

Supreme Court of the United States

Stanley PRZYBYSZEWSKI, petitioner,

v.

UNITED STATES OF AMERICA and NEW YORK STATE DEPARTMENT
OF CORRECTIONS, respondents.

No. 18-01.

February 1, 2018.

Case below: 1. F.5th 1 (2018).

Opinion

Petition for writ of certiorari granted on the following questions:

1. Whether the warrant issued by the District Court lacked probable cause, in violation of the Fourth Amendment; and
2. Whether the Petitioner's current and future incarceration violates his Fourteenth Amendment rights to due process and equal protection.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

STANLEY PRZYBYSZEWSKI

Appellant

vs.

Civil Case Nos: 2018-1(M)and
2018-2(M)

UNITED STATES OF AMERICA

and

NEW YORK STATE DEPARTMENT OF CORRECTIONS

Appellees

OPINION

Thomas Franczyk, Chief Judge:

Before the Court is Appellant's appeal from a consolidated judgment of the District Court for the Western District of New York (Moot, J.). For the reasons admirably stated in that Decision and Order, we **AFFIRM** the District Court's judgment. Rebecca Donoghue, Circuit Judge, dissents.

Dissent

Rebecca Donoghue, Circuit Judge:

By affirming the District's orders, the Second Circuit today has done the unpardonable: we have criminalized poverty. Though Petitioner sought two divergent forms of relief, the underlying issue in both claims is indigence. The warrant was issued under false pretenses because Kimberly Przybyszewski's children were hungry. And Stanley Przybyszewski has spent most of the past ten

years behind bars because he cannot pay what he owes without losing his livelihood. I therefore dissent.

Facts

Let me begin by providing some of the facts left out of the District Court's order. Stan Przybyszewski is a lifelong resident of Buffalo. He graduated from high school in 1999. During his first semester at the University at Buffalo, his father died suddenly, and Przybyszewski left school to work full-time to support his mother and siblings. Following an apprenticeship with Local 276, he became a union carpenter. He also began drinking. In 2005, he married Kimberly Nowicki, also from St. Casimir's Parish. In 2007, their daughter was born, and in 2010, they had twin boys. Przybyszewski received his first citation for driving while impaired in 2009. He pleaded guilty to the charge and was fined \$5,000 by the Cheektowaga Town Court. His second conviction came in 2011, when he was again fined, and his license suspended for 90 days. In 2015, he was stopped by the Tonawanda Police Department on suspicion of driving under the influence. He failed the field sobriety tests administered by the police. The Tonawanda Police also determined that he was driving with a suspended license. He again pleaded guilty to the charges. The Town of Tonawanda Town Court revoked his license, fined him \$10,000 for his repeated violations, and sentenced him to ninety days in jail. He sold his car, which was the only vehicle the family owned, to pay down his fines. He still owed \$1,200 on the first fine from Cheektowaga, and \$6,000 on the most recent fine from Tonawanda.

Back in January 2012, he reported to work at a construction site too inebriated to work. He was sent home, and a report was made to Local 276. When the same thing happened three months later at another site, his union card was revoked. He sought non-union construction jobs, but with no vehicle, travel to and from job sites became difficult. In 2013, Przybyszewski and his wife separated. As part of the eventual divorce, Przybyszewski was ordered by the Family Court to pay \$300 per month in child support. After six months, Przybyszewski could no longer regularly pay the court-ordered child support.

In 2016, he secured a job building an addition on a house in West Seneca. He earned \$10,000 on that job, after expenses. He used \$7,500 of the money to buy a used 1998 Ford Econoline van, which he hoped would allow him to take on more work as a carpenter. He gave his ex-wife \$2,000 of the remaining money cover some of his outstanding debt to her, and retained \$500 for his own living expenses.

With the van, he was able to secure additional non-union work as a carpenter, earning \$17,000 in 2017. During that year, that van required \$3,000 in

repairs to pass inspection, and his annual insurance for the vehicle was \$1,600, due to his prior convictions. He pays rent to his sister of \$300 a month to stay in a room over her unattached garage. Over the course of 2017, he paid \$5,000 to his wife for arrears on his child support, and \$2,500 to the various courts for his outstanding fees and fines. At the time of his arrest, Przybyszewski had a little more than \$300 in his checking account, and no savings, investments, or any other financial support.

He does have, however, a 20-year old van worth \$5,000; power tools, ladders, and some supplies (such as surplus nails and wood) worth an additional \$10,000, and an air compressor worth \$2,300. He pays \$80 per month for a storage locker to store his equipment and supplies. If he liquidated his assets, he could pay off the amount he owes to his ex-wife, and put a dent into what he owes in court fees and fines. But he would be without any ability to earn any income in the future: his tools and his van are his livelihood. Without them, he feels he is nothing.

Kimberly Przybyszewski works part-time from home in the evenings as a medical billing assistant, after the children have fallen asleep. She earned \$12,000 in 2017, the most she has ever earned. Despite that, she could not afford the rent on her lower flat in Cheektowaga, and the food, clothing, and medical bills incurred for the children. In January of this year, the twins were both diagnosed with Type I (Juvenile) Diabetes, and they require multiple daily injections of insulin. It was that diagnosis that prompted her admittedly false report to the FBI. She needed money, and getting Przybyszewski arrested was the only way she could see to do it. She knew that if she told the FBI that her husband had joined ISIS, he would be arrested, and the court might be able to force him to pay what he owed.

ANALYSIS

1. The Magistrate failed to exercise any judgment in determining probable cause.

The magistrate erred in not using his common sense to see the affidavit in support of the application was based on unreliable and biased information.

An affidavit in support of a search warrant must present the magistrate with a specification of the particular facts and circumstances asserted to establish probable cause sufficient to enable the magistrate to perform his duty to make an independent assessment of the matter. *See, e.g., Franks v. Delaware*, 438 U.S. 154, 165, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). In other words, “a magistrate is not entitled to rely on the judgment of law enforcement officials. He or she is expected to review the materials submitted and make a detached, independent judgment of

probable cause.” *U.S. v. Davis*, 714 F.2d 896, 900 (9th Cir. 1983). As the Supreme Court stated in *Illinois v. Gates*, 462 U.S. 213, 219, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), the magistrate’s “actions cannot be a mere ratification of the bare conclusions of others.”

In the case at bar, a question of whether the magistrate made a detached, independent judgment of probable cause arises from the face of the warrant itself. The warrant claims Przybyszewski had become a member of ISIS, or at least had become radicalized in some way. This information came from Przybyszewski’s ex-wife, who, to be fair, would have reason to know about her former husband’s interests. But the affidavit also disclosed Przybyszewski *owed her money*. Further, Special Agent Doright gave no indication he had done anything to verify her claims. He did not even check on Facebook or Twitter to see if what she said was true. There is no indication he checked to see if Przybyszewski had made any purchases of weapons, or even if he had a firearms license.

As the Court of Appeals for the First Circuit has stated:

Under the “probable cause” standard, the “totality of the circumstances” disclosed in the supporting affidavits must demonstrate “a *fair probability* that contraband or evidence of a crime will be found in a particular place.”

Zayas-Diaz, 95 F.3d at 111, quoting *Illinois v. Gates*, 462 U.S. at 238 (emphasis added); *U.S. v. Bucuvalas*, 970 F.2d 937, 940 (1st Cir. 1992).

In the case at bar, it is readily apparent that the government simply acted too fast in obtaining and executing the warrant. The agents rushed forward prior to obtaining the necessary probable cause to support the warrant. The agents’ failure to exercise restraint and to proceed more diligently in their investigation left them with a constitutionally defective affidavit. And the magistrate failed to “make a detached, independent judgment of probable cause.” No reasonable person could conclude that Przybyszewski had become an ISIS sympathizer simply based on his ex-wife’s allegations.

It is thus submitted that an examination of the totality of the circumstances disclosed in the affidavit reveals that there was an absence of probable cause that the defendant had committed a crime. Accordingly, the evidence obtained through this search should be suppressed.

2. Poverty is Not a Crime.

The District Court erred in failing to examine the root cause of Przybyszewski's incarceration after incarceration and his former wife's false accusation against him: poverty. These people are caught in an endless cycle of jail and debt that renders null the Fourteenth Amendment's guarantees of due process and equal protection.

The Fourteenth Amendment's equal protection and due process clauses work together to restrict a state's ability to imprison indigent defendants for failure to pay fines. *Tate v. Short*, 401 U.S. 395, 396, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971). The Supreme Court of the United States has held that the due process and equal protection clauses prevent a state from invidiously discriminating against, or arbitrarily punishing, indigent defendants for their failure to pay fines they cannot pay. *Bearden*, 461 U.S. at 665.

Therefore, a trial court must inquire as to a defendant's ability to pay before imprisoning the defendant in order to ensure the failure to pay is contumacious -- that is, stubbornly disobedient -- and not due solely to a lack of means. *Id.* at 668-69, 103 S.Ct. 2064.

No precise definition of "constitutional indigence exists." In *Williams*, the Supreme Court spoke of indigence as meaning "without funds." 399 U.S. at 242, 90 S.Ct. 2018. Nonetheless, courts have recognized that constitutional indigence cannot mean absolute destitution. *Bearden* essentially mandates that we examine the totality of the defendant's financial circumstances to determine whether he or she is constitutionally indigent in the face of a particular fine. 461 U.S. at 661-62, 666 n. 8 ("The more appropriate question is whether consideration of a defendant's financial background in setting or resetting a sentence is so arbitrary or unfair as to be a denial of due process.").

As the *Bearden* Court stated: "the reason for non-payment is of critical importance." If a defendant fails to pay despite sufficient bona fide efforts to satisfy his legal debts, the court must consider and reject alternative measures of punishment before a period of incarceration may be imposed. Focusing on the reason for noncompliance balances unlawful discrimination against the poor on the one hand and the State's interest in punishing criminal offenders on the other hand.

Applying this rule to the facts of this case is straightforward. The various courts that have imprisoned Przybyszewski looked at his balance sheet and determined that he has assets. Yet, while Przybyszewski may not be *absolutely* destitute, he *cannot* pay the fines he owes. To do so would require him to pawn the very tools he uses to make a living. He is a carpenter, and his tools are just as necessary to him as his hands, or his eyes. Without them, he cannot live. Perhaps more important, he

has been forced to choose whether to go to jail, or to give up any hope of supporting his children, or himself, in the future. To pay his debts, he *must* keep his tools.

Again and again, the courts have forced Przybyszewski into a Hobson's Choice: give up what you are, or go to jail. True, he may *choose* to go to jail. But what kind of choice is that?

With regard to the District Court's claim that the *Rooker-Feldman* doctrine prevents us from examining Przybyszewski's claim, I find that an abdication of our duty to do justice, and an incorrect application of the law. On a procedural basis, the District Court erred because the order from the Family Court came *after* the commencement of this action. But more important, what Przybyszewski seeks is not a review of the Family Court's order of support, or his conviction in the Tonawanda Town Court for driving while impaired. What he seeks, rather, is an examination of the entire *system* of court fines and costs. That is manifestly different from the endless re-hash of state court actions barred by the *Rooker-Feldman* doctrine. Rather, that examination is exactly what a federal court must do to ensure the enforcement of the Constitution.

I dissent.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

Civil Case No: 2018-1 (M)

STANLEY PRZYBYSZEWSKI,

Defendant

and

STANLEY PRZYBYSZEWSKI,

Petitioner

vs.

Civil Case No: 2018-2 (M)

NEW YORK STATE DEPARTMENT
OF CORRECTIONS,

Respondent

Decision and Order

Stanley Przybyszewski has been a frequent guest of the State over the past ten years. He has served time for failing to pay child support, for failing to pay the fine and court costs associated with his conviction for driving while impaired, and he is currently serving a sentence for his conviction for possession of a controlled substance.

He seeks two forms of relief: one, a Fourth Amendment challenge to the validity of the search warrant that led to the discovery of the controlled substance; the other, a *habeas corpus* petition under the Fourteenth Amendment to challenge his

current and future incarceration.¹ For the reasons below, we deny both motions.

Factual Background

On October 31, 2017, United States Magistrate Judge John Lord O'Brian approved a search warrant requested by Special Agent Dudley Doright of the Federal Bureau of Investigation and a member of the Erie County Anti-Terror Joint Task Force. In his affidavit supporting the application, Special Agent Doright informed the Court he had received information from Kimberly Przybyszewski, the ex-wife of Stanley Przybyszewski, indicating he had become a radicalized supporter of the Islamic State in Syria (ISIS), and that he was stockpiling weapons in his apartment. Ms. Przybyszewski indicated to Special Agent Doright that Przybyszewski had made posts on Facebook and Twitter indicating his support for ISIS. Following this tip, Special Agent Doright conducted a search for outstanding warrants. He noted that Przybyszewski had an outstanding warrant from the New York State Family Court for Erie County for failure to pay child support. He also noted that Przybyszewski had a prior conviction for Driving While Impaired from the Town of Tonawanda Town Court, and that court had also issued a warrant for Przybyszewski's arrest for his failure to pay the fine. He noted both warrants in his affidavit in support of his application for a search warrant, along with the information provided by Kimberly Przybyszewski.

Magistrate Judge O'Brian found sufficient probable cause to approve the application. Before dawn on November 3, 2017, agents from the Joint Task Force entered Przybyszewski's apartment, with his consent. No weapons were found, and Przybyszewski denied owning a computer or any means to post messages on Facebook or Twitter. The agents did discover, however, a wooden box in the room, which contained over an ounce of marijuana, along with matches and rolling papers. Przybyszewski admitted the marijuana was his. He was taken into custody by Special Agent Doright, charged with possession, and held at the Erie

¹ Przybyszewski's two actions were consolidated into the present action pursuant to the Wechsler Moot Court Act, 28 U.S.C. § 00000, the full text of which reads, "Participants and Judges are to ignore all procedural irregularities, hiccups, errors, or oddities, so the students can have two sufficiently substantive but distinct issues to argue."

County Holding Center. He was subsequently indicted and remained at the Holding Center, pending trial.

Appearing *pro se*, he submitted a letter to the Court challenging the search warrant. We read the letter as requesting a *Franks* hearing. In support of that request, he included a statement from his ex-wife to the effect that she had misrepresented some of the information she supplied to Special Agent Doright. The Magistrate Judge O'Brian denied Przybyszewski's request for a *Franks* hearing. Following a bench trial before the Magistrate, Przybyszewski was found guilty of possession of a controlled substance in violation of 21 U.S.C § 844(a) and sentenced to one-year imprisonment, along with a \$10,000 fine.

While that matter was pending, Przybyszewski was brought before Judge Mary Giallanza of the New York Family Court, who sentenced him to six-months incarceration for his failure to obey the Court's order of child support, in accordance with New York's Family Court Act § 454. That incarceration is to begin upon completion of his sentence for criminal possession, ordered by this Court. Przybyszewski was also brought before the Tonawanda Town Court, for his failure to pay the fine and costs associated with his conviction for Driving While Impaired. That court sentenced him to six-month incarceration, to be served following his sentence from Family Court.

Przybyszewski, currently serving his federal sentence, was able to secure counsel from a faculty member from the University at Buffalo School of Law, who agreed to represent him *pro bono*.

He brings before this court an appeal from his conviction before the Magistrate, and a petition for *habeas corpus* relief from his incarceration by the New York State Department of Corrections. The Department moved to dismiss the petition under Fed. R. Civ. P. 12(b) 1 & 6. We have consolidated the actions pursuant to the Wechsler Moot Court Act, 28 U.S.C. § 00000.

Analysis

1. Defendant's Motion to Suppress the Evidence

Prior to his trial, Przybyszewski moved for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), asserting that the Magistrate Judge should have

determined the reliability of the information contained in the affidavit supporting the warrant application.

Under *Franks*, evidence obtained pursuant to a warrant based on materially false and misleading information is not admissible absent a hearing at which it is determined whether, setting aside the false statements, sufficient independent evidence was presented to the judicial officer such that the warrant was, notwithstanding the tainted information, issued on probable cause. *Franks, supra*, at 155-56, 98 S.Ct. 2674. Moreover, before a defendant is entitled to a hearing to test the truthfulness of a warrant's underlying affidavits, the "defendant must make a 'substantial preliminary showing' that: (1) the claimed inaccuracies or omissions are the result of the affiant's deliberate falsehood or reckless disregard for the truth; and (2) the alleged falsehoods or omissions were necessary to the judge's probable cause finding." *United States v. Salameh*, 152 F.3d 88, 113 (2d Cir.1998) (citing *United States v. Levasseur*, 816 F.2d 37, 43 (2d Cir.1987)), *cert. denied*, 525 U.S. 1112, 119 S.Ct. 885, 142 L.Ed.2d 785 (1999). Additionally, a hearing is not required where an affidavit in support of a search warrant application contains material allegedly presented with "deliberate falsity or reckless disregard" for the truth if "when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause." *Franks, supra*, at 171-72, 98 S.Ct. 2674; *United States v. Ferguson*, 758 F.2d 843, 849 (2d Cir.), *cert. denied*, 474 U.S. 841, 106 S.Ct. 124, 125, 88 L.Ed.2d 102 (1985). *Franks* has been limited to the statements contained in the affidavit based on the investigator's personal knowledge and does not extend to the information an informant may have provided to the applicant. *United States v. Wapnick*, 60 F.3d 948, 956 (2d Cir.1995), *cert. denied*, 517 U.S. 1187, 116 S.Ct. 1672, 134 L.Ed.2d 776 (1996).

In this case, the Magistrate correctly determined that Przybyszewski had not met the constitutional bar successfully to challenge the warrant. "In order to challenge successfully a search warrant based on an attack on the allegations in a supporting affidavit, a defendant must show by a preponderance of the evidence that the affidavit contained false statements that were material on the issue of probable cause." *United*

States v. Wapnick, 60 F.3d 948, 955 (2d Cir.1995) (internal quotations and citation omitted); see also *United States v. Lahey*, 967 F.Supp.2d 698, 709 (S.D.N.Y.2013) ("To require suppression, a movant must demonstrate, by a preponderance of the evidence, both the affiant's *intent* to mislead the issuing judge and the *materiality* of the affiant's falsehoods or omissions.") (emphasis in original). Przybyszewski argues that the application for the warrant contained obviously false statements from his ex-wife. The court agrees the affidavit contained misleading statements from Kimberly Przybyszewski regarding her ex-husband's terrorist activities. Nonetheless, the affidavit also contained the self-evidently true information that warrants had been issued for Przybyszewski's arrest by the Town of Tonawanda Town Court and the New York State Family Court. These, standing alone, were sufficient to provide the Magistrate with probable cause to issue the search warrant. Therefore, Przybyszewski's appeal to suppress the evidence and set aside the verdict is DENIED.

2. Equal Protection and Due Process Claims.

Przybyszewski has also brought a *habeas corpus* petition challenging his incarceration by the Family Court, the Town of Tonawanda Court, and, one supposes, this Court. He makes the somewhat novel claim that his chronic imprisonment is somehow a violation of his Fourteenth Amendment right to due process and equal protection of the laws. For the reasons below, the Court rejects this argument.

Przybyszewski cites the Supreme Court decision *Bearden v. Georgia*, 61 U.S. 660, 665, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983), in support of his argument. Unfortunately for Przybyszewski, however, that case compels us to deny his petition. In *Bearden*, the Supreme Court held that a defendant's probation could not automatically be revoked for failure to pay a fine or restitution even though his probation was conditioned on such payment. Instead, the proper court must inquire into the reasons for the failure to pay. If the defendant is found to have willfully refused to pay the fine or restitution when he had the means to do so, or to have failed to make sufficient bona fide efforts to obtain employment or borrow money with which to pay the fine or restitution, the government is

justified in using imprisonment as a sanction to enforce collection. If, however, the defendant is found to have made all reasonable efforts to pay the fine or restitution but was still unable to do so through no fault of his own, the court must consider alternative means of punishment in lieu of more imprisonment. Here, by Przybyszewski's own admission in the disclosure forms submitted to the Family Court, he has sufficient assets to pay the outstanding fines, or to at least pay the monthly installments. That he chooses not to pay does not rise to a Constitutional violation. Where a prisoner has the keys to the prison door in his pocket, this Court will not open that door for him.

But even if the Court were inclined to grant Przybyszewski's petition, we could not grant the relief he seeks, as the Court does not have subject matter jurisdiction over a state Family Court matter. The *Rooker-Feldman* doctrine prevents a losing state court defendant from bringing a subsequent cause of action in federal court to reject the state court judgment that may have caused injury to the now-plaintiff. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 281 (2005). To apply the doctrine, four elements must be met: (1) the now-plaintiff must have lost in state court; (2) the complaint must allege injuries sustained from the state's judgment; (3) the plaintiff must bring a district court case to review and reject the previous state court judgment; and (4) the state's judgment must have been finalized before the federal case's commencement. See *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005).

Even though Przybyszewski's Petition asserts federal question claims that would arise under the Constitution, the case maintains a domestic relations flair that prevails throughout. He alleges Fourteenth Constitutional violations based upon an imposed penalty ordered by a state court judge for child support arrears. When a case that seemingly meets federal question standards reflects family relations decisions, the federal court generally will not entertain the action. See *Firestone v. Cleveland Trust Co.*, 654 F.2d 1212, 1215 (6th Cir. 1981). The objections to the state court's decision and any injuries claimed to be a result of that decision should be addressed in state court proceedings. The *Rooker-Feldman* doctrine allows federal courts to prevent the

entanglement with domestic relations cases by dismissing the case before the court.

For this reason alone, Przybyszewski's Petition for *habeas corpus* relief would be denied.

Conclusion

For the foregoing reasons, Przybyszewski's claims are denied.

s/ Adelbert Moot
United States District Judge

999 U.S. 1

Supreme Court of the United States

Stanley PRZYBYSZEWSKI, petitioner,

v.

UNITED STATES OF AMERICA and NEW YORK STATE DEPARTMENT
OF CORRECTIONS, respondents.

No. 18-01.

February 1, 2018.

Case below: 1. F.5th 1 (2018).

Record on Appeal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter of the Search of

Case No.: 2018-1 (M)

400 Elmwood Avenue (Above Garage)
Buffalo, New York

I, **DUDLEY D. DORIGHT**, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), and have been so employed for approximately 20 years.
2. For the past 3 years, I have been assigned to the Buffalo Field Office of the FBI. For the past year, I have been seconded to the Joint Anti-Terror Task Force, comprised of federal, state, and local law enforcement personnel.
3. On October 30, 2017, I received a telephone communication from one **KIMBERLY PRYZYSZBEWSKI** of 123 Wehrle Drive (Lower), Cheektowaga, New York.
4. Ms. **PRYZYSZBEWSKI** informed me that she believed that her former husband, **STANLEY PRYZYSZBEWSKI** of **400 ELMWOOD AVENUE (ABOVE GARAGE), BUFFALO, NEW YORK**, had become a member of the Islamic State of Syria ("ISIS"), or of some other related group.
5. She also informed that he had begun posting messages supporting ISIS on Facebook and Twitter, both of which are known to me to be online forms of social media.
6. She also informed me that he had begun stock-piling weapons and explosives, which he posted about on those social media websites.
7. Following my telephone conversation with **KIMBERLY PRYZYSZBEWSKI**, I conducted a search on the federal and state criminal and public records databases for information on **STANLEY PRYZYSZBEWSKI**. I determined he had several prior convictions and

outstanding arrest warrants.

8. Specifically, I determined that:

- a. He was convicted of Driving While Impaired, a violation of New York Vehicle and Traffic Law § 1192, in 2009 by the Cheektowaga Town Court.
- b. He was convicted of Driving While Impaired again in 2015 by the Town of Tonawanda Town Court, along with a being convicted for Driving with a Suspended License. For these convictions, he was sentenced to ninety days in jail, along with a \$10,000 fine.
- c. A bench warrant for his arrest was issued by the Town of Tonawanda Town Court, for his failure to pay the fine imposed by the Court. That warrant remains valid.
- d. In 2013, an order for divorce for **STANLEY PRYZYSZBEWSKI** and **KIMBERLY PRYZYSZBEWSKI** was entered by the Erie County Clerk's Office.
- e. A bench warrant for his arrest was issued by the New York State Family Court, for his failure to pay child support as ordered by the Court. That warrant remains valid.

9. Based upon all of the above information, your affiant has reasonable grounds to believe that at the residence of **400 ELMWOOD AVENUE (ABOVE GARAGE), BUFFALO, NEW YORK**, will be found certain property, namely **weapons, firearms, explosives, computers, computer drives, cellular telephones, propaganda, cash, and any and all other illicit items, all of which are fruits and evidence of criminal offenses in violation of the Anti-Terrorism Act (18 U.S.C. § 2333 (a)).**

The above information is true and correct to the best of my knowledge, information and belief.



DUDLEY D. DORIGHT
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn and subscribed to before me this 31st day of October,
2017.

Moot

Adelbert Moot

United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter of the Search of

Case No.: 2018-1 (M)

400 Elmwood Avenue (Above Garage)
Buffalo, New York

WARRANT TO SEARCH

TO: **MEMBERS OF THE JOINT ANTI-TERROR TASK FORCE**, and any other Authorized Officer of the United States:

Affidavit(s) having been made before me by **Special Agent Dudley Doright**, who has reason to believe that on the premises known as **400 Elmwood Avenue (Above Garage)** in the Western District of New York, there is now concealed a certain person or property, namely **weapons, firearms, explosives, computers, computer drives, cellular telephones, propaganda, cash, and any and all other illicit items, all of which are fruits and evidence of criminal offenses in violation of the Anti-Terrorism Act (18 U.S.C. § 2333 (a))**.

I am satisfied that the affidavit establishes probable cause to believe that the person or premises above described and establishes grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before **November 5, 2017** the person or place named above for the person or property specified, serving this warrant and making the search at any time in the day or night as I find reasonable cause has been established, and to prepare a written inventory of the person or property seized and promptly return this warrant to me as required by law.

Date and Time Issued: October 31, 2017 at Buffalo, New York.
12:00 p.m.

A. Moot

Adelbert Moot
United States Magistrate Judge

To Whom It May Concern:

My name is Kimberly Przybyszewski and I am Stan Przybyszewski's ex-wife. I called the F.B.I to report my husband was a member of ISIS. I did this because his children need money, and he has not paid the support he owes us. My twins were diagnosed with Juvenile Diabetes and I can't afford the insulin they need every day along with all the doctor's visits and blood tests and stuff.

By my figures, Stan owes us at least \$8,000 in child support, both current and in the past.

I did not expect him to be put in jail. I just really needed the money.

Please let him keep working. (He is not really in ISIS.)

Sincerely,

Kim Przybyszewski

At a hearing of the Family Court of the State of New York,
held in and for the County of Erie, at Buffalo, New York, on
this 15th day of November, 2017.

PRESENT:

HON. Mary Giallanza, J.F.C.

Justice.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of a Proceeding for Support

KIMBERLY PRZYBYSZEWSKI,

Petitioner,

-against-

Index No.: 1234(G)

STANLEY PRZYBYSZEWSKI,

Respondent.

ORDER

The Petitioner, Kimberly Przybyszewski, having moved this Court by Order to Show Cause granted on November 12, 2018, for an order (a) adjudging the defendant to be in contempt of court for his willful and deliberate failure to comply with the provisions of the judgment of divorce granted in this action on October 31, 2013 and entered in the office of the Erie County Clerk on November 1, 2017, by reason of his default in making payments for the support and maintenance of the child(ren) of the parties, Stella Przybyszewski, Stanley Przybyszewski, Jr., and Stosh Przybyszewski; (b) granting an award of counsel fees to plaintiff's attorney, and (c) granting such other relief as may be just and proper, and this this matter having come on to be heard before me on November 15, 2017, and the parties having appeared at that time in person and by their respective attorneys; and the parties having thereupon presented their evidence in support of their respective positions; and this Court having rendered its written decision dated of the same date, and it appearing that the remedies afforded the plaintiff under sections 243 and 244 of the Domestic Relations Law and N.Y. C.P.L.R. §§ 5241 or 5242 would be or are ineffectual, it is

ADJUDGED that the defendant is guilty of contempt of court for having willfully disobeyed the support provisions of the said judgment of divorce granted by this Court on October 31, 2013, and entered in the office of the Erie County Clerk, in the total sum of \$10,000.00 and that he has failed to explain or excuse to the satisfaction of this Court his said default, and it is further


ADJUDGED that said conduct on the part of the defendant was willful, deliberate, contumacious and calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the plaintiff herein, and it is further

ORDERED, ADJUDGED AND DECREED that for his said misconduct and contempt of this Court, the defendant Stanley Przybyszewski is fined the said sum of \$5,000 and it is further

ORDERED AND DECREED that the defendant may purge himself of said contempt by paying \$300 per month for a term of fifty months, and it is further

ORDERED AND DECREED that the defendant is hereby ordered to be confined by the Department of Corrections for a period of no less than 90 days, and it is

ORDERED, ADJUDGED AND DECREED that the cross-motion by the defendant for a modification of his support obligations under said judgment of divorce is in all respects denied.



Mary Giallanza
Justice, New York Family Court

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of a Proceeding for Support

KIMBERLY PRZYBYSZEWSKI,

Petitioner,

-against-

Index No.: 1234(G)

STANLEY PRZYBYSZEWSKI,

Respondent.

STATE OF NEW YORK)
)
COUNTY OF ERIE) :ss.:

I, Stanley Przybyszewski, the Respondent herein, residing at:
400 Elmwood Avenue (above garage)
Buffalo, NY

being duly sworn, depose and say that the following is an accurate statement of my income from all sources, my liabilities, my assets and my net worth, from whatever sources, and whatever kind and nature, and wherever situated:

I. INCOME FROM ALL SOURCES: List your income from all sources as follows:

a. Wages and Salaries (as reportable on Federal and State income tax returns):

- 1 Employer and address: Self (Przybyszewski Carpentry)
- 2 Hours worked per week: 50-60 (when on a job)
- 3 Gross salary/wages (☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Semi-monthly ☒ Annual)

\$ 17,000

- | | | |
|----------------|---------------------------------|-------------------|
| 4. Deductions: | a. Social Security/Medicare Tax | a. \$ <u>750</u> |
| | b. Federal Income Tax | b. \$ <u>1000</u> |

c.	New York State Tax	c.	\$ <u>250</u>
d.	NYC/Yonkers Tax	d.	\$ <u>N/A</u>
e.	Other payroll deductions		
 <u>N/A</u>	e.	\$ _____
		\$ _____
		\$ _____

5. Number of members in household 1

6. Number of dependents 1

7. Income of other members of household \$ per

b. Self-Employment Income:

(Describe and list self-employment income; attach to this form the most recently filed Federal and State income tax returns, including all schedules):

Please see above

c. Interest/Dividend Income:

N/A

d. Other Income/ Benefits:

1. Workers Compensation	1. \$ <u> </u> per <u> </u>
2. Disability Benefits	2. \$ <u> </u> per <u> </u>
3. Unemployment Insurance Benefits	3. \$ <u> </u> per <u> </u>
4. Social Security Benefits	4. \$ <u> </u> per <u> </u>
5. Veterans Benefits	5. \$ <u> </u> per <u> </u>
6. Pensions and Retirement Benefits	6. \$ <u> </u> per <u> </u>
7. Fellowships/Stipends/Annuities	7. \$ <u> </u> per <u> </u>

- | | |
|---------------------------------------|----------------------------------|
| 8. Supplemental Security Income (SSI) | 8. \$ <u> </u> per <u> </u> |
| 9. Public Assistance | 9. \$ <u> </u> per <u> </u> |
| 10. Food Stamps | 10. \$ <u> </u> per <u> </u> |

Income from other sources: (List here and explain any other income including but not limited to: nonincome producing assets; employment "perks" and reimbursed expenses to the extent that they reduce personal expenses; fringe benefits as a result of employment; periodic income, personal injury settlements; non-reported income; and money, goods and services provided by relatives and friends): N/A

II. **ASSETS:** The Court can consider the assets of the custodial parent and/or the non-custodial parent in its award of child support. List your assets as follows:

- | | |
|---|---------------------|
| a. Savings account balance (Name of bank: | a. \$ <u> </u> |
| b. Checking account balance (Name of bank: | b. \$ <u>254.73</u> |
| c. Automobile(s) (Year and make: <u>1998 Ford Econoline</u>) | c. \$ <u>5000</u> |
| Loan information <u> </u> | |
| d. Residence owned (Address: | d. \$ <u> </u> |
| e. Other real estate owned | e. \$ <u> </u> |
| f. Other assets (For example: stocks, bonds, trailers, boat, etc.) | f. \$ <u> </u> |
| <u> </u> | |
| g. Driver's, professional, recreational, sporting and other licenses and permits held (provide name of issuing agency, license number and attach a copy if possible) <u> </u> | |
| <u>Driver's License (expired)</u> | |

NOTE: ATTACH TO THIS FORM ANY INFORMATION AS TO ANY ADDITIONAL ASSETS.

III. **DEDUCTIONS FROM INCOME:** The Court allows certain deductions from income prior to applying the child support percentages. List the deductions that apply to you as follows:

- | | |
|--|-------------------------|
| a. Unreimbursed employee business expenses | a. \$..... ² |
| b. Maintenance actually paid to spouse not a party to this action* | b. \$..... |
| c. Maintenance actually paid to spouse who is a party to this action | c. \$..... |
| d. Child support actually paid on behalf of non-subject child(ren)* | d. \$..... |
| e. Public Assistance and Food Stamps | e. \$..... |
| f. Supplemental Security Income | f. \$..... |
| g. NYC/Yonkers Income Tax | g. \$..... |
| h. Social Security/Medicare Taxes | h. \$..... |

***Attach to this form a copy of the appropriate Court Order**

IV. HEALTH INSURANCE, UNREIMBURSED HEALTH-RELATED EXPENSES, CHILD CARE EXPENSES, EDUCATIONAL EXPENSES AND LIFE AND ACCIDENT INSURANCE POLICIES:

As part of the child support obligation, parents must be directed to provide health insurance coverage, pay a pro-rated share of the cost or premiums to obtain or maintain the health insurance coverage, a pro-rated share of unreimbursed health-related expenses, pro-rated share of child care expenses and, in the Court's discretion, educational expenses. The Court may direct you to purchase and maintain life and/or accident insurance benefits or assign benefits on existing policies for the benefit of your children. List your information as follows and cross out or delete inapplicable provisions:

a. [Check applicable box]:

☒ I do NOT have health insurance coverage [If this box is checked, SKIP to section IV(b), below]

☐ I HAVE health insurance coverage through [specify]:

☐ Employer or organization ☐ Private purchase ☐ Medicaid

☐ "Child Health Plus" program; my monthly premium is \$_____

1. My coverage includes ☐ medical ☐ dental ☐ prescription drugs ☐ optical

☐ other health care services or benefits [specify]: _____

2. The cost of the insurance paid by me is \$ per _____

3. The person(s) covered by my insurance is/are: _____

4. My policy number is _____.

5. Coverage ☐ does ☐ does not presently include my child(ren). The additional cost to me to include my child(ren) would be [specify cost for each type of benefit; if benefit unavailable, so indicate]:

Medical: \$ per _____

Optical: \$ per _____

Dental: \$ per _____

Prescription drugs: \$ per _____

Other Health Services or Benefits [specify]: _____ \$ per _____

6. The name and address of my primary (and secondary) health insurer is/are: _____

7. My primary (and secondary) health plan administrator is/are: (indicate name, address and telephone number of contact person for employer or organization): _____

8. There are ☒ medical ☐ dental ☐ prescription drugs ☐ optical

☐ other health care services or benefits [specify]: _____ benefits available to the child(ren) through an individual who is not a party to this action. This individual is [indicate name and relationship]: _____.

The cost is: \$ per _____.

b. My child care provider is: _____

The average number of hours of child care incurred per week are: _____

c. My child's educational needs and expenses are: _____

d. I have the following life and accident insurance policies:

1. Life insurance: (Name of insurer): Corporate Life \$ 10,000

(Beneficiary/Beneficiaries): My children

(Stella, Stan, Jr., Stash)

(Name of insurer): _____ \$.....

(Beneficiary/Beneficiaries):.....

2. Accident insurance: (Name of insurer): _____ \$.....

(Name of insurer): _____ \$.....

This information is current as of (specify date) 11/14/2017.

V. VARIANCE FROM THE PERCENTAGES: The Family Court Act allows the Court to order support different from the percentages if the Court finds that the support based upon the percentages would be unjust or inappropriate due to certain factors. The factors are set forth in Addendum D. The following is/are the factor(s) that the Court should consider in this case: See attached....

VI. EXPENSES: In ordering support by the percentages the Court is not obligated to consider your expenses. However, if the Court varies from the percentages, your expenses may be considered. List your expenses as follows: List all expenses on a weekly or monthly basis; however, you must be consistent. If any items are paid monthly, divide by 4.3 to obtain the weekly payment. If any items are paid weekly, multiply by 4.3 to obtain the monthly payment.

Check applicable box: I am listing my expenses on a ☐ weekly ☒ monthly basis:

EXPENSE ITEM	COST [check box]: <input type="checkbox"/> weekly <input type="checkbox"/> monthly
a) Rent or mortgage payment	a. \$ 300
b) Mortgage interest and amortization	b. \$ —
c) Realty taxes (if not included in mortgage payment)	c. \$ —
d) Insurance on realty	d. \$ —
e) Utilities: gas <input checked="" type="checkbox"/> electric <input checked="" type="checkbox"/> water <input checked="" type="checkbox"/> telephone <input checked="" type="checkbox"/> cable <input type="checkbox"/>	e. \$ 120
f) Garbage collection	f. \$ —

g) Household repairs (specify)	g. \$	—
h) Food	h. \$	300
i) Charge accounts, loans, etc. (from Section VII below)	i. \$	—
1)		
2)		
3)		
j) Auto expense: gas <input checked="" type="checkbox"/> insurance & fees <input checked="" type="checkbox"/> maintenance <input checked="" type="checkbox"/> loan <input type="checkbox"/>	j. \$	200
k) Public transportation	k. \$	—
l) Life insurance	l. \$	10
m) Health insurance	m. \$	—
n) Clothing: self \$ <u>50</u> others \$ <u>—</u>	n. \$	50
(Explain: _____)		
o) Laundry and dry cleaning	o. \$	25
p) Education and tuition (explain: _____)	p. \$	—
q) Child care	q. \$	—
r) Contributions	r. \$	—
s) Union dues (Are dues mandatory? <input type="checkbox"/> yes <input type="checkbox"/> No)	s. \$	—
t) Entertainment <u>Bowling, Bingo</u>	t. \$	100
u) Miscellaneous personal expenses (specify: <u>Lottery</u>)	u. \$	25

v) Other (specify: _____)	v. \$
w) TOTAL: <input type="checkbox"/> weekly <input checked="" type="checkbox"/> Monthly Expenses	w. \$ 1130

VII. LIABILITIES, LOANS AND DEBTS: In ordering support by the percentages the Court is not obligated to consider liabilities, loans, and debts. However, if the Court varies from the percentages, they may be considered. List your liabilities, loans and debts as follows:

Creditor	Creditor	Creditor
Purpose	Purpose	Purpose
Date incurred	Date incurred	Date incurred
Total balance due \$	Total balance due \$	Total balance due \$
Monthly payment \$	Monthly payment \$	Monthly payment \$

NOTE: ATTACH TO THIS FORM INFORMATION REGARDING ANY ADDITIONAL DEBTS.
I have carefully read the foregoing statement and attest to its truth and accuracy.

I have carefully read the foregoing statement and attest to its truth and accuracy.

Stanley Przybyszewski
RESPONDENT

Stanley Przybyszewski
(print name)

On this 14th of November, 2017 before me personally came and appeared Stanley Przybyszewski to me known and known to me to be the individual described in and who executed the foregoing instrument and who duly acknowledged to me execution of the same.

Patrick J. Long
PATRICK J. LONG
Notary

PATRICK J. LONG
NOTARY PUBLIC - STATE OF NEW YORK
No. 02LO6219536
Qualified in Erie County
My Commission Expires March 29, 2018

November 14, 2017

To whom it may concern:

Please consider this when looking at my finances. I am a professional carpenter. During the course of my career, I purchased many power tools and other items necessary for me to do my job. I also own some scrap lumber I use for projects, and some nails, screws, etc. I estimate I could get about \$10,000 for all these tools (saws, routers, nailgun, ladders, etc.) depending. I also own an air compressor for the power tools. That's worth about \$2,300. I keep all of these in my storage locker at Life Storage on Hertel Ave. That costs me \$80 per month.

My van is a 1998 Ford Econoline. It has 330,000 miles on it. According to the 2016 Bluebook, it's worth about \$5,000. In 2017, I had to have all the brakes and the muffler replaced. That cost me \$3000.

I also own some work clothes, regular clothes, and some furniture, which I got at the AMVETS. I don't know what those are worth.

If I sell all my stuff, I cannot work as a carpenter. I also cannot get to any jobs to do work. {The buses don't go everywhere}.


Stanley Przybyszewski, Sr.

At a term of the Tonawanda Town Court of the State of New York, held in and for the County of Erie, at Tonawanda, New York, on the 30th day of November, 2017.

Present: Hon. Charles B. Sears, Justice.

STATE OF NEW YORK : TOWN COURT
TOWN OF TONAWANDA

TOWN OF TONAWANDA,

-against-

Index No.: 1234(S)

STANLEY PRZYBYSZEWSKI,

Defendant.

The above named Stanley Przybyszewski, defendant in this action, having being found guilty of violating New York Vehicle and Traffic Law § 1192 (a), and having been sentenced to 90 days' incarceration, and having been ordered to pay a fine to the Court of \$10,000, and having failed to make regular and good faith payments to the Court, in accordance with the schedule set forth in the sentencing Order, and having now \$12,000.00 due in arrears, to include the fine plus Court fees and costs, and this Court having heard the arguments put forth by Defendant in excuse for this default,

NOW, due deliberation having been had thereon, it is

ORDERED, that the Defendant is in CONTEMPT of this Court's prior ORDER, and it is

ORDERED, that Defendant shall be remanded to the custody of the New York State Department of Corrections, and it is

ORDERED, that Defendant shall be incarcerated for a period of not less than one hundred and eighty (180) days, and it is

ORDERED, that payment of an additional fine be made on the following terms of \$150 per month for a total of sixty (60) months, or in a lump sum of \$9,000.

Enter,



Charles B. Sears
Justice,
Town of Tonawanda Court