

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**RICHARD F. STOKES**  
*JUDGE*

**SUSSEX COUNTY COURTHOUSE**  
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June 23, 2015

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RE: **State v. Paris Boyer**  
ID No.: 1409003291

Dear Counsel,

Before the Court is defendant Paris Boyer's ("Defendant") Motion to Suppress evidence found during a search of his residence. Specifically, Defendant is requesting this Court to convene a hearing pursuant to *Franks v. Delaware*<sup>1</sup> to assess the adequacy and veracity of the facts provided in the warrant application. In the

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<sup>1</sup> 438 U.S. 154 (1978).

alternative, Defendant argues the warrant is overly broad, or a general warrant, in that it allowed law enforcement to “search and seize items not specifically listed in the warrant,” since it authorized the search and “seizure of ‘any and all other items that may be stolen from thefts from vehicles or burglaries reported . . . .’”<sup>2</sup>

The Court finds that a *Franks* hearing is not necessary. Further, without the complained of information, or lack thereof, there are sufficient facts stated in the search warrant affidavit to establish probable cause that the fruits of alleged burglaries were stored in Defendant’s residence. As such, the Court does not deem the search warrant to be unconstitutionally broad or general because it provided sufficient notice to Defendant and other residents regarding the types of items being sought based on the specifically described items enumerated in the warrant. The mere fact that the warrant included a catch-all clause, that some items listed were not found in the residence, and that certain items were located in places other than in plain view does not dictate that necessity for such a hearing. For the following reasons, Defendant’s Motion to Suppress is **DENIED**.

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<sup>2</sup> Def.’s Op. Br. ¶ 16 (quoting Def.’s Ex. C).

## FACTS

In August of 2014, the Delaware State Police were investigating a string of burglaries<sup>3</sup> in Sussex County, Delaware. Detective Keith McCabe (“McCabe”) was assigned to the case. One of the items stolen during one of the burglaries, occurring on August 11, 2014, was an Apple iMac computer (“iMac”). McCabe was eventually able to locate the iMac by the serial number at the Atlantic Pawn Shop (“Atlantic”) in Millsboro, Delaware.<sup>4</sup> The iMac had been pawned by Defendant and Montrell Burton (“Burton”), evidenced by Defendant’s signature on the pawn slip receipt and surveillance footage from Atlantic.<sup>5</sup>

At the time of McCabe’s investigation, Defendant was on probation at Level IV home confinement.<sup>6</sup> McCabe, upon further investigation, learned that this Court had imposed, as a condition of probation, a no-contact order between Defendant and Burton.<sup>7</sup> As such, McCabe contacted Defendant’s probation officer, Todd Meredith (“Meredith”), regarding Defendant’s and Burton’s infraction of the no-contact order.

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<sup>3</sup> Two cars were burglarized and a few houses were also broken into. Tr. of April 2, 2015 Suppression Hearing (hereinafter “Tr.’) at 11.

<sup>4</sup> Search Warrant ¶ 2.

<sup>5</sup> Search Warrant ¶ 2; Tr. at 12, 19.

<sup>6</sup> Search Warrant ¶ 2.

<sup>7</sup> Tr. at 19.

McCabe informed Meredith of the violation of probation and showed Meredith the surveillance video of the two at Atlantic.<sup>8</sup> While discussing the surveillance footage and the no-contact order, McCabe informed Meredith that he was interested in the Defendant because he was a suspect for a series of burglaries. McCabe also explained his belief that Defendant had “multiple items that [he] believed could be stolen, such as GPSs, electronic devices, cell phones, handbags, and laptop computers and any items that you would find in a motor vehicle.”<sup>9</sup> McCabe, however, never described a specific list of items to Meredith.<sup>10</sup> At the conclusion of their meeting, McCabe asked Meredith to observe the color of Defendant’s vehicle at Defendant’s next scheduled probation meeting.<sup>11</sup> McCabe’s concern with the color vehicle Defendant drove was due to Defendant arriving at Atlantic in a red or maroon Hyundai Santa Fe.<sup>12</sup>

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<sup>8</sup> Tr. at 39.

<sup>9</sup> Tr. at 41, 48.

<sup>10</sup> Tr. at 55.

<sup>11</sup> Tr. at 41.

<sup>12</sup> Tr. at 21.

At their next scheduled probation meeting, Meredith observed Defendant drive a red Santa Fe.<sup>13</sup> Meredith informed McCabe of this information. Upon further investigation, McCabe discovered that the red Santa Fe belonged to Defendant's mother.<sup>14</sup>

On August 21, 2014, several reports of other vehicles that were broken into in the housing development the Reserves of Nassau ("Nassau Housing Development") were recorded.<sup>15</sup> "During one of the incident[s] a resident . . . confronted a subject outside his residence going through [the resident's] vehicle. The subject approached him at gunpoint and ordered him to the ground placing the gun to his head."<sup>16</sup> Nassau's video surveillance system revealed a red SUV leaving the development shortly after the incident.<sup>17</sup>

On September 4, 2014, after obtaining the proper authorizations from his supervisor, Meredith conducted a home visit to arrest Defendant for violating his

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<sup>13</sup> Tr. at 42.

<sup>14</sup> Search Warrant ¶ 2; Tr. 21.

<sup>15</sup> Search Warrant ¶ 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

probation due to his infraction of the no-contact order.<sup>18</sup> Meredith, the Governor’s Task Force, and SPO Todd Mumford approached Defendant’s house.<sup>19</sup> Defendant answered the door, invited Meredith and the others inside, and was arrested.<sup>20</sup> Meredith explained he was arresting Defendant for violating the no-contact order with Burton, and placed Defendant on a couch in Defendant’s house.<sup>21</sup> At that point, Meredith cleared the house for officer safety purposes (“protective sweep”), going into each room of the house to check whether other people were hidden or located in the house.<sup>22</sup> While conducting the protective sweep, Meredith entered a room he knew to be Defendant’s bedroom.<sup>23</sup> In Defendant’s bedroom, Meredith saw, in plain view, two cell phones on a table, a laptop computer on the floor of the bedroom, and several purses inside the bedroom’s open closets.<sup>24</sup> Meredith only observed the objects, inspecting them visually, but never touched anything in the room, before

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<sup>18</sup>Search Warrant ¶ 2; Tr. at 40, 44 .

<sup>19</sup> Tr. at 43–44.

<sup>20</sup> Tr. at 44.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Tr. at 46.

<sup>24</sup> Tr. at 46–47.

leaving to continue the protective sweep.<sup>25</sup> After Meredith completed the protective sweep, he took Defendant outside and placed him in his vehicle before driving him to Troop 4 to talk to McCabe.<sup>26</sup> Prior to driving Defendant to Troop 4, however, Meredith contacted McCabe and simply told him “that when we did the arrest, when I entered into Paris Boyer’s bedroom, I observed multiple electronic devices consistent with—well, I saw multiple electronic devices in the residence and handbags.”<sup>27</sup> With this information in hand, McCabe applied for a warrant to search Defendant’s residence for items, both general and specific, related to the burglaries in question.<sup>28</sup> The relevant portions of the search warrant stated:

On 9/04/14, Probation Officer Todd Meredith conducted a home check on Paris Boyer, currently on Level 4 Home Confinement, at his residence . . . . They entered the residence and observed *in plain view numerous electronics consistent with the burglaries*. Probation Officer Meredith immediately contacted your affiant to pass on the information.

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<sup>25</sup> Tr. at 47.

<sup>26</sup> Tr. at 48.

<sup>27</sup> Tr. at 48.

<sup>28</sup> *See generally*, Search Warrant.

Based on the information above including *numerous credit cards, and electronics being taken and located in the residence of Paris Boyer*, your affiant believes that there is probable cause to search the residence (emphasis added).<sup>29</sup>

Further, the warrant listed on an attachment entitled “ITEMS TO BE SEARCHED FOR AND SEIZED” several specific items, but also included the following: “[a]ny and all other items that may be stolen from thefts from vehicles or burglaries reported (emphasis added)” as item to be searched for and seized.<sup>30</sup>

Based on the above quoted language, McCabe and Delaware State Police entered Defendant’s home, searched, and obtained several items not specifically listed on the warrant. Defendant was subsequently charged with over two hundred (200) crimes.<sup>31</sup>

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<sup>29</sup> Search Warrant ¶ 2.

<sup>30</sup> Def.’s Ex. C.

<sup>31</sup> The litany of crimes Defendant has been charged with is not important for purposes of this motion. They range from Robbery in the First Degree to Theft of Less Than \$1,500.

## PROCEDURAL POSTURE

On February 12, 2015, Defendant filed a motion to suppress, challenging the constitutionality of Meredith's administrative search, i.e. his protective sweep.<sup>32</sup> Primarily, Defendant argued Meredith acted as a "stalking horse" for the Delaware State Police, conducting no independent investigation prior to violating Defendant in contravention of the holding in *Culver v. State*, 956 A.2d 5, 10 (Del. 2008).<sup>33</sup>

An evidentiary hearing for Defendant's suppression motion was held on April 2, 2014 ("April 2 hearing").<sup>34</sup> At the April 2 hearing, it was determined that Defendant's purpose for the hearing was to seek "a ruling about the unlawfulness of the entry into the defendant's residences and his arrest, period, and [that Defendant was] not seeking to suppression anything [specifically recovered during the search] at th[at] point."<sup>35</sup> The Court denied the motion upon determining the arrest for the violation of the no-contact order was lawful, conducting the protective sweep of the

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<sup>32</sup> See, Def.'s Feb. 12, Motion to Suppress.

<sup>33</sup> See generally, *Id.*

<sup>34</sup> See generally, Tr.

<sup>35</sup> Tr. at 25.

residence was lawful, and the information Meredith learned during the protective sweep was properly passed on to McCabe for purposes of obtaining a warrant.<sup>36</sup>

On May 22, 2015, Defendant filed the present motion to suppress. The State filing its response on the same day, and Defendant filed his reply on May 29, 2015. The Court has reviewed the motion and briefs, and reviewed the April 2 hearing transcript. The motion is now ripe for decision.

## **DISCUSSION**

### **General Requirements for Search Warrants**

Under both the United States and Delaware Constitutions, the people of Delaware are protected against unreasonable searches and seizures.<sup>37</sup> As such, these two constitutions protect the public by “requiring that a search warrant can only be issued upon a showing of probable cause supported by oath or affirmation.”<sup>38</sup> “The probable cause standard is incapable of precise definition . . . because it deals with probabilities and depends on the totality of the circumstances.”<sup>39</sup> “An affidavit

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<sup>36</sup> Tr. at 201.

<sup>37</sup> U.S. Const. art. IV; Del. Const. art. I § 6.

<sup>38</sup> *State v. Ivins*, 2004 WL 1172351. \*3 (Del. Super. May 21, 2004) (citations ommitted).

<sup>39</sup> *Stafford v. State*, 59 A.3d 1223, 1229 (Del. 2013) (quoting *Lopez v. State*, 861 A.2d 1245, 1248 (Del. 2004)).

submitted in support of a search warrant application must set forth facts that, within the affidavit's four corners, are sufficient for a neutral magistrate to conclude that 'a crime has been committed and that the property sought to be seized would be found in a particular place.'"<sup>40</sup> There must be "a logical nexus between the items sought and place to be searched."<sup>41</sup>

### **Legal Framework for a *Franks* Analysis**

Where this is reason to believe an affiant has provided false information upon which a magistrate relied in approving a search warrant, a defendant may challenge the ensuing search. The subject was explored in *Franks v. Delaware*. The United States Supreme Court explained:

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with a reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's

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<sup>40</sup> *Rivera v. State*, 7 A.3d 961, 966 (Del. 2010) (quoting *Blount v. State*, 511 A.2d 1030, 1032–33, (Del. 1986); see also, *LeGrande v. State*, 947 A.2d 1103, 1111 (Del. 2008)

<sup>41</sup> *State v. Cooke*, 2006 WL 2320533, \*21 (Del. Super. Sept. 8, 2006) (citing *State v. Sisson*, 883 A.2d, 868, 887 (Del. Super. 2005)).

request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavits false material set to one side, the affidavits remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the fact of the affidavit.<sup>42</sup>

The Delaware courts review “a magistrate’s determination of probable cause ‘with great deference.’”<sup>43</sup> As such, the defendant in a *Franks* situation has a heavy burden in establishing he is entitled to a hearing. According to the United States Supreme Court, “[t]here is . . . a presumption of validity with respect to the affidavit supporting the search warrant.”<sup>44</sup> In order to obtain a hearing, the defendant must allege there are deliberate falsehoods in the affidavit, or at least a reckless disregard for the complained of statement’s truth,<sup>45</sup> supported by an offer of proof.<sup>46</sup> The allegations “should point out specifically the portion of the

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<sup>42</sup> *Franks*, 438 U.S. at 155–56.

<sup>43</sup> *Rivera*, 7 A.3d at 967 (quoting *Smith v. State*, 887 A.2d 470, 473 (Del. 2005)).

<sup>44</sup> *Franks*, 438 U.S. at 171.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

warrant affidavit that is claimed to be false; . . . accompanied by a statement of supporting reasons” for their falsity.<sup>47</sup> Finally, the *Franks* analysis is inapplicable in situations where the affidavit supporting the warrant alleges other truthful facts that alone are sufficient to establish probable cause, the Defendant has only proffered the affiant acted with negligence, or was innocently mistaken.<sup>48</sup>

In *Sisson v. State*, the Delaware Supreme Court addressed a “reverse-*Franks*” scenario. The Court explained “[i]f the police omit facts that are material to a finding of probable cause with reckless disregard for the truth, then the rationale of *Franks v. Delaware* applies,”<sup>49</sup> and such evidence obtained pursuant to that faulty warrant must be suppressed.<sup>50</sup> With that said, as in the typical *Franks* scenario, if the addition of the omitted information does not materially affect law enforcement’s ability to establish probable cause, the search stands as valid, and the evidence may be admitted at trial.<sup>51</sup> In *Rivera v. State*, the Delaware Supreme Court adopted the Third Circuit’s test for a reverse-*Franks* situation, in part,

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 171–72.

<sup>49</sup> *Sisson v. State*, 903 A.2d 288, 300 (Del. 2006) (quoting *Smith*, 887 A.2d at 472).

<sup>50</sup> *Rivera*, 7 A.3d at 967 (Del. 2010) (quoting *Sisson*, 903 A.2d at 300).

<sup>51</sup> *Ridgeway v. State*, 67 A.3d 1023, \*3 (Table) (Del. 2013).

holding that the defendant must: (1) demonstrate that police either knowingly, intentionally, or with a reckless disregard for the truth,<sup>52</sup> omitted information from the search warrant affidavit; and (2) show that the omitted information was material.<sup>53</sup>

To implement the *Franks* ruling, the Delaware Superior Court has rules and procedures a Defendant must follow to obtain a hearing. Superior Court Criminal Rule 41 contains such requirements, mandating:

The court shall receive evidence on any issue of fact necessary to the decision of [a motion to suppress], but . . . shall not receive evidence on motions challenging the manner of execution of a search warrant *or the veracity of a sworn statement used to procure a search warrant* unless the motions are supported by affidavits, or their absence is satisfactorily explained in the motion, and the *allegedly false*

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<sup>52</sup> “[R]ecklessness may be inferred where the omitted information was ‘clearly critical’ to the probable cause determination.” *Rivera*, 7 A.3d at 969 (quoting *Rivera v. United States*, 928 F.2d 592, 604 (2nd Cir. 1991)).

<sup>53</sup> *Rivera*, 7 A.3d at 968 (citing *Sisson*, 903 A.2d at 300; *Smith*, 887 A.2d at 472). Note that what distinguishes Delaware’s test from the Third Circuit’s is the fact that the Third Circuit requires a defendant to prove the malice prong first, followed by the materiality prong. The Delaware Supreme Court, however, declined to follow this portion of the test, finding that the two prongs need not be established in a particular order.

*statement is necessary to a finding of probable cause* (emphasis added).<sup>54</sup>

### **General Warrants Requirements**

In addition to a showing of probable cause, a search warrant must describe the places to be searched and items to be seized with sufficient particularity.<sup>55</sup> In Delaware, this requirement has been codified in 11 *Del. C.* §§ 2306 and 2307.<sup>56</sup> The affidavit and application for the warrant must “state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite facts upon which such suspicion is founded.”<sup>57</sup> Further, the warrant is required to “designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible.”<sup>58</sup>

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<sup>54</sup> Super. Ct. Crim. R. 41 (f).

<sup>55</sup> U.S. Const. art. IV; Del. Const. art. I § 6.

<sup>56</sup> 11 *Del. C.* §§ 2306, 2307; *State v. Bordley*, 2003 WL 22455185, \* 2 (Del. Super. Oct. 14, 2003); *State v. Fink*, 2002 WL 312882, \*4 (Del. Super. Feb. 25, 2002) (citing U.S. Const. art. IV; Del. Const. art. I § 6).

<sup>57</sup> 11 *Del. C.* § 2306.

<sup>58</sup> 11 *Del. C.* § 2307.

As is evident by this language, both the United States and Delaware Constitutions “placed some emphasis upon the necessity of describing in detail the place and/or person to be searched and/or seized.”<sup>59</sup> The general explanation for such a requirement is “search warrants must be sufficiently particular to prevent general exploratory searches.”<sup>60</sup> “[A] ‘warrant[] must “particularly describ[e] the place to be searched and the persons or things to be seized,”” and that when it does not, ‘all evidence seized pursuant to [the] general warrant must be suppressed[.]’”<sup>61</sup> A warrant is “unconstitutionally general [when] ‘. . . it can be said to “vest the executing officer with unbridled discretion to conduct an exploratory rummaging . . . in search of criminal evidence.’””<sup>62</sup>

### **Application**

First, under Superior Court Criminal Rule 41(f), Defendant was required to submit a sworn affidavit in conjunction with his motion to suppress regarding the truthfulness of the statements contained in the search warrant. The Court has been unable to locate any such affidavit, and the motion does not explain why one was not

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<sup>59</sup> *State v. Wise*, 284 A.2d 292293 (Del. Super. 1971).

<sup>60</sup> *Cooke*, 2006 WL 2620533 at \*22.

<sup>61</sup> *United States v. Karrer*, 460 Fed. Appx. 157, 161 (3rd Cir. 2012) (citations omitted).

<sup>62</sup> *Id.* (quoting *United States v. Leveto*, 540 F.3d 200, 211 (3rd Cir. 2008)).

included. This alone is grounds to deny Defendant's motion. For the sake of thoroughness, the Court will evaluate Defendant's motion notwithstanding this procedural error.

Defendant insists that the warrant in this case is unconstitutional. First, Defendant claims false facts and material factual omissions were either transcribed or omitted by McCabe in his search warrant affidavit in bad faith. Defendant asserts such misstatements, or the lack thereof, entitle him to a *Franks* hearing. Prior to Meredith arresting Defendant, Meredith only knew from his conversation with McCabe that Defendant was a suspect in a string of burglaries. Meredith also knew that McCabe was looking for "GPSs, electronic devices, cell phones, handbags, and laptop computers and any other items that you would find in a motor vehicle."<sup>63</sup> Defendant provides three grounds as to why a *Franks* hearing is necessary, focusing on three statements found within the search warrant.

Initially, Defendant argues the warrant's use of the phrase "numerous electronics *consistent with* the burglaries" was "factually inaccurate, as Meredith did not know with any specificity whether the items viewed were consistent with the

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<sup>63</sup> Tr. at 48.

burglaries.”<sup>64</sup> In short, Defendant insists McCabe lied in the warrant because there was no way Meredith knew whether the items viewed were those stolen in the burglaries. As such, the specific details on the makes, models, and types of electronic devices and purses were necessary to establish probable cause, and the omission of these particulars, which Defendant claims was done in bad faith, mandates a reverse-*Franks* hearing.<sup>65</sup>

What is noteworthy are Meredith’s statements made at the April 2 hearing. While testifying, Meredith explained after Defendant’s arrest, Meredith contacted McCabe, telling him “when I entered into Paris Boyer’s bedroom, I observed multiple electronic devices consistent with—well, I saw multiple electronic devices in the residence and handbags.”<sup>66</sup> Meredith knew generally, what items were reported stolen prior to the Defendant’s arrest. As such, Meredith did know whether the items he viewed were consistent with the description of the stolen items. Also, it is relevant that at the time Meredith saw the items in question, Meredith was only doing a protective sweep of the residence.<sup>67</sup> He was not searching the premises for fruits of

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<sup>64</sup> Def.’s Op. Br. ¶ 5.

<sup>65</sup> Def.’s Reply Br., at 3.

<sup>66</sup> Tr. at 48.

<sup>67</sup> Tr. at 45.

the accused crimes. He was not documenting the makes and models of the electronic devices and purses he viewed. If he had, Meredith would have been conducting an unconstitutional search of the premises, exceeding the scope of his duties as a probation officer, since he was arresting Defendant for violating the no contact order, not for contraband. Additionally, the mere fact that Meredith and McCabe did not provide specifics as to what particular electronics Meredith witnessed, does not demonstrate that the inclusion of general term “electronics” in the search warrant affidavit was used in bad faith. At most it is only a showing of negligence or an incomplete investigation, which as stated above, is expected since Meredith was only conducting a protective sweep of the residence. Hence, this alleged defect in the search warrant affidavit alone does not entitle Defendant to a *Franks* hearing.

The reverse situation poses different questions, particularly regarding the constitutionality of the later obtained search warrant.<sup>68</sup> Defendant would have been able to argue Meredith was acting as a stalking horse for police if McCabe had given Meredith a more precise list of the items stolen in the burglaries. Probation working in concert with police, as an agent of the police, in doing a preemptive search, may have required a search warrant in its own right. Meredith, at that point, would not

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<sup>68</sup>This issue was addressed in the April 2 hearing.

have been arresting Defendant for violating his probation, but would instead be conducting a search for contraband.

Further, the omission of particulars describing the items viewed, when considering the other facts alleged in the warrant's affidavit, is of no consequence. The affidavit notes Defendant was seen on surveillance video pawning one of the stolen electronic devices of one of the burglaries at Atlantic.<sup>69</sup> As such, the fruits of one of the crimes was seen in his possession. It is thus probable that other electronic devices would be found in his possession that were the fruits of similar crimes.

Defendant, in his reply brief, argues absent a description of each individual item to be searched with particulars, there is an insufficient nexus to Defendant's house as a place that could contain fruits of Defendant's alleged burglaries. Defendant again points primarily to the warrant's use of the phrase "consistent with the burglaries" when describing the electronics Meredith viewed during the protective sweep. Defendant insists this phrase is too vague and that there is nothing tying those items to the items actually taken during the burglaries. This is also incorrect. Common sense and logic dictate that a criminal defendant would likely store the fruits of his activities in his house or on his property. It is therefore probable that

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<sup>69</sup> Search Warrant ¶ 2.

Defendant in this case did the same. Taking this inference into consideration along with the portion of the affidavit stating that Defendant pawned an iMac reported stolen from one of the burglaries, evidenced by Defendant's signature on the pawn slip and surveillance footage, it is probable that if Defendant committed the other similar burglaries, he also stored them within his home. There is a sufficient nexus between the conduct alleged and Defendant's residence.<sup>70</sup>

Next, Defendant argues the warrant is factually inaccurate in that the electronic items and purses were not found in plain view, which, he maintains, the warrant stated to be true based on Meredith's statements to police.<sup>71</sup> According to the search warrant's affidavit: "On 09/04/14, Probation Officer Todd Meredith conducted a home check on Paris Boyer, currently on Level 4, Home Confinement, at his residence . . . . They entered the residence and observed in plain view numerous electronics consistent with the burglaries."<sup>72</sup> At the April 2 hearing, Meredith explained he did a protective sweep of Defendant's residence after Defendant's arrest. Meredith also stated while he was clearing the house he entered Defendant's bedroom and observed two cell phones on a table, a laptop computer on the floor, and multiple

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<sup>70</sup> See, e.g. *Bradley v. State*, 51 A.3d 423, 436 (Del. 2012).

<sup>71</sup> Def.'s Op. Br. ¶¶ 7-9.

<sup>72</sup> Search Warrant ¶ 2.

purses in an open closet.<sup>73</sup> Defendant notes in his opening brief when law enforcement obtained and executed the warrant, several of the items found were not in plain view, according to the inventory list.<sup>74</sup> The inventory list states that some of the items found during the search were located in a bedroom desk, in multiple bedroom closets, under beds, behind beds, etc.<sup>75</sup> As such, Defendant asserts Meredith's statements that the items seen were in plain view was made to police in bad faith and false.

But, Meredith's testimony at the April 2 hearing, adequately explains that he only viewed three sets of items in plain view. Specifically, Meredith saw two cell phones, a laptop computer, and several purses in an open closet. These items are noted in the inventory list to be in places consistent with the places Meredith claimed to have viewed them.<sup>76</sup> What Defendant fails to recognize is that just because Meredith asserted he saw some items in plain view, does not mean that every item

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<sup>73</sup> Tr. at 46–47.

<sup>74</sup> Def.'s Ex. D.

<sup>75</sup> *Id.*

<sup>76</sup> *See, Id.* The inventory list notes that a Verizon LG cell phone and a Samsung cell phone were located on a bedroom desk, which may have been mistaken by Meredith as a table, that miscellaneous purses were found in a bedroom closet, and that a Dell laptop was found under Defendants bed (which could have been on the floor sticking out from under Defendant's bed). All of this is predominantly consistent with what was described by Meredith during his protective sweep.

searched for and seized needed to also be in plain view. In fact, the items seen in plain view are primarily important because they provided law enforcement with probable cause to search for hidden fruits of the alleged crimes. The fact that not all the items to be searched for were found in places other than those in plain view is completely expected and consistent with Meredith's testimony that he was only doing a protective sweep. As such the statements indicating that items were in plain view were not false and were not made in bad faith when considering the purpose the plain viewed items served in obtaining probable cause to search for hidden items, and the common sense conclusion that not every stolen item would be left out in the open.

Lastly, Defendant insists that the warrant is factually inaccurate due to the warrant's language stating "[b]ased on the information above including *numerous credit cards*, and electronics being taken and located in the residence of Paris Boyer, your affiant believes that there is probable cause to search the residence."<sup>77</sup> What Defendant takes particular issue with is the assertion that numerous credit cards were located in Defendant's residence. To bolster this complaint, Defendant turns to both the search and seizure inventory list and Meredith's April 2 hearing testimony. The inventory list is completely devoid of any credit cards being found in either

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<sup>77</sup> Search Warrant ¶ 2.

Defendant's residence, or the vehicle he drove.<sup>78</sup> Further, Meredith testified at the April 2 hearing that he never saw any credit cards while doing the protective sweep.<sup>79</sup>

Assuming, *arguendo*, that McCabe included the sentence regarding the credit cards knowing it was false, or not caring that it was untruthful, setting aside that information has no effect on the probable cause determination. When this statement is set aside, as is required under the *Franks* analysis, it has no effect on the probable cause calculation. Without even mentioning credit cards, there is sufficient probable cause for several reasons. First, according to the search warrant's affidavit:

On 08/11/14, Paris Boyer . . . on video [is] seen pawning the Apple I mac [sic] computer at the Atlantic Pawn shop in Millsboro. Your affiant contacted Atlantic Pawn Show and verified that the Apple I mac [sic] computer serial number matched the one from the burglary report. A copy of the pawn sheet revealed that Paris Boyer signed [the] pawn slip.<sup>80</sup>

The warrant's affidavit goes on to state:

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<sup>78</sup> See, Def.'s Exh. D.

<sup>79</sup> Tr. 49.

<sup>80</sup> Search Warrant ¶ 2.

On 8/21/14, several vehicles were reported broken into at the Reserves of Nassau located on Nassau Road in Lewes, Delaware; Sussex County.

Video surveillance was obtained later from the Reserves of Nassau Management revealing a red SUV resembling the vehicle Paris Boyer drives in belonging [sic] to his mother . . . .<sup>81</sup>

Lastly, when Meredith went to Defendant's residence to violate him due to Defendant's infraction of the no-contact order between him and Burton, Meredith witnessed multiple electronic devices and purses in plain view. Even setting aside the inclusion of credit cards in the search warrant, assuming the inclusion was made falsely or in bad faith, there is sufficient probable cause for a magistrate to grant a search warrant.

Finally, even with the above stated analysis, Defendant has not provided any proof demonstrating that McCabe and/or Meredith included or omitted the complained of information in bad faith. If anything, Defendant has only provided conclusory statements as to McCabe's and Meredith's malicious state of mind. He has, in a sense, only argued that since the warrant did not provide sufficient particulars describing the items to be searched, and not all items recovered were in

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<sup>81</sup> *Id.*

plain view, that both Meredith and McCabe were adding and omitting information with an ends-justify-the-means mentality. However, without more than this uncorroborated presumption, the Court does not find Defendant is entitled to a *Franks* hearing.

In addition to Defendant's *Franks* argument, he also maintains that the warrant is unconstitutional because it is overly broad and lacks particularity. His primary issue regarding the warrants supposed lack of particularity is that it allowed "officers to search and seize items not specifically listed in the warrant."<sup>82</sup> The officers in this case, however, had a list of "ITEMS TO BE SEARCHED FOR AND SEIZED."<sup>83</sup> This list is of specific items, but also authorizes officers to seize "all other items that may be stolen from thefts from vehicles or burglaries reported. . . ."<sup>84</sup> This list guided law enforcement on what items to look for and what items to seize. The items seized that were not particularly specified in the list were all found in places that the specified items could have been found, were items "[one] would find in a motor vehicle,"<sup>85</sup> and similar to the items specified. The warrant listed Defendant's

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<sup>82</sup> Def.'s Op. Br. ¶ 16.

<sup>83</sup> *See*, Def.'s Exh. C.

<sup>84</sup> *Id.*

<sup>85</sup> Tr. at 48.

residence as a place to be searched for the items listed, and directed officers to search it within ten (10) days.<sup>86</sup>

Based on this information, the Court finds that the warrant was not overly broad or vague. The items described with particularity gave law enforcement a sufficient idea or inference as to what other items may have been stolen. The similarities between the items not listed and seized, and the items described with particularity on the list is striking. It is evident that the warrant did not give officers a blank check to search for evidence of any and all criminal activity, but for evidence regarding a series of similar burglaries where electronics (primarily GPS devices, cell phones, laptop computers, and cameras), purses, and wallets were stolen.

### CONCLUSION

Considering the foregoing, Defendant's Motion to Suppress is **DENIED**, Defendant's request for a *Franks* hearing is also **DENIED**.

**IT IS SO ORDERED**

Very truly yours,

*/s/ Richard F. Stokes*

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Richard F. Stokes, Judge

cc: Prothonotary

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<sup>86</sup> *See*, Search Warrant.