UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 08-1345 (RMC)**
	)	
8 GILCREASE LANE, QUINCY, FLORIDA 32351, *et al.*,	)	
	)	
Defendants.	)	

ORDER

On August 5, 2008, the United States brought a civil forfeiture action against certain real properties, as well as $53 million in funds from ten Bank of America accounts, alleging that such properties and money are the proceeds of wire fraud. That day, federal agents executed a search warrant at one of the defendant properties – the residence of Thomas A Bowdoin, Jr., located at 8 Gilcrease Lane, Quincy, Florida. Pl.'s Opp'n to Mot. to Exclude ("Pl.'s Opp'n") [Dkt. # 52] at 2. The government agents who searched Mr. Bowdoin's home did not arrest him at that time or any other. While executing the search warrant, however, U.S. Secret Service agents did ask him questions about Ad Surf Daily ("ASD") and Golden Panda ("GP"), the companies through which it is alleged the underlying fraud was perpetrated. Though Mr. Bowdoin initially declined to speak to the agents without a lawyer present, he later agreed to be interviewed. On August 15, 2008, Mr. Bowdoin and two entities he controls filed a verified claim for the forfeited items. Mr. Bowdoin's attorneys later withdrew from the case and, on February 27, 2009, Mr. Bowdoin filed a *pro se* motion to suppress evidence, alleging, in sum, that any evidence seized or statements made during the search

and seizure of his property was obtained in violation of his rights under the Fourth and Fifth Amendments to the U.S. Constitution. *See* Dkt. # 48.

The Fourth Amendment to the Constitution protects against unreasonable search and seizure. *See* U.S. Const. amend. IV. However, evidence seized in good faith and pursuant to a valid search warrant is rarely excludable. *See United States v. Leon*, 468 U.S. 897, 913 (1984) ("[O]ur evaluation of the costs and benefits of suppressing reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate leads to the conclusion that such evidence should be admissible in the prosecution's case in chief."); *United States v. Spencer*, 530 F.3d 1003, 1006 (D.C. Cir. 2008). The agents who searched Mr. Bowdoin's property and seized certain tangible evidence were operating on the basis of a warrant issued "upon probable cause, supported by an affidavit made under oath, which particularly described the place to be searched and the things to be seized." Pl.'s Opp'n at 2. There is no basis upon which to suppress evidence so seized.

Nor is there any basis to suppress Mr. Bowdoin's statements to the investigators. Mr. Bowdoin claims the government agents questioned him during their search of his home in violation of his Fifth Amendment rights. Mot. to Suppress [Dkt. # 48] at 1-2. The Fifth Amendment to the Constitution states, in relevant part: "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V. Thus, "[s]tatements compelled by police interrogations of course may not be used against a defendant at trial . . . but it is not until their use in a criminal case that a violation of the Self-Incrimination Clause occurs[.]" *Chavez v. Martinez*, 538 U.S. 760, 767 (2003) (internal citations omitted); *see also Minn. v. Murphy*, 465 U.S. 420, 462 (1984) (holding that "a probationer has a right to refuse to respond to a question the answer to which

might expose him to criminal liability unless he is granted immunity from the use of his answer against him in a subsequent criminal prosecution."). As Mr. Bowdoin's statements are not being used to subject him to criminal liability, there can be no violation of his privilege against self-incrimination here.[1]

Mr. Bowdoin also alleges that the agents who questioned him failed to advise him of his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966). However, "just as the Self-Incrimination Clause [of the Fifth Amendment] primarily focuses on the criminal trial, so too does the *Miranda* rule." *Patane*, 542 U.S. 630, 636-37 (2004). Furthermore, government agents are only required to issue "*Miranda* warnings" prior to a custodial interrogation. *See Miranda*, 384 U.S. at 478-79; *United States v. Beckwith*, 510 F.2d 741, 742 (D.C. Cir. 1975) (finding that cases following *Miranda* are based upon "interrogation in so-called 'custodial' circumstances," not circumstances where a suspect was "neither arrested nor detained against his will"). "Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Cali. v. Beheler*, 463 U.S. 1121, 1125 (1983) (internal quotations omitted); *see United States v. Baird*, 851 F.2d 376, 380-81 (D.C. Cir. 1988) (finding that defendant was not in custody when he was ordered by a superior to attend and not to leave the interrogation but no "formal" restraints held him there). Mr. Bowdoin was never placed under arrest, never ordered to participate in the interrogation, and was in his own home. The agents had no duty to advise him of his *Miranda* rights,

[1] To the extent Mr. Bowdoin asks the Court to exclude evidence obtained as a result of the lawful search of his home from hypothetical future civil or criminal actions, the Court will not decide that issue here, as any such opinion would be advisory.

and their failure to do so cannot be a basis for suppressing his statements.

For the foregoing reasons, it is hereby

ORDERED that Mr. Bowdoin's Motion to Exclude and Suppress Evidence [Dkt. # 48] is **DENIED**.

SO ORDERED.

Date: September 18, 2009

/s/
ROSEMARY M. COLLYER
United States District Judge