IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	**ID No. 2311012390A&B**
	)	
PAULRON CLARK,	)	
Defendant.	)	

Date Submitted: July 25, 2024
Date Decided: August 29, 2024

MEMORANDUM OPINION

***On Defendant's Motion to Suppress* - DENIED**

Amanda Buckworth, Esquire, Deputy Attorney General, Office of the Attorney General, Wilmington, Delaware, Counsel for the State of Delaware

Erika LaCon, Esquire, Office of Defense Services, Wilmington Delaware, Counsel for Paulron Clark

BRENNAN, J.

I. BACKGROUND

Defendant Paulron Clark (hereinafter "Defendant") is charged with one count of Rape First Degree, one count of Sexual Abuse of a Child by a Person in a Position of Trust First Degree, three counts of Unlawful Sexual Contact First Degree, one count of Sexual Abuse of a Child by a Person in a Position of Trust Second Degree, one count of Continuous Sexual Abuse of a Child, one count of Dangerous Crime Against a Child, one count of Sexual Extortion; one count of Sexual Solicitation of a Child, and one count of Sex Offender Unlawful Sexual Conduct Against a Child.[1]

It is alleged that during the time frame of July 1, 2020, to January 18, 2023, Defendant sexually abused S.M., the daughter of his girlfriend.[2] S.M. reported to a teacher that Defendant had been touching her for approximately two years.[3] On January 19, 2023, Wilmington Police was notified and on February 20, 2023, the then-eleven-year-old S.M. was interviewed by the Child Advocacy Center.[4] S.M. stated the touching began when she nine years old, that Defendant would touch her

[1] *See State v. Paulron Clark*, Crim. I.D. Nos. 2311012390A & B; I.D. No. 2311012390A D.I. 1. In a later filing, Defendant moved to sever the Sex Offender Unlawful Sexual Conduct Against a Child charge, which was granted and is now proceeding under Crim. I.D. No. No. 2311012390B. However, all docket references cited herein ("D.I.") will refer to Crim. I.D. No. 2311012390A.
[2] D.I. 18 at 2.
[3] *Id*.
[4] *Id*.

vagina and make her touch his penis with her hands and mouth.[5] S.M. also stated that Defendant would touch her vagina with his mouth.[6] S.M. informed the interviewer that when she was nine years old, Defendant once showed her a video on his iPhone of her mother touching Defendant's penis with her hands and mouth.[7]

With that information, Detective Bozeman of the Wilmington Police Department drafted a search warrant to gain access to Defendant's iPhone and on March 16, 2023, the warrant was approved by a Magistrate in the Justice of the Peace Court (hereinafter "Warrant One").[8] On January 18, 2024, the Delaware Supreme Court issued its ruling in *Terreros v. State*.[9] In response to that decision, a revised warrant was drafted by Detective Bozeman, consistent with *Terreros'* ruling. The revised search warrant (hereinafter "Warrant Two") was presented to and approved by Superior Court on May 1, 2024.

On May 9, 2024, Defendant filed a Motion to Suppress based on the validity of Warrant One.[10] On May 29, 2024, Defendant filed a Supplemental Motion to Suppress challenging Warrant Two.[11] The State responded on July 5, 2024.[12]

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[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] 312 A.3d 651 (Del. 2024).
[10] D.I. 8.
[11] D.I. 12.
[12] D.I. 18.

Defendant filed a Sur-Reply on July 18, 2024.[13] Oral argument was heard on the motion on July 24, 2024,[14] at which time the Court reserved decision pending supplemental submission of the parties pertaining the applicability and effect of this Court's decision in *State v. Carter*.[15] The State and Defense filed their respective cross submissions on July 25, 2025.[16] This is the Court's decision.

II. LEGAL STANDARD

Under the United States and Delaware Constitutions, a search warrant may be issued upon the showing of probable cause.[17] Both constitutions require a search warrant contain descriptions of the places and things to be searched with particularity.[18] "An affidavit in support of a search warrant must, within the four-corners of the affidavit, set forth facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place."[19] "A warrant application must contain sufficient

[13] D.I. 21.
[14] D.I. 22.
[15] 2022 WL 1561537, at *1 (Del. Super. Ct. May 17, 2022) (holding so long as there has not been an application of the exclusionary rule following a motion to suppress, and the affidavit of probable cause did not rely on any evidence learned from the first search, the State may obtain a subsequent warrant correcting any overbreadth concerns of a first warrant).
[16] D.I. 23
[17] *See* U.S. CONST. amend. IV; DEL. CONST. art. I, § 6.
[18] *Terreros v. State*, 312 A.3d 651 (Del. 2024).
[19] *Sisson v. State,* 903 A.2d 288, 296 (Del.2006).

facts—viewed under the totality of the circumstances—to allow a neutral magistrate to conclude that there is a "fair probability" both that a crime has been committed and that evidence of that crime will be found in the particular place identified in the warrant."[20]

A judicial officer's determination of probable cause is to be given great deference by a reviewing court.[21] The Affidavit supplied in support of the warrant must be reviewed as a while and evaluated for probably cause while looking at the totality of the facts supplied. A reviewing court must be assured that the judicial officer had a substantial basis for their finding, and if such basis exists, the warrant should be upheld.[22] If a portion of the search warrant application is found to be improper, the reviewing court may strike that portion and review the remaining facts for a probable cause determination.[23]

III. DISCUSSION

Defendant challenges the warrants at issue here under a variety of theories. First, Defendant argues that Warrant One is unconstitutionally overbroad, and therefore any subsequent warrant must be deemed fruits of the poisonous tree. Defendant next argues Warrant One lacked a nexus and was an unconstitutional

[20] *Terreros*, 312 A.3d at 661.
[21] *Id.* (internal citations omitted).
[22] *Id.*
[23] *Thomas v. State*, 305 A.3d 683, 703 (Del. 2023).

general warrant, and therefore any subsequent warrant must be deemed fruits of the poisonous tree. Finally, Defendant challenges the information contained in both warrants as stale.[24] The State concedes that Warrant One does not pass constitutional muster as an overbroad, and not a general warrant, which is why Warrant Two was obtained. The State submits the Second Warrant is proper and valid.

A. CONSTITUTIONALITY OF WARRANT ONE.

1. A Nexus Is Established.

Warrant One sought "all visual recordings, multi-media messages, text messages, and any other information/data pertinent to this investigation within the time frame of July 20, 2020 to November 30, 2021."[25] The warrant lays out the specific allegations and does, contrary to Defendant's assertion,[26] establish a nexus between the facts of the case and the items to be searched. The warrant's request for permission to search video files for evidence in support of the charge Sexual Solicitation of a Child, was directly tethered to the assertion in the Affidavit that S.M. reported Defendant showed her sexually explicit videos from his cell phone.

Here, both the Affidavit and Application contain sufficient facts to allow the judicial officer to conclude that evidence of the video S.M. saw could be found by

[24] D.I. 8.
[25] D.I. 8 at 4.
[26] *Id.*

conducting a search of Defendant's iPhone. Specifically, S.M. alleges she was nine years old when Defendant showed her the video of her mother performing a sexual act on the Defendant; and S.M. describes the housing situation where the video was viewed. Between S.M.'s age and the housing description, the dates fall within the time frame that S.M. would be nine years old. The affidavit provides a nexus between the probable cause and the authorization to search Defendant's cell phone *for visual recordings* between July 20, 2020, to November 30, 2021, and thus established a nexus between the place to be searched and the items sought.[27]

2. The Information in the Warrants is Not Stale.

When reviewing information contained in an affidavit that is challenged as stale, the Court must look to the nature of the criminal activity in order to make an assessment.[28] Defendant argues that the information contained in Warrant One regarding S.M.'s statement about Defendant showing her this video is stale due to the age and the fact that Defendant no longer had the phone described by S.M., as the phone seized is admittedly a different version of an iPhone than what S.M. described. The State argues the staleness analysis is case specific and determined based upon the individual considerations in each case.

[27] *Dorsey v. State*, 761 A2.d 807, 811 (Del. 2000); *but see Terreros v. State*, 312 A.3d at 670.
[28] *Jensen v. State*, 482 A.2d 105, 111-112 (Del. 1984).

Had Detective Bozeman failed to articulate the fact that Defendant had a different phone in his possession than described by S.M. in her Affidavits, Defendant's argument would be more compelling. However, this was presented to the issuing magistrate in Warrant One, and again in Warrant Two, presented to Superior Court. Specifically, the Affidavit in both Warrant One and Two states:

> 4. Your affiant can truly state that during the interview, the Victim was asked if she has seen the Suspect touch anyone else. The Victim said "yes" but that it was not in person. She described being "maybe nine" and living in their old house when she saw a video. The Suspect used his cell phone to make her watch a video of her mother touching his "down there" area with her hands and mouth. She said that the video made her very uncomfortable and she wanted to puke. She said that the video was long and it was something shown to her once. She described his cell phone as a black in color IPhone, possibly an 8, 9 or 10 model and possibly having a black case. She also thinks that he still has the same cell phone.
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> 5. Yor affiant can truly state the Victim stated that she has lived in two different homes with her mom … and the Suspect… The Victim did not know the address of the "old house" …The Victim stated that they moved into their current house around March or April of 2022. The Victim did state that they have lived in three places since her mother began a relationship with the Suspect. However, the Victim stated that the Suspect only lived in two of the three houses which include the "old house" and their current house.
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> …
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> 7. … In Paulron's possession at the time of the interview was a black in color Apple IPhone with a black and dark blue case. The cell phone was seized at that time. The cell phone is an Apple Iphone [sic] 13Pro Model … Though this Apple IPhone is not the exact model described by the Victim, it is common for Apple IPhone users to transfer the data contents from one Apple IPhone to a new Apple IPhone.

As the ever-growing body of case law on law enforcement searches of cellular phones tells us, it is now commonplace for people to have cellular phones, as well as significant experience and knowledge regarding their usage.[29] It is common knowledge that cell phone users often "upgrade" phones and transfer data to the new phone. Detective Bozeman presented this information to both the issuing magistrate and to Superior Court.

The information presented in the affidavits at issue are not stale. Rather, because sexual offenses involving children are often late reported, the fact that time had passed between the information and the search is not unexpected given the typical delay in reporting of these crimes. Detective Bozeman did not unnecessarily delay obtaining the warrant based upon this information. S.M. was interviewed on February 20, 2023, the information provided to investigators was explored, and dates and housing locations were corroborated by witnesses interviewed on March 7, 2023. Defendant was then interviewed on March 13, 2023, at which time the cellular phone in question was seized. Warrant One was sought on March 16, 2023, and the same facts were used when Warrant Two was sought due to new case law on May 1, 2024. Given the totality of the circumstances in this case, including the nature of the charges, the timeline, the alleged victim's age and the type of crime alleged here,

[29] *Riley v. United States*, 573 U.S. 373 (2014); *Carpenter v. United States*, 585 U.S. 296 (2018); *Buckham v. State*, 185 A.3d 1 (Del. 2018).

including the relationship between the parties, the information in the warrants is not stale and was appropriate for a judicial officer to review in their respective probable cause findings.[30]

3. The First Warrant is Overbroad and Not General.

The finding that the warrants are supported by proper evidence establishing probable cause does not end the constitutional analysis. Defendant argues the first search warrant is unconstitutionally overbroad and insufficiently particular. The Court finds that both warrants are supported by probable cause, but that does not mean it satisfies constitutional law with respect to searches.[31] A warrant also must satisfy the particularity requirement," which is "fundamental and performs its own work in protecting against unreasonable searches and seizures."[32] A warrant itself must describe the things to be searched with particularity, leaving the executing police officer with no discretion.[33]

If the particularity requirement is not met, the warrant is either a: 1) general warrant allowing an indiscriminate search or exploratory rummaging; or 2) an overboard warrant, allowing a search of places and things where no probable cause

[30] *Prince v. State*, 920 A.2d 400 (Del. 2007), *citing Jensen v. State*, 482 A.2d 105 (Del. 1984).
[31] *Terreros* 312 A.3d at 662.
[32] *Id*.
[33] *Id.*

exist for the search.[34] "All fruits of a general warrant must be suppressed in their entirety, whereas an overbroad warrant, the less constitutionally offensive of the two, can be redacted as to the portions of the search for which no probable cause exists."[35]

Applying this constitutional analysis, Warrant One is overboard. Because the warrant points to specific items to be searched, it is not akin to an exploratory general rummaging of Defendant's phone. Further, Warrant One also contained temporal limitations based upon the facts articulated in the Affidavit. Warrant One is not a general warrant.[36] It's scope of the search requested: "…multi-media messages, text messages, and any other information/data pertinent to this investigation…" is overbroad and unsupported by the Affidavit and fails the particularity requirement.

Because the warrant is overbroad, the Court may redact the portions of the search to limit its search to areas for which probable cause exists. In redating the overbroad portion of Warrant One, the Court may only allow evidence of the visual recordings obtained from Defendant's iPhone from the specified time frame. Notably, this is the search requested in Warrant Two.

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[34] *Id*. At 663.
[35] *Id.*
[36] *Id.* at 668, (citing *Thomas v. State*, 305 A.2d 683 (Del. 2023)). As in *Thomas*, the phone in the instant matter is alleged to be an instrument of the charged crime of Sexual Solicitation of a Child.

B. THE SECOND WARRANT IS PERMISSIBLE.

Finally, Defendant argues that because the first warrant is unconstitutional, the State is prohibited from obtaining a revised, subsequent warrant. In response, the State argues the Independent Source Doctrine applies, and rebuts the Defendant's proposition that Detective Bozeman used information from the first unconstitutional search to obtain the second warrant in Superior Court.

The second warrant contained additional language restricting the scope of the search, and included the following:

> 12. Your affiant can truly state that this search warrant is a reapplication of an initial search warrant signed on March 16, 2023 in the Justice of the Peace Court 20. This warrant reapplication is being made to restrict the scope of the data within the cellular phone to be accessed. The cell phone has remained in police custody and the warrant reapplication does not exclude any evidence that was obtained from the download of the cellular device at that time. The probable cause that Sexual Solicitation of a Child has been committed and that evidence of that crime exists within the digital device possessed by Paulron Clark during his arrest existed at the time for the original warrant application and remains today.

State v. Carter[37] is instructive. In *Carter*, Superior Court ruled that where an initial warrant was found to be an overbroad warrant, the State could reapply for a subsequent warrant that sufficiently limited the scope of the warrant to pass

[37] 2022 WL 1561537 (Del. Super. May 17, 2007).

constitutional muster.[38] While the exclusion language set forth in paragraph 12 of the second warrant is confusing, it simply cannot be said – and the record does not support the allegation – that Detective Bozeman relied on information received from the Warrant One in Warrant Two.

Here, as in *Carter*, there is no prior ruling by any court that suppressing the evidence obtained from Warrant Once based upon an illegal search. It follows that the exclusionary rule prohibiting all evidence "recovered or derived from an illegal search" from being admitted does not apply.[39] Instead, the Warrant Two is "separate and apart" from Warrant One, as the information used by Detective Bozeman to obtain the second warrant was available to her prior to obtaining the initial download, and no information derived from the first warrant was used to support Warrant Two's Affidavit.[40]

Delaware Courts have adopted the Independent Source Doctrine, borne from the United States Supreme Court decision in *Brown v. Illinois*.[41] The Independent Source Doctrine permits evidence obtained in the face of unconstitutionally obtained evidence, where "police learned of the challenged evidence through an independent

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[38] *Id.* at *6, *citing State v. Blackwood*, 2020 WL 975465, at *7 (Del. Super. Ct. Feb. 27, 2020).
[39] *Carter*, 2022 WL 1561537 at *6.
[40] *Id.*
[41] 422 U.S. 590, 608-609 (1975).

source."[42] It logically flows that where an original warrant was obtained and realized to be overbroad given new decisional law on the topic, and where the Court could properly excise the overbroad portions of the warrant, the Exclusionary Rule would not bar obtaining a subsequent, constitutionally complaint warrant. Because Warrant Two did not rely on any evidence from Warrant One, the Independent Source Doctrine applies and the evidence obtained from it need not be suppressed.

CONCLUSION

As explained above, because the Warrant One was overbroad, the Court could have excised the language of the first to exclude the overbroad terms to pass constitutional muster. However, the Warrant Two is equally valid, as it likewise 1) did not rely on stale information, 2) was supported by probable cause and 3) did not contain any information learned from the first warrant execution.

The Defendant's Motion to Suppress is **DENIED.**

IT IS SO ORDERED.

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Danielle J. Brennan, Judge

[42] *Garnett v. State*, 308 A.2d 625, 642-643 (Del. 2023) (citing *Brown*, 422 U.S. at 608-609).