UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v. Case No. 3:19-cr-72-J-34MCR

LARRY BOUKNIGHT

UNITED STATES RESPONSE TO LARRY BOUKNIGHT'S
MOTION TO SUPPRESS HISTORICALLY STORED DATA

The United States opposes Larry Bouknight's (hereinafter "the defendant") Motion to Suppress Historically Stored Data, Doc. 25. For the reasons set forth below, the motion should be denied.

Factual Summary

On September 6, 2018, H.B. died from fentanyl toxicity. Jacksonville Sheriff's Office Sergeant[1] Jordan Dowling worked with other law enforcement officers to investigate the circumstances surrounding the death of H.B., specifically working to identify the individual who supplied the fentanyl to H.B. As part of the investigation, Sgt. Dowling sought to obtain, via a state search warrant, the historically stored data for telephone number (904) 483-0628, between September 1, 2018, and September 7, 2018. In support of his

[1] At the time, Jordan Dowling was a Detective with the Jacksonville Sheriff's Office. He has since been promoted to Sergeant ("Sgt.").

request for a court order authorizing the release of that data, on September 22, 2018, Sgt. Dowling submitted an affidavit to the Honorable Elizabeth Senterfitt, Circuit Court Judge, Fourth Judicial Circuit, in and for Duval County. Judge Senterfitt found probable cause existed, and entered an order authorizing historically stored data to be obtained for (904) 483-0628, between September 1, 2018, and September 7, 2018. The records were disclosed pursuant to the warrant.

Argument

The defendant seeks suppression of the historically stored data associated with (904) 483-0628, arguing that Sgt. Dowling's affidavit failed to establish probable cause because the affidavit (1) fails to explain how phone number (904) 483-0628 is associated with the defendant; (2) fails to list the details of the text messages between the defendant and Graham that led to Sgt. Dowling's belief that the messages were drug related; (3) fails to define Target Telephone and indicates a desire to physically search the phone itself; and (4) is inaccurate in that Sgt. Dowling stated in the affidavit that he was seeking a search of Graham's tolls and cell site data but previously indicated the data was the product of the use of the defendant.

For the reasons set forth below, the Court should find that the affidavit established probable cause and connected the defendant to telephone number

(904) 483-0628, warranting the issuance of the warrant directing T-Mobile to produce records of historically stored data associated with telephone number (904) 483-0628 between September 1 and 7, 2018.

Analysis of the affidavit

The affidavit submitted by Sgt. Dowling alleged that H.B. met an unknown male, later identified as the defendant, at a store located at 1762 Sheridan Street, and purchased $40 worth of heroin.[2] The affidavit explained that Kristen Graham ("Graham") arranged the transaction with the defendant via cell phone and was with H.B. when she purchased the drugs from the defendant. The affidavit further noted that Graham showed Sgt. Dowling the text messages she had with the defendant arranging the drug transaction with him. From his review of the messages, Sgt. Dowling knew phone number (904) 483-0628 was associated with the defendant, and determined, as he wrote in his affidavit, that the messages were text messages, "arranging the drug transaction with the defendant." Affidavit p. 3. All of that information established that phone number (904) 483-0628 was associated with Bouknight, and explained how that phone number was used between September 1 and 7 in connection with the distribution of the drugs that Graham used.

[2] At the time the affidavit was submitted to Judge Senterfitt, the Medical Examiner's report had not been completed, which later revealed that the substance that H.B. used, and which caused her death, was fentanyl.

It is clear throughout the affidavit that Sgt. Dowling was seeking data associated with (904) 483-0628, and the reference to Target Telephone in the first paragraph of the affidavit clearly referred to that number. At no point could there have been confusion that Sgt. Dowling was seeking a physical search of the phone- e warrant and affidavit were clearly directed towards T-Mobile providing data.

MEMORANDUM OF LAW

The task of a reviewing court in examining a challenge to a search warrant is different from the task of the issuing judge. In analyzing whether a search warrant is supported by probable cause, a reviewing court does not conduct a *de novo* determination of probable cause, but only looks at whether there is substantial evidence in the record supporting the judge's decision to issue the warrant. *Massachusetts v. Upton,* 466 U.S. 727, 728, (1984); *United States v. Miller,* 24 F.3d 1357, 1363 (11th Cir.1994) ("[R]eviewing courts lend substantial deference to an issuing magistrate's probable cause determinations.").

When deciding whether a search warrant was supported by probable cause, the reviewing court must consider only that information brought to the attention of the issuing judge. *United States v. Lockett,* 674 F.2d 843, 845 (11th Cir.1982); *see also United States v. Schulz,* 486 Fed. Appx. 838, 841 (11th Cir.

Aug.14, 2012). When affidavits are attached to a warrant, courts consider the affiants' statements as well as the search warrant. *See United States v. Martinelli,* 454 F.3d 1300, 1308 (11th Cir.2006). The United States has attached the Search Warrant as Exhibit 1 and the Affidavit for Search Warrant as Exhibit 2 for the Court's review.

In reviewing the probable-cause determination, supporting affidavits should not be interpreted in a hyper technical manner; rather, a realistic and commonsense approach should be employed so as to encourage recourse to the warrant process and to promote the high level of deference traditionally given to issuing judges in their probable-cause determinations. *See Illinois v. Gates,* 462 U.S. 213, 236–37 (citing *United States v. Ventresca,* 380 U.S. 102, 109 (1965)); *Miller,* 24 F.3d at 1361. When it is difficult to determine whether a search-warrant affidavit supports probable cause, "the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." *Upton,* 466 U.S. at 734 (quoting *Ventresca,* 380 U.S. at 109).

Search warrants, once issued, are presumed to be validly issued. *Franks v. Delaware,* 438 U.S. 154, 171 (1978). The burden of establishing that the warrant in this case was defective is upon the defendant. *See id.; United States*

v. Van Horn, 789 F.2d 1492, 1500 (11th Cir.1986); *United States v. Osborne,* 630 F.2d 374, 377 (5th Cir.1980).

The defendant's arguments, as addressed above, fail to establish that the search warrant is defective or that the issuing judge had no substantial basis for finding probable cause. Quite the contrary. The defendant's mere assertion that the warrant is "conclusory" and "fails to make the link between the phone number and the defendant" is insufficient to warrant a hearing. There must be a preliminary showing by the defendant that a material omission or false statement can be proven, not a mere allegation or an unsupported request for a hearing. *United States v. Barsoum*, 763 F.3d 1321, 1329 (11th Cir. 2014).

Finally, the Supreme Court has established a "good faith" exception to the exclusionary rule to prevent suppression of items found pursuant to a search warrant. Under *United States v. Leon,* 468 U.S. 897, 913 (1984), the "good faith" exception to the rule requiring the suppression of evidence for violations of the Fourth Amendment keeps evidence from being suppressed when law-enforcement officers obtain evidence through objective good-faith reliance on a facially valid warrant that is later found to lack probable cause. The United States does not believe that the "good faith" exception would be

triggered in the instant case, as sufficient probable cause existed for the issuance of the warrant for historically stored phone data.

Conclusion

For the reasons set forth herein, the defendant's motion should be denied. Moreover, the defendant has not made the preliminary showing that a material omission or false statement can be proven warranting a hearing.

Respectfully submitted,

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By: */s/ Julie Hackenberry*

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will electronically serve a copy to the following:

Patrick K. Korody, Esq.
Counsel for the Defendant

/s/ Julie Hackenberry
JULIE HACKENBERRY
Assistant United States Attorney