UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 6:15-cr-176-Orl-37KRS

JOSHUA ADAM TATRO

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS**

The United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, through the undersigned, hereby responds to and opposes the Defendant's Motions to Suppress. Docs. 58 and 59.

**FACTUAL BACKGROUND**

On or about January 24, 2015, the National Center for Missing and Exploited Children ("NCMEC") generated CyberTipline Report Number 3583328 that concerned an individual who was using the email address of "joshu17hudson@gmail.com" and the Internet Protocol ("IP") address of "142.197.64.38" to upload images of child pornography onto an online service maintained by Google, Inc. ("Google"). Because the IP address was assigned to Merritt Island, Florida, the CyberTipline Report was referred to the Brevard County Sheriff's Office ("BCSO").

BCSO Task Force Agent ("TFA") Michael Spadafora, who was assigned to investigate the tip, reviewed the CyberTipline Report and learned the following: On or about January 23, 2015, from 14:15 hours through 14:22 hours UTC time,

Google user "josh17hudson@gmail.com" used the aforementioned IP address to upload 14 images of child pornography onto Google+ Photos, an online service maintained by Google. The mobile telephone number provided for this Google account was 321-458-5324. On or about January 24, 2015, Google notified NCMEC of this upload and submitted the 14 images to NCMEC.

NCMEC staff also performed searches of the above-mentioned email address and telephone number on publicly-available, open-source websites, and determined the following: The phone number was associated with Julie Postmus (as set forth below, this is the Defendant's girlfriend who lived with the Defendant at her parent's house in Merritt Island). The telephone number was also listed on a Facebook page for a user named "Josh Tatro," the Defendant's name. The publicly viewable information on this Facebook page revealed that "Josh Tatro" lived in Merritt Island, Florida, that he was in a relationship, and that he had a son. Further open-source searches revealed that "Josh Tatro," was a 23 year old male who lived at 1460 Fiddler Avenue, in Merritt Island (hereinafter, "the Subject Residence").

NCMEC included all of the aforementioned information as well as the 14 images in the CyberTipline Report. Upon reviewing the report, TFA Spadafora confirmed that the 14 images depicted child pornography, as defined under both federal and State of Florida law. Thereafter, TFA Spadafora determined, based on subpoenaed Bright House Networks records, that the aforementioned IP address that was used to upload the child pornography images was subscribed to

"Brian Postmus" at the Subject Residence. As set forth below, Brian Postmus is the father of the Defendant's girlfriend. TFA Spadafora further confirmed, based on subpoenaed MetroPCS records, that the aforementioned telephone number was subscribed to Julie Postmus at the Subject Residence. Through law enforcement databases, TFA Spadafora also determined that the Defendant, Mr. Postmus, Cheryl Postmus (Mr. Postmus's wife), and Julie Postmus all lived at the Subject Residence.

On or about March 5, 2015, TFA Spadafora conducted physical surveillance at the Subject Residence and confirmed that the only unsecure wireless internet signal was associated with a neighbor who lived next door to the Subject Residence. Thus, the aforementioned Bright House Networks IP address assigned to the Subject Residence that was used by the Google user to upload child pornography was secured, and only users with access to the internet service at the Subject Residence could use the internet there.

On or about March 17, 2015, TFA Spadafora applied to an appropriate state court judge for a warrant to search the Subject Residence for evidence of possession and distribution of child pornography, in violation of Florida Statute §§ 827.071(3) and 847.0135(2) (hereinafter, collectively "the subject offenses"). On this same date, a Judge of the Eighteenth Judicial Circuit for the State of Florida, in and for Brevard County, issued the warrant authorizing the search of the Subject Residence and the curtilage thereof for evidence of the subject offenses. The affidavit and search warrant are attached as Exhibit A and Exhibit B,

respectively. The warrant authorized agents to search for the subject offenses on several variations of computers and computer-related devices, including "pocket" computers, and other devices that are synonymous with modern day cell phones. See Exhibit B at 2-4. The warrant further granted agents permission to conduct "off-site" examinations of the computers and computer-related devices and to delegate such searches to a forensic analyst. Id. at 5.

On March 17, 2015, TFA Spadafora conducted physical surveillance at the Subject Residence again, and observed the Defendant and a young child exit a vehicle that was parked at the residence. TFA Spadafora recognized the Defendant from a photograph of him obtained from the Florida Driver's and Vehicle Information Database. The child is the minor victim in this case and was later determined to be three years old.

Later on this same date, while in possession of the search warrant, TFA Spadafora and another BCSO agent knocked on the door to the Subject Residence and an occupant, who was not the Defendant, opened the door. The agents observed the minor victim inside the house and asked to speak to the Defendant. The Defendant approached the agents and TFA Spadafora commenced interviewing the Defendant. The Defendant was not handcuffed or physically restrained during the interview, which was audio recorded. At the outset, the Defendant was deliberately evasive and misleading. For instance, the Defendant denied any wrongdoing and distanced himself from the Google email address and telephone number that was associated with the upload of the 14

images of child pornography. Later, the Defendant admitted that he used the email address and claimed that it was "hacked" sometime in the past year. TFA Spadafora showed the Defendant the 14 images of child pornography from the NCMEC CyberTipline Report and the Defendant turned away as if he was disgusted by the images. The Defendant eventually admitted that he obtained child pornography from the internet but claimed that it came from an adult pornography website. The Defendant also stated that he used his old cell phone to access the internet at the residence and to use his Google account. The Defendant estimated that there were approximately 100 images of child pornography on his old phone that he uploaded onto Google+ Photos. When asked where this cell phone was, the Defendant claimed that the phone was turned into MetroPCS along with the sim card.

The Defendant also admitted that he masturbated to images of child pornography but affirmatively denied ever sexually abusing children. The Defendant further stated that his girlfriend's parents paid for the internet at the Subject Residence and that he put the password in his phone to use the internet. The Defendant acknowledged that he took care of the minor victim when the child was not in school.

The aforementioned interview took place inside the garage of the Subject Residence. While still at that location, the agents told the Defendant they were going to begin searching the residence pursuant to a search warrant. At this point, the agents recovered an LG Metro PCS, model LGMS500 Optimus, from the

Defendant's pocket (hereinafter, "the Defendant's new cell phone"). Prior to this, the Defendant had failed to mention that his new cell phone was in his pocket, despite answering several questions about his cell phones.

During the execution of the search warrant, the agents recovered a black Metro PCS cell phone, which was located in the Defendant's bedroom on top of a dresser (hereinafter, "the Defendant's old cell phone"). After the cell phones were recovered, BCSO Vincent Ziccardi, a computer forensic analyst, conducted a preview examination of the devices. This examination revealed that there were several videos of the Defendant sexually abusing the minor victim stored on the Defendant's new cell phone.

After the discovery of the child pornography on the Defendant's cell phone, TFA Spadafora asked to speak with the Defendant again, and the Defendant agreed. TFA Spadafora, another agent, and the Defendant went to a bedroom inside the Subject Residence. TFA Spadafora attempted to activate his recording device once the second interview began. TFA Spadafora provided the Defendant with Miranda warnings and the Defendant acknowledged that he understood his rights, and agreed to make further statements to the agents. Approximately two minutes into the second interview, TFA Spadafora realized that the audio recording device was not on. Upon realizing this, TFA Spadafora re-activated the device and made sure that it was recording properly. TFA Spadafora also re-administered Miranda warnings to the Defendant and the Defendant once again waived his rights and agreed to answer the agent's questions. The Defendant

was not handcuffed or physically restrained during the second interview. While receiving his Miranda warnings, the Defendant asked the agents to shut the bedroom door. During the second interview, the Defendant made numerous incriminating admissions, including admitting to: (1) sexually abusing the minor victim, who was his three year old son; (2) producing images and videos of the sexual abuse; and (3) distributing the child pornography to others. The Defendant also mentioned, for the first time, that he had a disability that made it difficult for him to remember things.

After completing the second interview, TFA Spadafora interviewed Julie Postmus. The following day, March 18, 2015, TFA Spadafora returned to the Subject Residence and interviewed Mr. Postmus and Mrs. Postmus. These interviews revealed that although the Defendant had a low-functioning intellectual ability, the Defendant was capable of making every day decisions of consequence, and that he understood the difference between right from wrong. All three Postmuses also trusted the Defendant to care for the minor victim based on their belief that he was a functional and competent person.

## PROCEDURAL HISTORY

On July 30, 2015, a federal grand jury returned a thirteen count indictment, charging the Defendant with production of child pornography, in violation of 18 U.S.C. § 2251(a) (Counts One through Nine), receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(B) (Counts Ten through Twelve), and possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) (Count

Thirteen). Doc. 1. On August 31, 2015, the Defendant was arrested on the indictment and had his initial appearance. Doc. 7.

On September 25, 2015, the Defendant filed an unopposed motion for a psychiatric examination to determine the Defendant's competency to stand trial. Doc. 19. On September 30, 2015, the Court entered an Order committing the Defendant to the custody of the Attorney General for a competency evaluation. Doc. 22. Experts from the Federal Bureau of Prisons ("BOP") evaluated the Defendant from October 5, 2015 through November 4, 2015. On November 16, 2015, the BOP issued a report concluding that the Defendant was mentally competent to stand trial, demonstrated a sufficient understanding of the charges against him, and possessed an ability to assist his attorney in his own defense. The Defendant also demonstrated an appreciation of the penalties he was facing. According to the BOP report, the Defendant suffered from a "Mild Intellectual Disability" that allows individuals to ".. achieve social and vocational skills adequate for minimal self-support." In addition, during his BOP evaluation, the Defendant was an adequate historian whose "…memory was grossly intact for immediate, recent, and remote recall," and he exhibited "… organized, rational, sequential, coherent, yet concrete thought processes."

On March 21, 2016, at an uncontested competency hearing, the Court found that the Defendant was competent to proceed and entered an Order setting forth its findings. Docs. 44 and 45. On April 14, 2016, the Defendant filed his motions to suppress evidence. Docs. 58 and 59. On or about April 26, 2016, the

Court entered an Order directing the United States to respond to the Defendant's motions to suppress by May 4, 2016, and setting a hearing on the motion on May 12, 2016.

**MEMORANDUM OF LAW**

The Defendant's motions to suppress are limited to two arguments. First, the Defendant contends that the statements he made in his second interview should be suppressed because his "mental deficits" prevented him from knowingly and intelligently waiving his Miranda rights.[1] Doc. 58 at 4. Second, the Defendant argues that all content found during the examinations performed on his cell phones should be suppressed because the search warrant for the Subject Residence did not specify "cell phones" as a thing to be searched.

As an initial matter, the Defendant was not "in custody" during his second interview. Therefore, the administration of Miranda warnings, and a voluntary waiver of those rights, was not required. Miranda warnings are only required when "under the totality of the circumstances, a reasonable man in the suspect's position would feel a restraint on his freedom of movement to such an extent that he would not feel free to leave." See United States v. Brown, 441 F.3d 1330, 1347 (11th Cir. 2006); United States v. Street, 472 F.3d 1298, 1310 (11th Cir. 2006) (holding that Miranda is required only where there is a formal arrest or

[1] As of May 4, 2016, the United States has not received any expert opinions or reports that the Defendant intends to rely on in arguing that his mental deficiencies prevented him from making a knowing and intelligent waiver of Miranda. Thus, the United States cannot address in this response any such expert opinions or any expert opinions that the Defendant may disclose prior to the suppression hearing.

restraint on freedom of movement of the degree associated with a formal arrest). The Court must apply an objective test to decide if there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. See Thompson v. Keohane, 516 U.S. 99, 112 (1995) (internal marks, footnote, and citation omitted). The Defendant's actual, subjective beliefs or state of mind are irrelevant. See United States v. Stansbury, 511 U.S. 318 (1994); Berkemer v. McCarty, 468 U.S. 420 (1984). In addition, the objective standard is from the perspective of a reasonable innocent person. Florida v. Bostick, 501 U.S. 429 (1991).

"Courts are much less likely to find the circumstances custodial when the interrogation occurs in a familiar setting, such as the suspect's home." Brown, 441 F.3d at 1348. Other relevant factors to determine custody include whether the suspect was physically restrained or told he was under arrest. See United States v. Phillips, 812 F.2d 1355, 1362 (11th Cir. 1987) (per curiam).

At the time the Defendant made the statements in question, he had not been told he was under arrest, he was not placed in handcuffs, and he was otherwise not physically restrained. In addition, the Defendant was making the statements in his own home. Under these circumstances, no reasonable innocent person would have felt they were under formal arrest or had their freedom of movement restrained to the degree associated with formal arrest. At most, the Defendant was merely being detained while the agents were conducting their investigation. Such investigative seizure or detention does not constitute

"custody" for Fifth Amendment purposes. See United States v. Luna-Encinas, 603 F.3d 876, 881 (11th Cir. 2010). Based on the totality of the circumstances and evidence surrounding the Defendant's second interview, the Defendant was not in "custody' and his Miranda waiver was not necessary. Thus, the effectiveness of the waiver is irrelevant, and the Defendant's motion to suppress the statements should be denied.

Assuming the Court finds that the Defendant was "in custody," and that Miranda warnings were required, the Defendant was properly advised of his rights, and the Defendant made a knowing, voluntary, and intelligent waiver of those rights. Miranda warnings are not required to be phrased in some talismanic fashion and no precise style of questions are required so long as the following warnings and rights are adequately identified for the suspect: (1) the right to remain silent; (2) the warning that anything the suspect says can be used against the suspect in a court of law; (3) the right to have an attorney present; and (4) the right to have an attorney appointed for the suspect prior to any questioning if the suspect so desires. See Florida v. Powell, 559 U.S. 50 (2010). The Defendant's motion concedes that TFA Spadafora adequately identified each of these rights and warnings to the Defendant at the beginning of the second interview. Doc. 58 at 3. In addition, the warnings were administered twice, once at the very beginning of the interview and, a second time, two minutes into the interview once TFA Spadafora realized his audio recording device was not working. On both

occasions, the Defendant acknowledged that he understood the rights and warnings.

A defendant "may waive effectuation" of the constitutional rights conveyed in Miranda warnings "provided the waiver is made voluntarily, knowingly, and intelligently." Miranda v. Arizona, 384 U.S. 436, 444 (1966). The Government bears the burden of establishing a voluntary, knowing, and intelligent waiver by a preponderance of the evidence. United States v. Farris, 77 F.3d 391, 396 (11th Cir.1996). The Supreme Court has articulated a two-part inquiry in determining whether a defendant's waiver was made voluntarily, knowingly, and intelligently. In Moran v. Burbine, 475 U.S. 412 (1986), the Court stated:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Id. at 421.

Regarding the first prong, in order for a Miranda waiver to be deemed involuntary, there must be coercion or overreaching by law enforcement. See

United States v. Barbour, 70 F.3d 580, 585 (11th Cir.1995) (citing Colorado v. Connelly, 479 U.S. 157, 169-70 (1986)); United States v. Scheigert, 809 F.2d 1532, 1533 (11th Cir. 1987). The Defendant has not alleged any such coercion or overreaching by law enforcement in his case. Nor could he, as there is no evidence that the interviewing agents made any threats, undue promises, or inducements prior to the waiver, or that deception was employed to secure the waiver. In addition, there is nothing to indicate that the interviewing agents were aware of the Defendant's mental impairment, let alone took advantage of it. The Defendant, by merely alleging a mental impairment or diminished intellect, without proof of overreaching at the hands of the interviewing agents, cannot prevail on his claim that his waiver or his subsequent statements were involuntary. See United States v. Thigpen, 854 F.2d 394, 399 (11th Cir. 1988).

As for the second prong, despite the Defendant's mental defects, the Defendant had "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Whether there has been an intelligent waiver depends on the particular facts and circumstances in the given case, including the background, experience, and conduct of the accused. See Edwards v. Arizona, 451 U.S. 477, 482 (1981) (quoting from Johnson v. Zerbst, 304 U.S. 458 (1938)). Mental defects are but one factor to be considered in deciding the validity of a waiver. See Thigpen, 854 F.2d at 400. During the interview, the Defendant behaved in a manner that indicated his understanding of his rights, and that he waived them knowingly and intelligently. For instance, the

Defendant withheld incriminating information throughout the interview and only admitted to certain facts once he was confronted with information the agents obtained during their investigation. Thus, despite the Defendant's diminished intellect, he understood that a criminal investigation was underway and that his answers could be used against him.

The BOP report indicated that the Defendant suffers from a mild form of intellectual disability and has the ability to participate in daily activities. Such moderate mental defects do not prevent a defendant, who is able to effectively communicate with others about events, from making an effective waiver of Miranda. Id. at 399 (holding, under the facts and totality of circumstances surrounding the interrogation, that a "moderately retarded and functionally illiterate" defendant understood his Miranda rights and knowingly waived them). The interviews of the Postmuses confirmed that the Defendant was able to converse about current events and understood the difference between right and wrong. Further, the Postmuses believed that the Defendant was mentally able to care for the minor victim. The Defendant suffered from no delusions or hallucinations. In addition, the Defendant's BOP report confirmed that he understood the legal process and the penalties in his case. Based on the totality of the circumstances, the United States has established by a preponderance of the evidence that the Defendant knowingly and intelligently waived his Miranda rights and warnings.

Turning to the Defendant's motion to suppress the evidence derived from the search of his cell phones, the United States first argues that the examination of these devices was within the scope of the search warrant. As noted above, the search warrant authorized the off-site examination of computers and computer-related devices. Modern day cell phones, with internet access and other capabilities, are synonymous with several of the items listed in the search warrant as the property to be searched. For instance, the warrant specifically listed "pocket computers" and computer equipment used to collect, analyze, create, display, convert, store, conceal, or transmit electronic magnetic, optical, or similar computer impulses or data," including ".any data processing devices. See Exhibit B at 3. Indeed, the Supreme Court recently stated that the term "cell phone" is a misleading shorthand and that many of these devices are in fact "minicomputers" that happen to have the capacity to be used as a telephone. See Riley v. California, 573 U.S. ------,-------, 134 S.Ct. at 2473, 2484–2490 (2014). In addition, the Court noted that such devices have "immense storage capacity" and primarily function as computers holding "photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book," and … "videos." Id. Thus, the Court understands that cell phones fall under the rubric of computers or computer-related devices. The agent conduct in this case was consistent with that understanding. Here, the Defendant used his cell phones as his computers, using the devices to access the internet and to download content. Thus, the agents were authorized to search the cell phones

off-site, pursuant to a search warrant that authorized the off-site examination of computers and computer-related devices.

The crucial inquiry is always "whether the search and seizures were reasonable under all the circumstances." United States v. Wuagneux, 683 F.2d 1343, 1352 (11th Cir.1982), cert. denied, 464 U.S. 814 (1983); see also United States v. Heldt, 668 F.2d 1238, 1254 (D.C.Cir.1981), cert. denied, 456 U.S. 926, 102 S.Ct. 1971, 72 L.Ed.2d 440 (1982). The seizure of items not specifically enumerated in the warrant does not automatically invalidate and otherwise valid search. United States v. Khanani, 502 F.3d 1281, 1290 (11th Cir. 2007). Under the circumstances, treating the Defendant's cell phones as computers or computer-related devices, and searching them as authorized by the warrant, was reasonable.

The evidence obtained from the Defendant's cell phones is also not subject to suppression under the good faith exception to the exclusionary rule. See United States v. Leon, 468 U.S. 897, 922 (1984); see also United States v. Mathis, 767 F.3d 1264, 1276-77 (11th Cir. 2014); United States v. Martin, 297 F.3d 1308, 1313 (11th Cir. 2002). Under this exception, Courts generally should not apply the extreme sanction of suppression for evidence obtained by police officers who were acting in reasonable reliance upon a search warrant that was ultimately found to be defective. Leon, 468 U.S. at 916. Suppression was only required "if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause. Id.

at 926. Further, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." See Herring v. United States, 555 U.S. 135, 144 (2009). Here, the agents acted in good faith when obtaining the search warrant and acted in reasonable reliance on that search warrant when they examined the cell phones, believing that the devices were computers. This conduct was not sufficiently deliberate or culpable, as the agents had acquired a search warrant that they believed authorized them to do what they did. Thus, suppression of evidence from the cell phones is not warranted under the exclusionary rule.

Lastly, under the exception to the exclusionary rule for "inevitable discovery," the Government may introduce evidence that was obtained by an illegal search if the Government can establish a "reasonable probability that the evidence in question would have been discovered by lawful means." Jefferson v. Fountain, 382 F.3d 1286, 1296 (11th Cir.2004). The government must also establish that "the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct." Id. "Active pursuit" does not require that police have already planned the particular search that would obtain the evidence. The purpose of the "active pursuit" doctrine is to exclude evidence that was not being sought in any fashion. See United States v. Virden, 488 F.3d 1317, 1323 (11th Cir. 2007) (inevitable discovery did not apply because there was "no evidence that the [police were] pursuing [the defendant] or his

vehicle as part of their ongoing investigation" and [the defendant] was "completely unknown" to the police prior to the illegal search). The Government must instead establish that the police would have discovered the evidence "by virtue of ordinary investigations of evidence or leads already in their possession." Id.

Here, prior to the search of the Defendant's cell phones, the agents were "actively pursuing" an "ordinary investigation" that would have inevitably led to the lawful examination of the Defendant's cell phones, and the discovery of the child pornography on those devices. As noted above, based on the investigation of the NCMEC CyberTipline Report, TFA Spadafora had established a strong likelihood that the Defendant had uploaded images of child pornography onto a Google drive. The open source and database searches for the IP address and Google account that were used to upload these images revealed an association with the Defendant. Further, the IP address was subscribed to the Subject Residence. TFA Spadafora also confirmed, through surveillance and other means, that the Defendant lived at this residence with a minor child who was approximately the same age as some of the child depicted in the uploaded child pornography. This investigation also led to the issuance of a warrant to search the Subject Residence for evidence of child pornography. In addition, during the initial interview, before the cell phones were searched, the Defendant was evasive and deliberately deceitful about his use of the Google account used to upload the images. Eventually, the Defendant admitted that the Google account was his and that he downloaded child pornography onto his old cell phone, which he no longer

possessed. The Defendant failed to advise the agents that his new cell phone was on his person. The Defendant also admitted that he masturbated to child pornography. The Defendant acknowledged that he babysat his son regularly. Thus, the agents had determined that the Defendant had regular access to a child, prior to the search of the cell phones. After the Defendant made these admissions, the agents recovered the Defendant's cell phones.

Based on the foregoing, before the Defendant's cell phones were searched, the agents had taken several lawful investigative steps towards establishing that it was more likely than not that the Defendant's seized cell phones contained evidence of child pornography. In fact, the agents had established probable cause to search the devices. See Illinois v. Gates, 462 U.S. 213, 243 n. 13, 103 S.Ct. 2317, 2335 n. 13, 76 L.Ed.2d 527 (1983) ("innocent behavior frequently will provide the basis for a showing of probable cause," and the relevant inquiry in making a determination of probable cause "is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of non-criminal acts."); see also United States v. Tinkle, 655 F.2d 617, 621 (5th Cir. Unit A Sept.1981) ("The currency of probable cause is probability, not legal certainty; it may exist even though the evidence before the officer is insufficient to convict."). The Eleventh Circuit has held that probable cause exists to search a Defendant's cell phones in a child exploitation investigation even if there is a significant gap in time between the crime and the search. See Mathis, 767 F.3d at 1276. Thus, there is no question that probable cause existed to examine the

Defendant's cell phones. Further, there was a reasonable probability that when subtracting the search of the cell phones from the "factual picture" of the case, "nothing of substance …. would have changed." Jefferson, 382 F.3d at 1297. The cell phones would have been seized and, inevitably, lawfully searched, pursuant to a search warrant, and the child pornography evidence would have been found. Accordingly, the Court should not suppress the evidence under the exclusionary rule.

## CONCLUSION

In light of the foregoing, the undersigned respectfully requests this Court deny the Defendant's motions to suppress evidence and statements in their entirety.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

James T. Skuthan, Esquire.

*s/ Andrew C. Searle*

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