

IN THE IOWA DISTRICT COURT FOR JEFFERSON COUNTY

STATE OF IOWA,  v.  WILLARD NOBLE CHAIDEN MILLER, Defendant.	Plaintiff.	NO. FECR005143  STATE'S COMBINED RESISTANCE TO DEFENDANT'S MOTION TO SUPPRESS
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COMES NOW the State of Iowa, by and through Chauncey Moulding, Jefferson County Attorney; and Scott D. Brown, Assistant Attorney General, and for its Resistance to Defendant's Motion to Suppress states:

1. The defendant Willard Miller is charged with Murder in the First Degree and is currently set for trial on March 20, 2023, in Jefferson County District Court.

2. The defendant has filed Motions to Suppress on March 1, 2022, and March 15, 2022. The State would combine its response to those motions since the second motion appears to incorporate the first motion. The motions appear to allege the following issues:

a. The search warrants issued on November 4, 2021, and November 5, 2021, for the defendant's home, phone, computer, US Cellular phone records, and Snapchat records lack sufficient probable cause.

b. The search warrant issued on November 4, 2021, fails to establish a nexus to search the defendant's phone and computer and lacks probable cause to search the contents of the phone.

c. The search warrants issued on November 5, 2021, fail to establish a nexus between Graber's death and the phone and the US Cellular and Snapchat records.

d. The search warrants are based in part on a confidential informant's statement and lack sufficient corroboration.

e. Officers executing the search warrant on the US Cellular and Snapchat accounts lacked the authority to serve the warrants since they were executed outside the bounds of the State of Iowa.

f. The admissions made by the defendant during an interview were obtained without the consent of Miller's parents being told he was in custody due to a murder investigation in violation of Iowa Code Chapter 232.

3. The State of Iowa resists the Motions to Suppress.

4. The burden at the motion hearing concerning the four search warrants rests with the defendant. In an action involving a structural challenge to the validity of a warrant, the burden of proof rests with the defendant. *State v. Fremont*, 749 N.W.2d 234, 236 (Iowa 2008). Because the search was made pursuant to warrant, the defendant had the burden of proof in the suppression hearing. *State v. Farber*, 314 N.W.2d 365, 367 (Iowa 1982). The reviewing Court is limited to a "four corners" review of the search warrant which would include a review of the probable cause set forth in any affidavit accompanying a search warrant. The Court does this review with the mindset that it must give substantial deference to the issuing magistrate. The Court does not make an independent determination of probable cause; rather, the Court determines "whether the issuing judge had a substantial basis for concluding probable cause existed." *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). In so doing, the Court examines only the information actually presented to the judge. *Id. accord State v. McNeal*, 867 N.W.2d 91, 99 (Iowa 2015).

Probable Cause Exists to Search the Miller Residence, Computer, Snapchat, and  
Phone Records

5. An officer applying for a search warrant "is not required to present all inculpatory and exculpatory evidence to the magistrate," only that evidence which would support a finding of probable cause ... Omissions of fact constitute misrepresentations only if the omitted facts 'cast doubt on the existence of probable cause.'" *State v. Green*, 540 N.W.2d 649 (Iowa 1995).

6. When reviewing a warrant application, "we examine only the information actually presented to the judge." *Id.* But "we do not strictly scrutinize the sufficiency of the underlying affidavit." *Id.* at 100. "[T]he affidavit of probable cause is interpreted in a common sense, rather than a hypertechnical, manner." *Gogg*, 561 N.W.2d at 363-64. "We draw all reasonable inferences to support the judge's finding of probable cause and

decide close cases in favor of upholding the validity of the warrant." *Baker*, 925 N.W.2d at 614; see also *McNeal*, 867 N.W.2d at 100 ("[W]e draw all reasonable inferences to support the judge's finding of probable cause and give great deference to the judge's finding." (alteration in original) (quoting *Gogg*, 561 N.W.2d at 364)).

7. Officers applied for a warrant to search the residence occupied by the defendant located at 51 E Stone Avenue, Fairfield, IA.

8. The warrant was executed in compliance with Iowa Code Section 804.

9. The content of the affidavit is attached to the four search warrants to be offered to the Court at the motion hearing. It is the only information the Court should consider in determining the validity of the warrant based upon the issues recited by the defendant.

10. The entirety of the affidavit will be contained in the search warrants to be offered at the hearing on this matter.

11. It can be determined from the probable cause statement authored by the officers that it was believed that Miller was involved in the death of Graber through his association with Jeremy Goodale. In messages from Snapchat, Goodale stated that he and Miller were involved in the disappearance and death of Nohema Graber. Although this information came from J.B. (a juvenile here identified by his initials), it was credible information provided by a citizen informant who had no involvement in Graber's disappearance and who had no motive to fabricate any statements provided by law enforcement. See *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 1990) ("[T]his court has adopted the position that information imparted by a citizen informant is generally reliable.").

12. It was also known that Miller possessed a cell phone. It is reasonable to believe that a person who has a cell phone regularly communicates on a cell phone by making phone calls, authoring and sending text messages and emails, and utilizing social media accounts. Officers already had confirmation of that through the information provided by J.B. through his Snapchat conversation with Goodale that implicated Miller in Graber's death. Based on the information officers had been provided from J.B. who brought the phone information to the police, and the information they were provided on

Goodale's phone, would lead a reasonable and prudent person to believe evidence of an alleged crime could be located at Miller's residence in Fairfield or on his phone and by extension his cell records.

A Nexus Was Established Between the Homicide of Graber and the Search of Miller's Cell Phone and Computer

13. Probable cause to search requires a probability determination as to the nexus between criminal activity, the things to be seized, and the place to be searched. *State v. Seager*, 341 N.W.2d 420, 427 (Iowa 1983); *State v. Jamison*, 482 N.W.2d 409 (Iowa 1992) (no showing in warrant application of nexus between defendant or his car and criminal activity at targeted premises). A valid search warrant must be supported by reasonable inferences that demonstrate a nexus between the criminal activity, the things to be seized, and the place to be searched. This determination rests on a consideration of the nature of the crime and items to be seized, the defendant's opportunity to conceal the items, and any inferences as to where the items may be concealed. *State v. Randle*, 555 N.W.2d 666 (Iowa 1996); *State v. Gathercole*, 553 N.W.2d 569 (Iowa 1996); *State v. Green*, 540 N.W.2d 649 (Iowa 1995); *State v. Thomas*, 540 N.W.2d 658 (Iowa 1995).

14. The nexus between the place to be searched and the things to be seized can be found by considering the type of crime, the nature of the items, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would conceal the items. *State v. Hoskins*, 711 N.W.2d 720 (Iowa 2006) (nexus between the defendant's car and the drugs sought was established by an informant's evidence that he saw the defendant in a bar with drugs, and police testimony that drug dealers take their drugs with them when they leave a bar and hide their drugs in their vehicles to avoid detection if they are stopped); *State v. Groff*, 323 N.W.2d 204 (Iowa 1982); *State v. Leto*, 305 N.W.2d 482 (Iowa 1981) (direct observation is not necessary).

15. The following cases are several examples of the required nexus between the place to be searched and the thing or things to be seized:

a. *State v. Leto*, 305 N.W.2d 482 (Iowa 1981) (reasonable to infer that suspect in automobile theft operation would keep stolen automobiles in auto body repair shop maintained at his residence).

b. *State v. Iowa District Court*, 247 N.W.2d 241 (Iowa 1976)

(reasonable to infer that rest of stolen property would be stored in defendant's residence following defendant's arrest on a road in a truck which contained some but not all of fruits of crime of recent burglaries in the area).

c. *State v. Green*, 540 N.W.2d 649 (Iowa 1995) (sufficient evidence

supported search warrant which resulted in discovery of body of defendant's girlfriend, given factors suggesting her disappearance was not voluntary: (1) victim, who according to defendant "left with another man," did not take her money or car with her; (2) victim who normally kept in touch with her mother on a regular basis did not call for at least three months after she disappeared; (3) there was a history of domestic violence by defendant against the victim; (4) victim was last seen at defendant's house; and (5) defendant exhibited an "extreme reaction" to the request to search his house.)

d. *State v. Gathercole*, 553 N.W.2d 569 (Iowa 1996) (In determining

whether the required nexus exists between the crime, the items sought, and the places to be searched, it is reasonable to assume (1) that stolen goods might be found at the subject's residence and (2) that a gun might be found on the subject's person or at his or her residence.)

16. In the present case, the nexus between Goodale's statements and Miller is provided by the Snapchat messages provided by J.B. to law enforcement. Miller's home would be the last known location to find both physical and electronic evidence associated with a phone. The phone was collected at Miller's home and a subsequent search warrant was issued to search it. It is clear from the information provided to police that was included in the warrant that there is a nexus between the thing to be searched (the phone and computer) and the things to be seized (messages and communications between Miller and Goodale or anyone else concerning Graber's disappearance and death).

J.B. Is Not A Confidential Informant

17. The defendant repeatedly claims that J.B. is a confidential informant who required additional findings by the Court relating to his reliability prior to issuing the search warrant. J.B. is more appropriately labeled a "citizen informant."

18. An informant's reliability is satisfactorily established by showing that he is a "citizen informant." "Reliability of a citizen informant may be shown 'by the very nature of the circumstances under which the incriminating information became known' ... . [N]o greater showing of reliability is required." *State v. Post*, 286 N.W.2d 195 (Iowa 1979). "Citizen informant" usually denotes one who is a crime victim or witness. Although their information is generally presumed to be reliable, this is not a per se rule. A common-sense analysis of the totality of the circumstances must still be used to assess reliability of the information. *State v. Niehaus*, 452 N.W.2d 184 (Iowa 1990); *State v. Peck*, 517 N.W.2d 230 (Iowa Ct. App. 1994).

19. Although J.B. is not named in the affidavit, he is not a confidential informant. Confidential informants are treated as such since they are working in conjunction with police in a particular investigation. A confidential informant is generally treated as such since divulgence of their identity could put them in grave danger. Another characteristic of a confidential informant is that they receive some sort of consideration either through a charging concession or cash payment. None of those characteristics apply to J.B. He came forward with the information relating to Goodale and Miller on his own. Presumably, he came forward out of a sense of doing what is right under the circumstances. J.B. was a friend of both Goodale and Miller and was shocked by their behavior. His motive in coming forward had nothing to do with gaining anything for himself or anyone else.

The Warrants Executed on US Cellular and Snapchat Do Not Violate State or Federal Law in the Manner in Which They Were Executed

20. The defendant in his motion claims that the language of Iowa Code 808.4 precludes the service of an Iowa warrant in California. The basis for the defendant's argument is the three words "within the state." It is important to note that the actual text of 808.4 contains no limiting language. Had there been an intention to limit where the warrants could be served, the code section could have used the language "within this state" or as the defendant proposes, "within the boundaries of the State of Iowa." However, the Code does not contain that language. The phrase "within the state" needs to be read in the context of the language around it. The relevant language to be

considered is, "...commanding that peace officer forthwith to search the named person, place, or thing within the state for the property specified, and to bring any property seized before the magistrate."

21. In this case, what is named is Snap Inc. and US Cellular located in California. Iowa Code 808.4 authorizes this warrant to be served on Snap Inc. and US Cellular in California as that is within the state for the property specified. The defendant's interpretation of the language would create an absurd result and goes against a plain reading of the code section. Both companies do business within the boundaries of the State of Iowa. US Cellular is a registered entity in Iowa and has a registered service agent.

22. It is important to remember that the messages, pictures, and other content requested in this case were created in Iowa. They were viewed and made on devices located in Iowa. The defendant, victims, and witnesses reside in the State of Iowa and the crimes alleged took place in Iowa as well.

23. Additionally, California law supports the issuance of an Iowa search warrant on Snap Inc. and US Cellular. California Penal Code 1524.2(c) states:

- a. "A California corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a California court."
- b. Under this code section, the provider has a duty to provide the information contained in the warrant under California code regardless of whether the issuing state has specific provisions for service of the warrant in California.

24. The defendant references 18 USC § 2703 in his motion stating, "Generally stated, that federal statute merely provides that a communications services provider has to provide electronic information to a governmental entity, if that governmental entity follows procedure pursuant to that state's law." The relevant section of 18 USC § 2703 states, "A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty

days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures..." 18 U.S.C.A. § 2703 (West) (emphasis added). Whatever lack of authority the defendant claims law enforcement had to serve the search warrant is remedied by the requirements of § 2703 on Snap Inc. 18 USC § 2703 should not be analyzed as to how it applies to the State of Iowa but rather as to how it applies to Snap Inc. Regardless of the warrant's originating state, § 2703 spells out the responsibility of the provider when presented with a state warrant. The defendant's issue is with Snap Inc., not the State of Iowa.

Iowa Code Section 232.8(1)(c) provides that a Juvenile Age 16 or Older is Excluded from the Jurisdiction of Juvenile Code

25. Violations by a child, age 16 or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph "e" or "f," or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, or violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause. See Iowa Code § 232.8(1)(c).

26. In other words, investigations and charges relating to forcible felonies are "not subject to the juvenile code" when the offender is 16 years of age or older. Offenders 16 or older cannot benefit from the juvenile code's protections. *State v. Hajtic*, 724 N.W.2d 449, 452 (Iowa 2006); *State v. Harris*, 589 N.W.2d 239, 244 (Iowa 1999); *State v. Mann*, 602 N.W.2d 785(Iowa 1999).

27. The defendant's birthdate is August 9, 2005, which means he was age 16 years and approximately 3 months at the time of Nohema Graber's death. In this case he is treated as an adult based upon the seriousness of the offense and Iowa Code § 232.8(1)(c). The juvenile code provisions impacting how law enforcement may interview a juvenile and who is to be notified do not apply. *See, e.g., State v. Williams*, No. 18-2081, 2021 WL 593992 (Iowa Ct. App. Feb. 3, 2021).



28. The officers in this case complied with the law. Valid Miranda warnings were provided when they were required. Any statements made by the defendant to law enforcement are not suppressible.

WHEREFORE the State of Iowa requests the Court overrule and deny each of the defendant's Motions to Suppress.

Respectfully Submitted,

/s/ Chauncey T. Moulding

Chauncey T. Moulding  
Jefferson County Attorney  
51 W Hempstead  
Fairfield IA 52556  
Phone: (641) 472-9201  
Email: cmoulding@jeffersoncoia.us

/s/ Scott Brown

Scott Brown  
Assistant Attorney General  
1305 E Walnut St  
Hoover Bldg - 2nd Fl  
Des Moines IA 50319  
515-281-3648 – phone  
515-281-8894 – fax  
Scott.Brown@ag.iowa.gov

Original Filed.

Copies served via EDMS.