

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, DIVISION

UNITED STATES OF AMERICA

CASE NO. 3:19-cr-72-J-34MCR

v.

LARRY BOUKNIGHT  
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**DEFENDANT'S MOTION TO SUPPRESS HISTORICALLY STORED DATA**

**COMES NOW**, the Defendant, LARRY BOUKNIGHT, by and through his undersigned counsel, and respectfully move this Honorable Court to suppress all Historically Stored Data evidence for phone number (904) 483-0628 that the United States obtained as the result of a search warrant issued to T-Mobile on September 27, 2018. The grounds for this Motion are that search warrant violated the Warrants Clause of the Fourth Amendment to the United States Constitution. In support of this Motion, Mr. Bouknight would respectfully state:

1. On September 6, 2018, Haley Bishop (hereinafter referred to as "Bishop") was found unresponsive by a family member in her apartment at 3534 Smithfield Street #1506, Jacksonville, FL 32217. Bishop was transported to Memorial Hospital and pronounced dead at 1806 hours.
2. Bishop's family informed investigators from the Jacksonville Sheriff's Office that Bishop was addicted to heroin.
3. During the mid-morning to mid-afternoon on September 6, 2018, Bishop was with a friend, Kristen Graham (hereinafter referred to as "Graham"). Investigators identified Graham through a series of text messages on a cell phone found in Bishop's

apartment. Investigators determined that phone number (904) 554-3764 belonged to Graham.

4. When Graham was interviewed by investigators, she identified the Defendant, Larry Bouknight (hereinafter referred to as "Bouknight"), as the individual who sold Graham and Bishop heroin earlier in the day.
5. On September 27, 2018, investigators sent a Preservation Request to T-Mobile in reference to T-Mobile cellular number (904) 483-0628. The United States has attributed this phone number to Mr. Bouknight.
6. That same day, investigators obtained search warrants from a Circuit Court Judge of the Fourth Judicial Circuit in and for Duval County, Florida for Historically Stored Data for phone numbers (904) 483-0628 and (904) 554-3764. In support of the search warrants, Detective J.M. Dowling, Jacksonville Sherriff's Office submitted sworn affidavits.
7. The warrant for phone number (904) 483-0628 requested the following evidence be produced by T-Mobile, a cellular carrier:

The Historically Stored data for (904) 483-0628 to obtain incoming/outgoing call records, incoming/outgoing text messages, and historical cell site data within the automated files of the common telephone carrier (T-Mobile) for the dates of September 1, 2018 to September 7, 2018.
8. In response to the search warrants, T-Mobile (which also owns Metro-PCS) provided Microsoft Excel Spreadsheets that contain comprehensive call data including historical cell site location data for a period of 7 days (September 1, 2018 through September 7, 2018).

9. In *Carpenter v. United States*, the United States Supreme Court made clear that the government's acquisition from a wireless carrier of a defendant's historical cell site location data was a search under the Fourth Amendment where at least 7 days of information was accessed. 138 S. Ct. 2206, 2217 n. 3 (2018) ("It is sufficient for our purposes today to hold that accessing seven days of CSLI constitutes a Fourth Amendment search.").
10. The Warrants Clause to the Fourth Amendment establishes the constitutional requirements for a valid search warrant. More specifically, under the Warrants Clause, a law enforcement official must swear, under oath, that the information contained within the search warrant affidavit is true, and the affidavit must contain a statement or facts that form probable cause to perform the search.<sup>1</sup> Any search warrant that was not supported by probable cause at the time of its issuance is per se unconstitutional.
11. In *Illinois v. Gates*, the United States Supreme Court adopted a totality-of-the-circumstances analysis as the proper test for determining the existence of probable cause to support the issuance of a search warrant. 462 U.S. 213, 238-39 (1983). The Court rejected the idea that technical or rigid rules may be applied to determine the existence of probable cause, noting that the task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis

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<sup>1</sup> The Warrants Clause to the Fourth Amendment provides:

. . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* at 238-239. Accordingly, “[a]n affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause.” *Id.* at 239. In other words, “[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.” *Id.*

12. In reviewing a probable cause determination, the reviewing court is limited to assessing the information contained within the four corners of the affidavit. See *United States v. Brooks*, 594 F.3d 488, 492 (6th Cir. 2010) (“When determining whether an affidavit establishes probable cause, we look only to the four corners of the affidavit; information known to the officer but not conveyed to the magistrate is irrelevant.”); *United States v. Vigeant*, 176 F.3d 565, 569 (1st Cir. 1999) (“We review the question of probable cause de novo, . . . assessing the information provided in the four corners of the affidavit supporting the warrant application.”) (citations omitted).

13. Detective Dowling’s affidavit fails to establish probable cause for the following reasons:

- a. It fails to explain how phone number (904) 483-0628 is associated with Mr. Bouknight, or how he connected that phone number to Mr. Bouknight between September 1, 2018 and September 7, 2018.
- b. It failed to explain the phone numbers used for the text messages arranging the alleged drug transaction. It fails to provide any details regarding the text

messages, only making conclusory statements that the text messages were indicative of a drug transaction.

- c. Under “Investigative Need for Court Approval,” the affidavit discusses “the forensic search of the Target Telephone automated records . . . .” First, “Target Telephone” is never defined in the affidavit. Second, the language clearly indicates an intent to conduct a forensic search of an actual phone (hardware) vice obtain records from a common carrier.
- d. Also under “Investigative Need for Court Approval,” the affidavit indicates that he is seeking a “search of Graham’s toll and cell site data . . . .” But previously in the affidavit, the officer states the data “was the product of the use of Larry Bouknight II . . . .”

14. Based on the substantial shortcomings and inconsistencies in the affidavit, there was no substantial basis for the issuing judge to conclude probable cause existed under the totality of the circumstances to issue a warrant for the Historically Stored Data for phone number (904) 483-0628.

15. Additionally, the search warrant itself is defective. Though the affidavit and the warrant itself discuss data covering September 1, 2018 to September 7, 2018, the warrant only authorizes the seizure of the Historically Stored Data for September 6, 2018 in its final line of text. Importantly, investigators did in fact obtain data covering September 1, 2018 to September 7, 2018 using this warrant.

16. The appropriate remedy in this case is suppression. The exclusionary rule is “a judicially created remedy de-signed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party

aggrieved.” *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). The United States Supreme Court has recognized that the exclusionary rule “cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.” *Id.* at 918–19. This has become known as the good faith exception to the exclusionary rule.

17. The good faith exception announced in *Leon* does not apply in the case of (1) a false or reckless affidavit; (2) where the magistrate wholly abandons his judicial role; (3) where the affidavit in support of the warrant is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable”; and (4) where the warrant itself is so facially deficient, i.e. in failing to particularize the place to be searched or the things to be seized, that the executing officers cannot reasonably presume it to be valid. *Id.* at 923.

18. The good faith exception does not apply in this case. Based on the conclusory nature of the affidavit and its failure to make the most legally important link for probable cause for the evidence sought – that phone number (904) 483-0628 was used by Mr. Bouknight during the targeted period of time – it is clear that the reviewing magistrate abandoned his/her judicial role. The affidavit is poorly drafted and riddled with consequential inconsistencies that an official belief in the existence of probable cause based on the four corners of the affidavit is entirely unreasonable. The only reasonable conclusion is that the judge simply ratified the search warrant without a real judicial review.

19. Additionally, the warrant itself is so facially defective that the executing officer could not reasonably presume it to be valid. As identified above, the warrant, on its face, has inconsistent dates which were never reconciled by either the judge or the officer.

**WHEREFORE**, the Defendant, LARRY BOUKNIGHT, respectfully requests that he be given an evidentiary hearing on this Motion, that he be allowed to further brief this issue prior to the Court's ruling, and that this Motion to Suppress be granted and that all of the evidence provided by T-Mobile in response to the search warrant phone for number (904) 483-0628 be suppressed.

Attachments

1. Search Warrant with Affidavit for Search Warrant
2. Custodian of Records certification
3. T-Mobile response – Microsoft Excel Sheet (on CD to clerk)
4. T-Mobile response – Interpreting Call Detail records

The undersigned counsel believes the evidentiary hearing will take approximately two hours.

Respectfully submitted,

KORODY LAW, P.A.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished to Office of the United States Attorney, Suite 700, 300 North Hogan Street, Jacksonville, Florida 32202 by ECF PACER delivery, this 17th day of October, 2019.

KORODY LAW, P.A.



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PATRICK K. KORODY, ESQUIRE