



BILLY RAY LEE

Myss m011g

Rating

Report Monitoring

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PREMIUM REPORT

Billy *AKA

Leaflet (http://leafletjs.com)

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POSSIBLY RELATED PEOPLE

FLAG AS INACCURATE: RATE THIS SECTION: FLAG AS INACCURATE:

VIEW PRINTABLE VERSION (/DASHBOARD/PRINT-TIMELINE/73355980/PERSON/A77D9F12-22CB-407C-A179-205D1C18AA8E/)

VIEW BILLY'S TIMELINE

Timeline view displays report highlights in chronological order from birth to Billy's most recent data.

VIEW TIMELINE

PERSONAL INFORMATION

FLAG AS INACCURATE: RATE THIS SECTION:

This section contains available known aliases, birth records, and phone information gleaned from public records.

FULL NAME	AGE AT DEATH	BIRTH DATE	ASTROLOGICAL SIGN
Billy Ray Lee	62	Nov. 1, 1931	♏ Scorpio
	DIED ON	Apr. 1, 1994	CHECK RELATIONSHIP COMPATIBILITY

AKAS

B R Lee Remove	Billy R Lee Remove
-------------------	-----------------------

SOCIAL SECURITY NUMBERS

VALID SSN	STATE	ISSUED
	TENNESSEE	1934-1951

JOBS

Manager at Food City
Remove

Vice President Information Technology
Remove

Leave a Comment

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POSSIBLE RELATED PEOPLE

FLAG AS INACCURATE: **Billy Ray Lee's Relatives** RATE THIS SECTION:

<p><i>Daughter</i></p>  <p>Constance Helms Shepherd 61 Years Old Kingsport, Tennessee 0 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>	<p><i>Son</i></p>  <p>William Albert Lee 60 Years Old Talbott, Tennessee 334 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>	<p><i>WIFE</i></p>  <p>Etta Mae Lee 80 Years Old Talbott, Tennessee 0 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>
 <p>Anita Rochelle Lee 48 Years Old Morristown, Tennessee 7 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>	 <p>Billy Ray Lee 87 Years Old Morristown, Tennessee 157 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>	 <p>W Albert Lee Years Old Morristown, Tennessee 4 CRIMINAL RECORD(S)</p> <p>VIEW REPORT</p> <p>Show Relatives > Remove</p>

POSSIBLE ASSOCIATES

 **Our extensive public records search did not find Possible Associates for Billy Ray Lee.**


Public records laws vary by state, so information about Billy Ray Lee's possible associates might not be available.

 We refresh our databases every 24 hours, so check back soon to see if Billy Ray Lee's possible associates show up!

POSSIBLE RELATIONSHIPS

Our extensive public records search did not find Possible Relationships for Billy Ray Lee.

Our search for Billy Ray Lee's relations on social media returned with no results.

 We refresh our databases every 24 hours, so check back soon to see if Billy Ray Lee's possible relationships show up!

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POSSIBLE RELATED PEOPLE

FLAG AS INACCURATE:

RATE THIS SECTION:

CONTACT INFORMATION

FLAG AS INACCURATE:

RATE THIS SECTION:

PHONE NUMBERS

CARRIER

PHONE NUMBER

LINE TYPE

VIEW PHONE REPORT



(615) 587-5216

Mobile

Edit

Remove

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LOCATION INFORMATION

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Donna Hodges
625 Lakeway Dr, Memphis, Tennessee
Phone: (423) 581-5657

[View Background Report](#)

POSSIBLE RELATED PEOPLE

FLAG AS INACCURATE
[VIEW MORE NEIGHBORS \(6\)](#)

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CRIMINAL RECORDS

FLAG AS INACCURATE:

RATE THIS SECTION:

Disclaimer:

The criminal record information contained in our reports may not be 100% accurate or complete. This is because the information is pulled from records maintained by government agencies and the information contained in those records may not be 100% accurate or complete. Please use this information as a starting point for your own due diligence and investigation.

We didn't find any likely criminal records for Billy Ray Lee but we did find some that COULD belong to Billy Ray Lee.

4 Unlikely Records | Matching Result(s) based on 2 or 3 out of 5 data points

These records most likely DO NOT belong to Billy Ray Lee based on our Criminal Record Matching Logic. These records matched based on first name, and last name. The date of birth and middle name were NOT a match.

If any of these are inaccurate simply remove them from your report by clicking the "remove" link below.

Charge/Offense
Failure to Appear

[Remove](#)

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DETAILS ▾](#)

Source
TN Montgomery County Arrest (Tennessee)

Charge/Offense
Primary offense: Voluntary Manslaughter

[Remove](#)

[SHOW
DETAILS ▾](#)

Source
TN Dept Of Corrections (Tennessee)

Charge/Offense
Theft - Property

[Remove](#)

[SHOW
DETAILS ▾](#)

Source
TN Montgomery County Arrest (Tennessee)

Charge/Offense
Fta

Remove

SHOW
DETAILS ▾

Source
TN Montgomery Warrant (Tennessee)

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POSSIBLE MATCHING ARREST RECORDS FOR FAMILY/KNOWN ASSOCIATES

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POSSIBLE RELATED PEOPLE

Constance Helms Shepherd - (0) Records Found

POINTER=4:EJXMYCGQWJAQRUFXKF86AWLUP5P13YWEV7OTFYFOQARTAE7C4PUOISD3WL_S7W1WFU4, PLEASE FLAG AS INACCURATE: RATE THIS SECTION: MORE INFO

William Albert Lee - (334) Records Found

POINTER=4:EJXEYB2QAJEQXFFXWU6DGCZNB5PYDIJ1YQIXSW7RSBGWNF3TWGINOLW_91WQA1VFCD MORE INFO

Etta Mae Lee - (0) Records Found

POINTER=4:EJXMYCGQWJAQRUFXKF86AWLUP5P13YWEV7OTFYFOQARTAE7C4PUOISD3WL_S7W1WFU4, PLEASE FLAG AS INACCURATE: RATE THIS SECTION: MORE INFO (/DASHBOARD TVJBN6VSOXXAMIRIYJNBI33LYWFMWZ711X7L3AI ZCKH3PDE0DTLNUAD0S

Anita Rochelle Lee - (7) Records Found

POINTER=4:EJXMYCGQWJAQRUFXKF86AWLUP5P13YWEV7OTFYFOQARTAE7C4PUOISD3WL_S7W1WFU4, PLEASE FLAG AS INACCURATE: RATE THIS SECTION: MORE INFO (/DASHBOARD/REPORT/PERSON/?POINTER=4:EJXEICEKWJAQRH-LZDI WHCKC5W2F9AN2967RUOJ

Billy Ray Lee - (157) Records Found

POINTER=4:EJYKVNKZMMPVNRJCKOEK6PQUO6EDGFOMRKBQGGGWTJQ11DQ11DZHYXGYQAOI MORE INFO

W Albert Lee - (4) Records Found

POINTER=4:EJYKVGXP0LFYZELKSPR0LHYSU1V0LEKV4AIKEC4ACJE3DRE1YNIYVJJR6M MORE INFO

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FINANCES













FLAG AS INACCURATE: RATE THIS SECTION:

This section includes possible bankruptcies, liens, judgments, UCC filings and evictions for Billy Ray Lee.

BANKRUPTCIES

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Our extensive public records search did not find
Bankruptcy information for Billy Ray Lee.

Most cases of bankruptcy are caused by financial hardship from unexpected events such as job loss, divorce, or accidents. If bankruptcy information does not show up here, Billy Ray Lee may not have filed for bankruptcy.
Find out if your passport, driver's license, job loss, divorce, or accidents. If bankruptcy information does not show up here, Billy Ray Lee may not have filed for bankruptcy.
number, or other private data has been scanned on the internet.

But remember, we refresh our databases every 24 hours. If we uncover bankruptcy information for Billy Ray Lee, we will add that data ASAP.

POSSIBLE RELATED PEOPLE

FLAG AS INACCURATE: RATE THIS SECTION:

LIENS

LIEN (MAY. 29, 1993)

Name	Billy R Lee
Address	233 W Main St, Morristown, TN 37814-4630
Filing Type	Federal Tax Lien Release
Total Lien Amount	\$5,979
Recording Book Number Type	R 113
Recording PageNumber Type	337
Court Name	Hamblen Co Register Of Deeds
Court ID	TNHAIC1
Court Address	511 W 2nd North St, Morristown, TN 37814
Court Phone Number	(423) 586-6551
Court Case Number	9877
Alternate Court Case Number	629305976
Filing Date	May. 29, 1993
Release Date	Jul. 31, 1997

LIEN (NOV. 9, 1992)

Name	Billy R Lee
Address	233 W Main St, Morristown, TN 37814-4630
Filing Type	Federal Tax Lien Release
Total Lien Amount	\$331,103
Recording Book Number Type	R109
Recording PageNumber Type	171
Court Name	Hamblen Co Register Of Deeds
Court ID	TNHAIC1
Court Address	511 W 2nd North St, Morristown, TN 37814
Court Phone Number	(423) 586-6551

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LIEN (NOV. 9, 1992)	
Court Case Number	978
Alternate Court Case Number	6292188378
Filing Date	Nov. 9, 1992
Release Date	Jan. 28, 1997

 POSSIBLE RELATED PEOPLE

LIEN (NOV. 9, 1992)	FLAG AS INACCURATE:	RATE THIS SECTION:
Name	Billy R Lee	
Address	233 W Main St, Morristown, TN 37814-4630	
Filing Type	Federal Tax Lien Release	
Total Lien Amount	\$331,103	
Recording Book Number Type	TL13	
Recording PageNumber Type	545	
Court Name	Sevier Co Register Of Deeds	
Court ID	TNSEVC1	
Court Address	125 Court Ave Suite 106, Sevierville, TN 37862	
Court Phone Number	(423) 453-2758	
Court Case Number	1758	
Alternate Court Case Number	629218837	
Filing Date	Nov. 9, 1992	
Release Date	Jan. 27, 1997	

 JUDGMENTS



Our extensive public records search did not find judgments for Billy Ray Lee.

Billy Ray Lee may not have a judgment. Plus, not all counties and states disclose residents' public records, so information about Billy's possible judgments might not be available.



But remember, we refresh our databases every 24 hours. If we uncover information about Billy Ray Lee's possible judgments, we will add that data ASAP.

 EVICTIONS

Our extensive public records search did not find evictions for Billy Ray Lee.

Billy Ray Lee may not have an eviction. Plus, not all counties and states disclose residents' public records, so information about Billy Ray Lee's possible evictions might not be available.



But remember, we refresh our databases every 24 hours. If we uncover information about Billy Ray Lee's possible evictions, we will add that data ASAP.

WP LEAVE A COMMENT

Currently no comments.

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BUSINESSES

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POSSIBLE RELATED PEOPLE

FLAG AS INACCURATE: RATE THIS SECTION:

BUSINESS AFFILIATIONS FLAG AS INACCURATE: RATE THIS SECTION:

THE Sportsman

DUNS Number	#007983877
Primary Company Names	THE Sportsman
Current Address	233 W Main St, Morristown, TN 37814-4630

Remove

CORPORATE FILINGS

Our extensive public records search did not find Business Affiliations for Billy Ray Lee.

About 13% of Americans own their own business
Billy Ray Lee may not be one of them.

But remember, we refresh our databases every 24 hours. If we uncover business affiliations for Billy Ray Lee, we will add that data right away.

13%
Of Americans own their own business

EMPLOYERS

THE Sportsman

Employer's Address	233 W Main St, Morristown, TN 37814
Employer's Phone Number	(423) 586-9986

TRADEMARKS

Our extensive public records search did not find any Trademarks associated with Billy Ray Lee.

But remember, we refresh our databases every 24 hours. If we uncover Trademarks associated with Billy Ray Lee, we will add that data right away.

13%
Of Americans own their own business

Leave a Comment

0 Comments

JUSTIA

United States of America, Plaintiff-appellee, v. Billy Ray Lee, Defendant-appellant, 539 F.2d 606 (6th Cir. 1976)

U.S. Court of Appeals for the Sixth Circuit - 539 F.2d 606 (6th Cir. 1976)

Argued Feb. 4, 1976. Decided Aug. 13, 1976

H. M. Bacon, John F. Dugger, Bacon, Dugger & Jessee, Morristown, Tenn., for defendant-appellant.

John L. Bowers, U. S. Atty., Edward E. Wilson, Knoxville, Tenn., for plaintiff-appellee.

Before EDWARDS, McCREE and LIVELY, Circuit Judges.

McCREE, Circuit Judge.

Appellant was convicted of attempting to board an aircraft while carrying a dangerous concealed weapon. 49 U.S.C. § 1472(l) (1970), Amendments to Sec. 902 of the Federal Aviation Act of 1958, Sept. 5, 1961, Pub. L. No. 87-197, § 1, 75 Stat. 466.¹ Before boarding a Knoxville to Indianapolis flight, Lee presented his hand luggage for inspection to a security guard who discovered a .38 caliber pistol in the side pouch of the briefcase. Lee contended that he had placed the gun in the bag the night before, and had forgotten that it was there.

A complaint was filed charging Lee with violating § 1472, a minor offense punishable with a fine not to exceed \$1,000 or imprisonment not to exceed one year. Appellant signed a printed form which recited the following:

I, Billy Ray Lee, charged with attempting to board an aircraft while having concealed a dangerous weapon, a minor offense against the laws of the United States in the Eastern District of Tennessee, appearing before James C. McSween, Jr., United States Magistrate, who has fully apprised me of my right to elect to be tried before a judge of the United States District Court which has jurisdiction of the offense, and explained to me the consequences of this consent, do hereby consent to be prosecuted before the Magistrate on the charge hereinbefore stated, as authorized by Section 3401 of Title 18 of the United States Code.

He was tried before a magistrate who found him guilty, holding that it was not necessary to determine whether Lee knew that the gun was still in his briefcase, because the statute did not make intent an element of the offense. He sentenced appellant to 9 months imprisonment and a \$1,000 fine. The term of imprisonment was to be suspended and appellant was to be placed on probation upon payment of the fine.

Lee appealed the conviction to the district court. The court reversed, holding that the statute required a showing of knowledge of the presence of the weapon. The court observed that the statute referred to a "concealed" weapon, and stated that "it has long been held that concealment of contraband in a legal sense is a knowing concealment and not the mere fact that the contraband is found in the possession of the defendant." Additionally, the court observed that a serious question of due process would be presented if the statute were construed to make a person strictly liable for any proscribed item found in his luggage, whether he had left it there mistakenly, or it had been placed there surreptitiously by another. The court remanded for further consideration and for findings about the defendant's knowledge or intent, observing:

This Court has taken notice of the testimony of the defendant at trial and believes that defendant's assertions of forgetfulness as to the presence of the handgun in his briefcase strain credulity at best. This is especially true since the defendant had placed the handgun there on the same day of his arrest. Moreover, as a previously convicted felon, defendant admitted that he could not obtain a permit to carry the gun and this would also seemingly make him mindful of its presence in his briefcase. On remand, the Magistrate is instructed to carefully consider these factors and others in the determination of whether or not the defendant had knowing possession of the pistol when he submitted to the boarding search.

After the case was remanded, appellant moved to withdraw his waiver in order to have a retrial before a jury in district court. The magistrate overruled Lee's motion, and proceeded as directed by the district court. No additional evidence was presented, and the magistrate again found Lee guilty and pronounced the same sentence. The district court affirmed the magistrate's action, and appellant noticed this appeal.

Lee presents three contentions: (1) that it was error to refuse to permit the withdrawal of his consent to be tried by a magistrate; (2) that it was error for the district judge to opine in his remand order that Lee's defense "strained credulity at best"; and (3) that it was error to hold that knowing possession was an element of 49 U.S.C. § 1472.²

We agree, for the reasons stated in the district court's opinion,³ with its holding that § 1472 required a finding that appellant knew of the presence of the concealed dangerous weapon. Nevertheless, Lee's conviction must be reversed because he should have been permitted to withdraw his consent to trial before a magistrate.

We have found no precedent deciding the question whether a defendant's consent to trial by a magistrate continues in force after reversal by a reviewing court, but there are two related situations that may suggest the proper rule. The first is where a tribunal grants a new trial in the interests of justice without the intervention of a reviewing court. In this situation, it appears appropriate to hold that waiver of a jury trial or consent to trial by a magistrate should continue in force. F.R.Crim.P. 33 and Magistrates Rule 7, which permit the tribunal to simply vacate the judgment and reopen the original proceedings in an appropriate case, may be construed to require this result. The second situation is when a reviewing court finds error in the conduct of a trial and reverses with directions for a new trial. In that situation the general rule is that a litigant is not bound by his prior waiver of a jury trial. We believe that this appeal is more like the situation where an appellate court has ordered a retrial. Unless the language of a waiver unambiguously states that it will apply in all retrials should they be ordered, a waiver should not continue in effect after the jurisdiction of the court to which it was tendered terminates upon the taking of an appeal.

The general rule to be applied where a judgment of a trial court is reversed after a bench trial was stated in *Burnham v. N. Chicago St. Ry. Co.*, 88 F. 627, 629-630 (7th Cir. 1898):

2. The stipulation to waive a jury, and to try the case before the court, only had relation to the first trial. There could be no presumption then that there would ever be a second trial; and therefore it should not be presumed that the parties, in making the stipulation, had in mind any possible subsequent trial after the first, to which the stipulation could refer. The right of trial by jury in cases at law, whether in a civil or criminal case, is a high and sacred constitutional right in Anglo-Saxon jurisprudence, and is expressly guaranteed by the United States constitution. A stipulation for the waiver of such right should therefore be strictly construed in favor of the preservation of the right.

The rule and the reason for it are fairly laid down by the supreme court of Alabama in *Cross v. State*, 78 Ala. 430, as follows:

"We need not decide whether the defendant, under the facts of this case, so far waived his right of trial by jury as to justify the judge of the county court in proceeding to try the cause. * * * Conceding that such was the case, all we decide is that the agreement to waive the right of trial by jury must ordinarily be construed to apply only to the particular trial at which it is made. Such a waiver is a renunciation of a valuable constitutional right, and must be strictly construed. It may well be supposed that a defendant would be perfectly willing for a particular judge to try him, when he would not risk his successor, or that he would be willing to be tried the first time by a judge, when he would not submit to a second trial by the same judge after such officer had convicted him one or more times, so that the judicial mind might not afterwards be perfectly free from the influence of a bias created by the circumstances of such previous conviction. This would be sufficient ground for the challenge of a juror, and ought not to be considered as waived in the case of a judge, at least on doubtful implication." *Marton v. King*, 72 Ala. 354; *Stedman's Heirs v. Stedman's Ex'rs*, 32 Ala. 525; *Benbow v. Robbins*, 72 N.C. 422. (Emphasis added.)

The rationale of *Burnham* is especially compelling in view of the facts of this appeal. As the *Burnham* court noted, the right to a jury trial is a fundamental right, and a waiver should not be presumed. Here Lee waived not only the right to a jury trial, but also the right to trial by an Article III judge. And the *Burnham* court was certainly correct in its statement that when a defendant signs a waiver he ordinarily does not contemplate a retrial. As *Burnham* further observes, even though a defendant has consented once to a bench trial, he could reasonably be expected to object to retrial without a jury before the same judge who had previously convicted him of the same offense. In Lee's case, moreover, the magistrate who originally convicted him was appointed by and was responsible to the district judge who observed in reviewing the first conviction that Lee's story "strained credulity at best." Nevertheless, Lee was not permitted to withdraw his consent in order to have the issue of his knowledge tried before an impartial jury in the district court.

We think that if Lee is to be deemed to have waived these two constitutional rights for an unlimited number of retrials, his intentions should be evidenced by more than just his signature on a printed form, particularized only by the typed addition of his name, the number of the case, the district court, the charge, and the magistrate's name. To treat the phrase "consents to be prosecuted" from a boiler-plate form as evidencing a perpetual consent would be contrary to the rules that "' courts indulge every reasonable presumption against waiver' of fundamental constitutional rights," and that they require a showing of "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461 (1938).

The general rule stated in *Burnham* that the defendant's waiver of jury trial applies only to his first trial was followed and approved by the Eighth Circuit in *F. M. Davis & Co. v. Porter*, 248 F. 397 (8th Cir. 1918), and more recently the Third Circuit reached a similar conclusion in *United States v. Lutz*, 420 F.2d 414 (3d Cir.), cert. denied, 398 U.S. 911, 90 S. Ct. 1709, 26 L. Ed. 2d 73 (1970), where the defendant with the consent of the government had waived a jury before his first trial, which ended in a mistrial. The government refused to consent to the defendant's waiver for the retrial, and the court of appeals held that the United States was not bound by its consent from the earlier trial:

We agree with the trial judge, and reject Lutz's contention, that the prosecution was not bound by its first waiver. The waiver referred to the earlier trial, before another judge. Once a mistrial was declared each party was free to assert or waive his rights. 420 F.2d 416. (Emphasis added.)

These cases are in accord with the general rule in state as well as federal cases:

II. Operation of waiver as regards new or subsequent trial.

The weight of authority is that a waiver of a jury trial is not operative as regards a subsequent trial, but that after waiver of a jury trial and a trial without a jury, the right of trial by jury, as regards subsequent proceedings to which it is otherwise guaranteed or applicable, remains available, and may be demanded and exercised as in original proceedings, in the absence of statute or stipulation governing the matter and compelling a contrary conclusion.

"Annotation: Waiver of right to jury trial as operative after expiration of term during which it was made, or as regards subsequent trial," 106 A.L.R. 203, 205.

Another annotation collects cases holding that the trial judge erred in denying a defendant's motion for withdrawal of a waiver of trial by jury when the waiver was executed prior to the first trial, and the motion for withdrawal was made prior to the second trial. "Withdrawal of Waiver of Right To Trial By Jury," 46 A.L.R.2d 919, § 5 at 926.

Accordingly, both precedent and policy require us to reverse Lee's conviction because Lee should have been permitted to withdraw his consent to trial by the magistrate. The case will be remanded for a new trial at which appellant, as provided in 18 U.S.C. § 3401(b) and Rule 2(b), Magistrates Rules, will have the right to elect to be tried before a judge, and jury, in the district court.

EDWARDS, Circuit Judge (concurring).

Although I agree with the result reached by my colleagues in this case, I do not travel exactly the same route to decision.

It seems to me that all of the facts in this case would point to affirmance of the judgment of conviction if it were not for there being a genuine doubt about the continuing validity of appellant's waiver of a jury trial after the reversal and remand of the case by the District Court, as detailed in the majority opinion. It is true, of course, that the form which appellant signed states specifically that he consents "to be prosecuted before the Magistrate on the charge hereinbefore stated." On balance I am inclined to agree with my colleagues that signing of such a printed form does not of and by itself necessarily constitute a fully knowledgeable voluntary waiver, not only of a right to a jury trial in the first instance, but also a continuing waiver of any right to a jury trial upon the occasion of any new trial in the same proceeding.

I do not consider the rules and case law cited by the majority opinion to be controlling of the result arrived at. If they were the sole authority relied upon, I would feel that Rule 7 of the Magistrates Rules, and Rule 33 of the Federal Rules of Criminal Procedure would tend to counterbalance them in the opposite direction.

The fact, however, that the right to a jury trial is a constitutional right directly applicable in this federal trial and that the waiver relied upon is contained in ambiguous language on a printed form at that, causes me to join in the majority's result.

A waiver form stating a defendant's consent to be prosecuted (and in the event of a new trial to be reprosecuted) before the Magistrate could, of course, be easily devised to cure the problem.

A similar provision is now found at 49 U.S.C. § 1472(l) (1)

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The apparent anomaly of appellant raising this last question, which was decided by the trial court in his favor, is explained by the statement in his brief that this issue was included at the request of the U. S. Attorney, who did not file a cross appeal

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The district court's complete discussion of the case was as follows:

Should the Magistrate find that defendant was ignorant of the fact that the pistol was in his briefcase when the search occurred, then the Magistrate must find defendant not guilty of

the offense charged. Subsection (l) of Title 49 U.S.C. § 1472 states specifically that defendant must attempt to board an air carrier "while having on or about his person a concealed deadly or dangerous weapon." (Emphasis added.) It has long been held that concealment of contraband in a legal sense is a knowing concealment and not the mere fact that the contraband is found in the possession of the defendant. *United States v. 350 Chests of Tea*, 25 U.S. (12 Wheat.) 486, 492, 6 L. Ed. 702 (1827); *United States v. Powell*, 420 F.2d 949, 950 (6th Cir. 1970).

Moreover, a serious question of due process of law would be raised if a person could be convicted under subsection (l) on the theory that any person presenting himself and his carry-on luggage for boarding inspection would be held strictly accountable for whatever may have been inadvertently left in his carry-on luggage or even might have been surreptitiously placed there by the act of another, for whatever reason. Subsection (l) does not itself specify the requisite criminal intent of the crime and the case law on this point is rather meager. Appellee cites *United States v. Dishman*, 486 F.2d 727 (9th Cir. 1973), rehearing denied Dec. 5, 1973, and *United States v. Margraf*, 483 F.2d 708 (3rd Cir. 1973), vacated 414 U.S. 1106, 94 S. Ct. 833, 38 L. Ed. 2d 734 (42 L.W. 3361), for the proposition that subsection (l) does not require specific criminal intent. Both cases are distinguishable from the present case in that the defendants in those cases were aware when they submitted to a boarding search that they had in their possession the alleged contraband. In *United States v. Freed*, 401 U.S. 601, 91 S. Ct. 1112, 28 L. Ed. 2d 356 (1971), the Court held that specific knowledge that hand grenades were unregistered was not necessary to support a conviction under the National Fire Arms Act where defendant receives or possesses such contraband. 401 U.S. at 607, 91 S. Ct. 1112. Mr. Justice Brennan concurring pointed out, however, that regardless of the lack of a requirement of specific intent "(t)he Government and the Court agree that the prosecutor must prove knowing possession of the items . . ." 401 U.S. at 612, 91 S. Ct. (1112) at 1120. Thus, it would seem clear that under subsection (l) the knowing possession of the contraband as distinguished from knowledge of its illegal character must be viewed as an element of the crime stated by that section. See, *United States v. Renner*, 496 F.2d 922 (6th Cir. 1974). 3

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This Court is convinced that drawing this distinction between knowing possession of contraband as opposed to knowledge that such contraband is illegal is in no way at odds with previous decisions holding that subsection (l) is not a specific intent statute

JUSTIA

United States of America, Plaintiff-appellee, v. Billy Ray Lee, Defendant-appellant, 542 F.2d 353 (6th Cir. 1976)

US Court of Appeals for the Sixth Circuit - 542 F.2d 353 (6th Cir. 1976)

Argued April 6, 1976. Decided Oct. 1, 1976. Rehearing Denied Oct. 21, 1976

John F. Dugger, Herbert Bacon, Morristown, Tenn., for defendant-appellant.

John L. Bowers, Jr., U. S. Atty., Hugh J. Moore, Jr., W. Thomas Dillard, Chattanooga, Tenn., for plaintiff-appellee.

Before PECK, McCREE, and ENGEL, Circuit Judges.

McCREE, Circuit Judge.

Billy Ray Lee appeals from his conviction for violation of 18 U.S.C. §§ 2, 1955, which forbid participation in a gambling business which involves more than five persons, which has revenues in excess of \$2,000 in a single day, and which violates the laws of a state (in this case, Tennessee) in which it is conducted. The dispositive issue is whether evidence seized during a search of defendant's premises pursuant to a search warrant should have been suppressed.

The warrant was based in large part upon information obtained by an interception of defendant's telephone communications pursuant to an order of the district court for the Eastern District of Tennessee. The order authorized the interception of calls to and from three telephones used by five named principal gambling investigation suspects who are not parties to this appeal. It was issued under the authority of 18 U.S.C. § 2518, which provides, inter alia, that(4) Each order authorizing or approving the interception of any wire or oral communication shall specify

(a) The identity of the person, if known, whose communications are to be intercepted;

In *United States v. Donovan*, 513 F.2d 337 (6th Cir. 1975), this court, following *United States v. Kahn*, 415 U.S. 143, 94 S. Ct. 977, 39 L. Ed. 2d 225 (1974), ruled that the application and order must name all persons whom the government has probable cause to believe are committing the offense for which the wiretap is sought. Since we conclude that the rationale of *Donovan* requires the suppression of this evidence, we reverse.

The district court recognized the authority of *Donovan*, which was decided three months prior to its order denying the motion to suppress, but sought to distinguish this case on its facts.

In *Donovan*, the interception had been aimed primarily at other defendants, but information gathered from it was used to convict Buzzacco. Before the application for an extension of a prior intercept order in the same investigation, 91 calls had been made in ten weeks from the prime suspects to a telephone in Youngstown listed in a name known to be used as an alias by Buzzacco. Buzzacco had a reputation as a bookmaker from previous investigations, and had moved his place of operations in 1972 to an address in Niles. However, it was not clear from the record whether the FBI's physical surveillance had placed Buzzacco at that address prior to the intercept application. Telephone calls between other suspects and a person at the Niles address' telephone, identified only as "Buzz" or "Buzzer" had been intercepted pursuant to the prior order. Finally, at the suppression hearing FBI Agent Ault, upon whose affidavits the wiretap orders had been based, testified that at the time of the application he had had "suspicions" that Buzzacco was involved. 513 F.2d at 341-42.

In this appeal, the FBI had received from a reliable confidential source information which was set forth in the affidavit supporting the application for an intercept order, that defendant Lee was a known bookmaker who operated "The Sportsman" in Morristown; that Lee operated in Knoxville a telephone, number 522-3741, for his bookmaking business; and that the informant had personally made use of this number to obtain "line" information for wagering on sporting contests. The affidavit further stated that this information had been

corroborated by independent investigation by FBI agents and by contacts with other sources.

Furthermore, Lee had admitted to an FBI agent prior to the application that he was engaged in business as a bookmaker; that he owned the Sportsman; and that he used a telephone there, number 586-6881, for his bookmaking business. Inspection of telephone company records had also revealed "almost daily" calls from the telephones of the primary suspects named in the application and order to both number 522-3741 and number 586-6881.

To the extent that the facts here and in *Donovan* are different, this appeal presents a more compelling case for requiring that the "known" incidental subject of interception be named in the application and order.

In *Donovan*, Chief Judge Phillips, writing for the court, insisted that

(i)t is apparent that Congress intended § 2518(1) to impose "stringent conditions," thereby playing an integral role in the limitation of wiretap procedures and serving a substantial purpose in the statutory scheme to limit the indiscriminate or otherwise unauthorized use of wiretaps.

513 F.2d at 340-41. Thus any omission of information required by the statute, "whether the omission was inadvertent or purposeful, . . . cannot be excused as a 'mere technical violation.' "

In *Donovan* we found a violation of § 2518(1) (a) because the identity of a "known" subject of interception had been omitted from the application for the intercept order. Here, on the other hand, defendant was mentioned in the affidavit submitted in support of the application, but his name was omitted from the application's list of individuals whose communications were to be intercepted. Consequently, his name also was not listed in the order itself, contrary to the requirements of § 2518(4) (a). This variance is a distinction without a difference. Indeed, the government's formal admission of awareness that Lee's communications would regularly be intercepted makes this appeal a stronger case for suppressing the evidence.

Since the information that was obtained by the interception cannot be employed against Lee, the government concedes that the evidence seized in the search of Lee's premises must also be suppressed because the authorization for the search was based in large part on information derived from the interception. See *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). The district court should therefore have granted Lee's motions to suppress the evidence obtained by both the interceptions and the search.

If the facts obtained by the unlawful interception and search are stricken from the stipulation, there is insufficient evidence to support the conviction. This is so notwithstanding the fact that the district court apparently also relied upon defendant's implicit admission of guilt in his motion to suppress as sufficient in itself to show guilt. Since a defendant must attempt to show government knowledge amounting to probable cause to believe that he is committing the offense in order to secure the benefits of the statutory protection, such allegations may not then be used against him on the issue of guilt. Else the protections of § 2518 would be hollow indeed. Cf. *Simmons v. United States*, 390 U.S. 377, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968).

For the foregoing reasons, the judgment of guilty entered against appellant Lee is REVERSED.⁴

At argument, the court was informed that certiorari was granted in *Donovan* on February 23, 1976. 424 U.S. 907, 96 S. Ct. 1100, 47 L. Ed. 2d 310. In the hope that a dispositive ruling might follow promptly, we delayed our decision until this time. However, it is now five months since oral argument in our court, and the Supreme Court has not yet scheduled oral argument. Accordingly, it is likely that it will be several months before the Supreme Court review of *Donovan* is completed. The defendant should not be unjustifiably subjected to the restraints of bail and confinement. Therefore we now decide the appeal under the precedent of our circuit