

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

STATE OF OHIO,)	CASE NOS. CR 14 588664-A,
)	CR 14 591898-B, CR-15-596253-B
)	
Plaintiff,)	JUDGE SHANNON M. GALLAGHER
)	
vs.)	
)	<u>OPINION AND ORDER</u>
WILLIAM WATERS III,)	
)	
Defendants,)	

Shannon M. Gallagher, J.:

This matter comes before the court on defendant William Waters' motion to suppress evidence obtained in violation of the fourth amendment and a request for a *Franks* hearing. For the following reasons, defendant's motion is denied.

An evidentiary hearing was held on defendant's motion to suppress. Deputy U.S. Marshall James Edge; Lieutenant Billy Oliver of the Sallisaw, Oklahoma Police Department; Detectives Richard Johnson and Roseanna McCoy of the Westlake, Ohio Police Department and Sergeant Mark Morales of the Bay Village, Ohio Police Department testified on behalf of the state.

I. Standard

The review of a motion to suppress is a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71. The very nature of the questions presented requires a case-by-case fact-driven analysis. *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 14. Moreover, when a reviewing court determines that a warrant should not have been issued, it must then determine whether the good-faith exception applies, and that

question is a question of law, subject to de novo review by the appellate court. *United States v. Leary*, 846 F.2d 592, 606 (10th Cir.1988).

II. Defendant failed to meet his burden for a hearing pursuant to *Franks vs. Delaware*

During the hearing, this court denied defendant's request for a *Franks* hearing finding that the defendant did not meet his burden to require such a hearing. Specifically, this court found that he did not make a substantial preliminary showing that any of the affidavits in question contained deliberately or recklessly false statements or material omissions. *Franks v. Delaware*, 438 U.S. 154, 155-156, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). The court further found that these affidavits, even if they did contain false statements, provide the requisite probable cause to sustain the warrants. *Id.* 171-172. Therefore, the evidence resulting from the October 3, 2014 search of the defendant's 2000 Ford Windstar Van and the October 8, 2014 search of the Motel 6 and defendant's aforementioned van was constitutional and not subject to suppression on this basis.

III. The search warrants at issue are not unconstitutional due to lack of particularity

Defendant argues that the following search warrants are overbroad and therefore not in compliance with the particularity requirement of the Fourth Amendment to the United States Constitution and Article 1, Section 14 of the Ohio Constitution: (1) the July 19, 2014 search warrant of the Westlake home; (2) the August 1, 2014 search warrant authorizing the search of electronic devices recovered from the Westlake home; (3) the October 2, 2014 search warrant authorizing the search of Defendant's room at the Motel 6 in Sallisaw, Oklahoma; (4) the October 8, 2014 search warrant authorizing the search of electronic devices recovered from the Motel 6 and the 2000 Ford Windstar Van; and (5) the October 16, 2014 search warrant

authorizing the search of electronic devices recovered from the Motel 6 and the defendant's person upon his arrest.

Defendant makes this particularity challenge on the basis that victim K.L. made one specific allegation that the defendant photographed a particular sexual act with a specific device, an LG cellphone. The court does not find merit to defendant's argument that failure to limit the search on the basis of this specific allegation results in an overbroad warrant. Information was supplied in the affidavits for search warrants regarding a number of incidents involving the defendant's use of electronic devices in conducting these alleged crimes over many years. A search warrant must particularly describe the things to be seized, but the description, whose specificity will vary with the circumstances of the case, will be "valid if it is as specific as the circumstances and the nature of the activity under investigation permit." *Guest v. Leis*, 255 F.3d 325, 336 (6th Cir. 2001) (citing *United States v. Henson*, 848 F.2d 1374 (6th Cir. 1988)). These search warrants and accompanying affidavits are sufficiently specific given the circumstances and nature of the State's investigation of defendant in this matter.

Additionally, Detective Johnson and Sergeant Morales testified, that in each of their experiences as computer forensic experts for the Westlake and Bay Village police departments, respectively, the time stamp affiliated with electronically stored images is not always accurate. They each testified that this may be due to a number of reasons such as incorrect date settings on the device on which the image or video was taken or if the video or image was transferred from one device to another. Particularizing the search warrants to limit the search of images and videos taken on a certain date or range of dates is therefore not effective as such dates do not necessarily reflect the actual date such electronically stored information was created.

Detective Roseanna McCoy testified at the hearing and averred in the affidavit for search warrant that co-defendant Heather Waters advised her that the defendant "is known to keep various SD cards in random jacket pockets throughout the house ... and that both Heather Waters and K.L. claimed that defendant was "computer savvy." State's Exhibit 1, at pg. 5, ¶ 11. Detective McCoy further averred that "in her experience cell phones are readily capable of transferring images to computer devices and other electronic storage media to include, but not limited to SD cards, computers, other cellular phones, thumb drives, hard drives, and disks." *Id.* at ¶ 8. This evidence put forth in Detective McCoy's affidavit provides the requisite probable cause to support the warrant authorizing the search of "cellular phones, SD cards, desktop computer systems, any device capable of storing videos files, picture files, images . . ."

As the State notes in its brief in opposition, "[c]ourts have repeatedly upheld extensive searches so long as the warrant supplies enough information to guide and control the agent's judgment in selecting what to take and what not to take." See State of Ohio's Memorandum in Opposition, at pg. 23. For this proposition they cite a line of Ohio and federal case law that supports this court's finding that the search warrants in question supplied enough information to guide and control a reasonable and particular search of the devices in question.¹ The court further finds that each of these warrants was properly supported by evidence in the underlying search warrant affidavits.

¹ The defendant relies on the recent decision of the Ohio Supreme Court in *State v. Castagnola*, Slip Opinion No. 2015-Ohio-1565, for the proposition that a search warrant authorizing the search of a computer must particularly describe the items believed to be contained on the computer with as much specificity as the affiant's knowledge and the circumstances of the case allow and that the search be conducted in a manner that restricts the search for the items identified. The State of Ohio, in its Supplemental Memorandum in Opposition to Defendant's Motion to Suppress Evidence, filed 08/04/2015, asserts that the directive of the Ohio Supreme Court in *Castagnola*, issued on April 28, 2015, does not retroactively apply to the seven warrants issued in this case which were executed between July 18, 2014 and October 28, 2014. The court declines to comment whether *Castagnola* retroactively applies, but finds that the present facts are distinguishable from the facts of that decision and therefore this case is not controlling on that basis.

IV. The arrest of Defendant William Waters, III in Sallisaw, Oklahoma was Constitutional

Defendant also moves to suppress evidence on the basis that his arrest was unconstitutional and warrantless. See Supplement to Defendant's Motion to Suppress and Motion for Franks Hearing. Defendant was apprehended with the assistance of U.S. Marshalls in Oklahoma, to which he fled from Westlake, Ohio. Defendant argues that his arrest was federal due to the involvement of the U.S. Marshalls and is therefore subject to the federal rules of criminal procedure which require a judge, rather than a deputy clerk, as was the case here, to sign the arrest warrant. Rule 4 of the Ohio Rules of Criminal Procedure states that an arrest warrant is sufficient where a deputy clerk, assigned by a judge, signed the warrant or complaint for arrest. The court finds that federal authorities merely assisted in the apprehension and arrest of Waters, so the federal warrant requirement does not apply here. The court also finds that sufficient local law enforcement officers were present when defendant was apprehended and arrested in Sallisaw, Oklahoma. Lastly, the federal officers' involvement ended with the arrest – they did not conduct any further investigation.

V. Probable cause existed to search the electronic devices specified in the August 1, 2014 search warrant past the three day limitation of Ohio Rule of Criminal Procedure 41(C)

Defendant further moves for suppression of all evidence recovered from electronic devices searched pursuant to the August 1, 2014 search warrant on the basis that this warrant, by its language, authorized the search of the electronic devices named therein "within three days of the date hereof for the property specified." State's Exhibit 4, at 3. The State stipulates that searches of certain electronic devices searched under the authority of this warrant were conducted after the three day limitation period. The three day rule is a general instruction of Ohio Rule of Criminal Procedure 41(C) and R.C. 2933.24.

The exclusionary rule will not ordinarily be applied to evidence which is the product of police conduct violative of state law but not violative of constitutional rights. *State v. Crane*, 2nd Dist. Montgomery No. 17967, 2000 Ohio App. LEXIS 645, *8 (Feb. 25, 2000) (citing *Kettering v. Hollen*, 64 Ohio St. 2d 232, 235, 416 N.E.2d 598 (1980)). The ultimate issue to be determined by the Court is the reasonableness of the search pursuant to the requirements of the fourth amendment. *United States v. Richmond*, 694 F. Supp. 1310, 1311 (S.D. Ohio 1988). The State argues, and this court agrees, that probable cause existed past the three day instruction of Ohio Crim. R. 41(C). Thus, the searches conducted past the three day limit were constitutional and all resulting evidence is admissible.

For the foregoing reasons, William Waters' motion to suppress, filed May 11, 2015, is denied.

IT IS SO ORDERED:

SHANNON M. GALLAGHER, JUDGE

DATE: _____

CERTIFICATE OF SERVICE

A copy of the foregoing **Opinion and Order** was sent by ordinary U.S. Mail this ____ day of August, 2015 to:

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