23.1225, Florida Statutes (2009). *Daniel v. State*, 20 So.3d 1008, 1010 (Fla. 4th DCA 2009); *Allen*, 790 So.2d at 1125 (stating that an officer, by investigating a crime outside his jurisdiction, was acting improperly "unless saved by the voluntary cooperation agreement").

"The announced policy of the Florida Mutual Aid Act was to provide a means to deal with disasters, emergencies, and other major law enforcement problems." *Allen*, 790 So.2d at 1125. However, "a voluntary cooperation agreement cannot extend police powers beyond the specific additional authority granted by the legislature. Here, the legislative intent was to assure the continued functioning of law enforcement in times of emergency or in areas where major law enforcement efforts were being thwarted by jurisdictional barriers." *Id.* at 1125-26. The Florida Mutual Aid Act authorizes two or more law enforcement agencies operating in Florida to enter into a "mutual aid agreement." §23.1225(1), Fla. Stat. (2009). One type of agreement is a "voluntary cooperation written agreement," which "permits voluntary cooperation and assistance in routine law enforcement nature across jurisdictional lines." §23.1225(1)(a), Fla. Stat. (2009). Such an agreement *"must specify the nature of the law enforcement assistance to be rendered,"* state the procedures for requesting

and for authorizing assistance," and set forth "any other terms and conditions necessary to give it affect." *Id.* (emphasis added) *see also, Daniel*, 20 So.3d at 1011-1012.

In the instant case, the Mutual Aid Agreement between the Neptune Beach Police Department and Atlantic Beach Police Department did not authorize Detective Burban to conduct an investigation outside of her jurisdiction. The Mutual Aid Agreement at Section IV.a.1.-5. sets forth the "authority of law enforcement officers operating pursuant to this agreement." [R. I, 123].[2] The only portion of Section IV of the Mutual Aid Agreement which appears to deal with investigations is Section IV.a.4., which provides in material part:

> In the event an officer of the Atlantic Beach Police Department, Jacksonville Beach Police Department, or Neptune Beach Police Department who is investigating a

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[2] The operative and relevant portions of the Mutual Aid Agreement were reproduced in Knight's Memorandum in Support of his Second Motion to Suppress and a copy of the same was attached thereto as Exhibit 1. [R. I, 123-24]. However, it appears that Exhibit 1 was not included in the record on appeal. Nevertheless, the State stipulated that the Mutual Aid Agreement referenced, cited, and attached to Knight's aforementioned pleading is the Mutual Aid Agreement which controlled in this case. [R. III, 497-98].

This is important to note because there is a different Mutual Aid Agreement that appears in the record at [R. I, 255-59], which the State admitted during a hearing on Knight's motions to suppress, but had not been disclosed to Knight prior to the hearing. [R. III, 453-57]. This belated disclosure led to a continuance of the hearing and the stipulation that the Mutual Aid Agreement referenced, cited, and attached to Knight's memorandum is that which controls in this case. Accordingly, the Agreement at issue in this case is that referenced in Knight's Memorandum of Law in support of his Second Motion to Suppress. [R. I, 123-24].

> felony or misdemeanor which occurred within his or her respective jurisdiction should develop probable cause to arrest a suspect for that felony or misdemeanor when the suspect is located outside the officer's jurisdiction, but within Duval County, the officer shall be empowered with the same authority to arrest said suspect as the officer would have within the political subdivision in which they are employed.

[R. I, 123-24]. As is plain from the text of the Mutual Aid Agreement, in order to act outside of the jurisdiction to make an arrest, the investigation regarding the crime had to occur within the officer's respective jurisdiction prior to being able to act outside the jurisdiction.[3] Thus, the Mutual Aid Agreement does not authorize extra-jurisdictional investigations. Rather, by the plain language of the agreement, in order to act outside of the jurisdiction, the investigation had to involve a felony or misdemeanor which was committed within the officer's respective jurisdiction.

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[3]The other portions of Section IV dealing with the authority of law enforcement officers operating pursuant to the Mutual Aid Agreement do not address investigations. [R. I, 124]. Rather, Section IV.a.1. simply restates what is set forth in §23.127, Fla. Stat.: that officers acting pursuant to the Mutual Aid Agreement have the same powers, duties, rights, responsibilities, privileges and immunities as if they were performing their duties in the political subdivision in which they are normally employed. *Id.* Similarly, Section IV.a.2. and 3. deal with arrests outside of the jurisdiction when a crime is committed in the presence of an officer while acting outside of their respective jurisdictions. *Id.* Finally, Section IV.a.5. provides that members of the signatories to the Mutual Aid Agreement may request assistance in the enforcement of local ordinances. *Id.*

The requirement within the Mutual Aid Agreement that an officer may act outside of his or her respective jurisdiction when the investigation began within his or her respective city limits is unremarkable and simply a restatement of the general law that a municipal police officer may conduct investigations outside the city limits in situations where the subject matter of the investigation originated inside the city limits. *See, e.g. Wilson*, 403 So.2d at 983. In fact, Florida courts have upheld extra-jurisdictional investigations pursuant to Mutual Aid Agreements where the subject matter of the investigation began within the officers' respective jurisdiction.

For example, in *State v. Walkin*, 802 So.2d 1169 (Fla. 3d DCA 2001), a City of Miami Shores detective was investigating a purse snatching that occurred in the City of Miami Shores. *Id.* at 1169. Acting on a tip that the vehicle that was used in the purse snatching was parked in the City of Miami, the City of Miami Shores detective contacted the City of Miami and proceeded to conduct his investigation there. *Id.* at 1169-70. Once in the City of Miami, the City of Miami Shores detective found and arrested the defendant. *Id.* The defendant filed a motion to suppress arguing that the City of Miami Shores police detective was outside of his jurisdiction while acting in the City of Miami. In response thereto, the State relied upon a Mutual Aid Agreement which allowed the City of Miami Shores officer to act in the City of Miami and make arrests "of persons identified as a result of investigations of any

offense constituting a felony....once such offense occurred in the municipality employing the arresting officer[.]" *Id.* at 1170. Relying on the language of the Mutual Aid Agreement, the court held "[i]n the instant case, the Miami Shores detective acted within the scope of his jurisdiction, pursuant to the addendum to joint declaration to Mutual Aid Agreement, when he investigated a felony in the City of Miami that had occurred within the City of Miami Shores." *Id.* at 1171.

Similarly, in *Daniel,* the Fourth District upheld the investigation and arrest of the defendant by detectives from the City of Coconut Creek within the City of Margate pursuant to a Mutual Aid Agreement which provided that "[o]n duty officers from one jurisdiction may conduct investigations (that originate in their jurisdiction) in any of the undersigned jurisdictions." *Daniel,* 20 So.3d at 1011 n.1. In *Daniel*, the City of Coconut Creek detectives were in the City of Margate investigating a burglary that took place earlier in the City of Coconut Creek. *Id.* at 1012. The court, relying upon the language of the Mutual Aid Agreement, held that the City of Coconut Creek detectives "were engaged in conduct that was permissible under the Mutual Aid Agreement. The Agreement provides that "[o]n duty officers from one jurisdiction may conduct investigations (that originate in the other jurisdiction)...Therefore, the stop and arrest were therefore valid, as they were made in accordance with the Mutual Aid Agreement." *Id.* at 1012.

Unlike the investigations in *Daniel* and *Walkin,* Detective Burban's investigation did not involve a crime that originated within her city limits. Thus, the entire subject matter of her investigation was at all times outside of her jurisdiction. As a result, the Mutual Aid Agreement in the instant case did not give Detective Burban the power to investigate a possible crime outside of her jurisdiction when said crime did not occur within her jurisdiction. Accordingly, Detective Burban's illegal extra-jurisdictional investigation is not saved by the Mutual Aid Agreement, and the fruits of this investigation should have been suppressed.

In its Order denying Knight's Second Motion to Suppress, the trial court held:

> Defendant had no reasonable expectation of privacy in such shared files which he shared through a peer-to-peer network. Thus, it is inconsequential that Detective Burban allegedly conducted an "extra-jurisdictional investigation" because Defendant had no Fourth Amendment protections in his peer-to-peer sharing activities.... Finally, this Court finds the software which Detective Burban used merely monitored Defendant's peer-to-peer online shared files depicting child pornography; she did not conduct a search *into* Defendant's computer.

[R. II, 204] (citations omitted, emphasis in original).

The trial court's ruling was in error. The trial court's holding that it was inconsequential that Detective Burban conducted an extra-jurisdictional investigation because no Fourth Amendment search took place overlooks and misapprehends the

well established common law rule set forth above. In particular, it appears that the trial court equated an investigation with a full blown Fourth Amendment search. However, this is simply not the law. The facts of *Allen* are instructive for analysis and illustrate this principle of law. The operative facts of *Allen* were as follows:

> On February 15, 2000, a Tampa Police Department detective received information originating from an anonymous source that a marijuana odor was emanating from a structure on Mr. Allen's property. Based upon this information, the detective traveled to the described location in Lutz, Florida, which is not within Tampa's city limits. There he located the garage or shed described in the tip and later identified the individuals who called in the tip. With their consent and while on their property he was able to get very close to the garage on Mr. Allen's property; from the vantage point he could smell a distinct marijuana odor coming from the garage. Armed with this information, he ultimately procured a search warrant.

Allen, 790 So.2d at 1123. On these facts, the court in *Allen* affirmed the trial court's order granting the defendant's motion to suppress holding that the investigation by the detective was illegal because it occurred outside his territorial jurisdiction. *Id.* at 1125. Thus, in *Allen,* the officer's investigation outside of his jurisdiction which led to the search warrant did not involve a Fourth Amendment search. Rather, he was able to smell a distinct odor of marijuana coming from Allen's garage while he was located on Allen's neighbor's property, a legal vantage point. Clearly, this conduct did not amount to a Fourth Amendment search under the "plain smell doctrine." *See*

State v. Pereira, 967 So.2d 312, 314 (Fla. 3d DCA 2007); *Ferrer v. State,* 113 So.3d 860, 862-63 (Fla. 2d DCA 2013).

In the instant case, there is no question that the subject matter of Detective Burban's investigation was Knight and his computer, which at all times relevant, were located in Atlantic Beach and outside Detective Burban's jurisdiction as a Neptune Beach police officer. As noted above, "the cases hold that it is the *subject matter of the investigation* which must originate in the officer's jurisdiction." *State v. Sills,* 852 So.2d 390, 393 (Fla. 4th DCA 2003) (emphasis in original) (rejecting State's argument that extra-jurisdictional investigation was permissible where "the conceptual idea to investigate came to the officers within their own jurisdiction [yet] the subject matter – the defendant's possession of the substance – was never in their jurisdiction."). Therefore, the *investigation* of Knight and his computer was unlawful.

Simply put, Detective Burban did, by computer, what she could not have done in person under the law, *to wit:* investigate Knight and his computer outside of her jurisdictional limits. She did so not as an ordinary citizen, but under color of office utilizing a program only available to law enforcement, using her power as an officer

to subpoena Knight's internet service provider, and seeking a warrant.[4] *Allen,* 790 So.2d at 1125 ("Because the officer began the investigation and sought the warrant under the color of his office, he was not acting as a private citizen."). It is of no legal significance that her investigation which provided probable cause for the warrant in this case was not an actual Fourth Amendment search, as the law prohibits any *investigation* outside of her jurisdiction irrespective of whether that investigation involved a Fourth Amendment search. *Cf. Allen,* 790 So.2d at 1123-25.

Taking the trial court's reasoning and logic one step further, Detective Burban could enter any jurisdiction she pleased to "investigate" as long as she did not conduct a Fourth Amendment search. For example, she could travel into a neighboring jurisdiction to take photographs, write down tag numbers, talk to potential witnesses, and conduct general surveillance, *i.e.,* "monitoring" of someone's activities, short of a Fourth Amendment search. Indeed, she could even conduct "trash pulls" in other jurisdictions since there is no expectation of privacy in garbage left for collection outside the curtilage of the home. *California v. Greenwood,* 486 U.S. 35, 37 (1988). An even more extreme consequence of the trial court's ruling is that Detective Burban can act as a worldwide investigator, without jurisdictional

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[4] In this regard, the trial court's finding that Burban "merely monitored Defendant's peer-to-peer online shared files," [R. II, 204], is factually incorrect, as she in fact did a great deal more.

boundaries, simply by utilizing her computer program. Certainly, well-established Florida law does not countenance the same. In sum, the trial court erred by misapprehending longstanding law regarding the jurisdictional limitations upon municipal police officers. While acting as a police officer, all extra-jurisdictional investigatory actions by an officer, including those short of an actual Fourth Amendment search, are unlawful when the subject matter of the investigation does not originate with the officer's jurisdiction, as was the case here. Accordingly, the order below denying Knight's Second Motion to Suppress should be reversed.

II.

THE WARRANT AUTHORIZING THE SEARCH OF KNIGHT'S RESIDENCE AND PROPERTY WAS FACIALLY INVALID BECAUSE IT LACKED PARTICULARITY AND WAS OVERBROAD.

The warrant authorizing the search and seizure of Knight's computer equipment was overbroad and not sufficiently particularized because it did not contain adequate reference to the alleged criminal activity and/or computer search methodology limiting the scope of the search. Both insufficiently particularized, *i.e.,* "general" warrants, and overbroad warrants violate the Fourth Amendment's prohibition of unreasonable searches and seizures. As a result, the trial court erred in denying Knight's Third Motion to Suppress and the order below should be reversed.

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.* Additionally, "[b]ecause the sufficiency of a search warrant is an

issue of law, this court must review the trial court's order by the de novo standard." *State v. Eldridge,* 814 So.2d 1138, 1140 (Fla. 1st DCA 2002).

B. The warrant lacked particularity because it was not adequately limited by reference to the alleged crime.

A search warrant must particularly describe the place to be searched and items of persons to be seized. U.S. Const. Amend IV; Art. I, §12, Fla. Const.; *Eldridge,* 814 So.2d at 1140-41. A warrant that does not sufficiently particularize the place to be searched or the items to be seized is an unconstitutional general warrant. *United States v. Travers*, 233 F.3d 1327, 1329 (11th Cir. 2000). A description is sufficiently particular when it enables the searcher to reasonably ascertain and identify the things to be seized. *United States v. Santarelli*, 778 F.2d 609, 614 (11th Cir. 1985). Lack of sufficient specificity will doom a warrant and the fruits of a search pursuant to it. *Travers*, 233 F.3d at 1329. This particularity requirement aims to prevent excessive seizures and exploratory rummaging by requiring that the description of the things to be seized be limited to the scope of probable cause established in the warrant, and that the warrant tell the officers how to separate those items from irrelevant ones, leaving nothing to their discretion. *Eldridge,* 814 So.2d at 1141.

Here, only four (4) of the twelve (12) numbered paragraphs[5] in the warrant authorizing government agents to seize property at Knight's home and then search it off-site referenced child pornography. Those items were:

> 3. Computer storage media and the digital content to include but not limited to floppy disks, hard drives, tapes, DVD disks, CD-ROM disks other magnetic, optical or mechanical storage which can be accessed by computers to store or retrieve data or images of *child pornography.*
>
> 8. Correspondence or other documents (whether digital or written) pertaining to the possession, receipt, origin or distribution of images involving the *sexual exploitation of children.*
>
> 9. Correspondence or other documents (whether digital or written) exhibiting an interest or the intent to sexually exploit children and to identify a particular user of the materials or contraband and any data or text which tends to prove the identity of the computer user at a time that may be relevant to prove the *possession or distribution of child pornography or the sexual exploitation of children.* Items may include, but are not limited to, pictures, films, video tapes, magazines, negatives, photographs, correspondence, mailing lists, books, and tape records, "trophies," grooming aids or other items demonstrating an interest in the *exploitation of children.*

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[5] There are twelve (12) numbered paragraphs, however, the twelfth paragraph is incorrectly numbered "13." [R. I, 91].

13. Data maintained on the computer, or computer related storage devices such as floppy diskettes, tape backups, computer printouts, and "zip" drive diskettes, in particular, data in the form of images and/or videos and any accompanying text associated with those images, and/or log files recording the transmission or storage of images, as they relate to violations of Florida law cited herein as related to the *possession of distribution of child pornography*.

[R. I, 90-91] (emphasis added).

In contrast, at least seven (7) of the warrant's twelve (12) numbered paragraphs permitted the government to go on a fishing expedition through every nook and cranny of Knight's home, seize much of his property, and conduct a boundless search of Knight's seized property, without any reference to any criminal activity at all. [R. I, 90-91]. Indeed, items 1-2, 4-7, and 11, exemplify the warrant's lack of particularity. *Id.*

Additionally, neither the warrant nor affidavit defines the critical phrases "child pornography" or "sexual exploitation of children." This omission-and the attendant vagueness and overbreadth-distinguishes the warrant here from cases where courts have deemed warrants sufficiently particularized. *See, e.g., United States v. Richards*, 659 F.3d 527 (6th Cir. 2011) (affidavit, which was incorporated in application for search warrant, defined "child pornography," "visual depiction,"

"minor," "sexually explicit conduct," and "child erotica" by reference to federal law); *United States v. Wunderli*, 2012 WL 1432606, *6 (E.D. Mo. March 27, 2012) ("the search warrant specifically and graphically defined what 'child pornography' images would include"); *United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999) (one of two warrant provisions at issue included "[a]ny and all visual depictions, in any format or media, of minors engaging in sexually explicit conduct [as defined by the statute]") (emphasis added).

The officers involved and/or the State easily could have made the warrant more particular and the failure to do so was a constitutional error. "[G]eneric classifications in a warrant are acceptable only when a more precise description is not possible." *United States v. Bright,* 630 F.2d 804, 812 (5th Cir.1980). Most obviously, the warrant's boilerplate list of property could have been limited by reference to child pornography. For example, the warrant could have authorized investigators to search and seize "any and all computer equipment used to collect, analyze, create, display, convert, store, conceal, or transmit electronic magnetic, optical, or similar computer impulses or data which may be used to receive, distribute, store or retrieve images of child pornography." Likewise, the warrant could have authorized the government to search for "items containing or displaying passwords, access codes, usernames or other identifiers necessary to examine or operate items, software or information

seized, which pertain to the use, receipt, storage, or retrieval of images of child pornography." *See In re U.S.'s Application For A Search Warrant*, 770 F. Supp. 2d 1138, 1145 (W.D. Wash. 2011) ("The requested warrant is, in essence, boundless. This is made evident by the fact that the government seeks authorization, among other things, to obtain 'all passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.'"). And the warrant could have defined the phrases "child pornography" and "sexual exploitation of children."

Because the warrant failed to provide the requisite specificity to allow for a tailored search of Knight's electronic media, it was invalid. *Compare United States v. Rosa*, 626 F.3d 56, 62 (2d Cir. 2010) ("The warrant was defective in failing to link the items to be searched and seized to the suspected criminal activity-*i.e.*, any and all electronic equipment potentially used in connection with the production or storage of child pornography and any and all digital files and images relating to child pornography contained therein-and thereby lacked meaningful parameters on an otherwise limitless search of Rosa's electronic media."); *United States v. Burgess*, 576 F.3d 1078, 1091 (10th Cir. 2009) ("If the warrant is read to allow a search of all computer records without description or limitation it would not meet the Fourth Amendment's particularity requirement."); *United States v. Riccardi*, 405 F.3d 852

(10th Cir. 2005) (warrant facially invalid because it did not limit scope of search to child pornography); *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995) (finding that overly broad warrant which authorized seizure of virtually every document and computer file could have been made more particular by specifying suspected criminal conduct); *United States v. Wilson*, 4:12-CR-00023-RLV, 2012 WL 7992597 (N.D. Ga. 2012) report and recommendation adopted, 4:12-CR-00023-WEJ, 2013 WL 1800018 (N.D. Ga. 2013) ("The search warrant here, like the ones upheld in *United States v. Hall*, 142 F.3d 988, 996-97 (7th Cir. 1998), was 'written with sufficient particularity because the items listed on the warrants were qualified by phrases that emphasized that the items sought were those related to child pornography.'"); *United States v. Richards*, 659 F.3d 527 (6th Cir. 2011) (search warrant authorizing search of "all content" of specifically identified computer servers, including "any computer files that were or may have been used as means to advertise, transport, distribute, or possess child pornography" was not impermissibly broad); *United States v. Campos*, 221 F.3d 1143 (10th Cir. 2000) (rejecting particularity challenge to warrant that authorized agents to seize computer equipment "which may be, or [is] used to visually depict child pornography, child erotica, information pertaining to the sexual activity with children or the distribution, possession, or receipt of child pornography, child erotica or information pertaining to an interest in child pornography or child erotica").

As such, the warrant authorized precisely the kind of uncircumscribed, "wide ranging exploratory search[] that the Framers intended to prohibit." *Maryland v. Garrison,* 480 U.S. 79, 84 (1987); *see also United States v. Liu*, 239 F.3d 138, 140 (2d Cir.2000) ("A warrant must be sufficiently specific to permit the rational exercise of judgment by the executing officers in selecting what items to seize.") (internal quotation marks and alterations omitted); *Campos*, 221 F.3d at 1148 ("Computers often contain 'intermingled documents' (*i.e.,* documents containing both relevant and irrelevant information). When law enforcement officers confront such documents a more particularized inquiry may be required: Law enforcement must engage in the intermediate step of sorting various types of documents and then only search the ones specified in a warrant."). Accordingly, the warrant violated the Fourth Amendment's core protection against general searches and the trial court erred by denying Knight's Third Motion to Suppress.

C. The warrant was overbroad because it authorized a general rummaging through Knight's computers and hard drives.

The warrant also was unconstitutionally overbroad because it permitted the government to search and seize property that plainly fell outside the scope of probable cause. Pursuant to the warrant's sweeping terms, the government seized and continues to hold personal and private items located in Knight's computer files.

A generalized seizure of files may be justified if the government establishes probable cause to believe that all of the files are likely to evidence criminal activity. *See generally United States v. Offices Known as 50 State Distrib. Co.*, 708 F.2d 1371, 1374 (9th Cir. 1983), *cert. denied*, 104 S.Ct. 1272 (1984); *Garrison*, 480 U.S. at 84 (noting the scope of a lawful search must be limited to the areas in which the object of the search reasonably may be found). But none of the items listed above-all of which were foreseeably located in Knight's seized electronic equipment-could rationally be connected to the alleged criminal activity. They certainly could not satisfy the probable cause standard. *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (Probable cause to issue the warrant exists when, given all the circumstances set forth in the affidavit before him," the judge can conclude "there is a fair probability that contraband or evidence of a crime will be found in a particular place."); *United States v. Rubinstein*, 2010 WL 2723186, *8 (S.D. Fla. June 24, 2010) ("[o]verbroad warrants authorize the seizure of things for which there is no probable cause") (internal citation omitted).

Even assuming it is acceptable for digital files unrelated to child pornography to initially be seized in an investigation like the one at bar, the State still erred when it failed to clearly link its expansive list of items that could be taken from Knight to the underlying probable cause. Authorization to search and seize an individual's

computer grants the government potentially unfettered access to an individual's personal electronic effects. Thus, as discussed above, the warrant should have been bounded by consistently connecting the property it listed to the alleged criminal activity. Because the warrant instead allowed the government to conduct a nearly boundless search and seizure of Knight's property at his home, it authorized an exploratory rummaging for anything that might lead to a basis to prosecute.

Further, the warrant should have been limited by reference to the various technical means that enable the government to confine the search to the scope of probable cause. These methods include searching by filename, directory or sub-directory; the name of the sender or recipient of e-mail; specific key words or phrases; particular types of files as indicated by filename extensions; and/or file date and time. A fundamental purpose of the Fourth Amendment is to prevent broad exploratory searches. Therefore, in a search of digital "papers," judicial officials and government agents must take care to assure that they are conducted in a manner that minimizes unwarranted intrusions on privacy. *See Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976); *see also United States v. Tamura*, 694 F.2d 591, 595-96 & n.3 (9th Cir. 1982) (sufficiently specific guidelines for identifying the documents sought [must be] provided in the search warrant and...followed by the officers conducting the search); *In re U.S.'s Application For A Search Warrant*, 770 F. Supp. 2d 1138 (W.D.

Wash. 2011) (rejecting warrant application because supporting affidavit contained no reference to use of a filter team and no promise to foreswear reliance on the plain view doctrine). Because a different kind of selectivity is possible as to computer files, it should be followed. *See* 2 Wayne R. LaFave, Search and Seizure § 4.10 (4th ed. 2011). Accordingly, various courts favor warrants that require a targeted approach to computer searches because it minimizes the possibility that the government will use a warrant for a narrow list of items to justify a broad search and seizure. *See Campos*, 221 F.3d at 1148; *United States v. Gawrysiak*, 972 F. Supp. 853, 866 (D.N.J. 1997) *aff'd*, 178 F.3d 1281 (3d Cir. 1999). *See also Steve Jackson Games, Inc. v. United States Secret Service*, 36 F.3d 457, 463 (5th Cir. 1994); *United States v. Orefice*, No. 98 CR. 1295 (DLC), 1999 WL 349701, *2 (S.D.N.Y 1999); *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F. Supp. 11, 13 (S.D.N.Y. 1994); Winick, *Searches and Seizures of Computers and Computer Data*, 8 Harv. J.L. & Tech. at 108.

While the law is unsettled regarding the specificity with which warrants must prescribe computer search methodology, in a case like the one at bar where the warrant consistently failed to link the government's seizure authority to the alleged crime, the warrant's additional failure to delineate the scope of the subsequent search should be viewed as a fatal error because of the uncircumscribed search and seizure

it thereby authorized. *Compare United States v. Hunter*, 13 F.Supp.2d 574, 584 (D. Vt. 1998) ("To withstand an overbreadth challenge, the search warrant itself, or materials incorporated by reference, must have specified the purpose for which the computers were seized and delineated the limits of their subsequent search.") with *United States v. Maali,* 346 F. Supp. 2d 1226, 1246 (M.D. Fla. 2004), *aff'd sub nom*, *United States v. Khanani*, 502 F.3d 1281 (11th Cir. 2007) ("While it may be preferable and advisable to set forth a computer search strategy in a warrant affidavit, failure to do so does not render computer search provisions unduly broad.").

Probable cause to believe that a stolen lawnmower will be found in a garage will not support a search of an upstairs bedroom, nor will a warrant for a stolen refrigerator authorize the opening of desk drawers. *See Garrison*, 480 U.S. at 84; *United States v. Ross*, 456 U.S. 798, 824 (1982); *Walter v. United States*, 447 U.S. 649, 657 (1980). Likewise, probable cause to believe that Knight possessed computer-accessible images of child pornography did not justify granting the government virtually unlimited access to all of Knight's computer-accessible data.

The Vermont Supreme Court recently affirmed the importance of judicially-imposed limits on digital searches in *In re Appeal of Application for Search Warrant*, 71 A.3d 1158 (2012). There, the government requested a warrant to search and seize "any computers or electronic media" located at the address where a suspect