[redacted]

STATE OF MINNESOTA | IN DISTRICT COURT

COUNTY OF CLAY | SEVENTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Court File No. [redacted]

vs.

ORDER

[redacted]
Defendant.

The above-entitled matter came on for a contested omnibus hearing before the undersigned on April 21, 2022, at the Clay County Courthouse in Moorhead, Minnesota on the Defendant's motion to suppress. The Defendant was present and represented by Bruce Ringstrom, Sr., and Bruce Ringstrom, Jr. Chief Assistant Clay County Attorney Pamela Foss appeared on behalf of the State. The Court heard testimony from Detectives [redacted] and [redacted] from the Moorhead Police Department, and Probation Officer [redacted] from the Minnesota Department of Corrections. Following the close of evidence, the Court set a briefing timeline, the parties submitted written briefs and the Court took the matter under advisement.

Having heard and considered the evidence introduced at the hearing in addition to all of the filings herein, the Court now makes the following:

ORDER

1. Defendant's motion to suppress is **DENIED** in part and **GRANTED** in part. The phone and anything found on the phone itself is suppressed. The SD card and any statements made by Defendant are not suppressed.

[redacted]

2. See the attached Memorandum, which is incorporated herein by reference.

Dated this 20th day of July, 2022.

BY THE COURT:

Michelle W. Lawson
Judge of District Court

[redacted]

MEMORANDUM

FACTS

The State has submitted evidence that on October 9, 2013, [redacted] hereinafter "Defendant", was convicted in the State of Virginia of thirty-one (31) counts of Possession of Child Pornography in violation of Virginia criminal code 18.2-374.1.1. Exhibit 4. Defendant transferred his probation to the State of Minnesota in September of 2020 via the Interstate Compact. Exhibit 7. Defendant's supervising agent in Minnesota was [redacted]. Exhibit 4.

The Moorhead Police Department received a report through the Minnesota Adult Crime Reporting Center ("MARC") that alleged a domestic abuse identifying Defendant as a potential suspect. Hrg. Transcript, p. 11. Detective [redacted] was assigned to investigate this report. Id. While researching information for the report, Det. [redacted] conducted name searches on Defendant and learned that he was a registered offender and was currently on probation. Id. Det. [redacted] further learned that [redacted] was Defendant's supervising agent and inquired with Sup. Agt. [redacted] about Defendant's status to possess a firearm, because the MARC report alleged there was a firearm or "gun" involved. Id. at pp. 11-14. Sup. Agt. [redacted] informed Det. [redacted] that Defendant had signed a form on January 24, 2020, which stated he was prohibited from possessing firearms and that Defendant had felony convictions out of the State of Virginia from approximately eight (8) years ago. Id. at pp. 14-15. Det. [redacted] also conducted a criminal history search of Defendant that returned what appeared to Det. [redacted] to be numerous felony convictions out of the State of Virginia. Id. at p. 22; Exhibit 3.

After learning of this information, Det. [redacted] contacted a local federal agent with the ATF regarding the eligibility of Defendant to possess firearms, to which the agent opined that

[redacted]

Defendant was prohibited from possessing a firearm both federally and within the State of Minnesota. Hrg. Transcript, p. 25. Based upon all the information gathered, Det. [redacted] drafted a search warrant ("gun warrant") to search Defendant's residence located at [redacted] in Moorhead, Minnesota for a black and silver Glock Model 48 with Serial Number BLSB553, a Glock pistol case, spare magazines, and ammunition, which was signed by Judge [redacted] on May 10, 2021. Id. at p. 27; Exhibit 1. The gun warrant was executed on May 11, 2021. Hrg. Transcript, p. 28.

While officers executed the gun warrant at Defendant's residence, a phone was discovered in a drawer located in the northwest bedroom of the residence. The phone was moved to further that search. Id. at p. 30. The officer searching the drawer observed that the phone appeared to be 100% charged and missing the SD card when he moved it in furtherance of his search. Id. While the search of the residence continued, Det. [redacted] contacted Sup. Agt. [redacted] via phone to discuss the phone that had been found during the search. Id. at p. 31. After Det. [redacted] relayed this information to Sup. Agt. [redacted] Sup. Agt. [redacted] directed Det. [redacted] to seize the phone and to further conduct a search of the phone for him. Id. at pp. 31-32.

Defendant was arrested and transported to jail prior to the conclusion of the execution of the gun warrant. Id. at p. 36. The inventory of the items taken from the residence was left at the residence. Id. Defendant was initially charged with Gross Misdemeanor Possession of Ammunition/Firearm – Previous Felony Conviction in violation of Minn. Stat. 624.713, subd. 1(10)(i).

Some time after Defendant was arrested, Det. [redacted] was notified by the alleged victim, who was the girlfriend of Defendant, that there were phone calls being made from the jail

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by Defendant to the alleged victim. Hrg. Transcript at pp. 42-43. Det. [redacted] passed this information along to Detective [redacted] who obtained and listened to the recorded phone calls. Id. at pp. 43; 75-76. Of interest to Det. [redacted] in the phone calls was that Defendant expressed concern for the phone that was found in the residence and repeatedly asked the alleged victim to find the SD card for the phone and hide it. Id. at p. 80.

Based upon this information and a belief that the alleged victim had access to the residence that had been searched, Det. [redacted] applied for a search warrant ("SD warrant") and in his application, requested the warrant be nightcapped. Id. at pp. 80-81, 86; Exhibit 2. The SD warrant was granted by Judge [redacted] on May 11, 2021, and was executed at approximately 9:04 p.m. on that same day. Hrg. Transcript at pp. 85-86. A micro SD card was located during the execution of the search warrant at Defendant's residence. Id. at p. 86. At the hearing, Det. [redacted] testified that he inadvertently included a clerical error in the search warrant application as well as the search warrant itself. Hrg. Transcript, pp. 82-85; Exhibit 2. More specifically, the premises was listed as "Micro SD cards" and "any other electronic storage devices" and listed evidence to be searched for as [redacted] A brick sided townhome located on the [redacted] Exhibit 2. In other words, the warrant authorized searching SD cards for a house.

As a result of the accumulation of this evidence, Defendant was charged with ten (10) counts of Possession of Pornographic Work as a Registered predatory offender pursuant to Minn. Stat. § 617.247, subd. 4(b)(2). Defendant now makes a number of assertions, as follows: (1) the gun warrant is void and should not have been granted (Franks challenge); (2) the officers who executed the gun warrant illegally seized the cell phone; (3) Sup. Agt. [redacted] did not have the authority to order officers to seize and search the phone, and (4) the warrant is void as it

[redacted]

authorizes searching an SD card for a house. For these reasons, Defendant requests this Court to suppress the phone and its contents as evidence found as a result of the execution of the gun warrant, as well as all evidence derived from the alleged illegal search and seizure of the phone, including the SD card found as a result of the execution of the SD warrant.

LEGAL ANALYSIS

1) **Det. [redacted] properly secured the gun warrant for Defendant's residence and did not do so by making deliberate statements in reckless disregard for the truth.**

"A search warrant is void, and the fruits of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the findings of probable cause." State v. Andersen, 784 N.W.2d 320, 327 (Minn. 2010). When a defendant seeks to invalidate a search warrant, they must satisfy the two-prong test set forth in Franks v. Delaware, 438 U.S. 154, 171-72 (1978) and State v. Causey, 257 N.W.2d 288, 291-92 (Minn. 1977). The two-prong test requires a Defendant to show that (1) the affiant "deliberately made a statement that was false or in reckless disregard of the truth," and (2) "the statement was material to the probable cause determination." State v. McDonough, 631 N.W.2d 373, 390 (Minn. 2001). There is a presumption of validity with respect to an affidavit supporting the application of a search warrant. Id. at 171.

If, at the hearing on the matter, Defendant establishes by a preponderance of the evidence the allegation of perjury or reckless disregard, and, "with the affidavit's false material set to one side, the affidavit's 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 face of the affidavit." Franks at 156.

[redacted]

[redacted]

Here, Defendant alleges that Det. [redacted] made a false statement in the gun warrant application when he stated, "Your affiant knows [redacted] to be prohibited from owning and or possessing a firearm from his previous felony conviction and also term of his current probation status." Exhibit 1, p. 3.

Det. [redacted] testified at the hearing that he reviewed Defendant's criminal history report and noted in the report that Defendant had multiple convictions for possession of child pornography out of the State of Virginia. Hrg. Transcript, p. 12, 15, 22, 96; Exhibits 3, 4. Det. [redacted] also testified during the hearing that when he was reviewing Defendant's criminal history and totaled the number of convictions, he stated in regard to the convictions that if he was not positive it was a felony, then he did not count it as such. Hrg. Transcript, p. 22. Det. [redacted] also searched a local police database and conducted a second search through the Minnesota Department of Corrections portal to learn that Defendant was a registered offender and on probation in Minnesota and that his probation agent was Sup. Agt. [redacted] Id. at pp. 12-14. After learning this information, Det. [redacted] then contacted Sup. Agt. [redacted] who confirmed Defendant was on felony probation, and that he was prohibited from possessing a firearm as Defendant had signed a form acknowledging his inability to possess firearms on January 24, 2020. Id. at 14-15. Finally, Det. [redacted] consulted with a special agent from the ATF about the nature of the situation, including what he had learned from his searches and from Sup. Agt. [redacted] Id. at 23-24. The ATF shared with Det. [redacted] his opinion that Defendant was prohibited from possessing firearms both federally and in the State of Minnesota. Id. at 24. Based upon all the information gathered and his conclusion or belief that Defendant was indeed prohibited from possessing firearms, Det. [redacted] prepared a search warrant

[redacted]

application and presented it to Judge [redacted] which was signed on May 10, 2021. Hrg. Transcript, p. 28; Exhibit 1.

Based upon the evidence in the record, there is nothing to suggest that Det. [redacted] deliberately made any false statement, or that any statements he made were made in reckless disregard of the truth. Rather, Det. [redacted] gathered the information and took a number of steps to confirm what he believed to be true before submitting the application for the search warrant to a judge. The information Det. [redacted] relied upon when drafting his application explains why he came to the conclusion that he did, namely that Defendant was prohibited from possessing firearms. Defendant has failed to show or satisfy the two-prong Franks test by a preponderance of the evidence. While the statements or information that Det. [redacted] included in his search warrant application were undoubtedly material to the probable cause determination in this case, there is no evidence in the record to suggest that Det. [redacted] deliberately made a statement that was false or in reckless disregard of the truth. Therefore, the gun warrant was properly secured, and is valid.

2) **The phone found during the execution of the gun search warrant was illegally seized and subsequently searched.**

The United States Constitution and the Minnesota Constitution protect an individual's right to be free from unreasonable searches and seizures. U.S. CONST. AMEND. IV; MINN. CONST. ART. I, § 10. Any evidence gained from an unreasonable search or seizure must be suppressed. State v. Harris, 590 N.W.2d 90, 99 (Minn. 1999). Subject to certain exceptions, warrantless searches and seizures are considered unreasonable. State v. Munson, 594 N.W.2d 128, 135 (Minn. 1999). The state bears the burden of showing that at least one of the exceptions applies in order to avoid suppression of the evidence acquired from a warrantless search or seizure. State v.Metz, 422 N.W.2d 754, 756 (Minn. Ct. App. 1988).

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A) Scope of the Search Warrant

"A search that exceeds the scope of a warrant is unconstitutional." Horton v. California, 496 U.S. 128, 140 (1990); State v. Molnau, 904 N.W.2d 449, 452 (Minn. 2017). When a defendant argues that a seizure exceeded the scope of a search warrant, they are challenging the actions of the officers who executed the warrant. State v. Sexter, 935 N.W.2d 157, 163 (Minn. Ct. App. 2019).

> The rule in Minnesota is that police executing a search warrant may seize items not described in the search warrant provided there is a strong relationship between the seized and described items. Phrased differently, it is proper if the seized items clearly and definitely relate to the behavior which prompted the issuance of the search warrant.

State v. Michaelson, 214 N.W.2d 356, 359 (Minn. 1973). The test for determining whether a search has exceeded the scope of the warrant is reasonableness, and to determine what was reasonable, a court must utilize a totality of the circumstances analysis. Molnau, at 452-53.

Here, the gun warrant allowed officers to search Defendant's residence for a gun, gun case, spare ammunition, and magazines. Exhibit 1. The warrant made no mention of cellular phones to be searched for or seized. Id. However, the phone in this situation was found while looking in a dresser that could have also contained the items for which the gun warrant authorized. When the phone was found, the officer who uncovered it noted that the phone was 100% charged when the screen illuminated, and also noted that the SD card from the phone was missing. Hrg. Transcript, pp. 30, 58, 60.

What is left to be determined is whether, considering the totality of the circumstances, the phone was strongly related to the items that were described in the gun warrant or, stated otherwise, whether the phone was clearly and definitely related to the behavior which prompted the issuance of the gun warrant in the first place. This Court finds that it was not. The phone was found in a drawer during the execution of the gun warrant, specifically looking for guns and

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related items, such as ammunition. Exhibit 1. There is nothing to suggest that the phone was in any way related to the behavior that originally prompted the issuance of the gun warrant. However, we must examine the other facts surrounding the seizure of the phone, which are discussed next.

B) Probation Officer's Authority to Search

Individuals who are placed on probation have a significantly diminished expectation of privacy because probation is considered a criminal sanction and therefore, probationers do not enjoy the absolute liberty to which every citizen is entitled. State v. Bursch, 905 N.W.2d 884, 890 (Minn. Ct. App. 2017). In the State of Minnesota, "a search involving a person on probation for a criminal offense is not strictly governed by automatic reference to ordinary search and seizure law." State v. Anderson, 720 N.W.2d 854, 861 (Minn. Ct. App. 2006) (internal quotations omitted). "A consensual search is accepted as a reasonable search under the Fourth Amendment. Thus, a warrantless search pursuant to a valid probation agreement generally will not violate the Fourth Amendment." Id. at 862 (internal quotations omitted). Reasonable suspicion of criminal activity is all that is needed for a probation officer to order a search of a probationer's house. United States v. Knights, 534 U.S. 112, 121 (2001).

In United States v. Knights, it was explained that California law required the defendant probationer to submit to a search at any time, with or without a warrant by any probation officer or law enforcement officer. Id. at 114. The U.S. Supreme Court held a warrantless search conducted by law enforcement did not violate defendant's Fourth Amendment rights because the warrantless searches were a term of his probation and officers had reasonable suspicion that he was engaged in criminal activity. Id. at 121.

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In State v. Anderson, the Minnesota Court of Appeals found that the law enforcement officer's search of the defendant probationer's home was supported by the terms of his probation because the search was ordered and conducted by the appellant's probation officer. 720 N.W.2d at 862. The court further stated that defendant submitted to the search when informed of it by the officer, stating that he had nothing to hide. Id.

Here, Defendant argues that the phone was "seized" when it was moved in the drawer during the execution of the gun warrant. The Court disagrees. Buttons need not necessarily be pressed for a smart phone screen to illuminate, simple movement, motion, or touching of a cell phone screen can illuminate a smart phone when the power is turned on. The screen of a smart phone constitutes the whole front half of the phone. It would be nearly impossible to move a smart phone without touching the screen. There is nothing in the record that indicates the phone was seized or manipulated in any way other than to be picked up and moved in the drawer while officers were searching for guns and ammunition. Hrg. Transcript, pp.30, 58, 60. The Court finds that the phone was not seized until Sup. Agt. [redacted] directed Detective [redacted] to do so pursuant to his apparent authority to seize and search the phone as part of a probationary search. Id. at pp. 31-32. Det. [redacted] also testified that, in the past, it is common or not unusual for a probation agent to have the authority to search a defendant who had been placed on felony probation. Id. at p. 33. Further, Sup. Agt. [redacted] testified that he believed then and still now that he indeed had the authority to seize and search Defendant's property. Id. at pp. 101-102.

The facts in the record do not support the assertion or belief that Sup. Agt. [redacted] had the actual authority to do search the cell phone of Defendant or to ask Detective [redacted] to do it on his behalf. Sup. Agt. [redacted] testified that he believed he had the authority under the

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Interstate Compact Transfer, however, there is no mention of searches or the ability to conduct warrantless searches of cell phones in the probation transfer documents. Hrg. Transcript, pp. 101-107; Exhibit 7, 8.

C) Good Faith Exception

The exclusionary rule does not apply to violations of the Fourth Amendment or Article I, Section 10 of the Minnesota Constitution when law enforcement acts in good faith, with objectively reasonable reliance on binding appellate precedence. State. Lindquist, 869 N.W.2d 863, 870 (Minn. 2015). The Supreme Court of Minnesota recognized a very narrow good-faith exception to the exclusionary rule in the Lindquist case. State v. Leonard, 943 N.W.2d 149, 161 (Minn. 2020). "The binding precedent must specifically authorize the officer's action, and the officer may not extend the law to other or unsettled areas of law." State v. Velisek, 971 N.W.2d 111, 118 (Minn. Ct. App. 2022).

Here, there is nothing to suggest that Det. [redacted] believed anything other than the fact that Sup. Agt. [redacted] had the authority to direct him to seize and search the phone for him based on his prior experience with similar situations. However, the State fails to point to or cite any binding appellate precedent that would authorize their actions in this type of situation.

For these reasons, this Court finds that the warrantless seizure and subsequent search of the phone found during the execution of the gun warrant was not authorized by warrant and no exception applies. Stated otherwise, the seizure of the phone was unreasonable and exceeded the scope of the gun warrant. Further, Sup. Agt. [redacted] acked the authority to order such a seizure and search, and the good-faith exception to the exclusionary rule does not apply here. It is important to note that the SD card was not in the phone at the time the phone was seized by police and searched consistent with Sup. Agt. [redacted] direction.

[redacted]

[redacted]

Therefore, the phone must be suppressed.

3) The SD card from the SD search warrant will not be suppressed.

A) Clerical Error in Search Warrant

The Fourth Amendment specifically requires a search warrant to particularly describe the place to be searched. U.S. CONST. AMEND. IV; MINN. CONST. ART. I, § 10; State v. Kessler, 470 N.W.2d 536, 538 (Minn. Ct. App. 1991). "The purpose of the particularity requirement is to minimize the risk that officers executing the search warrant will by mistake search a place other than the place intended by the magistrate." Id. (internal quotations omitted). The Minnesota Supreme Court has recognized that not all errors in the search warrants description of the premises to be search will invalidate a search pursuant to a warrant. State v. Gonzales, 314 N.W.2d 825, 827 (Minn. 1982). "The test for determining the sufficiency of the description of the premises is whether the description is sufficient so that the executing officer can 'locate and identify the premises with reasonable effort' with no 'reasonable probability that [other premises] might mistakenly be searched.'" State v. Schnorr, 346 N.W.2d 380, 382 (Minn. Ct. App. 1984) (quoting State v. Gonzales, 314 N.W.2d 825, 827 (Minn. 1982)).

Although neither Defendant nor the State addressed this issue in their briefs, it was argued in the filings and therefore, the Court will address it here as well. Here, there was a clerical error made, admittedly, by Det. [redacted] in the SD warrant that was signed by Judge [redacted] Hrg. Transcript, p. 82-85, Exhibit 2. More specifically, the premises was listed as "Micro SD cards" and "any other electronic storage devices" and listed the evidence to be searched for as [redacted] A brick sided townhome located on the east side of [redacted] Exhibit 2.

[redacted]

This clerical error in the SD warrant's description of the premises to be searched is not enough to invalidate the search pursuant to the SD warrant in this case. While the description of the premises to be searched and the property to be searched for were entered incorrectly in the opposite section for each, this is not enough to say that the premises to be searched was not stated with particularity. The address of Defendant's residence was correctly listed and described in the search warrant, albeit the incorrect placement, which was identified by Detective [redacted] as a clerical error. The premises was described so that the executing officers could locate and identify the residence with reasonable effort, and there was no reasonable probability that another premises might mistakenly be searched. Therefore, the clerical error was just that, and the search pursuant to the SD warrant was valid. Neither party has provided authority to the court that would establish the warrant should be set aside for an error that is so obviously an unintentional clerical error.

B) Fruit of the Poisonous Tree

In order to determine whether evidence is fruit of the poisonous tree, four factors must be examined. State v. Bergerson, 659 N.W.2d 791, 797 (Minn. Ct. App. 2003); Knapp v. Comm'r of Pub. Safety, 610 N.W.2d 625, 628 (Minn. 2000). These factors are: (1) the purpose and flagrancy of the officer's misconduct, (2) the presence of intervening circumstances, (3) whether it is likely the evidence obtained in the absence of the illegality, and (4) the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality. State v. Warndahl, 436 N.W.2d 770, 776 (Minn. 1989). No single factor is dispositive but rather, all must be balanced. State v. Weekes, 268 N.W.2d 705, 709 (Minn. 1978).

i) Purpose and Flagrancy of Officer's Misconduct

This factor weighs in favor of finding that the SD card was not fruit of the poisonous tree.

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The officer in question was acting on the apparent authority of Sup. Agent [redacted] something he had done in the past. There was no intent to exceed the scope of authority in this case on the part of the investigating officer(s).

ii) Presence of Intervening Circumstances

This factor weighs in favor of a finding that the SD was not fruit of the poisonous tree. A number of events and the passing of time occurred between the officer's misconduct and the discovery of the SD card. Defendant was arrested and transported to jail prior to the conclusion of the execution of the gun warrant. Hrg. Transcript, p. 36. Sometime after Defendant was arrested, Det. [redacted] was notified by the alleged victim, who was the girlfriend of Defendant, that there were phone calls being made from the jail by Defendant to the alleged victim and that the content of the phone calls may be of interest to him. Id. at pp. 42-43. Det. [redacted] passed this information along to Det. [redacted] who obtained and listened to the recorded phone calls. Id. at pp. 43; 75-76. Based upon these facts, Det. [redacted] submitted an application for the SD search warrant, which was executed on the same day it was granted. Id. at pp. 80-81, 85-86. There were clearly intervening circumstances in this case that occurred between the illegal seizure and the issuance of the SD warrant, combined with the SD card that was found during the execution of the SD warrant.

iii) Likelihood the Evidence would have been Obtained in the Absence of the Illegality

This factor weighs in favor of a finding that the SD was not fruit of the poisonous tree. Sometime after Defendant was arrested, Det. [redacted] was notified by the alleged victim, who was the girlfriend of Defendant, that there were phone calls being made from the jail by Defendant to the alleged victim. Id. at pp. 42-43. Det. [redacted] passed this information along to Det. [redacted] who obtained and listened to the recorded phone calls. Id. at pp. 43; 75-76.

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Of interest to Det. [redacted] in the phone calls was that Defendant expressed concern for the phone that was found in the residence and repeatedly asked the alleged victim to find the SD card for the phone and hide it. Id. at p. 80. These facts support the notion that the evidence that led to the issuance of the SD warrant and the subsequent finding of the SD card would have been obtained even in the absence of the illegal seizure. The officer noticing the phone prior to its seizure at the request of Sup. Agent [redacted] formed the basis for defendant's concern and subsequent phone calls to his girlfriend to find the SD card. The officer had all the information that he needed about the phone prior to seizing it consistent with Sup. Agent [redacted] direction. Specifically, that the phone was hidden in a drawer, fully charged and lacking an SD card.

iv) Temporal Proximity of Illegality and the Evidence Alleged to be the Fruit of the Illegality

This factor weighs in favor of a finding that the SD was not fruit of the poisonous tree. The discovery of the SD card was far removed from the original investigation and the execution of the gun warrant. Additionally, the discovery of the SD card is also far removed from the illegal seizure of the phone.

Based upon the four-factor analysis and balancing the factors, there is adequate information to support a finding that the SD card was not fruit of the poisonous tree and therefore, the SD card and evidence obtained from it will not be suppressed.

4) The recorded phone calls made from the jail will not be suppressed.

While Defendant filed a motion to suppress the phone calls made by Defendant while he was in jail, Defendant failed to address this in their brief. However, the Court feels it is necessary to briefly address the issue here. Defendant was in custody when he made the phone calls to the alleged victim. The alleged victim informed Det. [redacted] that they had had phone conversations and that he should listen to them. Hrg. Transcript, pp. 43, 74-75. Further,

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the standard recording at the beginning of the phone calls when made from the jail informs defendants that they are recorded and thus, have no expectation of privacy regarding the content of the phone calls. Further, these calls cannot be deemed fruit of the poisonous tree as outlined above. For these reasons, the phone calls made from the jail by Defendant will not be suppressed.

5) The SD warrant was properly nightcapped.

Although Defendant did not address this issue in his briefs, it was argued in the filings and therefore, the Court will address it here as well. At the hearing, Det. [redacted] outlined the need for the nightcap on the warrant, stating there was concern about the possibility of evidence being hidden or destroyed because of the numerous phone conversations between the alleged victim and Defendant where Defendant repeatedly asked the victim to find and hide the SD card, or, in the alternative, to reach a third party who would. Hrg. Transcript, p. 85-86. Because the Defendant's residence that was searched pursuant to the gun warrant was left in control of the alleged victim, Det. [redacted] felt as though time was of the essence and the Court does not find that conclusion to be erroneous or unreasonable. Thus, the warrant was properly nightcapped.

Defendant's motion to suppress is GRANTED in part and DENIED in part as outlined above. The phone and its contents are suppressed, the SD card and its contents are not supressed. Any statements made by the Defendant are not suppressed.

M.W.L. 7.20.2022

[redacted]