

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM R. WILKINSON,

Defendant.

Case No. 1:14-cr-00168-BLW

ORDER

The Court has before it the Defendant's Motion to Suppress (Dkt. 40). For the foregoing reasons, the Court will deny the motion in full.

BACKGROUND

Defendant William Wilkinson is charged in a second superseding indictment with three counts of sexual exploitation of children, one count of possession of child pornography, one count of access with intent to view child pornography, and one count of transportation of child pornography in violation of 18 U.S.C. § 2251(a), 2252A(5)(B), and 2252A(a)(1) (Dkt. 36). As explained in previous orders (Dkts. 65, 69) Wilkinson is seeking to suppress evidence from three searches and one seizure: (1) a May 24, 2013 search of his residence ("Residence Search"); (2) a forensic search of the electronic devices seized during the May 24, 2013 Residence Search pursuant to two June 12, 2013 search warrants ("Forensic Search"); (3) the November 12, 2013 seizure of his vehicle

(“Vehicle Seizure”); and (4) a November 27, 2013 search of his vehicle, which included the search of a laptop computer found therein (“Vehicle Search”).

In early May of 2013, Sergeant J.R. Gregory of the Lincoln County Sheriff’s Office received information that Wilkinson had sexually abused H.H., a nine-year-old girl. Wilkinson had previously dated H.H.’s mother, L.T., and the three of them resided together for approximately two years. Sergeant Gregory also learned that after Wilkinson and L.T. ended their relationship, Wilkinson requested and received visitation rights for H.H. On May 22, 2013, H.H. submitted to a forensic interview with Children at Risk Evaluation Services, or “CARES.” In the CARES interview, which Sergeant Gregory observed, H.H. detailed sexual abuse committed by Wilkinson from the time she was two years old until the last time she was at his residence approximately a month earlier. H.H. explained that most of the abuse occurred at Wilkinson’s residence. She added that Wilkinson took sexually explicit photos of her and made her watch pornographic videos.

On May 24, 2013, Sergeant Gregory applied for a search warrant for Wilkinson’s residence in Shoshone, Idaho (“First Search Warrant Application”) based on the CARES interview, as well as information provided by L.T. and H.H.’s grandfather, S.T. The search was executed that same day. Officers seized numerous electronic devices, as well as a green suitcase containing a pink vibrator, condoms, and other sex toys. *Def.’s Br.*, pp. 5–6, Dkt. 40-1. Wilkinson was arrested that same day and charged with five counts of Lewd Conduct with a Minor Under 16 in violation of Idaho Code § 18-508, but was thereafter released on bail.

On June 11, 2013, Sergeant Gregory applied for two search warrants to conduct a forensic search of the computers, cell phones, hard drives, and other electronic devices seized during the Residence Search (“Second Search Warrant Application”). The Second Search Warrant Application was identical to the First, with the addition of a few minor updates. A magistrate judge signed the search warrants on June 12, 2013, and the electronic devices seized in the Residence Search were analyzed by Intermountain West Regional Computer Forensics Laboratory. The devices contained a sexual video of H.H., sexual pictures of H.H., possible child pornography, and websites related to incest and teenage sex. This evidence forms the basis for Counts Three and Four of the Second Superseding Indictment, and part of the basis for Counts One and Two.

The state charges against Wilkinson were dismissed on October 24, 2013, pending a review of the Forensic Search results. On November 1, 2013, after Sergeant Gregory received the results of the Forensic Search, he refiled the charges against Wilkinson and obtained a warrant for his arrest. *Gov. ’s Br.*, pp. 5–6, Dkt. 46.

That same day, Twin Falls authorities attempted to arrest Wilkinson at his place of employment. But, upon being told officers were there to speak to him, Wilkinson fled out the back door. Two days later, a Jerome County deputy spoke with Wilkinson’s stepfather, Carl Fillmore, with whom Wilkinson was living in Jerome. The deputy told Fillmore that officers were looking for Wilkinson and left his business card. Fillmore later told the deputy that he gave the business card to Wilkinson, who then grabbed a 9mm handgun and a 30-30 rifle and left the residence in his truck. Sergeant Gregory was informed of this development. *Gov. ’s Resp.*, p. 6, Dkt. 46.

On November 4, 2013, Sergeant Gregory observed a pickup truck that he believed belonged to Wilkinson at Craig Hadden's house, which was next door to Wilkinson's residence in Shoshone. Gregory ran the registration and discovered that it had recently been registered to Hadden. Sergeant Gregory spoke to Hadden, who told him that he and Wilkinson had traded vehicles on October 25, 2013, and that Wilkinson was now driving Hadden's 2005 dark blue Chevy truck with Idaho license plate 4L7841. Hadden also stated that Wilkinson might not have registered the truck in his name. Sergeant Gregory confirmed that the truck was still registered in Hadden's name. *Gov. 's Resp.*, p. 6, Dkt. 46.

Sergeant Gregory was aware that Wilkinson had family in the Salt Lake City area. At Sergeant Gregory's request, the U.S. Marshal's Fugitive Task Force in Salt Lake City began trying to locate Wilkinson. On November 12, 2013, agents observed the dark blue Chevy truck with Idaho license plate 4L7841 and saw Wilkinson walk to and from the vehicle. Wilkinson was then arrested, pursuant to a Lincoln County warrant. *Id.*

Immediately following Wilkinson's arrest, Deputy U.S. Marshal Bobby Arnes observed a laptop computer and what appeared to be a rifle case through the rear passenger window of the Chevy truck. This information was relayed to Sergeant Gregory, who then requested that the vehicle be impounded so that he could seek a search warrant. The vehicle was towed to the impound yard at Unified Police Department of Greater Salt Lake. *Id.*

On November 13, 2013, Sergeant Gregory inquired about obtaining a search warrant for the vehicle, but was informed that he could not seek a State of Idaho search

warrant because the truck was located in Utah. On November 14, 2013, Sergeant Gregory spoke to FBI Agent Rebekah Morse about obtaining a federal search warrant for Wilkinson's vehicle. Agent Morse agreed to draft the affidavit after reviewing Sergeant Gregory's investigative materials. Agent Morse also arranged for a forensic interview of H.H. by FBI Child Adolescent Forensic Interview Rachael Happel. The forensic interview of H.H. was conducted by Happel on November 25, 2013. On November 27, 2013, FBI Special Agent Daniel Horan acted as the affiant and presented the application for the search warrant before a Utah magistrate judge ("Third Search Warrant Application"). The search warrant was signed and served that same day.

The laptop seized in the Vehicle Search pursuant to the November 27, 2013 search warrant contained visual depictions of sexually explicit conduct with a child under eighteen years, and images of child pornography. This evidence forms the basis for Counts One, Two, Five, and Six of the Second Superseding Indictment.

Wilkinson filed a motion to suppress on January 12, 2015. Therein, he requested an evidentiary hearing so he could attack the veracity of the affidavits used in the Second and Third Search Warrant Applications. After careful consideration, the Court ultimately held that Wilkinson was not entitled to an evidentiary hearing. The motion to suppress presented additional arguments, which the Court takes up now.

ANALYSIS

Generally, a reviewing court gives "great deference" to an issuing judge's finding that probable cause supports a warrant. *United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir. 2011). Indeed, a reviewing court should find that probable cause is not met only

“when the issuing judge lacked a ‘substantial basis for . . . conclud[ing]’ that probable cause existed.” *United States v. Underwood*, 725 F.3d 1076, 1081, (9th Cir. 2013) (citations omitted). On the other hand, probable cause exists when the issuing judge finds that “‘given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.’” *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). “An affidavit must recite underlying facts so that the issuing judge can draw his or her own reasonable inferences and conclusions; it is these facts that form the central basis of the probable cause determination.” *Id.* In making this determination, a magistrate judge must assess the totality of the circumstances and make a “practical, common-sense decision.” *Gates*, 462 U.S. at 214. Additionally, the issuing judge “may rely on the training and experience of affiant police officers.” *U.S. v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir. 2002). The Ninth Circuit has also made clear that “if the government presents expert opinion about the behavior of a particular class of persons, for the opinion to have any relevance, the affidavit must lay a foundation which shows that the person subject to the search is a member of the class.” *United States v. Weber*, 923 F.2d 1338, 1345 (9th Cir. 1990).

1. *Residence Search*

In support of his argument that the evidence from the Residence Search should be suppressed, Wilkinson makes three arguments: (1) the First Search Warrant Application failed to establish probable cause that Wilkinson’s residence contained evidence of a crime; (2) there was no probable cause to seize the electronic devices; and (3) the exclusionary rule should apply because reliance on the affidavit was objectively

unreasonable. *Def.'s Br.*, pp. 12, 14, 21, Dkt. 40-1. Each argument shall be discussed in turn.

a. Probable cause to search the residence

Wilkinson admits that the First Search Warrant Application “sufficiently establishes probable cause to believe that [he] molested H.H.” but contends that it “does not establish a nexus between the crime and the location nor does it provide a basis for the magistrate judge to conclude that evidence or contraband would be found at the location to be searched.” *Def.'s Br.*, p. 12, Dkt. 40-1. In particular, Wilkinson alleges there is only one statement that links Wilkinson to the address to be searched: that H.H.’s grandfather told Sergeant Gregory that “in 2006–2008 [his daughter and H.H.] had been living with [Wilkinson] at [the address] in Shoshone, Idaho.” *Def.'s Br.*, p. 13, Dkt. 40-1. Wilkinson argues nothing else in the application establishes that he continued to reside at that address after H.H. and her mother moved out in 2008. *Id.* The Court disagrees.

Here, the issuing judge had a substantial basis for finding probable cause because a reasonable inference from the affidavit’s facts suggests that evidence of a crime would be located at Wilkinson’s residence. When a magistrate judge issues a search warrant for a residence, he or she must find a “reasonable nexus” between the evidence sought and the residence. *United States v. Rodriguez*, 869 F.2d 479, 484 (9th Cir.1989). The magistrate judge need only find that it would be reasonable to seek the evidence there. *United States v. Terry*, 911 F.2d 272, 275 (9th Cir.1990). The evidence from Sergeant Gregory’s affidavit establishes this reasonable nexus.

First, the May 24, 2013 affidavit established that Wilkinson lived at the residence sought to be searched. *Def. 's Ex. A*, ¶¶ 1–2., Dkt. 40-2. The residence was described in the affidavit and photographs of the residence were submitted with the affidavit. That Wilkinson lived at that particular residence was stated in the second paragraph. It was also established that H.H. and her mother previously lived with Wilkinson at that residence, and that it was the residence where H.H. regularly visited him. Second, the affidavit established that it would be reasonable to search for evidence there, because that is where the alleged abuse occurred. The affidavit states that (1) Wilkinson had visitation with H.H. at his residence, (2) H.H. would go to his house two times a month, (3) Wilkinson exposed H.H. to porn while at his residence, (4) H.H. stated that the abuse “always happened” when she was at his residence, (5) she was abused “the last time she was there” and (6) the abuse took place in Wilkinson’s bed. *See Gov. 's Resp.*, pp. 12–13, Dkt. 46. Based on these statements and others, the issuing judge had a substantial basis for concluding that probable cause existed to search Wilkinson’s residence.

b. Probable cause to seize the electronic devices

The May 24, 2013 search warrant authorized the seizure of videos containing images of minor children, cell phones, computers, netbooks, electronic data storage equipment, and cameras or other items able to make digital images. *Def. 's Ex. A*, p. 2, Dkt. 40-2. Wilkinson argues that “[a]lthough the affidavit contains sufficiently detailed factual allegations that Mr. Wilkinson abused H.H. and used sex toys in the abuse, it lacks a nexus with child pornography and images of minor children and therefore does

not support the conclusion that Mr. Wilkinson possessed child pornography.” *Def.’s Br.*, pp. 15, Dkt. 40-1.

The issuing judge had a substantial basis for concluding that probable cause existed to seize the electronic devices found in Wilkinson’s residence. As the Government points out, there are numerous facts within the affidavit that support this determination:

1. L.T. stated that Wilkinson exposed H.H. to pornography at his house, and that H.H. wrote two websites on a lunch menu that referenced pornography.
2. L.T. stated that Wilkinson provided H.H. with multiple cell phones, and told her not to show them to L.T., who nevertheless observed sexual content on one of the phones.
3. H.H. told L.T. that Wilkinson is naked with her and “watches porn.”
4. H.H. told L.T. that she has taken a picture of “what is going on” and there are “two phones with the picture.”
5. H.H. took a digital photo, using her phone, of Wilkinson trying to “French kiss” her by sticking his tongue in her mouth.
6. H.H. stated in the CARES interview that Wilkinson makes her watch “some really bad movies.” When asked about the “bad parts,” H.H. stated “like the kind of things that [Wilkinson] is doing to her.”
7. H.H. stated that Wilkinson took three pictures of her. She explained he made her lie down on her back and took off her underwear and then took a picture. The next month she came back, she deleted the picture.

Based on these facts, the issuing judge had a substantial basis to conclude there was a fair probability that digital evidence of a crime would be discovered on electronic devices

located at Wilkinson's residence. In sum, the seizure of Wilkinson's electronic devices was justified.¹

For the foregoing reasons, Wilkinson's motion to suppress evidence discovered in the Residence Search is denied.

2. *Forensic Search*

After seizing the electronic devices pursuant to the May 24, 2013 search warrant, Sergeant Gregory submitted a Second Search Warrant Application, which was largely identical to the First, but did provide a more specific description of the electronic devices to be searched. Wilkinson argues that Second Search Warrant Application contained materially false statements. In some cases, a defendant is entitled to an evidentiary hearing in order to attack the veracity of a facially-valid affidavit used to support a search warrant. *Franks v. Delaware*, 438 U.S. 154 (1978).

The Court has already concluded that Wilkinson is not entitled to a *Franks* hearing here. *See* Dkt. 63. The *Franks*-related issue was the only argument raised in the motion to suppress as to the Forensic Search specifically. As such, the evidence found during the execution of the Forensic Search will not be excluded.

3. *Vehicle Seizure*

¹ Wilkinson also argues that the evidence should be excluded because the good faith exception does not apply. The good faith exception can be explained as follows: when an officer executes "an unconstitutional search in good faith or based on "objectively reasonable reliance" the exclusionary rule will not be applied. *United States v. Leon*, 468 U.S. 897, 922 (1984). Because the Court finds that the Residence Search was lawful, it need not delve into whether the good faith exception should apply in this case.

Regarding the vehicle seizure, which occurred after Wilkinson's arrest on November 12, 2013, Wilkinson argues that "at the time of [his] arrest, the officers had no reason to believe that additional evidence existed in the truck." *See Def.'s Br.*, at 27, Dkt. 40-1. Concerning the laptop and rifle case present in the rear passenger compartment of the vehicle, Wilkinson argues that neither item constitutes evidence of a crime or contraband, and thus, the officers did not have probable cause to seize the vehicle without a warrant. The Court disagrees.

It is well-established that "[a] search or seizure effectuated without a warrant issued upon a probable cause is 'per se unreasonable under the fourth amendment—subject only to a few specifically established and well delineated exceptions.'" *U.S. v. Bagley*, 772 F.2d 482, 491 (9th Cir. 1985) (citations omitted). One of these exceptions is the automobile exception, which permits law enforcement to search an automobile without a warrant when they have probable cause to believe it contains contraband or evidence of criminal activity. *See California v. Carney*, 471 U.S. 386, 392–93 (1985). The justification for this exception is rooted in the inherent mobility of vehicles and the reduced expectation of privacy associated with them. *See Carroll v. U.S.*, 257 U.S. 132, 153 (1925). A warrantless seizure of an automobile, based on probable cause to believe the vehicle contains evidence of criminal activity, falls within the ambit of the exception. *Bagley*, 772 F.2d at 491. A determination of probable cause is not restricted to the knowledge of a single officer. Rather, probable cause is determined based on the totality of the circumstances, culminating from the "collective knowledge of all the officers

involved in the criminal investigation.” *U.S. v. Ramirez*, 473 F.3d 1026, 1032–37 (9th Cir. 2007).

At the time of the vehicle seizure, much was known to Sergeant Gregory and the other officers about the circumstances of Wilkinson’s case. For example, Sergeant Gregory knew that (1) the forensic examination of Wilkinson’s electronic devices had yielded a sexual video and sexual pictures of H.H.; (2) Wilkinson left Idaho after a warrant was issued for his arrest, charging him in Idaho state court with sexually abusing H.H.; (3) Wilkinson had stated to his brother-in-law that he might flee to Mexico or Hawaii; (4) prior to leaving the state, he swapped vehicles with a neighbor and did not register the new vehicle in his name; and (5) prior to leaving the state, Wilkinson obtained two firearms before leaving his stepfather’s home where he had been staying.

Looking at the totality of the circumstances, probable cause existed to believe that the vehicle was evidence—and contained evidence—of a crime. First, the vehicle itself is evidence of Wilkinson’s attempt to avoid prosecution in Idaho. Prior to his interstate flight, Wilkinson knew that he had been charged with sexually abusing H.H. in Idaho state court, that a warrant was issued for his arrest there, and that law enforcement officers were looking for him. With that in mind, Wilkinson obtained two firearms and fled Idaho in a vehicle he obtained from his neighbor without registering it in his name. Thus, Wilkinson’s flight from prosecution in Idaho may be germane to his consciousness of guilt regarding the charges against him in Idaho. *See U.S. v. Silverman*, 861 F.2d 571, 581 (9th Cir. 1988). In any event, at the time of the vehicle seizure, a reasonable

probability existed that evidence demonstrating Wilkinson's intent to flee Idaho and reside elsewhere would be found inside the vehicle.

Next, the officers had probable cause to believe that Wilkinson's vehicle contained firearms. Officers received information from Wilkinson's stepfather that Wilkinson had obtained two firearms prior to leaving Idaho. *See Gregory Affidavit* (Ex. 1) at ¶ 27. In addition, Deputy U.S. Marshal Arnes—prior to seizing the vehicle—observed what appeared to be a rifle case in the rear passenger area of the vehicle. It was entirely reasonable for Marshal Arnes to believe the rifle case, in plain view in the rear passenger compartment of Wilkinson's vehicle, actually contained a rifle. *See generally U.S. v. Huffhines*, 967 F.2d 314, 319 (9th Cir. 2005) (explaining that the contents of some containers are so obviously discerned from its outward appearance “[t]here can be no reasonable expectation of privacy . . .”). Wilkinson takes the position that he could have lawfully been in possession of a firearm at the time of the seizure. But as the Government points out, it is unlawful for a fugitive from justice to transport a firearm or ammunition in interstate commerce. 18 U.S.C. § 922(g)(2).

Finally, officers had probable cause to believe that digital evidence of the sexual abuse of H.H. would also be found in the vehicle. Again, Marshal Arnes observed a laptop computer in plain view in the rear passenger-side seat. The results of the Forensic Search had already revealed that Wilkinson kept a sexual video as well as photographs of H.H. on the computer seized in the Residence Search. It was reasonable to conclude that the laptop identified by Marshal Arnes could also contain evidence of a crime.

In sum, the totality of the circumstances arising from the collective knowledge of all the officers involved in the investigation amounted to probable cause to believe that Wilkinson's vehicle contained evidence of criminal activity relating to the sexual abuse of H.H., and his flight to avoid prosecution. Accordingly, Wilkinson's Fourth Amendment rights were not violated by the warrantless seizure of his vehicle.

Finding that the officers had probable cause to seize Wilkinson's vehicle, it must next be determined whether the delay between seizing the vehicle and searching it fifteen days later was, as Wilkinson urges, unreasonable under the circumstances.

While an unreasonable delay between a seizure and obtaining a search warrant may violate a defendant's Fourth Amendment rights, the relevant inquiry is one of reasonableness under all of the circumstances. *See U.S. v. Van Leeuwen*, 397 U.S. 249, 252–53 (1970). In making this reasonableness determination, the Court balances “the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *United States v. Place*, 462 U.S. 696, 703 (1983).

Any intrusion on Wilkinson's possessory interest in the vehicle was minimal here, in large part because Wilkinson was in custody at all relevant times and thus could not make use of the vehicle. After all, where individuals are incarcerated and cannot make use of seized property, their possessory interest in that property is reduced. *See Segura v. United States*, 468 U.S. 796, 813 (1984) (Burger, C.J.) (plurality opinion) (holding that defendants' possessory interests in their apartment were “virtually nonexistent” when

they “were under arrest and in the custody of the police throughout the entire period the agents occupied the apartment”).

Moreover, legitimate governmental interests were promoted by retaining the vehicle. As discussed above, the officers had a reasonable basis to conclude that the vehicle both was evidence, and contained evidence, of criminal activity.

In sum, the officers’ course of conduct was reasonable under the totality of the circumstances. Sergeant Gregory initially attempted to obtain a search warrant the very next day, but upon learning that he could not, he acted diligently in securing assistance from the FBI.

4. *Vehicle Search*

With regard to the Vehicle Search, the only argument asserted by Wilkinson has already been addressed by the Court. Wilkinson argued he was entitled to a *Franks* hearing because the Third Search Warrant Application contained materially false statements.

Wilkinson later withdrew his argument that Marshal Arnes would not have been able to observe items in the backseat of Wilkinson’s vehicle and the Court concluded that no *Franks* hearing was warranted. *Def. ’s Supp. Br.* at 2, Dkt. 67. As that was the sole argument presented by Wilkinson as to the Vehicle Search, the evidence found pursuant to that search will not be excluded.

IT IS HEREBY ORDERED:

1. Defendant’s Motion to Suppress (Dkt. 40) is DENIED.

2. Trial in this matter is hereby set for **October 26, 2015, at 1:30 p.m.** in the Federal Courthouse in Boise, Idaho.
3. A telephonic pretrial conference shall be held on **October 14, 2015 at 4:00 p.m.** Counsel for the Government shall initiate the call. The Court can be reached at (208) 334-9145.



DATED: September 21, 2015

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive, flowing style.

B. Lynn Winmill
Chief Judge
United States District Court