ask it,
4 unless you would like to ask it.

5 THE COURT: Can you answer that question? Are there
6 digital devices that can be returned that would not allow Mr.
7 Calabro to access or recreate the cryptocurrency?

8 THE WITNESS: Your Honor, I think that that is --
9 that would be determined of exactly what is on the digital
10 devices, which as you are aware in today's world, there are
11 terabytes.

12 Altogether, I have no way of knowing what is on
13 those digital devices at this point in time. So, therefore,
14 they could, for example, hold the 24 words that are required to
15 reconstitute a wallet at another location.

16 THE COURT: So that would include telephones, laptop
17 computers?

18 THE WITNESS: Yes, Ma'am.

19 THE COURT: You all may ask further on that subject
20 if that is not what you were trying to get at. That is what I
21 was trying to understand.

22 MR. CUMMINGS: I don't have any other questions.

23 MR. McLOUGHLIN: No other questions, Your Honor.

24 THE COURT: All right. You may step down.

25 All right. Anything further, Mr. Cummings?

1 MR. CUMMINGS: Not as far as the evidence goes.

2 THE COURT: I will hear your argument.

3 MR. CUMMINGS: Your Honor, we find ourselves dealing
4 into the sophisticated world that has developed during our
5 lifetimes, and it's the state's position with regard to these
6 various items, there is a difference in them.

7 First of all, it's the state's position that
8 anything in the nature of cash, any other currency or any gold
9 or silver coins, that that is the result of the sale, the
10 unlawful sale of securities and the solicitation of the sale of
11 securities and that should be held and either forfeited to the
12 School Board or used to try to repay some of the victims in
13 this case because there are, in fact, victims, and that is how
14 this investigation got started.

15 THE COURT: Well, I understand what you are saying,
16 but there have not been any charges brought against this
17 individual.

18 MR. CUMMINGS: There have not been.

19 THE COURT: And, I am -- I understand Judge
20 O'Foghludha's order earlier that basically indicated I think
21 that it was a matter of weeks at that time, and you know, the
22 position that it's seven months later and there have not been
23 charges brought is concerning to the court.

24 I understand that there are -- that this is involved
25 in terms of going through, but I have some concerns about do we

1 just say that without charges being brought that, you know,
2 that the state can continue to hold all these items?

3 MR. CUMMINGS: You mean the whole list of items or
4 just those particular parts?

5 THE COURT: Well, let's start with where you started
6 with the cash currency, silver.

7 MR. CUMMINGS: Well, I believe that although charges
8 have not been brought, that that is the result of criminal
9 activity and that it should be preserved and frozen for
10 purposes of restitution.

11 THE COURT: All right.

12 MR. CUMMINGS: And then I will move on.

13 THE COURT: All right.

14 MR. CUMMINGS: The digital devices, it is the
15 state's position that should they be returned in whatever
16 format they are in to the defendant, that based on what I
17 understand to be the technology, that he will be able to access
18 funds that cannot be accessed at this point, and that he will
19 be able to reward himself during the interim prior to the time
20 whatever of charges might be taken out.

21 I mean, it's -- he has made all this money. He
22 stored it somewhere. And I believe that if he is given access
23 to his digital devices in whatever format, he will be able to
24 access that and it's the state's position that he should not be
25 able to do that.

1 THE COURT: And is that because you are putting that
2 in the category then again of ill-gotten gains?

3 MR. CUMMINGS: Well, that or manipulating the kind
4 of data and the kind of records that are involved.

5 THE COURT: Documents. Do you want to be heard on
6 that category?

7 MR. CUMMINGS: Well, only to the extent that the
8 documents may contain passwords that would allow him to
9 manipulate the various accounts that the state believes he
10 is -- was in control of.

11 And I also believe that some of the -- going back to
12 the digital devices, I believe that those are instruments that
13 he used to commit these crimes, to advertise and place into
14 social media the kind of information that would cause people to
15 invest in his various offerings.

16 THE COURT: Can the state give a time table on
17 charges being brought?

18 (Whereupon, there was a pause.)

19 MR. CUMMINGS: There are prosecution entities over
20 which the state has no control. There are prosecution agencies
21 over which the state does have some control.

22 Those that we have control over will be approached
23 within the next ten days.

24 THE COURT: And I am not trying to split hairs on
25 words, but when you say they will be approached within ten

1 days, is that another way of saying that the ones that the
2 state does have control over will bring charges or not within
3 ten days?

4 MR. CUMMINGS: Yes, Ma'am. Or either yes or no.

5 THE COURT: Either yes or no. All right.

6 All right, Mr. McLoughlin.

7 MR. McLOUGHLIN: Your Honor, I appreciate the
8 state's transparency about its motives here. And with that
9 appreciation, I find this a tremendously disturbing episode.

10 The fact of the matter is under the law of the State
11 of North Carolina, there is no forfeiture prior to indictment
12 or otherwise. Only upon conviction.

13 If, for example, under federal law, you were taking
14 the position that these funds were the proceeds of a crime, if
15 you had to bring that proceeding, you would have to bring it
16 within 60 days of seizing the items.

17 We did a survey of various states and we couldn't
18 find a single state that has such a forfeiture where it was
19 longer than 180 days.

20 We have the State of North Carolina coming into a
21 state courtroom and saying, We are only holding this, there is
22 no longer the pretense that we need this for evidence. We are
23 holding this because we think it might be the proceeds of a
24 crime. And so we are not going to give it back even though we
25 have no statutory or constitutional right to hold it under the

1 Fourth Amendment or otherwise. But we are just going to do it
2 because we think we can get away with it. And that is
3 appalling.

4 Second, the -- even if we are to assume for the sake
5 of academic argument that the state had the statutory or
6 constitutional right to engage in this behavior -- the only
7 witness and evidence before this court has said I have no idea
8 whether anything on those computers or the cell phone or those
9 flash drives would allow Mr. Calabro to do anything with
10 respect to any money or any account. I just don't know.

11 Yet the government then stands up and says if you
12 give it to him, he is going to have the opportunity to do
13 that.

14 We also have the government having admitted that
15 with respect to the paper here, they have had copies of this
16 stuff for a very long time and have simply failed or refused to
17 turn it over regardless of whether it was not responsive
18 because they have admitted that some of it was and regardless
19 of the fact that they have perfectly good copies that satisfy
20 all of their evidentiary needs.

21 The same is true with respect to forensic copies of
22 the cell phone and the computers. The only reason we don't
23 have that testimony with respect to the flash drives and the
24 storage devices is they just didn't get around to it.

25 Now, they have perfectly good forensic copies of the

1 electronic devices and for those, Your Honor, there is
2 absolutely no excuse for those not to be delivered to counsel
3 for Mr. Calabro tomorrow. The same with the paper.

4 With respect to the flash drives, they have said they
5 can do it within ten days. There is absolutely no reason why
6 this court shouldn't order them to deliver those devices to
7 counsel for Mr. Calabro within ten days.

8 And with respect to the cash and the precious metals,
9 there is absolutely no evidence that any of those are the
10 proceeds of any illegal activity other than the bald assertion
11 of the government that it believes it to be true. There is no
12 forensic accounting evidence. There is no tracing. There is
13 no admissible evidence with respect to the proceeds of illegal
14 activity.

15 And indeed, the fact of the matter is the USI Tech
16 issue here, one of the primary issues is it's not a security.
17 And there is no one who has testified to this court that it is
18 a security.

19 Indeed, at the time Mr. Calabro's -- that search
20 warrant was executed, the SEC and the CFTC expressly refused to
21 issue any guidance about whether a cryptocurrency or various
22 activities with respect to cryptocurrencies were a commodity
23 covered by the Commodity Exchange Act or security covered by
24 the Security Exchange Act.

25 And under the Howey test, there is a considerable

1 doubt about exactly what it is we are taking about, whether or
2 not it's a security.

3 Before -- the evidence before Your Honor right now
4 is you don't even know what it is they claim is a security, so
5 you are therefore being asked to order them or authorize them
6 to continue to hold all of Mr. Calabro's property on the
7 possibility that whatever it is -- and you don't know because
8 they haven't told you -- might be a security and he might have
9 committed a violation of law with absolutely no evidence that
10 he actually did so with the necessary intent or behavior or
11 that any of this is the proceeds.

12 This is -- if one were to write a law school exam
13 about a violation of the Fourth Amendment and due process, you
14 wouldn't write this scenario because everybody would get an A.

15 THE COURT: Do you believe that the bringing of
16 charges changes anything?

17 MR. McLOUGHLIN: Not under the North Carolina law,
18 Your Honor, and not under the Fourth Amendment.

19 THE COURT: All right.

20 MR. McLOUGHLIN: Under North Carolina law, you can
21 only confiscate in personam which means there has to be a
22 conviction.

23 The government here has lost all of its rights by
24 the fact that it has withheld this stuff with the intent to
25 violate his Fourth Amendment rights and his rights under the

1 North Carolina Constitution for seven months despite the fact
2 that Mr. Calabro has made at least one motion seeking return in
3 court and has made repeated e-mail requests to the Department
4 of Secretary of State for the status and return of these
5 materials and has been stiff-armed every time, as recently as
6 yesterday afternoon.

7 And so, no, Your Honor, I don't care what they
8 indict him for. There isn't a case that they can cite -- and
9 they haven't cited a case -- that authorizes them to hold this
10 property if he is indicted.

11 THE COURT: All right. Thank you, sir.

12 All right. I will take this matter under
13 advisement. I will rule shortly.

14 MR. McLOUGHLIN: Thank you, Your Honor.

15 (Whereupon, the proceedings were adjourned.)
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Certificate of Transcript

This is to certify that the foregoing transcript of proceedings taken at the October 24, 2018, Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 21st day of November, 2018.

/s/ Sharon K. Kroeger
Sharon K. Kroeger
Official Court Reporter
Tenth Trial Division
Raleigh, NC