No. 20-7464 ORIGINAL

FILED
MAR 09 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Stephen Long — PETITIONER
(Your Name)

vs.

State of Ohio — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Appeals of Ohio, Sixth District, Wood Co.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stephen Long
(Your Name)

NCCC P.O. Box 1812
(Address)

Marion, Ohio 43302
(City, State, Zip Code)

na
(Phone Number)

QUESTION(S) PRESENTED

1. Can a search warrant issue for a private residence based solely on the uncorroborated statement of an anonymous citizen informant?

2. Is an irrebuttable presumption of probable cause established for a search warrant of a private residence when supported solely by statements given by an anonymous citizen informant?

3. Where an affidavit for search warrant contains information obtained through an illegal search, which represents the corroborating evidence to allegations made by an anonymous citizen informant, is the fact of the illegal search relevant to the determination of the totality of the circumstance or may it simply be ignored?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v. Long, 2018 CR 0141 & 2017 CR 0556, Common Pleas Court of Wood County, Ohio. Judgment entered March 8, 2019.

State v. Long, 2019WD0021 & 2019WD0022, Court of Appeals for the Sixth District of Ohio, Wood County. JUdgment entered August 14, 2020/

State v. Long, 2020-1173, Supreme Court of Ohio. Judgment entered December 15, 2020.

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[x] reported at 157 NE3d 362; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Wood Co. Court of Common Pleas court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] For cases from **state courts:**

The date on which the highest state court decided my case was 12/15/2020. A copy of that decision appears at Appendix E.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

USCS Const., Amend. 4

STATEMENT OF THE CASE

On May 1, 2017, the Perrysburg police received a complaint from a person designated as a confidential informant alleging that a resident identified as Petitioner at 515 East Secong Street was viewing child pornography. A Perrysburg Police Officer made contact with the confidential informant who explained that he could see inside the residence at 515 East Second Street from the interior of the next door residence and believed he had seen Petitioner viwing child pornography on a computer. The informant further related that he had attempted to investigate further by sneaking up to the window where Petitioner was sitting and he attempted to make a video of what he saw on his cell phone, but the video did not come out clearly.

The Perrysburg Police Officer then went into the next door residence with the informant and could see Petitioner at a computer, but he saw no child pornography. At the urging of the informant, the Perrysburg Police Officer, led by the informant, walked through the backyards of the residences, up the driveway of 515 East Second Street, so as to sneak a peek in the window. From there, child pornography was observed.

As a result of the informant received from the informant and the search, a search warrant wassought and obtained by a Perrysburg Police Detective the next day. The warrant was executed and items were seized.

On November 16, 2017, a Wood County Grand Jury returned a five-count indictment charging Petitioner with 5 counts of Pandering Sexually Oriented Material Involving a Minor, in violation of R.C. 2907.322(A)(1) and (C), felonies of the 2nd degree, and one count of Possessing Criminal Tools, in violation of R.C. 2923.24(A), a felony of the 5th degree. Later, on March 22, 2018, a Wood County Grand Jury returned a 10 count indictment charging Petitioner with 8 counts of Pandering Sexually Oriented Material Involving a Minor, in violation of R.C. 2907.322(A)(1) and (C), felonies of the 2nd degree, and 2 counts of Illegal use of a minor in Nudity-Oriented Material, in violation of R.C. 2907.322(A)(1) and (B), felonies of the 2nd degree.

A motion to suppress and request for an evidentiary hearing was filed on March 12, 2018. The state responded on April 23, 2018, and requested the court to deny Petitioner's request for hearing. On May 21, 2018, Petioner responded to the state's opposition and filed a motion for a Franks hearing. On August 14, 2018, the trial court denied Petitioner's motions and denied the request for an evidentiary hearing.

On December 10, 2018, Petioner withdrew his previous pleas of not guilty and entered pleas of No Contest to the charges contained in the indictments. On March 5, 2019, the trial court sentenced Petitioner to serve an aggregate term of 5 years in Case Number 2018 CR 0141, to be served consecutively to an aggregate term of 5 years in Case Number 2017 CR 0556, for a total sentence of incarceration of 10 years.

On March 8, 2019, Petitioner filed his Notice of Appeal in the Sixth District Court of Appeal. On August 14, 2020, the Sixth District Court of Appeals issued its decision affirming the trial court's decision denying the Motion to Suppress.

On September 28, 2020, Petitioner filed a Notice of Appeal to the Ohio Supreme Court. On October 23, 2020, the state filed its Motion in opposition to jurisdiction. On December 15, 2020, the Supreme Court of Ohio declined to accept jurisdiction of the case.

Specific facts which Petitioner wishes to highlight include the following:

1. The instant matter concerns a search warrant for a house rather than a vehicle; note that below the State and lower courts relied on cased arising from vehicle stops in large part.

2. The informant herein, whether designated a confidential or citizen informant, remains anonymous, subject to neither civil or criminal liability for inaccurate or false statements.

3. The Perrysburg police officer by his actions showed a desire to corroborate the statements made by the informant, albeit by an illegal warrantless search, and this is relevant to the officier's actual assessment of the informant's veracity and reliability. In other words, if the officer was confident in the informant, at can be inferred that he would not have engaged in the clearly illegal search.

REASONS FOR GRANTING THE PETITION

This appeal raises the question of what is the minimum amount of information which must be contained in an affidavit for search waarant to support the issuance of a search warrant for a residence and is there such a thing as self-corroborating hearsay in said context.

Here, the matter concerns the issuance of a search warrant for a residence based upon an uncorroborated tip from an anonymous informant, whom the lower courts deemed a "citizen informant" and afforded the informant's hearsay statements the self-authenticating and thereby creating the irrebuttable presumption of probable cause to support the issuance of a search warrant for the residence.

The decisions of the courts below represent a novel interpretation of the law and a dilution of the protections afforded by the 4th Amendment of the United States Constitution by blurring the concepts of "reasonable suspicion" and "probable cause" and by grafting jurisprudence concerning vehicle stops based upon information received from tips onto traditional jurisprudence concering the issuance of search warrants for persoanal residences. The decisions further establish an irrebuttable presumption of probable cause where a magistrate is presented with hearsay stated from a person labled as a :citizen informant." The decisions of the lower courts represent a novel undermining of the 4th Amendment which calls for this Court's review and Petitioner urges the Court to grant the instant Petition.

1. Hearsay of an anonymous informant alone cannot support the issuance of a search warrant for a private residence.

It has long been held that anonymous hearsay statements alone cannot establish probable cause for a house. See Jones v. United States, 362 U.S. 257, 269 (1960). It is also well established a statement made to a law enforcement officer by a named citizen informant can provide reasonable suspicion to stop a vehicle or person in public. Here, the courts below have blurred the above two concepts to hold that where an affidavit for search warrant contains sufficient hearsay statements from a person who can be classified as a "citizen informant," the hearsay alone is sufficient to establish probable cause for the issuance of a search warrant for a personal residence. The lower courts are in error.

First, it is well established that a personal residence holds a higher place in the context of the 4th Amendment than a person's vehicle operating of a public road or walking in a public place. A home is afforded greater protection under the 4th Amendment than nearly anything else.

Second, even in vehicle jurisprudence, whether an informant is "confidential" or a "citizen" is not the crucial factor in crediting any hearsay supplied as truthful or reliable; the crucial fact is whether the informant identifies himself or herself and is so noted in the record such that inaccurate or untruthful statements raise jeopardy for criminal or civil

prosecution. Here, it is worth noting that the informant has yet to be named.

Finally, it is unimaginable that the Founding Fathers intended to allow governmental intrusion into a person's home based solely upon the hearsay statements of anonymous informants--even anonymous "citizen informants." In fact this is one of the situations the 4th Amendment was inacted to prevent.

Petitioner therefore urges this Court to grant his Petition.

2. Irrebuttable presumptions do not exist that will establish probable cause for the issuance of a search warrant for a personal residence.

In the decision of the Court of Appeals for the Sixth District of Ohio, the appellate court stated: "In a criminal proceeding, questions of veracity and reliability are essentially obviated when the information about the crime comes from a citizen eyewitness and the eyewitness's account supplies the basis for a finding of probable cause." See Appendix A at paragraph 37. In other words, the appellate court held that the hearsay statements of a "citizen informant" are both self-authenticating and create and irrebuttable presumption of probable cause to support the issuance of a warrant to search a person's home. This is an incorrect statement of the law.

Generally, conclusary or irrebuttable presumptions are disfavored in American jurisprudence for the reason that such shortcuts to proof do violence to the Due Process clause of the United States Constitution and the Fourteenth amendment. The suggested irrebuttable presumption here would obviate the necessity of a magistrate issuing a search warrant from needing to do anything more than rubber-stamp the application for such warrant indicating that the warrant was based upon the hearsay of an informant--as long as the informant can be designated a "citizen informant." Such a presumption removes the review of the information and judgment of the issuing magistrate and therefore the basic safeguard to a pearson's home provided by the 4th Amendment.

Further, even if such an irrebuttable presumption exists, it should not apply to anonymous informant's hearsay, regardless of whether said informant can be deemed to be a "citizen informant." Again, the veracity and reliability of an anonymous informant cannot be supported by the fact that false or inaccurate statements could subject the anonymous informant to criminal or civil liability, as one of the effects of being "anonymous" is protection from such liability.

Therefore, fore the foregoing reasons, Petitioner urges this Court to accept his Petition.

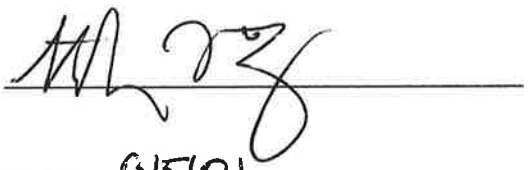
than relying on the anonymous informant's hearsay only to obtain a search warrant. Again, the investigating officer was unable to confirm any criminal activity was occurring in Petitioner's house from the vantage point where the anonymouz informant claimed to have viewed such actity. The illegal warrantless search is therefore relevant to viewing the "totality of the circumstances" surrounding the issuance of the warrant and the Sixth District Court of Appeals erred in ignoring the fact in its evaluation of the "totality of the circumstances"

Therefore, for the foregoing reasons, Petitioner urges this Court to grant his petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3/15/21

APPENDIX A

FILED
WOOD COUNTY, OHIO
2020 AUG 14 AM 8:58
SIXTH DISTRICT
COURT OF APPEALS
CINDY A. HOFNER, CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Appellee

v.

Stephen D. Long

Appellant

Court of Appeals Nos. WD-19-021
WD-19-022

Trial Court Nos. 2018CR0141
2017CR0556

DECISION AND JUDGMENT

Decided: AUG 14 2020

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Neil S. McElroy, for appellant.

* * * * *

MAYLE, J.

{¶ 1} In this consolidated appeal, appellant, Stephen Long, appeals the March 8, 2019 judgments of the Wood County Court of Common Pleas sentencing him to an aggregate prison term of ten years. For the following reasons, we affirm.

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Appendix A

I. Background and Facts

{¶ 2} On November 16, 2017, Long was indicted on five counts of pandering sexually-oriented matter involving a minor in violation of R.C. 2907.322(A)(1), all second-degree felonies, and one count of possessing criminal tools in violation of R.C. 2923.24(A), a fifth-degree felony. On March 22, 2018, the grand jury issued a second indictment, charging Long with an additional eight counts of pandering sexually-oriented matter involving a minor in violation of R.C. 2907.322(A)(1), all second-degree felonies, and two counts of illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1), both second-degree felonies.

{¶ 3} The facts relevant to this appeal are largely drawn from the affidavit submitted by Perrysburg Police Division ("PPD") Detective Sergeant Mark Baumgardner with his application for a warrant to search Long's home. According to the affidavit, on May 1, 2017, a "confidential informant" made a complaint to the PPD that the resident of 515 East Second Street in Perrysburg was masturbating to child pornography. Although there is very little information about the "informant" in the affidavit, Baumgardner implied that the informant was Long's neighbor. For example, Baumgardner said that the informant "could see inside the residence of 515 East Second Street from the interior of [the informant's] residence * * *" and "noticed what he thought could be child pornography, from his window, and then decided to get a closer look." To do so, Baumgardner said that the informant "went outside of his residence and walked up to the window on the southeast corner of 515 East Second Street * * *." The informant also

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knew that the person in the home watching the videos was Long and that Long was the only person who lived at 515 East Second Street.

{¶ 4} When the investigating officer, Officer Patrick McGuffin of the PPD, responded to the informant's home, the informant told McGuffin that he could see Long sitting in front of a computer through the window. The informant "observed what he believed to be child pornography on the screen." The informant walked outside to get a closer look and tried to record video of what he saw, but the video did not turn out clearly.

{¶ 5} From inside the informant's house, McGuffin could see Long sitting in front of a computer monitor inside his house, but did not see any child pornography on the screen. The informant offered to show McGuffin the route he took to peer in Long's window and took McGuffin "out of the east side of [the informant's] residence and walked around back, and then up the driveway of 515 East Second Street near the window on the southeast corner of the residence at 515 East Second Street."

{¶ 6} When McGuffin looked in the window, he saw "a white male with medium-to short-brown hair" sitting at a desk with two computer monitors on it. He saw several video clips on the right monitor that showed two female children—who McGuffin estimated to be five or six years old—sucking on an adult male's penis.

{¶ 7} Baumgardner followed up on McGuffin's investigation by interviewing the informant. During the interview, the informant explained that he first noticed that the blinds on Long's window were open and that Long was sitting at the computer. He then

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noticed, from his window, what looked like a video of a "small child in a red night gown [sic] or dress slowly being taken off," and saw that Long appeared to be masturbating, so he decided to investigate further. The informant went up to Long's window and saw a video of a female child who was approximately ten years old using a vibrator on her bare vagina. The informant showed Baumgardner the video he recorded while looking in Long's window, but Baumgardner said that it was "difficult to make out what is on the screen with clarity."

{¶ 8} Based on the affidavit, the judge of the Perrysburg Municipal Court granted a search warrant that yielded videos and images of children engaged in sexual acts and resulted in the indictments of Long.

{¶ 9} Long filed two motions to suppress. In the first, he argued that the affidavit in support of the search warrant did not contain sufficient information to show that the PPD had probable cause to search Long's home because Baumgardner relied on facts provided by a "confidential informant," but did not provide any information about the reliability and veracity of the informant, and McGuffin corroborated the informant's information by illegally trespassing on the curtilage of Long's home.

{¶ 10} In response to the first motion to suppress, the state argued that the municipal court judge's probable-cause determination was proper because information from a citizen informant is considered inherently more reliable than information from a confidential informant, and Baumgardner "errantly" describing Long's neighbor as a "confidential informant" did not affect the veracity of the neighbor's information.

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Additionally, the PPD could rely on the neighbor's information because McGuffin corroborated the information. Moreover, the state argued, McGuffin saw the child pornography through a window with the blinds open while standing on Long's driveway, which was an area impliedly open to the public, so anything McGuffin saw was in plain view and was not obtained in violation of Long's constitutional rights.

{¶ 11} In the second motion to suppress, Long requested a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), alleging that Baumgardner knowingly and intentionally, or with reckless disregard for the truth, included in his affidavit false statements that were necessary to the finding of probable cause. He claimed that Baumgardner omitted from his affidavit a statement regarding the reliability of the confidential informant and admitted that McGuffin was initially unable to confirm the informant's report that Long was viewing child pornography. Long also claimed that Baumgardner failed to mention in his affidavit that, in order to look in Long's window and confirm what was on Long's computer monitor, the informant took McGuffin through a row of lilac bushes that divided Long's yard from the neighbor's yard and trespassed in Long's enclosed backyard before ending up on Long's driveway and peering in Long's window.

{¶ 12} In response to the request for a *Franks* hearing, the state argued that Long was not entitled to a hearing because Baumgardner did not put any misstatements or lies in the affidavit, and, even if he did, the remaining information in the warrant was sufficient to support the municipal court judge's probable-cause determination. The state

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contended that the path McGuffin took to reach Long's window was immaterial to whether there was probable cause to search Long's house, so omission of the path from the warrant did not affect the probable-cause finding. The state also argued that Long's neighbor was a reliable source of information because the affidavit indicated that the informant was Long's neighbor and the neighbor was a "readily-identifiable person," was presumably familiar with Long, and "described in great detail that he saw [Long] masturbating to very specific child pornography * * *." The state also claimed that the informant was credible because McGuffin was able to corroborate the informant's report to the extent that McGuffin was able to see Long sitting in front of a computer monitor from McGuffin's vantage point inside the informant's house.

{¶ 13} The trial court denied Long's request for a *Franks* hearing and his motions to suppress. The court found that Long was not entitled to a *Franks* hearing because he failed to make a substantial preliminary showing that Baumgardner knowingly and intentionally made false statements in his affidavit for the search warrant, or that Baumgardner made any false statements with reckless disregard for the truth. Regarding Baumgardner's use of a "confidential informant" without providing any information regarding the informant's reliability or veracity, the court determined that "[a]lthough the witness in the search warrant affidavit is errantly referred to as a 'confidential informant,' the witness is clearly Long's neighbor and properly categorized as a concerned citizen eyewitness." Thus, the court concluded that Baumgardner properly relied on the information. Regarding the route McGuffin took to look in Long's window, the trial

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court found that "[w]hile the explanation of the route taken by Officer McGuffin may not provide the detail sought by Long, it cannot be said that the affiant knowingly and intentionally, or with reckless disregard for the truth, made misrepresentations regarding the route taken."

{¶ 14} As to the merits of Long's motions to suppress, the trial court acknowledged that McGuffin was on the curtilage of Long's home at the time he saw Long watching child pornography, but could not say whether McGuffin was on a part of the driveway that was impliedly open to the public because the court "did not hear evidence on the subject * * *." Regardless, the court determined that the good faith exception to the exclusionary rule would apply to any constitutional violations that might exist, so the fruits of the search warrant did not need to be suppressed.

{¶ 15} Following the denial of his motions to suppress, Long pleaded no contest to the charges in both indictments. The trial court found him guilty, and on March 5, 2019, sentenced him to a total prison term of ten years.

{¶ 16} Long appeals his convictions, raising one assignment of error:

> The trial court erred as a matter of law when it denied Mr. Long's Motion to Suppress.

II. Law and Analysis

{¶ 17} In his assignment of error, Long argues that the trial court erred by denying his motions to suppress because (1) the search warrant affidavit relied on a confidential informant without providing information about the informant's reliability and veracity,

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(2) the state failed to establish that McGuffin was on an area of Long's driveway that was impliedly open to the public, and (3) McGuffin entered the curtilage of Long's home without a warrant with the sole purpose of conducting a search.

{¶ 18} In response, the state argues that (1) the information provided by the "informant"—who was clearly Long's next door neighbor—supplied the Perrysburg Municipal Court judge with probable cause to issue the search warrant, (2) McGuffin's observations were legal because Long left his blinds open, putting his actions in plain view, and (3) Long's curtilage arguments fail for three reasons: (a) Ohio courts have not applied the rules in *Collins v. Virginia*, __ U.S. __,138 S.Ct. 1663, 201 L.Ed.2d 9 (2018), and *Florida v. Jardines*, 569 U.S. 1, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013), as broadly as Long claims, (b) McGuffin was on Long's property on legitimate police business (i.e., investigating a complaint that Long was masturbating to child pornography) and was in an area that was implied open to the public where a reasonably respectful citizen may go, and (c) the area where McGuffin was standing was not part of the curtilage under the test articulated in *United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987).

A. Standard of review.

{¶ 19} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. The trial court acts as the trier of fact. Although we must accept any findings of fact that are supported by competent, credible evidence, we conduct a de novo review to

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determine whether the facts satisfy the applicable legal standard, and this independent review is done without deference to the trial court. *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7, citing *Burnside* at ¶ 8; *State v. Jones-Bateman*, 6th Dist. Wood Nos. WD-11-074 and WD-11-075, 2013-Ohio-4739, ¶ 9.

{¶ 20} The Fourth Amendment to the United States Constitution and Article I, Section 14, of the Ohio Constitution prohibit unreasonable searches and seizures of persons or property. Central to those prohibitions is the requirement that search warrants issue based on probable cause. *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, ¶ 34. In this context, "probable cause" means that the evidence presented in support of issuing the search warrant is sufficient for the magistrate to conclude that there is a fair probability that evidence of a crime will be found in a particular place. *Id.* at ¶ 35.

{¶ 21} A reviewing court does not conduct a de novo review of the magistrate's probable-cause determination. *State v. George*, 45 Ohio St.3d 325, 330, 544 N.E.2d 640 (1989). Instead, we must ensure that the magistrate had a substantial basis, considering the totality of the circumstances, for concluding that probable cause existed. *Castagnola* at ¶ 35, citing *George* at 329, *Illinois v. Gates*, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and *Jones v. United States*, 362 U.S. 257, 271, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). An issuing judge's probable-cause determination is entitled to "great deference." *State v. Williams*, 173 Ohio App.3d 119, 2007-Ohio-4472, 877 N.E.2d 717, ¶ 13 (6th Dist.), citing *George* at 330.

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{¶ 22} A judge may issue a search warrant based solely on facts presented by affidavit or may require an affiant to appear and present oral testimony to supplement an affidavit. Crim.R. 41(C)(1), (2). If the warrant is based only on information provided by affidavit, review of the issuing judge's probable cause determination—both at the trial and appellate court levels—is limited to the information found within the four corners of the affidavit.[1] *Castagnola* at ¶ 39 ("[T]he reviewing court is concerned exclusively with the statements contained within the affidavit itself." (Internal quotations omitted.)).

B. The "confidential informant" was a citizen informant who was presumptively credible and reliable and whose tip was sufficient to provide probable cause for the search warrant.

{¶ 23} We first address Long's argument regarding the "confidential informant" who reported Long to the PPD. Long takes issue with the trial court's finding that the informant was a concerned citizen, rather than a confidential informant, and argues that Baumgardner was required to aver to the reliability and veracity of the informant or independently verify the informant's report through police work that did not violate

[1] A reviewing court may also look outside of the four corners of the affidavit if the defendant makes a "substantial preliminary showing" that the affidavit contains false statements that were necessary to the finding of probable cause and that the affiant made the statements knowingly and intentionally or with reckless disregard for the truth. *Franks*, 438 U.S. at 155-156, 98 S.Ct. 2674, 57 L.Ed.2d 667. Although Long raised a *Franks* claim in the trial court, on appeal, he does not challenge the trial court's denial of his request for a *Franks* hearing or its conclusion that Long failed to make the requisite "substantial preliminary showing" that Baumgardner's use of the term "confidential informant" and his description of the route the informant and McGuffin took from the informant's home to Long's window were material misrepresentations made knowingly and intentionally or with reckless disregard for the truth. Accordingly, we will confine our review to the four corners of the search warrant affidavit.

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Long's constitutional rights. Based on the totality of the circumstances, we find that the informant was a citizen informant and that his report to the police was sufficient to support the issuance of the search warrant.

1. The trial court correctly classified the informant.

{¶ 24} The law generally recognizes three categories of informants: "anonymous informants" about whom the police know little or nothing, "known informants" who are part of the criminal world, and "citizen informants" who have witnessed criminal activity. *Maumee v. Weisner*, 87 Ohio St.3d 295, 300, 720 N.E.2d 507 (1999). Given that the classification of an informant is relevant to the informant's reliability, we must determine which of these three categories applies to the "confidential informant" at issue in this case. Courts should, however, avoid performing a "conclusory analysis based solely upon these categories * * *" and instead must review all information in light of the totality of the circumstances. *Id.*

{¶ 25} That being said, "[i]nformation coming from a citizen eyewitness is presumed credible and reliable, and supplies a basis for a finding of probable cause in compliance with *Gates*." *State v. Garner*, 74 Ohio St.3d 49, 63, 656 N.E.2d 623 (1995). So "questions of veracity and reliability are essentially obviated in cases where the information tendered in support of a search warrant derives from a crime victim or citizen eyewitness." *State v. McCrory*, 6th Dist. Wood Nos. WD-09-074 and WD-09-090, 2011-Ohio-546, ¶ 21. The Supreme Court of Ohio has reasoned that requiring the police to provide evidence of past instances of the reliability of citizens—who generally provide

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police with information only once—would "create an undue burden on the issuance of search warrants * * *." *Garner* at 63.

{¶ 26} In contrast, information that comes from a known informant—a person who is part of the "criminal milieu"—is inherently more suspect. (Internal quotations omitted.) *Weisner* at 300. Consequently, a probable-cause finding based on a known informant's tip requires that the affiant either attest to the informant's reliability, veracity, and basis of knowledge *or* corroborate the informant's tip through independent police work. *State v. Nunez*, 180 Ohio App.3d 189, 2008-Ohio-6806, 904 N.E.2d 924, ¶ 19-20 (6th Dist.). That is, a known informant's word cannot be the sole basis for a finding of probable cause.

{¶ 27} Similarly, information from an anonymous informant is considered "comparatively unreliable" and any information from an anonymous source generally requires independent police corroboration in order to support a probable-cause finding. *Weisner* at 300, citing *Alabama v. White*, 496 U.S. 325, 329, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

{¶ 28} Here, the search warrant for Long's home was granted solely on Baumgardner's affidavit, so our probable-cause review is limited to the information in the affidavit. *Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, at ¶ 39. Based on that information, Long and the state dispute whether the "confidential informant" who reported Long's conduct to the PPD is properly classified as a citizen informant—whose report to the police is presumptively credible and reliable—or as a

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known or anonymous informant—rendering his report more suspect and requiring either attestation to his veracity and reliability or corroboration through independent police work.

{¶ 29} At the outset, we note that, regardless of what Baumgardner called the person from whom the PPD received its information, the label used is not dispositive of whether the search warrant affidavit demonstrated probable cause to search Long's house. *See Weisner*, 87 Ohio St.3d at 300, 720 N.E.2d 507 ("[T]he United States Supreme Court discourages conclusory analysis based solely upon [the] categories * * *" of informants.). Instead, we look at the totality of the circumstances. *Id.* Moreover, "[t]he validity of a search-warrant affidavit should not turn on the identifier that an officer selects when trying to protect a person's identity." *State v. Dibble*, 133 Ohio St.3d 451, 2012-Ohio-4630, 979 N.E.2d 247, ¶ 22.

{¶ 30} However, despite the state's claim that there is "no mystery who the concerned citizen was in this case," the affidavit is not that clear. In an apparent effort to protect the person who reported criminal conduct, Baumgardner did not say that the informant was Long's neighbor, provide any identifying information for the "confidential informant," or even indicate that the informant gave the PPD identifying information. Although at first glance these facts seem to support a finding that the informant was anonymous, courts have generally required very little identifying information to remove an informant's anonymity, so long as the person's "identity was ascertainable." *See Weisner* at 301 (noting that, in the context of reasonable suspicion for a traffic stop,

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"[c]ourts have been lenient in their assessment of the type and amount of information needed to identify a particular informant," for example, requiring only a tipster's occupation or some face-to-face contact between the tipster and a police officer). Here, we know that McGuffin went to the informant's home and entered the informant's house, and that Baumgardner separately "made contact with the confidential informant, and he came in to speak with [Baumgardner] regarding this report." We therefore know that the informant had face-to-face contact with both McGuffin and Baumgardner, and we presume that the informant provided the PPD with his name and contact information. At the very least, it is clear from the affidavit that the informant's identity was readily ascertainable.

{¶ 31} Further, probable cause for a search warrant can be based on reasonable inferences drawn from the information in the affidavit. *Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, at ¶ 41, citing *Gates*, 462 U.S. at 240, 103 S.Ct. 2317, 76 L.Ed.2d 527, *State v. Hobbs*, 133 Ohio St.3d 43, 2012-Ohio-3886, 975 N.E.2d 965, ¶ 10, and *State v. Jordan*, 11th Dist. Lake No. 97-L-211, 1998 WL 684231, *3 (Sept. 25, 1998) (O'Neill, J., dissenting). The information in Baumgardner's affidavit allowed the issuing judge to reasonably infer that the person providing the tip was Long's neighbor. First, the informant knew Long's identity, that he lived at 515 East Second Street, and that he lived alone. Although it is not impossible for a stranger to learn these details about someone, it is reasonable to infer that neighbors know these details about each other. Second, the informant was able to view Long's computer monitor from inside the

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informant's home. For this to be true, common sense dictates that the informant's home was necessarily near Long's home. Finally, based on Baumgardner's description of the path the informant took to lead McGuffin to Long's window—going out the side of the informant's house, around the back, and then up Long's driveway—it is reasonable to infer that the homes were close together. Considered together, we find that this information is sufficient to remove the informant in this case from the category of "anonymous informant."

{¶ 32} For these same reasons, we find that the informant is also not a "known informant"—i.e., someone in the criminal world whose tip required Baumgardner to aver to the informant's reliability and veracity, or to independently corroborate the tip. Indeed, the only argument Long makes regarding why we should classify the informant as a "known informant" is the fact that Baumgardner repeatedly called the informant a "confidential informant" in the affidavit. But the label Baumgardner used is not dispositive. *Weisner*, 87 Ohio St.3d at 300, 720 N.E.2d 507. Moreover, we conduct a commonsense review of a search warrant affidavit—not a hypertechnical one. *Dibble*, 133 Ohio St.3d 451, 2012-Ohio-4630, 979 N.E.2d 247, at ¶ 24, citing *United States v. Ventresca*, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). And an affiant's use of the wrong label for the person who provides information to police is not sufficient, standing alone, to call into question the veracity of a citizen eyewitness's tip. *See McCrory*, 6th Dist. Wood Nos. WD-09-074 and WD-09-090, 2011-Ohio-546, at ¶ 26 (the detective failing to include the complainant-victim's name in the search warrant affidavit

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did not make the complaint-victim a "confidential informant" to whose veracity and reliability the detective was required to attest).

{¶ 33} Here, Baumgardner merely used the wrong label for the informant. There is no evidence that the person who reported Long to the police is someone from the criminal world whose information should be more carefully scrutinized. And finding that the informant was a known informant, based solely on Baumgardner's use of the phrase "confidential informant," would require us to interpret the affidavit in the hypertechnical manner that the Supreme Courts of Ohio and the United States have each eschewed.

{¶ 34} In sum, although Baumgardner did not specifically name the informant, the information he provided in the affidavit allowed the Perrysburg Municipal Court judge to reasonably infer that the PPD received its information from Long's neighbor. Because the neighbor's identity is ascertainable from the information in the affidavit, we conclude that the informant is not an anonymous informant whose tip requires independent corroboration. Further, the fact that Baumgardner called the informant a "confidential informant"—alone—is insufficient to show that the person from whom the PPD received its information is a known informant who comes from the criminal world and whose reliability and veracity Baumgardner was required to vouch for or whose tip the PPD was required to verify through independent police work.

{¶ 35} Instead, the totality of the circumstances shows that the informant was a citizen informant who witnessed Long engaging in criminal activity, which he reported to the PPD. As a citizen informant, the neighbor is presumed to be credible and reliable,

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and Baumgardner was not required to aver to the neighbor's veracity or reliability or to independently verify the information the neighbor reported to the PPD.

2. The informant's report to the PPD was sufficient to support probable cause.

{¶ 36} Based on our determination that the person who reported Long to the PPD was, in fact, a concerned citizen whose report was reliable, we further find that the totality of the circumstances shows that the municipal court judge had a substantial basis for concluding that probable cause to search Long's home existed.

{¶ 37} As noted above, "questions of veracity and reliability are essentially obviated * * *" when the information about a crime comes from a citizen eyewitness, *McCrory*, 6th Dist. Wood Nos. WD-09-074 and WD-09-090, 2011-Ohio-546, at ¶ 21, and an eyewitness's account "supplies a basis for a finding of probable cause in compliance with *Gates*." *Garner*, 74 Ohio St.3d at 63, 656 N.E.2d 623. In our view, the information from Long's neighbor—i.e., a report to the PPD that the neighbor saw Long (who appeared to be masturbating) sitting in front of a computer screen watching what appeared to be videos of girls who were no older than ten engaged in sexual acts—provided the municipal court judge with probable cause to issue the search warrant. That is, the neighbor's presumptively reliable report was more than sufficient to support a finding that there was a fair probability that evidence of a crime would be found in Long's home. *Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, at ¶ 35. On this basis alone, we find that the trial court did not err in denying Long's motions to suppress.

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C. We need not address the curtilage issues.

{¶ 38} Long's other arguments center on whether McGuffin was lawfully on the curtilage of his property at the time McGuffin observed him viewing a video of children engaged in sex acts. We need not address these arguments, however, because the information provided by Long's neighbor was sufficient to support the municipal court judge's finding of probable cause to search Long's home. That is, even if we assume that McGuffin's actions were unconstitutional and we excise all information in Baumgardner's affidavit that came from McGuffin's own observations while standing on Long's driveway, the neighbor's information nonetheless provided probable cause for the search. *See State v. Gross*, 97 Ohio St.3d 121, 2002-Ohio-5524, 776 N.E.2d 1061, ¶ 17, quoting *United States v. Karo*, 468 U.S. 705, 719, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984) (when an affidavit for a search warrant contains information that the police obtained improperly or unconstitutionally, courts will uphold the warrant if "after excising tainted information from a supporting affidavit, '[]sufficient untainted evidence was presented in the warrant affidavit to establish probable cause * * *.'").

{¶ 39} Long's assignment of error is not well-taken.

III. Conclusion

{¶ 40} Based on the foregoing, the March 8, 2019 judgments of the Wood County Court of Common Pleas are affirmed. Long is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgments affirmed.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Christine E. Mayle, J.

Gene A. Zmuda, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.

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APPENDIX B

Appendix A

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT
2019 MAR -8 A 10: 26
CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

v.

Stephen Long,

Defendant.

Case No. 2017CR0556

JUDGMENT OF CONVICTION SENTENCING F-2 AND F-5 PRISON

JUDGE MARY "MOLLY" L. MACK

March 5, 2019

This matter came before the Court on this 5th day of March, 2019, for sentencing. Present were Alyssa Blackburn and Thomas Matuszak, Assistant Prosecuting Attorneys, on behalf of the State of Ohio and the offender with his counsel, Peter Rost, Esq.

At a prior hearing pursuant to Civ.R. 11(C), the offender entered a plea of no contest to the offenses of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 4: Pandering

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Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 6: Possessing Criminal Tools, a violation of R.C. 2923.24(A), a felony of the fifth degree. The court accepted the offender's plea of no contest, and adjudged the defendant guilty of the offenses of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 4: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 6: Possessing Criminal Tools, a violation of R.C. 2923.24(A), a felony of the fifth degree.

The Court proceeded to the Sexual Offender Classification Hearing.

The Court finds that the offense of Pandering Sexually Oriented Matter Involving a Minor is classified as a Tier II Sexual Offender. This Court then read to the Defendant in open Court the Explanation of Duties to Register for a Tier II classification and the offender signed same.

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IT IS ORDERED that the offender shall be classified under the Tier II Sex Offender Classification.

The Court then proceeded to sentencing the offender.

Counsel for the offender recommending the Court overcome the presumption of a prison term and place the offender on community control. The state recommended consecutive prison sentences. Upon inquiry, the offender made a statement prior to the imposition of sentence.

In determining the sentence, the record, all oral statements, the presentence report, the pertinent financial information contained in the presentence report that reflect upon the offender's present and future ability to pay any financial sanctions imposed, the purposes and principles of sentencing as well as the seriousness and recidivism factors were carefully reviewed.

The Court noted that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. The Court further noted that in achieving those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

The Court further noted that a sentence must be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon

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the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

The Court reviewed the seriousness and recidivism factors and considered that the offender's conduct was more serious as the physical and mental injury suffered by the victims of the offense was exacerbated because of the age of the victims; the victims suffered serious physical and psychological harm as a result of the offenses; and likelihood of recidivism was increased as the offender shows no genuine remorse for the offense. The Court considered that recidivism is less likely as the offender has no prior criminal history.

After a review of the foregoing factors, the Court finds with respect to Counts 1, 2, 3, 4, and 5, that it is presumed that a prison sentence is necessary comply with the purposes and principals of sentencing and the court finds no reason to overcome that presumption.

With respect to Count 6, the Court finds that a prison term is consistent with the purposes and principals of sentencing and that a sentence of imprisonment is commensurate with the seriousness of the offender's conduct and its impact on the victim; that a prison sentence does not place an unnecessary burden on the state government resources; and that a prison sentence is necessary to protect the public from future crime by the offender and others.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that for the offense of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the

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offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 4: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; and for the offense of Count 6: Possessing Criminal Tools, a violation of R.C. 2923.24(A), a felony of the fifth degree, the offender is sentenced to a term of twelve (12) months in the Ohio Department of Rehabilitation. These sentences shall be served concurrently to one another and consecutively to the sentences imposed in Case Number 2018CR0141.

The Court finds that consecutive service is necessary to protect the public from future crime and to punish the offender. The Court also finds that the consecutive sentences are not disproportionate to the seriousness of the

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offender's conduct and the danger that he poses to the public. The Court also finds that at least two of the multiple offenses were committed as part of one or more courses of conduct and that the harm caused by two or more of the multiple offenses so committed is so great or unusual that no single prison term for any of the offenses committed as part of the courses of conduct adequately reflect the seriousness of the offender's conduct.

IT IS FURTHER ORDERED that the offender shall pay a fine of $10,000.00, on Count 5, to the Wood County Clerk of Courts.

IT IS FURTHER ORDERED that the warden of the institution the offender is incarcerated in shall perform the Explanation of Duties to Register and Perform Duties of R.C. Chapter 2950, prior to the offender's release.

IT IS FURTHER ORDERED that the HP Desktop computer (SN MX308S0245) and the Toshiba Laptop computer (SN 39516363Q) shall be forfeited to the Perrysburg Police Department for sale, use, or destruction.

IT IS FURTHER ORDERED that the offender shall submit to DNA testing pursuant to R.C. 2901.07.

POST RELEASE CONTROL

The offender will be subject to Post Release Control of five (5) years on Counts 1, 2, 3, 4, and 5 and up to three (3) years on Count 6, as well as the consequences for violating the conditions of post release control imposed by the Parole Board pursuant to R.C. 2967.28. If the offender violates a post release control sanction, the Adult Parole authority, or the Parole Board may impose a

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more restrictive sanction, may increase the duration of the post release control or may impose a prison term, which may not exceed nine (9) months. The maximum cumulative prison term imposed for violations during post release control may not exceed one-half of the stated prison term. Further, if the violation of the sanction is a felony, the offender may be prosecuted for the felony and, in addition, the Court may impose a prison term for the violation. The offender is ordered to serve as a part of this sentence any term of post release control imposed by the Parole Board and any prison term for violation of the post release control conditions.

The Court informed the offender that he is eligible to apply for judicial release from prison, but if eligible, the Court may not grant such release.

The Court reminded the offender that under federal law, the offender can never lawfully possess a firearm and that if the offender is ever found with a firearm, even one that belongs to someone else; the offender may be prosecuted by federal authorities and may be subject to imprisonment for several years.

CREDITS AND COSTS

The offender is given credit for jail time served pursuant to R.C. 2967.191. The Court has been informed that the offender has been incarcerated for zero (0) day in the Wood County Justice Center as of the date of sentencing.

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RIGHT TO APPEAL

The Court reviewed with the offender his right to appeal a sentence that is contrary to law.

Offender is ordered to pay the costs of this prosecution. Judgment is awarded for costs and execution awarded. The offender is notified that if the offender fails to pay this judgment or fails to make timely payments towards that judgment under a payment schedule approved by the Court, the Court may order the offender to perform additional community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the offender is in compliance with the approved payment schedule. The offender is also notified that if the Court orders the offender to perform the community service, the offender will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount. The specified hourly credit rate per hour will be that minimum wage established as contemplated by R.C. 4111.02 as then in effect.

Bond released.

Offender is remanded to the custody of the Wood County Sheriff to await transportation to the Correction and Reception Center, Orient, Ohio.

The offender orally requested that the court set a bond pending appeal. The state objected to that request.

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IT IS FURTHER ORDERED that the offender's request for a bond pending appeal is denied.

Judge Mary "Molly" L. Mack

CERTIFICATE

The undersigned mailed or delivered a copy of this judgment entry to Alyssa Blackburn, Assistant Prosecuting Attorney, Peter Rost, Esq., the offender c/o WCJC, Adult Probation Department, Adult Parole Board, and the Wood County Sheriff.

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APPENDIX C

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FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT
2019 MAR -8 A 10: 26
CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

v.

Stephen Long,

Defendant.

Case No. 2018CR0141

JUDGMENT OF CONVICTION
SENTENCING F-2
PRISON

JUDGE MARY "MOLLY" L. MACK

March 5, 2019

This matter came before the Court on this 5th day of March, 2019, for sentencing. Present were Alyssa Blackburn and Thomas Matuszak, Assistant Prosecuting Attorneys, on behalf of the State of Ohio and the defendant with his counsel, Peter Rost, Esq.

At a prior hearing pursuant to Civ.R. 11(C), the offender entered a plea of no contest to the offenses of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 4: Pandering

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Appendix C

Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 6: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 7: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 8: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 9: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree; and Count 10: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree. The court accepted the offender's plea of no contest, and adjudged the defendant guilty of the offenses of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 4: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 6: Pandering Sexually Oriented

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Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 7: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 8: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree; Count 9: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree; and Count 10: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree.

The Court proceeded to the Sexual Offender Classification Hearing.

The Court finds that the offense of Pandering Sexually Oriented Matter Involving a Minor and Illegal Use of a Minor in Nudity-Oriented Material or Performance are classified as Tier II Sexual Offenders. This Court then read to the Defendant in open Court the Explanation of Duties to Register for a Tier II classification and the offender signed same.

IT IS ORDERED that the offender shall be classified under the Tier II Sex Offender Classification.

The Court then proceeded to sentencing the offender.

Counsel for the offender recommending the Court overcome the presumption of a prison term and place the offender on community control. The state recommended consecutive prison sentences. Upon inquiry, the offender made a statement prior to the imposition of sentence.

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In determining the sentence, the record, all oral statements, the presentence report, the pertinent financial information contained in the presentence report that reflect upon the offender's present and future ability to pay any financial sanctions imposed, the purposes and principles of sentencing as well as the seriousness and recidivism factors were carefully reviewed.

The Court noted that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. The Court further noted that in achieving those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

The Court further noted that a sentence must be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

The Court reviewed the seriousness and recidivism factors and considered that the offender's conduct was more serious as the physical and mental injury suffered by the victims of the offense was exacerbated because of the age of the victims; the victims suffered serious physical and psychological harm as a result of the offenses; and likelihood of recidivism was increased as

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the offender shows no genuine remorse for the offense. The Court considered that recidivism is less likely as the offender has no prior criminal history.

After a review of the foregoing factors, the Court finds that it is presumed that a prison sentence is necessary to comply with the purposes and principals of sentencing and the court finds no reason to overcome that presumption.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that for the offense of Count 1: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 2: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 3: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 4: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 5: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and

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Correction; for the offense of Count 6: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 7: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 8: Pandering Sexually Oriented Matter Involving a Minor, a violation of R.C. 2907.322(A)(1) and (C), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; for the offense of Count 9: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction; and for the offense of Count 10: Illegal Use of Minor in Nudity-Oriented Material or Performance, a violation of R.C. 2907.323(A)(1) and (B), a felony of the second degree, the offender is sentenced to a term of five (5) years in the Ohio Department of Rehabilitation and Correction.

These sentences shall be served concurrently to one another and consecutively to the sentences imposed in Case Number 2017CR0556.

The Court finds that consecutive service is necessary to protect the public from future crime and to punish the offender. The Court also finds that the consecutive sentences are not disproportionate to the seriousness of the

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offender's conduct and the danger that he poses to the public. The Court also finds that at least two of the multiple offenses were committed as part of one or more courses of conduct and that the harm caused by two or more of the multiple offenses so committed is so great or unusual that no single prison term for any of the offenses committed as part of the courses of conduct adequately reflect the seriousness of the offender's conduct.

IT IS FURTHER ORDERED that the warden of the institution the offender is incarcerated in shall perform the Explanation of Duties to Register and Perform Duties of R.C. Chapter 2950, prior to the offender's release.

IT IS FURTHER ORDERED that the offender shall submit to DNA testing pursuant to R.C. 2901.07.

POST RELEASE CONTROL

The offender will be subject to Post Release Control of five (5) years as well as the consequences for violating the conditions of post release control imposed by the Parole Board pursuant to R.C. 2967.28. If the offender violates a post release control sanction, the Adult Parole authority, or the Parole Board may impose a more restrictive sanction, may increase the duration of the post release control or may impose a prison term, which may not exceed nine (9) months. The maximum cumulative prison term imposed for violations during post release control may not exceed one-half of the stated prison term. Further, if the violation of the sanction is a felony, the offender may be prosecuted for the felony and, in addition, the Court may impose a prison term for the violation. The

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offender is ordered to serve as a part of this sentence any term of post release control imposed by the Parole Board and any prison term for violation of the post release control conditions.

The Court informed the offender that he is eligible to apply for judicial release from prison, but if eligible, the Court may not grant such release.

The Court reminded the offender that under federal law, the offender can never lawfully possess a firearm and that if the offender is ever found with a firearm, even one that belongs to someone else; the offender may be prosecuted by federal authorities and may be subject to imprisonment for several years.

CREDITS AND COSTS

The offender is given credit for jail time served pursuant to R.C. 2967.191. The Court has been informed that the offender has been incarcerated for zero (0) day in the Wood County Justice Center as of the date of sentencing.

RIGHT TO APPEAL

The Court reviewed with the offender his right to appeal a sentence that is contrary to law.

Offender is ordered to pay the costs of this prosecution. Judgment is awarded for costs and execution awarded. The offender is notified that if the offender fails to pay this judgment or fails to make timely payments towards that judgment under a payment schedule approved by the Court, the Court may order the offender to perform additional community service in an amount of not more

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than forty hours per month until the judgment is paid or until the court is satisfied that the offender is in compliance with the approved payment schedule. The offender is also notified that if the Court orders the offender to perform the community service, the offender will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount. The specified hourly credit rate per hour will be that minimum wage established as contemplated by R.C. 4111.02 as then in effect.

Bond released.

Offender is remanded to the custody of the Wood County Sheriff to await transportation to the Correction and Reception Center, Orient, Ohio.

The offender orally requested that the court set a bond pending appeal. The state objected to that request.

IT IS FURTHER ORDERED that the offender's request for a bond pending appeal is denied.

Judge Mary "Molly" L. Mack

CERTIFICATE

The undersigned mailed or delivered a copy of this judgment entry to Alyssa Blackburn, Assistant Prosecuting Attorney, Peter Rost, Esq., the offender c/o WCJC, Adult Probation Department, Adult Parole Board, and the Wood County Sheriff.

3-8-19 Nancy Amand

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APPENDIX D

Appendix B

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT
2018 AUG 14 AM 10:41
CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

v.

Stephen D. Long,

Defendant.

Case No. 2017 CR 0556
Case No. 2018 CR 0141

JUDGE REEVE KELSEY

ORDER

This case is before the court on the defendant's motion to suppress evidence and request for evidentiary hearing, filed March 12, 2018. The state filed its response to defendant's motion to suppress on April 23, 2018. On May 31, 2018, the defendant filed his reply to state's response to motion to suppress evidence and request for evidentiary hearing. On May 31, 2018, the defendant also filed his motion for Franks Hearing and to suppress evidence. On July 23, 2018, the state filed its response to defendant's motion for Franks Hearing and to suppress evidence, filed herein on May 21, 2018. On July 23, 2018, a hearing was held on the above motions. Present were the defendant, along with his counsel, Peter G. Rost, Esq., and for the state, Alyssa M. Blackburn-Dolan and David T. Harold.

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Appendix D

Facts:

On May 2, 2017, a warrant was issued by Perrysburg Municipal Court Judge Molly Mack for the search of defendant Stephen D. Long's residence located at 515 East Second Street, Perrysburg, Ohio 43551. Based on the sworn affidavit of Detective Sergeant Mark Baumgardner, Judge Mack determined there was probable cause to believe that there existed at Long's residence evidence of violations of R.C. 2907.321, R.C. 2907.322, R.C. 2907.323, and R.C. 2923.24.

According to the Affidavit, a call was received by Perrysburg Police on May 1, 2017, regarding a resident at 515 East Second Street, Perrysburg, Ohio viewing child pornography on his computer. Affidavit, ¶ 1. Officer Patrick McGuffin made contact with the caller, referred to in the affidavit as a "confidential informant," who stated that, from the interior of the caller's residence, he could see into the residence of 515 East Second Street and that he witnessed the man, defendant Stephen Long, viewing the child pornography and masturbating. Affidavit, ¶¶ 2, 6. The caller further told Officer McGuffin that the caller went outside to get a closer look at what Long was viewing, at which time he saw what appeared to be a child performing a sexual act on herself on the neighbor's computer monitor. Affidavit, ¶ 5. The caller attempted to take video of the incident, however, the video did not come out clearly. Affidavit, ¶¶ 2, 8.

The affidavit continued to state that when Officer McGuffin arrived at the caller's residence, he could view Long inside the 515 East Second Street residence sitting at a computer. Affidavit, ¶ 3. However, Long was not watching child pornography at that time. Affidavit, ¶ 3. The affidavit stated the caller then took Officer McGuffin "around back, and then up the driveway of 515 East Second Street near the

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window on the southeast corner of the residence at 515 East Second Street." Affidavit, ¶ 3. At that point, Officer McGuffin and the caller saw Long watching videos on his computer that appeared to be girls under the age of ten performing oral sex on an adult male. Affidavit, ¶¶ 4, 7.

Issues:

This case presents the court with two connected issues. First, the court must decide whether the affiant knowingly and intentionally, or with reckless disregard for the truth, made material misrepresentations in the search warrant affidavit. Second, the court must decide whether evidence obtained pursuant to the execution of the search warrant must be suppressed because of an alleged unconstitutional search by Officer McGuffin.

Law and Analysis:

1. Franks Hearing

"Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with 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 request." *State v. Roberts*, 62 Ohio St.2d 170, 177, 405 N.E.2d 247 (1980), citing *Franks v. Delaware*, 438 U.S. 154, 155-156, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). A challenge to the factual veracity of a warrant must be supported by an offer of proof which specifically outlines the portions of an affidavit

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alleged to be false, along with the supporting reasons for the claim. *Roberts*, 62 Ohio St.2d at 178. Even if a substantial preliminary showing is made, a court need not hold an evidentiary hearing if after the material alleged to be false is excluded from the affidavit, there remains sufficient content in the affidavit to support a finding of probable cause. *Id.*

According to Long, the affiant knowingly and intentionally, or with reckless disregard for the truth, made material misrepresentations in the search warrant affidavit. Due to the alleged misrepresentations, a hearing was held on July 23, 2018 in which Long argued that he was entitled to hearing pursuant to *Franks v. Delaware*. Long's arguments focused on two separate issues. First, Long argued that the affiant unduly relied upon the representations of an unreliable "confidential informant." Second, Long argued that the affiant omitted from his affidavit that Officer McGuffin committed a Fourth Amendment violation when he followed the "confidential informant" onto Long's property to view into his window.

a. Confidential Informant or Concerned Citizen

Although the witness in the search warrant affidavit is errantly referred to as a "confidential informant," the witness is clearly Long's neighbor and properly categorized as a concerned citizen eyewitness. *See* Affidavit, ¶¶ 2, 6 (neighbor from the "interior of his residence" witnessed Long viewing pornography); and *State v. Rodriguez*, 64 Ohio App.3d 183, 187, 580 N.E.2d 1127 (6th Dist. 1989) ("[I]n assessing the legal sufficiency of a challenged affidavit for a search warrant the reviewing court may draw reasonable, commonsense inferences from the allegations therein, but such

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inferences may only be drawn from the facts actually set forth in the affidavit"). Information supplied from a concerned citizen eyewitness is "presumed credible and reliable, and supplies a basis for finding probable cause in compliance with *Gates*." *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, 804 N.Ed.2d 1, ¶ 39, quoting *State v. Garner*, 74 Ohio St.3d 49, 63, 1995 Ohio 168, 656 N.E.2d 623 (1995); *State v. Williams*, 6th Dist. Lucas No. L-06-1195, L-06-1197, 2007-Ohio-4472. Therefore, the court finds that the affiant did not unduly rely on evidence from a confidential informant, but instead relied on evidence from a presumably creditable and reliable concerned citizen.

b. Omission of Unconstitutional Route

Long argues that Officer McGuffin took a route to his window that required him to travel in an area of his yard not open to the public. He further posits that the affiant knowingly and intentionally, or with reckless disregard for the truth, made material misrepresentations when he left out that information, which was indicative of an unconstitutional search. In particular, Long lays out the following facts that were omitted from the search warrant affidavit:

> The affiant omitted that the route taken to go from the east side of the confidential informant's residence to the driveway of 515 East Second entailed that Officer Patrick McGuffin, with the confidential informant leading, to trespass through the confidential informant's backyard, through a row of lilac bushes planted along the boundary of the confidential informant's property and that of 515 East Second Street, through the back yard of 515 East Second Street, which was bounded on the north and west by fencing, and to the east by lilac bushes, around the back of a detached garage located at 515 East Second Street, along the west side of the garage, past the rear entrance of the property, between the rear of the property and squeezing past a car parked in the driveway of the

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property, onto the driveway, to a point where the Officer could see in the window.

However, a review of the search warrant affidavit shows that the neighbor and Officer McGuffin "went out of the east side of that residence and walked around back, and then up the driveway of 515 East Second Street near the window on the southeast corner of the residence at 515 East Second Street." Affidavit, ¶ 3. While the explanation of the route taken by Officer McGuffin may not provide the detail sought by Long, it cannot be said that the affiant knowingly and intentionally, or with reckless disregard for the truth, made material misrepresentations regarding the route taken. Therefore, Long has not made a substantial preliminary showing that material misrepresentations were knowing and intentionally, or with reckless disregard for the truth, included in, or omitted from, the search warrant affidavit.

2. Unconstitutional Search

The Fourth Amendment provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Fourth Amendment. "Curtilage," which is the area "immediately surrounding and associated with the home," is considered to be part of the home for Fourth Amendment Purposes. *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 185 L.Ed.2d 495 (2013). When a police officer physically intrudes to gather evidence, a Fourth Amendment search has occurred, which is presumptively unreasonable absent a warrant. *Jardines*, 569 U.S. at 11. "Absent a warrant, police have no greater rights on another's property than any other visitor has." *State v.*

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Tallent, 6th Dist. Lucas No. L-10-1112, 2011-Ohio-1142, ¶ 15, citing *State v. Chapman*, 97 Ohio App.3d 687, 647 N.E.2d 504 (1994).

The state acknowledges that Officer McGuffin was within the curtilage of Long's home when he peered into his window, however, the state points out that Officer McGuffin was in Long's driveway, which is a place implicitly open to the public. While "there is an implied invitation for the public to use access routes to the house, such as parking areas, driveways, sidewalks, or pathways to the entry, and there can be no reasonable expectation of privacy as to the observations which can be made from such areas," that does not mean that an entire driveway is open to the public. *Tallent*, ¶ 15, citing *State v. Rigoulot*, 123 Idaho 267, 846 P.2d 918 (1992). For example, a police officer with legitimate business may use a driveway as an access route the front door, or perhaps the back door if he gets no response. *Id.*, ¶ 5. There is an implied invitation that a driveway can be used for its purpose as an access route, that does not mean there is no limit to where a police officer may travel on a driveway. That being said, the court did not hear evidence on the subject, therefore, it cannot say whether or not Officer McGuffin was in a part of the curtilage that was impliedly open to the public.

The real issue that Long has is not so much where Officer McGuffin was at the time he peered into his window, but the route he took to get to that window. It is in Officer McGuffin's clandestine route through an area of his yard not open to the public that Long argues a Fourth Amendment violation lies. While the constitutionality of Officer McGuffin's path to Long's driveway may be questionable, the court would not exclude evidence derived from the search even if it found Officer McGuffin's search in violation of the Fourth Amendment. Instead, based upon the circumstances, the court

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would apply the good faith exception to the exclusionary rule, which states that evidence should not be excluded when it is "obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause." *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795, 25 N.E.2d 993, ¶ 29.

The court notes that there are certain situations in which police reliance on a search warrant is not objectively reasonable. One situation is when a magistrate issues a warrant based on a deliberately or recklessly false affidavit. *See Franks*, 438 U.S. at 155-156. A second situation is when a magistrate fails to act in a neutral or detached manner. *See Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 326-38, 99 S.Ct. 2319, 60 L.Ed.2d 920 (1979). A third situation is when a warrant is based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," or is so facially deficient a reasonable officer could not believe it to be valid. *United States v. Leon*, 468 U.S. 897, 923, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

None of those situations are applicable to this case. First, as stated above, the warrant was not based on a deliberate or recklessly false affidavit. Second, there have been no allegations, nor do the facts suggest, that Judge Mack did not act in a neutral and detached manner. Third, the search warrant affidavit contained ample indicia of probable cause with detailed observations from a concerned citizen witness, and the corroboration of the observations by Officer McGuffin. Therefore, the court finds that the officers acted in objectively reasonable reliance on the search warrant

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issued by Judge Mack. As the good faith exception applies, the court finds Long's motion to suppress evidence not well-taken.

IT IS ORDERED that defendant Stephen Long's motion to suppress evidence and request for evidentiary hearing is denied.

IT IS ORDERED that defendant Stephen Long's motion for Franks Hearing and to suppress evidence is denied.

Judge Reeve Kelsey

CERTIFICATE

The undersigned mailed or delivered a copy of this judgment entry to Alyssa Blackburn; Assistant Prosecuting Attorney, Peter Rost, Esq., the offender @ 515 E. Second St., Perrysburg, Ohio 43551, and the Wood County Sheriff.

8-14-18 Nancy Aurand

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APPENDIX E

The Supreme Court of Ohio

FILED
DEC 15 2020
CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Stephen D. Long

Case No. 2020-1173

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Wood County Court of Appeals; Nos. WD-19-021 and WD-19-022)

Maureen O'Connor
Chief Justice

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Stephen Long
_____ — PETITIONER
(Your Name)

VS.

~~State of Ohio~~ — RESPONDENT(S)

PROOF OF SERVICE

I, Stephen Long, do swear or declare that on this date, March, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Wood County Prosecutor, One Courthouse Square, Bowling Green, Ohio 43402

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2021

_____
(Signature)