

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

(FILED: November 17, 2022)

STATE OF RHODE ISLAND

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:
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v.

C.A. No. K2-2019-0377A

DAVID PADULA

DECISION

MATOS, J. Before this Court is Defendant David Padula’s (Padula) Motion to Suppress evidence in the above-captioned case. Jurisdiction is pursuant to G.L. 1956 § 8-2-15, as Padula is charged with felony offenses in the State of Rhode Island, and Rule 12 of the Superior Court Rules of Criminal Procedure.

I

Facts and Travel

In January 2019, Detective Jesse Jarvis (Detective Jarvis), a detective assigned to the Rhode Island Internet Crimes Against Children Task Force, received and reviewed a complaint made to Facebook, Inc. (Facebook), forwarded through the National Center for Missing and Exploited Children (NCMEC). (Criminal Information Packet (Crim. Info.) Ex. 3 (Police Narrative), at 1.) The complaint that Facebook received from NCMEC reported that on December 10, 2018, a Facebook user, “Anthony Fargo,” shared an image of child pornography using

Facebook Messenger. *Id.* Facebook forwarded the reported image to Detective Jarvis along with the associated details surrounding the reported user, including the Internet Protocol address.¹ *Id.*

Detective Jarvis investigated the user's IP address and determined the location of the user at the time of the NCMEC complaint to be Providence, Rhode Island. *Id.* Detective Jarvis then prepared three separate search warrants to be served on Facebook, T-Mobile, and Google LLC. In each of the affidavits, Detective Jarvis described his review of the image at issue as follows:

“Your affiant viewed the image, which consisted of a white prepubescent female who appeared to be approximately eight to ten years old. The young female was wearing transparent clothing and she was laying down with her legs apart and her genitals on display. Your affiant confirmed its content to be consistent with the definition of child pornography as defined in Rhode Island General Law 11-9-13.” *Id.*

However, each of the warrants was geared to specific investigatory objectives. The Facebook search warrant sought “information related to the account owner's involvement in the possession and/or transfer of child pornography.” (Crim. Info. Ex. 7 (Facebook Search Warrant) at 4.) Specifically, the Facebook search warrant requested,

“Any and all records associated with the . . . Facebook identification number . . . to include but not [be] limited to all email content, images including EXIF data, videos including EXIF data, instant message contacts, profiles, friend requests, chat logs, subscriber information, Internet protocol connection logs, records related to services provided, and detailed billing records.” *Id.* at 2.

The T-Mobile search warrant sought the specific IP address information stating, “T-Mobile possesses information related to IP address . . . which [was] crucial to this investigation.” (Crim. Info. 5 (T-Mobile Search Warrant) at 4.) Therefore, the T-Mobile search warrant requested,

¹ An Internet Protocol address (IP address) “is a unique string of numbers that all computers or mobile devices that connect to the Internet acquire.” *In re Austin B.*, 208 A.3d 1178, 1181 (R.I. 2019).

“Any and all records from the T-Mobile account(s) associated with IP address, *2607.fb90:3b19:8d52.f49c:b53b:c7a4:90e9*, from December 10, 2018 at 00:01 (UTC), through December 10, 2018 at 23:59 (UTC), to include Internet Protocol connection logs, subscriber information, billing information, transactional logs, customer MAC addresses and historical Internet Protocol address logs.” *Id.* at 2.

The purpose of the Google warrant was “[to] assist your affiant in identifying the owner of this account.” (Crim. Info. Ex. 9 (Google Search Warrant), at 4.). Specifically, the warrant requested,

“Any and all records associated with the email account of *kayfabeadictions2@gmail.com* to include but not [be] limited to all email content including read, unread, and deleted emails, instant message contacts, profiles, subscriber information, Internet Protocol connection logs, Internet Protocol registration of email account, Google Drive, Google Photos, Google Hangouts, records related to services provided and detailed billing records from the account’s creation date to present date.” *Id.* at 2.

The search warrants for Facebook, T-Mobile, and Google were presented and authorized by the District Court on January 24, 2019 and served on the three companies on January 25, 2019.

On February 6, 2019, Detective Jarvis received search warrant results from Google, which revealed the person using the reported e-mail was Padula. (Crim. Info. Ex. 3 (Police Narrative), at 4.) On February 7, 2019, Detective Jarvis received the results from Facebook which revealed the “substance” of conversations between “Anthony” and other Facebook users.” *Id.* at 5. T-Mobile data, received on February 16, 2019, revealed that the IP address at the time of the upload was assigned to Padula in Coventry, Rhode Island. *Id.*

On March 6, 2019, the District Court authorized a search warrant for Padula’s address and a warrant for Padula’s arrest. (Crim. Info. Ex. 3 (Police Narrative), at 5.) Padula’s home was searched, and he was arrested. *Id.* A subsequent review of the digital media seized at Padula’s home did not reveal any evidence of child pornography. *Id.* Padula was subsequently charged by

way of Criminal Information with Possession of Images of Child Pornography and Transferring Images of Child Pornography. (Crim. Info. 1.)

On February 16, 2022, Padula filed a Motion to Suppress the evidence gathered from the search warrants used to seize evidence from T-Mobile, Google, and Facebook. (Mem. of Law in Supp. Def.'s Mot. to Suppress (Def.'s Mem.) 1.) Padula claims that the affidavits submitted by Detective Jarvis in support of the Facebook, T-Mobile, and Google search warrants lacked sufficient language to support a finding of probable cause. *Id.* at 5-8. Padula also submits a particularity challenge, but only in regard to the Google warrant. *Id.* at 3-5.

II

Standard of Review

Defendant brings the instant motion to suppress pursuant to Rule 41(f) of the Superior Court Rules of Criminal Procedure. At a suppression hearing, the State bears the burden of establishing that the evidence is admissible “by a fair preponderance of the evidence.” *State v. O’Dell*, 576 A.2d 425, 427 (R.I. 1990). Both the Fourth Amendment to the United States Constitution and article 1, section 6 of the Rhode Island Constitution recognize an individual’s right to be free from unreasonable search and seizure of their person, home, and possessions. U.S. Const. amend. art. IV; R.I. Const. art. 1, § 6. Under the Fourth Amendment, a valid warrant must: (1) be issued by a neutral, disinterested magistrate; (2) be supported by probable cause to believe “that the evidence sought will aid in a particular apprehension or conviction for a particular offense”; and (3) describe with particularity the things to be seized and the place to be searched. *Dalia v. United States*, 441 U.S. 238, 255 (1979) (internal quotation omitted).

“The Fourth Amendment to the United States Constitution and article 1, section 6, of the Rhode Island Constitution, prohibit the issuance of a search warrant absent a showing of probable

cause.” *State v. Verrecchia*, 880 A.2d 89, 94 (R.I. 2005). “The United States Supreme Court has indicated that the existence of probable cause should be determined pursuant to a flexible ‘totality-of-the-circumstances analysis.’” *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983)). Further, the approach to the probable cause question should be a “practical, commonsense decision[.]” *Id.* Therefore, “[t]he magistrate is permitted to draw reasonable inferences from the affidavit presented to him or her.” *Id.* In sum, “[p]robable cause exists when the affidavit demonstrates in some trustworthy fashion the likelihood that an offense has been or is being committed.” *Id.* (internal quotation omitted). “It is incumbent upon the trial justice and the reviewing court to accord great deference to the issuing magistrate’s probable-cause determination, so long as there is a showing of a substantial basis from which to discern probable cause.” *State v. Byrne*, 972 A.2d 633, 638 (R.I. 2009) (internal quotation omitted).

The Rhode Island Supreme Court recognized that “the probable cause and particularity requirements go hand in hand.” *State v. Storey*, 8 A.3d 454, 466 (R.I. 2010). Warrants “authoriz[ing] the wholesale rummaging through a person’s property” are invalid. *United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999). “The purpose of the particularity requirement is to prevent exploratory searches made on mere suspicion rather than on judicially determined probable cause.” *State v. DeLaurier*, 533 A.2d 1167, 1171 (R.I. 1987). To achieve this purpose, the warrant must state, with particularity, the place to be searched and the things to be seized. U.S. Const. amend. art. IV; R.I. Const. art. 1, § 6. “The particularity requirement demands that a valid warrant: (1) must supply enough information to guide and control the executing agent’s judgment in selecting where to search and what to seize, and (2) cannot be too broad in the sense that it includes items that should not be seized.” *United States v. Kuc*, 737 F.3d 129, 133 (1st Cir. 2013). If a warrant fails to meet this requirement, any evidence seized pursuant to such a defective warrant

must be suppressed; and that evidence may not be used to convict a person whose constitutional rights have been violated by the use of this type of overbroad or general writ. *State v. Jeremiah*, 696 A.2d 1220, 1220 (R.I. 1997).

III

Analysis

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Probable Cause for Issuance of Facebook, T-Mobile, and Google Search Warrants

Padula contends that the affidavit submitted by Detective Jarvis in support of the Facebook, T-Mobile, and Google search warrants lacked sufficient language to support a finding of probable cause that the image described in the warrants constituted child pornography. (Def.'s Mem. 5-8.) The State argues that Detective Jarvis' description of the photograph sufficiently establishes probable cause that the suspected images contained child pornography. (State's Obj. to Def.'s Mot. To Suppress (State's Obj.) 5.)

In *State v. Reisner*, 253 A.3d 1273 (R.I. 2021), the Rhode Island Supreme Court examined, as an issue of first impression, the sufficiency of a description of alleged child pornography, on video, to substantiate a finding of probable cause determination. *Reisner*, 253 A.3d at 1279. The Court considered the description contained in a search warrant application which stated, "[t]his video file depicts a prepubescent female on the beach removing her bathing suit exposing her genitals." *Id.* at 1281. The Court found that the description did not provide a basis to sufficiently determine whether there was probable cause that the purported video contained child pornography. *Id.* at 1282-83. The Court specified that

“when, as here, an image of a nude child is at issue, the question is far more difficult. Subtle differences may often separate a crime from a constitutionally protected image, such as an innocuous family photo or a work of art. In those situations, a judge must have

the tools, via either the image itself, a thorough description, or a direct connection between the specific hash value and files containing child pornography, to independently assess whether there is probable cause to believe that an image of a child is pornographic.” *Id.* at 1282.

The Court referred to the United States Court of Appeals for the First Circuit’s decision in *United States v. Brunette*, 256 F.3d. 14 (1st Cir. 2001), in which an issuing magistrate did not view the disputed images in a child pornography case, and instead considered the description of the images in the officer’s affidavit. *Brunette*, 256 F.3d. at 15. In *Brunette*, the officer described the disputed images as “photographs of a pre-pubescent boy lasciviously displaying his genitals.” *Id.* at 15. Ultimately, the court in *Brunette* found that “[t]he evidence on the nature of the images consisted solely of [the] legal conclusion parroting the statutory definition” and found that this description was insufficient to support a finding of probable cause. *Id.* at 17. The First Circuit concluded that “[i]f copies [of the allegedly pornographic material] cannot feasibly be obtained, a detailed description, including the focal point and setting of the image, and pose and attire of the subject, will generally suffice to allow a magistrate judge to make a considered judgment.” *Id.* at 20.

This case is distinguishable from both *Reisner* and *Brunette* because the officer’s description here provides a detailed explanation of the photo sufficient to establish probable cause to issue a search warrant. Detective Jarvis submitted search warrant applications that did not include the photograph at issue in this case. Instead, Detective Jarvis stated in his affidavits:

“Your affiant viewed the image, which consisted of a white prepubescent female who appeared to be approximately eight to ten years old. The young female was wearing transparent clothing and she was laying down with her legs apart and her genitals on display. Your affiant confirmed its content to be consistent with the definition of child pornography as defined in Rhode Island General Law 11-9-13.” (Crim. Info. Ex. 3 (Police Narrative), at 1.)

Focusing the inquiry on probable cause, which “does not require either certainty or an unusually high degree of assurance,” rather all that is required is a “reasonable likelihood that incriminating evidence will turn up,” Detective Jarvis’ description is sufficient. *Reisner*, 253 A.3d at 1285 (Goldberg, J, concurring in part, dissenting in part) (quoting *United States v. Morel*, 922 F.3d 1, 11 (1st Cir. 2019), *cert. denied*, 140 S. Ct. 283).

Detective Jarvis’ description is distinct from the description in *Reisner* because it does not merely describe nudity, but instead describes a prepubescent female with her genitals “on display.” *Reisner*, 253 A.3d at 1282; (Crim. Info. Ex. 7 (Facebook Search Warrant) at 3-4.) The description indicates that the young girl had her “legs apart” and only covered with “transparent clothing” (Crim. Info. Ex. 7 (Facebook Search Warrant) at 3-4.) Detective Jarvis describes, in his affidavits, images that are not “an innocuous family photo or a work of art.” *Reisner*, 253 A.3d at 1282. Instead, it contains “subtle differences that may separate [it] . . . from a constitutionally protected image,” *id.*, and, hence, support probable cause.

The description comprises a “detailed description” of the image, noting the “focal point” of the image (genitals “on display”), pose (“laying down”), and attire (“transparent clothing”) of the prepubescent female, which *Brunette* recognized “will generally suffice to allow a magistrate judge to make a considered judgment.” *Brunette*, 256 F.3d. at 20. Applying a flexible, totality of the circumstances, examination, *Verrecchia*, 880 A.2d at 94, Detective Jarvis’ description of the disputed image is sufficient for a judicial officer to find probable cause that the suspected image constituted child pornography. *Byrne*, 972 A.2d at 638. Hence, the motion to suppress on the basis of probable cause is denied.

Padula also argues that the Google search warrant did not describe the place or places to be searched with the required particularity. (Def.'s Mem. 3-5.) Specifically, Padula contends that "a blanket request for ANY and ALL records associated with this email account . . . since the creation of the account, is overbroad and lacks in the specificity required by the 4th amendment of the United States' Constitution and Article 1, Section 6 of the Rhode Island Constitution." *Id.* at 4. In response, the State contends that Detective Jarvis' search warrant described the place to be searched with "adequate particularity," and that "[e]vidence of this crime could potentially be found in all the areas of the Defendant's Google account." (State's Obj. 5.)

In examining the particularity requirement for warrants, the Rhode Island Supreme Court held that the warrant in *Jeremiah* permitted "a blanket or general search of the entire twelve-acre, eighteen-building, ten-warehouse, eighty-three-separate-unit Silver Center compound" even though there was probable cause to search only the defendant's single warehouse. *Jeremiah*, 696 A.2d at 1224. Ultimately, the Court suppressed "all evidence seized pursuant to the defective warrant[.]" *Id.* at 1225. Likewise, in *State v. Costakos*, 101 R.I. 692, 226 A.2d 695 (1967), the warrant "commanded the police to conduct a blanket or general search of an entire building although probable cause, if it existed, had been shown only for searching the single apartment occupied by defendant." *Costakos*, 101 R.I. at 696, 226 A.2d at 697. The Court granted the defendant's motion to suppress in *Costakos* as well. *Id.*

Electronic communication, in particular electronic mail (e-mail), has complicated the Fourth Amendment analysis, raising issues as to particularity and overbreadth of warrants specifically for e-mail accounts. Fern L. Kletter, Annotation, *Validity of Search and Seizure Warrant, and Execution Thereof, to Disclose Records and Electronic Communications Relating to*

Specific E-mail Address, 15 A.L.R. 7th Art. 5 (2016). However, the well-established rules of particularity provide sufficient guidance to examine the question at hand.²

The stated goal of the Google warrant was “[to] assist [the] affiant in *identifying* the owner of this account.” (Crim. Info. Ex. 9 (Google Search Warrant), at 4) (emphasis added.) The warrant requested the search of Padula’s e-mail address, along with all other associated accounts and accompanying information. *Id.* Specifically, the Search Warrant stated,

“[Property or articles to be searched for:] [A]ny and all records associated with the email account of kayfabeadictions2@gmail.com to include but not [be] limited to **all email** content including read, unread, and deleted emails, instant message contacts, profiles, subscriber information, Internet Protocol connection logs, Internet Protocol registration of email account, Google Drive, Google Photos, Google Hangouts, records related to services provided and detailed billing records from the account’s creation date to present date.” *Id.* (emphasis added).

The terms of the warrant authorized officers to conduct a comprehensive search of the e-mail address. *Id.* The warrant’s language leaves the reader to speculate how a connection between

² A similar issue has been addressed in Kansas, where in *In re Applications for Search Warrants for Information Associated with Target Email Address*, Nos. 12-MJ-8119-DJW, 12-MJ-8191-DJW, 2012 WL 4383917 (D. Kan. 2012), the court examined a search warrant in an investigation of an e-mail spam campaign. *In re Applications for Search Warrants*, 2012 WL 4383917, at *1. Ultimately, the court found that a warrant that permitted an e-mail service provider to disclose, without restriction and in their entirety, the contents of all e-mail communications and all records and other information regarding identification of the account (including deleted communications, other information stored by the account user, address books, contact lists, calendar data, pictures and files) was too broad and too general. *Id.* at *9. The court found that the warrant could not pass Constitutional muster, as it failed to set out any limits on the government’s review of the potentially large amount of electronic communications and information obtained from the service providers. *Id.* The court concluded that the government simply did not show probable cause for the breadth of the warrant, which gave the government virtual “carte blanche” to review the content of all electronic communications associated with the account, in violation of the Fourth Amendment. *Id.*

a comprehensive search of all of Padula's e-mails and associated applications would assist in the singular task of identifying the owner of the account.³

Further, the warrant contains no meaningful language limiting the date range for which the officers were authorized to collect information and no limitation on information sources within the account, conveying virtually complete access to the e-mail and its associated applications such as Google Drive, Google Photos, and Google Hangouts. *Id.*

While the association of the e-mail with the Facebook complaint supported probable cause to seek information related to the identity of the account owner, it did not support this broad, exhaustive search of his entire Google account. *See Costakos*, 101 R.I. at 696, 226 A.2d at 697. The warrant allowed law enforcement officials comprehensive access to the entirety of the e-mail and associated applications on the account amounting to an "exploratory search[ing]," of Padula's e-mail for the singular purpose of identifying the owner of the account. *DeLaurier*, 533 A.2d at 1171.⁴ In short, the scope of the warrant is wholly disproportionate to its stated purpose. Hence, any evidence seized pursuant to this insufficiently particular, overbroad warrant must be

³ For comparison, the Facebook and T-Mobile warrants request information for purposes which have a clearer connection to determining owner involvement in sharing child pornography. (Crim. Info. Ex. 5 (T-Mobile Search Warrant) at 3-4; Ex. 7 (Facebook Search Warrant) at 3-4.) The Facebook search warrant identified specific files, content, and logs where the affiant may search related to the probable cause established in Detective Jarvis' investigation that Padula was involved in sharing the disputed images on Facebook. (Crim. Info. Ex. 7 (Facebook Search Warrant) at 3-4.) The T-Mobile search warrant identified a precise IP Address that shared the disputed image, as outlined in the NCMEC complaint, which may be searched to determine the user's involvement with sharing the disputed image. (Crim. Info. Ex. 5 (T-Mobile Search Warrant) at 3-4.) In contrast, the language in the Google warrant affidavit authorizes a sweeping search of Padula's entire e-mail account and associated applications, for the narrow purpose of "identifying the owner of [the subject of the NCMEC complaint] account. (Crim. Info. Ex. 9 (Google Search Warrant), at 4.)

⁴ It is entirely unclear why the officer could not simply request subscriber information in order to identify the owner of the account.

suppressed. U.S. Const. amend. IV; R.I. Const. art. 1, § 6; *Upham*, 168 F.3d at 535; *Jeremiah*, 696 A.2d at 1224.

IV

Conclusion

Detective Jarvis' description of the image that he viewed and recounted in his affidavit contains information that is sufficient to establish probable cause that the suspected image contained child pornography. However, the Google warrant application was constitutionally defective because that warrant did not describe, with the required particularity, the evidence to be searched or seized. Accordingly, Padula's Motion to Suppress is GRANTED in part, in regard to the Google warrant only, and DENIED in part.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. David Padula

CASE NO: K2-2019-0377A

COURT: Kent County Superior Court

DATE DECISION FILED: November 17, 2022

JUSTICE/MAGISTRATE: Matos, J.

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