

RTF:SC:MER
F.#2005R01856

NO9-0028

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TO BE FILED UNDER SEAL

UNITED STATES OF AMERICA

AFFIDAVIT IN SUPPORT OF
ARREST WARRANT

-against-

(18 U.S.C. § 666(a)(1)(B))

LEONARD DIROMA,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

EVAN CAMPANELLA, being duly sworn, deposes and says that he is a Special Agent with the United States Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that from in or about and between August 2008 and January 2009, within the Eastern District of New York and elsewhere, the defendant LEONARD DIROMA, being an agent of an organization that received in excess of \$10,000 in any one year period under a Federal program involving a grant, subsidy or other form of Federal assistance, did knowingly, intentionally and corruptly solicit, demand, accept and agree to accept something of value, to wit, United States currency, with the intent to be influenced and rewarded in connection with business and a series of transactions of such organization involving \$5,000 or more.

(Title 18, United States Code, Section 666(a)(1)(B))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I have been a Special Agent with ICE since May 2007. I am currently assigned to ICE's El Dorado Task Force, which investigates money laundering.

2. The facts set forth in this affidavit are based upon my own investigation of the facts, a review of documents, witness interviews, and upon what I have learned from other agencies, including the Internal Revenue Service ("IRS") and the Office of the Inspector General of The Port Authority of New York and New Jersey.

I. The Defendant, Con Ed and the Contractor

3. Consolidated Edison ("Con Ed") is a New York-based corporation that provides electrical, gas and steam utility services in New York City and Westchester County. As a provider of such utility services, Con Ed is responsible for the maintenance and repair of its electrical, gas and steam lines, as well as the installation of new lines as needed. Con Ed is further responsible for rebuilding and rerouting existing utility lines as part of construction projects that interfere with

¹ Because the purpose of this affidavit is only to state the probable cause to arrest, I have not described all the relevant facts, circumstances and conversations that I am aware of related to this investigation. All conversations and statements reported in this affidavit, unless directly quoted, are described in substance and in part.

existing lines. Con Ed received federal funding in excess of \$10,000 for each year from 2008 through 2009.

4. The defendant LEONARD DIROMA is employed as a Construction Representative for Con Ed, and his duties include receiving invoices from various Con Ed contractors for construction work performed by those contractors in Westchester County, ensuring that the requested amounts are accurate and passing the invoices up Con Ed's chain of command for payment.

5. Cooperating Witness #1 ("CW-1") is the president and co-owner of a construction company that performs gas line and electrical work on construction projects.² Since 2004, CW-1 has been awarded numerous construction contracts by Con Ed.

II. The Con Ed Contract

6. In March 2007, CW-1 was awarded a two-year "area contract" with Con Ed to install and maintain various electric and "dead gas" (empty pipes with no live gas) facilities throughout Southern Westchester County, with an option for a third year. CW-1 intends to re-bid the contract when the two-year term is up.

III. The Kickback Scheme

7. In approximately August 2008, defendant DIROMA sent an envelope to CW-1 through one of CW-1's job site

² On September 17, 2008, CW-1 was arrested and has since signed a cooperation agreement with the government and is expected to plead guilty in the near future.

supervisors working on the Southern Westchester contract that contained a photograph of a Seiko watch and a pair of sunglasses, together worth approximately \$2,000, which CW-1 understood to be a request for a kickback payment. After receiving this communication, CW-1 put \$2,000 cash in an envelope and sent it to DIROMA through CW-1's site supervisor. During subsequent conversations summarized below, CW-1 and DIROMA agreed that DIROMA would be paid for ensuring that CW-1's invoices would be reviewed favorably and costs would be inflated so that CW-1's payments from Con Ed would increase. CW-1 and DIROMA agreed that CW-1 would pay DIROMA twenty percent of the inflated amounts CW-1 received in payments from Con Ed.

IV. Recorded Conversations³

8. On November 5, 2008, CW-1 and defendant DIROMA spoke by telephone to arrange a meeting. On November 6, 2008, CW-1 met with DIROMA in Yonkers, New York. During the meeting, CW-1 explained to DIROMA that he wanted to see him to "mend fences" after he heard about a falling out DIROMA had with one of CW-1's site supervisors. CW-1 told DIROMA that he didn't want DIROMA to be "pissed off going over [his] bills." DIROMA responded, "No, it's, it's not good for anybody to be pissed off." DIROMA further stated, "Between you and I, off the record,

³ CW-1 wore an electronic device to record the conversations with the defendant that are quoted in this section of the affidavit.

you know? I'm trying to help you out, you know?" When CW-1 again stated that he didn't want any "hard feelings," DIROMA responded, "you know, I'm always willing to work with you. You know, I just, and I got to be careful who the fuck I talk to anymore." CW-1 then inquired about what DIROMA did with the \$2,000 CW-1 sent DIROMA previously:

CW-1: So, did you, uh, did you ever get that watch?

DIROMA: Uh, no.

CW-1: No? Sorry, I, I, I didn't have, uh, I didn't have time to go shopping. I just sent -

DIROMA: Uh, I, I know you're busy, you know?

CW-1: Did, but you got the, uh, I sent 2,000 -

DIROMA: Uh,

CW-1: I just wanted to make sure, 'cause -

DIROMA: How much did you send?

CW-1: Two thousand.

DIROMA: It was fifteen hundred.

CW-1: Was it fifteen?

DIROMA: If you sent 2,000, somebody else got 500.

CW-1: Really?

DIROMA: Yes. [Laughs]

CW-1: Alright. Let's start all over.

CW-1 and DIROMA then decided that in the future, they would deal with one another directly, to avoid further problems:

CW-1: So, alright, so, look going forward, what, what would you, what would you want to do if anything?

DIROMA: Well, you know, I have no idea what the fuck, I'm, you know, I'm, I'm signing off on things and shit like that. You know, and there's no like set, nothing is set, you know?

CW-1: Well, that's why I wanted to talk.

DIROMA: You know, I mean, uh, uh, if we're gonna do anything at all I want to do it with you.

CW-1: Okay. Fair enough.

DIROMA: Alright?

CW-1: Uh,

DIROMA: 'Cause I can't have somebody, 'cause I trust you -

CW-1: Right.

DIROMA: - more than anybody.

CW-1 and DIROMA then discussed the particulars of their kickback agreement, specifically that DIROMA would receive a percentage of the extras he added to CW-1's bills:

DIROMA: I, I don't know. Uh, you know, I sometimes, you know? I don't know. We used to do like a percentage and, you know, or whatever, you know?

CW-1: If, if you want to do a percentage to keep track -

DIROMA: I mean, is, is, is, is cash hard for you to do?

CW-1: It is.

DIROMA: It doesn't matter to me. There's always stuff I could use.

CW-1: Well,

DIROMA: And believe me when I tell you, you know?

CW-1: Honestly, that's easier for me probably.

DIROMA: Yeah?

CW-1: Yeah. Cash is hard, but I, I can get some.

DIROMA: Uh-huh.

CW-1: But if, uh, you, you see other stuff, that's cool, too, uh, uh, it helps me. But if, if you want to do a percentage and then keep track and then we'll square up like once a month.

Later in the conversation, DIROMA suggested that he was willing to accept a Blackberry Curve in lieu of cash:

DIROMA: You know what I asked for and it'll probably, would probably be easy, I don't know, it'll, it'll probably be easy for you, I was looking for a, uh, what do you call it? A Blackberry.

CW-1: A phone?

DIROMA: Yeah.

CW-1: Not, something like, well, this is an I-Phone, but similar -

DIROMA: Yeah. No, a Blackberry. It's, it's, it's -

CW-1: Where you can get the, uh,

DIROMA: Sprint makes it.

CW-1: When you get the, uh, email? And -

DIROMA: Yeah. Yeah. Yeah.

CW-1: Yeah. Yeah. Alright, I'll look into that.

DIROMA: With a, with a, with a, maybe a, a, little a contract on it. That's something you could do business wise. You know what I'm saying?

CW-1: Yeah. And then put it right through. No problem.

DIROMA: I, I, I think you got to probably get a year or two contract with it.

* * *

DIROMA: The, the, the Curve it's called. And, and the plan is called the Everything Plan.

CW-1: The Curve? Yeah.

DIROMA: It's called Blackberry Curve.

CW-1: 'Cause they have the Pearl. The, uh, Curve and there's a new one that came out.

DIROMA: Yeah, the Curve is the one I was looking at.

CW-1 agreed that it would be no problem to get DIROMA a Blackberry Curve on CW-1's corporate account, telling DIROMA, "I'll order that when I get back." DIROMA reminded CW-1 to make sure he gets the Everything Plan to go with the phone:

DIROMA: Oh, yeah. Yeah, but, uh, I like that plan because it's unlimited. I don't want, like if I call my brother, it's unlimited long distance.

CW-1: Right.

DIROMA: So, if I call, if, just look for the Everything Plan.

CW-1: Okay.

DIROMA: For -

CW-1: Alright.

DIROMA: 99 dollars a month.

CW-1: Alright.

DIROMA: It's a, it's the Curve. I think it comes in two colors. If you could get the red one.

CW-1: The red.

DIROMA: The red. You want me to write it down?

CW-1 then confirmed their arrangement, and suggested means of payment, whether cash or otherwise:

CW-1: Yep. Alright, so just to, we're clear you, you and me we're gonna -

DIROMA: Me and you.

CW-1: - do a percentage?

DIROMA: Yeah.

CW-1: And then, you got to keep track of it somehow, 'cause -

DIROMA: Yeah, somehow, yeah.

CW-1: Yeah, I trust you.

DIROMA: Yeah. No. And I, I

CW-1: And then we'll come up with it -

DIROMA: I totally trust you, believe me.

CW-1: And then we'll come up with a dollar and then we'll sp, split it. Either -

DIROMA: Yeah. However you, yeah.

CW-1: Either like, like something and then cash, or, um,

DIROMA: I mean, if you, I know cash is hard. I mean, uh, it's like,

CW-1: Cash is hard everywhere.

DIROMA: It doesn't matter to me.

CW-1: Okay.

DIROMA: I, I, uh, there's things I need all the time, you know.

CW-1: Yeah.

DIROMA: Um, um, you know, just like anybody else [U/I]

CW-1: No problem. Even like gas cards or anything like that.

DIROMA: Yeah, that's like cash.

CW-1: Yeah,

DIROMA: And, and it doesn't even show. You know.

CW-1: Right.

DIROMA: You, you don't have to, you know -

CW-1: Yeah.

DIROMA: - hide the cash, you know?

CW-1: Yep! No, that'll be great.

DIROMA: Yeah, gas cards, sometimes that's good.

CW-1: I appreciate you working with me that way 'cause some guys they don't want to know shit. They just want -

DIROMA: I know.

CW-1: Cash, and they don't give a fuck and -

DIROMA: Oh, I know certain guys are demanding, you know, "I want this for a fucking month." I know there's -

CW-1: Right.

DIROMA: Certain people out there that do that shit.

CW-1: No, I know.

DIROMA: You know?

CW-1: I know. Believe me, I know.

At the conclusion of the conversation, DIROMA confirmed that he expected to be paid a kickback of twenty percent of the amount by which he increased the bills:

DIROMA: Now, what, what do you think is a fair percentage? I mean, the fucking old shit that they used that to do. You, you know today is a different time. You know what I mean?

CW-1: You tell me.

DIROMA: And I wanna be fair too. I mean, you know?

CW-1: Well, why don't we, pick, pick a number and we'll try it out. And then, um, if it's, doesn't seem like it's good we'll, we'll change it. You know what I mean?

DIROMA: Alright.

CW-1: We can go over it. So, you want?

DIROMA: You know, it used to be this thing where it was like fifteen percent you couldn't fucking negotiate nothing. Nobody wanted to hear nothing. I mean, that's ridic, oh, man.

CW-1: How about ten? Just an even number.

DIROMA: Huh? [Laughs]

CW-1: Ten alright?

DIROMA: Ten, he wants to go down. He don't want to go up.

CW1-: [Laughs]

DIROMA: [Laughs] You're a business man. I can understand that. Yeah.

CW-1: You tell me.

DIROMA: Yeah.

CW-1: I don't care. If it's, if it's worth it, it's worth it.

DIROMA: Yeah.

CW-1: So,

DIROMA: Of course it's worth it. It's, it's something that you, you,

CW-1: Right.

DIROMA: Weren't going to have.

CW-1: Right. So,

DIROMA: You know what I'm saying?

CW-1: You, you give, you tell me.

DIROMA: I mean, you know, I mean, I don't know, twenty percent?

CW-1: Fine.

DIROMA: You know, for now.

9. On November 20, 2008, CW-1 and defendant DIROMA met in CW-1's car in a parking lot in Yonkers, New York, at which time CW-1 gave DIROMA an envelope containing \$5,000 in cash. This transfer of cash was videotaped. During the conversation, DIROMA showed CW-1 three Con Ed reports indicating work that was done by CW-1's company in Westchester, and explained where DIROMA inflated the costs. DIROMA showed CW-1 the totals of the inflated costs and explained how he reached the twenty percent figure that he said he was owed. When CW-1 asked DIROMA if CW-1 could keep the documents to help CW-1 keep track of the kickback payments, DIROMA responded, "You know, I don't want anybody looking at this fucking shit, because my writing is all over it."

You know what I'm saying?" CW-1 indicated that CW-1 understood, and DIROMA told CW-1 that he would give CW-1 copies. DIROMA further explained that he identified the inflated figures on the form by writing in a different color, noting, "that's the extra." DIROMA instructed CW-1 to use these figures when CW-1 submitted CW-1's invoices, stating "that's what you're gonna be billing." Later in the conversation, CW-1 asked DIROMA what DIROMA's cut of the inflated total would be. DIROMA responded:

CW-1: So, what, what do you think it comes to from what you have there total?

DIROMA: Mine?

CW-1: Yeah.

DIROMA: Uh, just shy of 5,000, something like that, my twenty percent.

CW-1: Uh-huh. Okay. Guess what? Here.

DIROMA: Yeah. Huh?

CW-1: I, I got five.

DIROMA: Do you?

CW-1: That was a good guess. Yeah.

DIROMA: Oh, shit! You're giving me cash?

CW-1: Yeah.

DIROMA and CW-1 then discussed their current payment arrangements for the kickback scheme and agreed to meet approximately once a month.

10. On January 6, 2009, CW-1 called DIROMA and left a message. Later that same day, CW-1 received a phone call from DIROMA while CW-1 was in Astoria, New York. During the conversation, CW-1 asked DIROMA if DIROMA had an idea of the "rough amount" that CW-1 should pay DIROMA when they met up the following week, since CW-1's payments to DIROMA were supposed to reflect twenty percent of the inflated amounts DIROMA was able to add to CW-1's invoices. DIROMA responded, "I have to look at it and add it up cause last time I spoke to you I hadn't added the steel beams," for a particular job. DIROMA then stated that "Yeah so I mean that was left over there on that then I got a couple other little jobs I can add it up and give you a call." The conversation concluded:

CW-1: Add it up and give me a call.

DIROMA: I got everything with me right now I can add it up, alright?

CW-1: Very good.

DIROMA: And I got all the paperwork in case you need to look at some of the paperwork to see the way I drew it up, okay?

CW-1: No problem, very good.

DIROMA: Alright, I'll call you back in a few minutes.

CW-1: Okay.

DIROMA: Okay, bye bye.

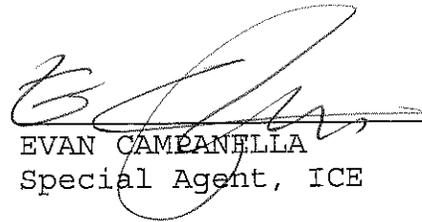
CW-1: Bye.

11. Approximately 25 minutes later, DIROMA called CW-1 back while CW-1 was still in Astoria, New York. During their conversation, DIROMA told CW-1 that he was able to add approximately \$55,000 to the current invoices and that he wanted to be paid \$11,000 for his help.⁴

⁴ This call was not recorded because the recorder malfunctioned. Agents, however, were present with the Contractor during the call and overheard the Contractor's side of the conversation.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant LEONARD DIROMA so that he may be dealt with according to law.

Because of the nature of this application, it is further requested that this application and the related arrest warrant be filed under seal.


EVAN CAMPANELLA
Special Agent, ICE

Sworn to before me on
12 day of January 2009


UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK