



**IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
FIRST DISTRICT**

APPEAL DOCKET NO.: 1D13-3182

JOHN GORDON KNIGHT,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

**On Appeal from the Circuit Court,
Fourth Judicial Circuit, in and for Duval County, Florida**

INITIAL BRIEF OF APPELLANT

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INITIAL BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant, John Gordon Knight, will be referred to herein by name, as "Defendant" or as "Appellant." Appellee, State of Florida, will be referred to herein as the "State" or as "Appellee." References to the record on appeal will be designated by reference to the relevant Appellant's record on appeal volume (by Roman numeral) and page number, as set forth in brackets. Example: [R. I, 1].

STATEMENT OF THE CASE AND FACTS

Knight was charged with two counts of possession of child pornography. [R. I, 13]. The charges resulted from the forensic examination of a computer seized from Knight's residence pursuant to a search warrant which revealed child pornography. [R.I, 1-8]. After Knight was arrested and charged, Knight filed five motions to suppress the evidence obtained against him. [R. I, 69-117, 145-48]. After an evidentiary hearing, the trial court entered orders denying each of Knight's motions. [R. I, 181-98; R. II, 199-373]. As to the order denying Knight's second motion to suppress, Knight moved for rehearing, [R. II, 374-78], and the trial court entered an order denying Knight's motion for rehearing. [R. II, 379-81]. Knight then entered a plea of no contest to both counts of the information and specifically reserved his right to appeal all five of his dispositive motions to suppress. [R. II, 393-96]. Knight timely filed his notice to appeal, [R. II, 389-90], and the instant appeal follows. As set forth more fully below, this appeal focuses on the denial of Knight's second, third, and fifth motions to suppress. The facts, as organized by the pertinent motions, are as follows:

Second Motion to Suppress (Extra-Jurisdictional Investigation)

Knight is a resident of Atlantic Beach, Florida. [R. I, 1]. Furthermore, the contraband with which Knight was charged with possessing was located on Knight's

computer in his Atlantic Beach residence. [R. III, 430]. The investigation which led to the search of Knight's computer was performed by Detective Camille Burban, a police officer of the Neptune Beach Police Department. [R. III, 415]. Detective Burban came to suspect that Knight might have child pornography on his computer by using a computer program to investigate the contents of Knight's computer. [R. III, 427-31]. The program utilized by Detective Burban is a program provided only to law enforcement agencies. [R. III, 449]. Using this program, Detective Burban was able to investigate the contents of Knight's computer, which was at all times stationary and located in Atlantic Beach, Florida. [R. III, 448-49, 492-93]. In fact, neither Knight nor his computer were ever located in Neptune Beach. [R. III, 448-49, 492-93]. After accessing the contents of Knight's computer in Atlantic Beach, Detective Burban then acquired a search warrant for Knight's residence, [R. I, 5, 89-91], and pursuant to the warrant, seized the computer from Knight's residence which revealed images of child pornography. [R. I, 5]. The sole probable cause stated in the Affidavit for Search Warrant came from the extra-jurisdictional investigation of Knight's computer. [R. I, 78-88].

Third Motion to Suppress (General Warrant)

The warrant issued in this case authorized the broad seizure of twelve categories of Knight's property. [R. I, 90-91]. However, only four of the twelve

numbered paragraphs in the warrant authorizing government agents to seize property at Knight's home and then search it offsite, referenced child pornography. *Id.* The remaining seven numbered paragraphs did not reference any criminal activity. *Id.* Moreover, the portions of the warrant that limited the searches to certain items relating to "child pornography" or "sexual exploitation of children" did not define those critical phrases. *Id.* Additionally, the warrant permitted the search and seizure of property that fell outside the scope of the probable cause. Thus, the warrant allowed the government to seize and hold personal and private, non-contraband items located in Knight's computer. *Id.* Finally, the warrant failed to prescribe any specific computer search methodology. [R. I, 89-91].

Fifth Motion to Suppress (Unreasonable Execution of Warrant/General Search)

The search warrant was issued on September 2, 2009, two months after Burban began her investigation of Knight on July 6, 2009. [R. I, 5, 89-91; R. III, 48, 85, 491]. The search warrant was executed on September 9, 2009 and Knight's computer was seized. [R. I, 5]. The computer was then tendered to Detective Boymer of the Jacksonville Sheriff's Office, who did not complete his forensic examination of the computer until March 20, 2010, over six months after the computer was seized. [R. I, 145; R. III, 484-85, 491]. In addition to contraband being discovered, the computer had many other electronic documents that were personal and private and not subject

to the search warrant. [R. III, 485]. Knight was not arrested until April 19, 2010, pursuant to a warrant obtained based on the examination of the computer. [R. I, 1-4]. Nevertheless, the State has yet to return any of Knight's non-contraband personal property after completing its analysis of the computer. [R. I, 145-46; R. III, 485].

SUMMARY OF THE ARGUMENT

The trial court erred in denying Knight's second, third, and fifth motions to suppress.

First, the search of Knight's residence and his arrest were the fruits of an illegal extra-jurisdictional investigation of Knight. Specifically, probable cause to obtain the warrant was based upon the investigation of Knight and his computer, both located at all times in Atlantic Beach, Florida, by a Neptune Beach, Florida detective.

Second, the warrant authorizing the search and seizure of Knight's property lacked particularity and was overbroad, as it was not limited by reference to the alleged crime at issue and it authorized a general rummaging through Knight's computer and hard drive.

Third, the search warrant was executed in an unreasonable manner where it took six months to complete the forensic examination of Knight's seized computer, and the State continues to this day to retain all of Knight's non-contraband files.

Accordingly, the orders below denying Knight's second, third, and fifth motions to suppress should be reversed.

ARGUMENT

I.

THE SEARCH OF KNIGHT'S RESIDENCE AND KNIGHT'S ARREST WERE THE PRODUCT OF AN ILLEGAL EXTRA-JURISDICTIONAL INVESTIGATION.

Mr. Knight's Second Motion to Suppress should have been granted. The investigation which led to the search of Knight's residence and his arrest was an illegal extra-jurisdictional investigation. Specifically, a Neptune Beach detective investigated Knight and the contents of Knight's computer in Atlantic Beach. Further, the entire subject matter of this investigation originated outside of Neptune Beach. As a result, the investigation of Knight by the Neptune Beach police officer was illegal because she acted outside of her jurisdiction as a Neptune beach police officer, and the subject matter of the investigation did not originate inside the city limits of her jurisdiction. Accordingly, the fruits of the extra-jurisdictional investigation should have been suppressed.

A. Standard of Review

The standard of review on a motion to suppress is a mixed question of fact and law. *Higerd v. State*, 54 So.2d 513, 516 (Fla. 1st DCA 2010). In reviewing a trial court's factual findings, this Court looks to whether competent, substantial evidence

supports the trial court's findings. This Court reviews the trial court's application of law *de novo*. *Id.*

B. Extra-Jurisdictional Investigations

As a general rule, a municipal police officer, while acting as a police officer, may conduct investigations beyond municipal limits; however, that authority is limited to the instances where the subject matter of the investigation originates inside the city limits. *Wilson v. State*, 403 So.2d 982, 984 (Fla. 1st DCA 1980); *T. T. N. v. State*, 40 So.3d 897, 899 (Fla. 2d DCA 2010); *State v. Allen*, 790 So.2d 1122, 1125 (Fla. 2d DCA 2001). An exception to this rule is when a municipal police officer acts as a private citizen. *Wilson*, 403 So.2d at 984. However, when officers act outside of their jurisdiction, their actions are sustainable as actions of private citizens only if they are not acting "under color of their office." *Id.*

This Court's decision in *Wilson* is instructive for analysis of the instant case.

The facts of *Wilson* were as follows:

[O]fficers of the Lake City Police Department conducted an investigation into the alleged possession of contraband outside the city limits of Lake City. There is no evidence in the record of any action taken by Wilson inside of the city limits. Pursuant to this investigation, an electronic listening device was placed on an informant and he was instructed to make two controlled purchases of drugs from a residence Wilson was known to frequent. Municipal officers directed and monitored these controlled buys.

Based solely upon the information obtained as a result of these controlled buys, a municipal officer submitted an affidavit for a search warrant and the warrant was issued. A week later the warrant was executed by both city and county law enforcement officers, and drugs were discovered in the residence while Wilson was present.

Wilson, 403 So.2d at 983.

Wilson moved to suppress the contraband found in his home on the grounds that the municipal police officers were acting outside of their jurisdiction in conducting their investigation of him. *Id.* The trial court denied the motion to suppress. *Id.* On appeal, this Court held that the city police officers acted outside of their jurisdiction in investigating Wilson, reversed Wilson's conviction, and directed the trial court to grant the motion to suppress. *Id.* at 984. This Court found that the entire investigation was improper. *Id.* Finally, this Court found that the officers acted under color of office by noting that the statute governing interception of oral communications established that the investigation could not have been conducted by a private citizen. *Id.*

Similarly, in *Allen, supra*, a Tampa police department detective acting on a tip that marijuana odor was emitting from a structure on Allen's property traveled to a location in Lutz, Florida, which is not within Tampa's city limits. *Allen*, 790 So.2d at 1123. From a nearby property and legal vantage point, the Tampa detective could

detect the odor of marijuana coming from Allen's garage. *Id.* With this information, the Tampa detective ultimately procured a search warrant for Allen's property and returned there with a Hillsborough County deputy sheriff to execute the warrant. *Id.* at 1123-24. Affirming the trial court's granting of Allen's motion to suppress, the Second District held "[h]ere, the detective undertook an investigation outside Tampa city limits and was therefore without subject matter authority to do so. As in *Wilson*, because the officer began the investigation and sought the warrant under the color of his office, he was not acting as a private citizen. Thus...the officer's action was improper." *Id.* at 1125.

Like the officers in *Wilson* and *Allen*, Detective Burban conducted an investigation outside of her jurisdiction and the subject matter of the investigation did not originate inside her jurisdiction. Specifically, Detective Burban, a Neptune Beach police detective, utilized a computer program only available to law enforcement to investigate the contents of Mr. Knight's computer which was located in Atlantic Beach, Florida. Further, there is no evidence of any action taken by Mr. Knight inside of the Neptune Beach city limits. Additionally, it is clear that Detective Burban acted under color of office while conducting the investigation outside of her jurisdiction, as she used a police computer program only available to law enforcement and sought the search warrant for Mr. Knight's residence under the color of her office

as well.¹ *Wilson*, 403 So. 2d at 984; *Allen*, 790 So.2d at 1125. Accordingly, just as the courts in *Wilson* and *Allen* found the investigations of the officers involved in those respective cases conducted outside of their jurisdictions were illegal, Detective Burban's extra-jurisdictional investigation in the instant case was illegal as well. Accordingly, all fruits of this illegal extra-jurisdictional investigation should have been suppressed. *Wilson*, 403 So.2d at 984; *Allen*, 790 So.2d at 1124-25. *See also*, *Moncrieffe v. State*, 55 So.3d 736, 741 (Fla. 4th DCA 2011) (holding municipal officer acting under the color of his office exceeded his authority by taking defendant into custody outside of officer's territorial limits without a warrant even though probable cause existed for arrest).

C. Mutual Aid Agreements

As mentioned above, as a general rule, a municipal police officer may conduct an investigation beyond his or her municipal limits; however, that authority is limited to those instances where the subject matter of the investigation originates inside the city limits. Notwithstanding the foregoing, a police officer may conduct an investigation outside of her jurisdiction while acting as a police officer if such investigation was authorized by a lawful Mutual Aid Agreement pursuant to Section

¹ Indeed, the State conceded below that there was no dispute Burban acted under "color of law" and that Knight nor his computer were ever located in Neptune Beach. [R. III, 492-93].