IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	I.D. No. 2603002385
v.	)	
	)	
DWAYNE ROSE,	)	
	)	
Defendant.		

Submitted: November 6, 2026
Decided: November 17, 2026

On Defendant's Motion to Suppress: Denied.

Mr. Rose moves for suppression of photographs recently taken of his home, pursuant to a search warrant of his home, on grounds of staleness. Final case review is approaching. For the reasons that follow, the motion is DENIED.

Factual Background[1]

Police received a late report of alleged Rape and Sexual Exploitation of a Child in June of 2025. The incidents in this indictment are alleged to have occurred between February 10th and 18th of 2025. From the outset of their investigation in June of 2025, law enforcement knew some allegations referenced criminal acts at 200 W. 25th Street. An investigation began and included, in part, interviews and a search warrant for the victim's cell phone, which was obtained in

[1] The Court's factual analysis of this legal issue is limited to the four corners of the warrant; therefore the facts are taken from the search warrant for 200 West 25th Street, attached to Defendant's Motion to Suppress at Ex. F.

July of 2025. Three months after the warrant was authorized, law enforcement was able to obtain evidence from a partner agency. This investigation yielded video evidence whose GPS coordinates revealed it may have originated at the West 25th Street address. This information was known to law enforcement as of October 8, 2025. Mr. Rose was arrested in May of 2026. The search warrant at issue was signed on September 13, 2026 and seeks photographs/video of the inside of the residence for comparison to the videos obtained from the alleged victim's cell phone.

Parties' Contentions

The parties agree that standing is not an issue the Court must decide. Mr. Rose argues the warrant was stale. He points out the affidavit of probable cause does not present facts to suggest it has been refreshed by investigative developments; essentially, the State knew all along this address was a potential crime scene. In fact, he argues, the State knew for 11 months that the GPS coordinates on the videos provided a specific location. With that argument, he seeks to distinguish this case from *Barnes*,[2] which declined to classify a warrant as stale after an eight-month delay because subsequent investigation by law enforcement refreshed the probable

[2] *State v. Barnes,* 2025 WL 327427 (Del. Super. 2025).

cause. Mr. Rose further alleges these facts are distinct from the Supreme Court's decision in *Gardner*,[3] as the facts of that case suggested continued criminal activity.

The State argues the Court's determination is intensely fact-based and should focus here on the items sought. Because the warrant sought photographs of the residence, which was unlikely to have undergone significant change in the intervening months, the State argues the warrant was not stale. For support, the State relies primarily on the Supreme Court's decision in *Jensen*.[4]

Legal Standards

Mr. Rose bears the burden of establishing a violation of his rights in relation to this search warrant.[5] He must establish this violation by a preponderance of the evidence.[6] "It is well settled that any finding of probable cause must be based on the information that appears within the four corners of the application or affidavit."[7] This Court must assess whether the four corners of the warrant establish a "fair probability that contraband or evidence of a crime will be found in a particular

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[3] *Gardner v. State*, 567 A.2d 404, 410 (Del. 1989).
[4] *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984).
[5] *State v. Sisson*, 883 A.2d 868, 875 (Del. Super. 2005).
[6] *Id.*
[7] *Valentine v. State*, 207 A.3d 566, 570 (Del. 2019) *quoting State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013).

place."[8] Review of a search warrant requires a totality of the circumstances assessment with "great deference" to the magistrate's determination.[9]

This challenge is specific to whether the warrant was stale at the time of its execution. It "is well-settled that probable cause to justify the issuance of a warrant must be manifest at the time the warrant is sought to make the search."[10] This is a fact-intensive inquiry which considers, in part, the nature of the alleged crime, the items sought, and whether those items are "consumable."[11] "[W]hether information has become stale due to an impermissible delay in securing a warrant depends upon all the facts as viewed in a flexible and practical manner."[12] "[T]ime is a fundamental element of probable cause. Eventually, the passage of time will diminish the reliability of the information which initially may have supported the issuance of a search warrant."[13] In *Jensen*, police obtained a search warrant seeking a nylon stocking, clothing, a map, hair from the defendant, and a gun after 27 days.[14] The Supreme Court looked primarily to the nature of the property sought in deciding the warrant was not stale.[15]

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[8] *Id.*
[9] *State v. Holden,* 60 A.3d 1110, 1114 (Del. 2013) *quoting Illinois v. Gates,* 462 U.S. 213, 237 (1983).
[10] *Jensen v. State,* 482 A.2d 105, 111 (Del. 1984) *citing Sgro v. United States,* 287 U.S. 206 (1932).
[11] *Id.* at 111–112 (internal citations omitted).
[12] *Smith v. State,* 887 A.2d 470, 475 (Del. 2005).
[13] *State v. Pulgini*, 374 A.2d 822, 823 (Del. 1977).
[14] *Id.*
[15] *Id.*

Analysis

After considering both the nature of the crime and the nature of the evidence sought, this warrant is not stale. The Court agrees there does not appear to be any information asserted within the warrant suggesting law enforcement refreshed the probable cause, as was the case in *Barnes.* But other factors are persuasive here—namely, the items sought and the connection between the defendant and the evidence itself.

In *Gardner,* factors for the Delaware Supreme Court included in its analysis are whether the "[e]vidence sought to be seized is subject to deterioration or change because of the passage of time or where contact between the evidence sought to be seized and the defendant is remote, historical information in the search warrant may be viewed as not establishing a current probability."[16] The facts of this case are distinct from *Gardner,* as all such inquiries are fact-specific. But that does not diminish its guidance here. The evidence sought here are photographs and video of the interior of a residence, in terms of layout and décor, for comparison to videos of an alleged rape. The Court finds the layout of a residence is the type of evidence that is unlikely to deteriorate. On other facts, DNA evidence may degrade and perhaps drug contraband is unlikely to be kept in one location for months on end—

[16] *Gardner v. State,* 567 A.2d 404, 410 (Del. 1989).

but here the State sought visual evidence of the layout and décor of a home which does not warrant the same concerns. Therefore, the Motion to Suppress is DENIED.

IT IS SO ORDERED.

/s/Sonia Augusthy
Judge Sonia Augusthy