IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	CRIMINAL ACTION NUMBERS
	)	
v.	)	IN-05-06-1529 thru IN-05-06-1533 and
	)	IN-05-06-2390 thru IN-05-06-2394
JAMES E. COOKE	)	
	)	ID No. 0506005981
Defendant	)	

Submitted: May 10, 2006
Decided: September 8, 2006

MEMORANDUM OPINION

Upon Motions of Defendant to Suppress - ***DENIED***

Steve P. Wood, Esquire, State Prosecutor, and Diane C. Walsh, Deputy Attorney General, Department of Justice, for State of Delaware

J. Brendan O'Neill, Esquire, and Kevin J. O'Connell, Esquire, of Wilmington, Delaware, attorneys for the defendant

HERLIHY, Judge

Defendant James Cooke has been indicted for murder in the first degree (the deceased being Lindsey Bonistall), felony murder in the first degree (murder-rape of Lindsey Bonistall), rape first degree (Lindsey Bonistall), burglary first degree (Lindsey Bonistall's apartment), arson in the first degree (the apartment in which Lindsey Bonistall lived), reckless endangering first degree (relating to that apartment), burglary second degree (at the residence of Amalia Caudra), robbery second degree (Amalia Caudra), theft misdemeanor (involving Amalia Caudra), burglary second degree (the residence of Cheryl Harmon), and theft misdemeanor (involving Cheryl Harmon). While the Court's decision on Cooke's suppression motions was under advisement, he filed a motion to sever into three separate trials (1) the charges involving the death of Lindsey Bonistall, (2) the second burglary and related theft charges, and (3) the other burglary and theft charge. The State has just responded to that motion, and, obviously, the Court has not rendered a decision on that severance motion.

Cooke has filed two motions to suppress. In one, he seeks to exclude evidence seized pursuant to a search warrant for a pair of boots and a sample of his blood. The blood was subjected to DNA testing. He challenges this warrant as lacking in probable cause for the murder and the rape, among other offenses related to the murder. He also claims the affidavit of probable cause contains false and misleading statements.

His second motion relates to a residence at 9 Lincoln Drive in Newark which he shared off and on with his girlfriend. The police seized certain evidence pursuant to that

warrant and seized other items not within the scope of the warrant. The State contends, however, these latter items were taken with the consent of the girlfriend. Cooke argues that this search warrant lacked probable cause, was pretextual, and that his girlfriend was coerced into giving permission to the police to take the items not related to the purpose of the search warrant.

Cooke's suppression motions are directed to the charges involving the death of Lindsey Bonistall. For reasons which will become apparent, matters involving the other charges will be discussed in this opinion. Nothing said in this opinion, however, is to be viewed as a prejudgment on Cooke's severance motion.

The Court finds that probable cause existed for the issuance of both search warrants. Further, the search warrant for the boots and his blood does not contain false and misleading statements. The Court finds that the search warrant for the residence was not pretextual and that the additional items seized were obtained through the uncoerced consent of the girlfriend. Both motions to suppress are **DENIED**.

Background

A brief recitation of some facts is necessary to place in context the Court's consideration of these motions. In the early morning hours of May 1, 2005 there was a report of a fire at an apartment at 81-6 Thorn Lane in Newark, Delaware. The local fire company, Aetna Hose and Ladder, responded and put out the fire. The Newark Fire Marshall also went to the scene. A little earlier there had been a fire in a garage at 208

Murray Road in Newark. Because arson was suspected there, Det. Andrew Rubin of the Newark Police had been called at home to investigate the garage fire.

Around noon on May 1st, the Fire Marshall called Det. Rubin to come to 81-6 Thorn Lane. He had discovered some unusual writing on the wall inside the burnt apartment and wanted the detective to see it. When Det. Rubin arrived, he saw writing referring to the KKK, "more bodies are going to be turning up dead," and "we want our weed back, give us our drugs back." Det. Rubin and the Fire Marshall looked around the apartment.

The Fire Marshall believed the fire had originated in the bathroom. Det. Rubin looked into it and noted that there was a significant amount of damage. He also saw a lot of debris in the bathtub. Det. Rubin then went elsewhere in the apartment while the Fire Marshall continued looking through the debris in the bathtub. While doing so, he found what he believed was a body. He called for Det. Rubin. The two of them continued to sift through the debris. When they found what appeared to be fingers, they stopped. Det. Rubin then secured the apartment as a crime scene and summoned the evidence detection officer(s). Further examination of the tub revealed a gag on the body that had been tied. Underneath the body was a cord which police then believed also had been tied at one time.

The body was that of Lindsey Bonistall.

The Crimes

On June 8, 2005, when Det. Rubin sought the search warrant for Cooke's blood and for a pair of boots, the Newark Police were investigating four sets of crimes which they

believed were connected, possibly through the participation of Cooke. These crimes are described here in summary fashion for clarity's sake:

> March 8, 2005 - burglary at 208 Murray Road in which the burglar left a boot print.
>
> April 26-27, 2005 - burglary at 11-2 Thorn Lane, Town Court Apartments, the home of Cheryl Harmon (hereinafter referred to as "the Harmon burglary").
>
> April 30, 2005 - second burglary at 208 Murray Road.
>
> April 30, 2005 - home invasion burglary at 209 West Park Place, home of Amalia Cuadra and Carolina Bianco (hereinafter referred to as "the home invasion").
>
> April 30-May 1, 2005 - burglary, rape and homicide of Lindsey Bonistall at her apartment at 81 Thorn Lane, Town Court Apartments (hereinafter referred to as "the homicide" or "the murder scene").

As described in the affidavit for Cooke's blood and boots,[1] the connection between some or all of these offenses was made initially in a call to 911. Subsequent to the call, Cooke's girlfriend and mother of three of his children, identified the caller as Cooke.

Part I

Search Warrant for Blood Sample and Boots

Parties' Claims

Cooke concedes that there are sufficient facts in the affidavit to link him to the home invasion incident on April 30th at 209 Park Place. But, he argues, there is insufficient

[1] *Infra* pp. 8-13.

information stated in the affidavit to link him to the murder and rape. Further, he asserts linking these two incidents does not provide probable cause for the murder. He states that his girlfriend's identification of his voice on the 911 call fails to link him to the murder. He claims that Det. Rubin's conclusory statement in the search warrant affidavit, that the caller had facts only someone present would know, lacks requisite detail. The affidavit must recite facts, he argues. Det. Rubin's statement, Cooke claims, is not a fact but an opinion. Opinions do not provide the basis for probable cause. Such an opinion is not, therefore, subject to a neutral magistrate's scrutiny.

Alternatively, Cooke argues that there are false and misleading statements in the affidavit. Even if the full affidavit were sufficient to establish probable cause in relation to the murder, if the false and/or misleading statements are removed, the remainder does not establish probable cause. This argument implicates *Franks v. Delaware*.[2]

The State's responses are that the affidavit provides sufficient probable cause to link Cooke to the murder. Further it argues that obtaining his blood for DNA testing was, therefore, lawful. It asserts there are no false or misleading statements in the affidavit. Finally, the State contends there was probable cause to seize Cooke's boots.

Applicable Standards

The Delaware Constitution provides that a search warrant may be issued only upon a showing of probable cause.[3] The constitutional requirements for search warrants are

---

[2] 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d. 667 (1978).

[3] *See* Del. Const. of 1897, art. I, § 6. ("The people shall be secure in their persons, (continued…)

codified in Sections 2306 and 2307 of Title 11 of the Delaware Code. Section 2306 provides that an application for a search warrant must "state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated [in the search warrant application] and shall recite the facts upon which such suspicion is founded."[4] Section 2307 provides that a warrant may issue only upon a judicial determination of probable cause.[5]

A "four-corners" test is used to determine whether an application for a warrant demonstrates probable cause.[6] Under this test, sufficient facts must appear on the face of

---

[3](...continued)
houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation.").

[4] *See* DEL. CODE ANN. tit. 11, 2306 (2001) ("The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.")

[5] *See* DEL. CODE ANN. tit. 11, § 2307 (2001) ("If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person by name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible, and may be returnable before any judge, justice of the peace or magistrate before whom it shall also direct to be brought the person or thing searched for if found, and the person in whose custody or possession such person or thing is found, to be dealt with according to law.")

[6] *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000)(quoting *Pierson v. State*, 338 A.2d 571, 573 (Del. 1975).

the affidavit so that a reviewing court can glean from that document alone the factual basis for a determination that probable cause exists.[7] Stated another way, the supporting affidavit must set forth sufficient or adequate facts for a neutral judicial officer to form a reasonable belief that an offense has been committed and that seizable property would be found in a particular place or on a particular person.[8] The test for probable cause in support of a search warrant is much less rigorous than that governing the admission of evidence at trial and requires only that a probability, and not a *prima facie* showing, of criminal activity be established.[9] Great deference must be paid by a reviewing court of a magistrate who has made a finding of probable cause to issue a search warrant.[10] The affidavit must be considered as a whole, and not in an isolated, *seriatim* fashion.[11] A common sense review of the affidavit is taken rather than a hypertechnical one.[12]

In *Illinois v. Gates*[13], the United States Supreme Court reiterated the traditional "totality of the circumstances" test for the issuance of search warrants. The *Gates* Court

---

[7] *Id.*

[8] *Id.*

[9] *Jensen v. State*, 482 A.2d 105, 112 (Del. 1984)(citing *Spinelli v. United State*, 393 U.S. 410, 419, 89 S.Tc. 584, 590, 21 L.Ed.2d 637 (1969).

[10] *State v. Sisson,* 883 A.2d 868, 876 (Del. Super. Ct. 2005) (citing *Jensen v. State*, 482 A.2d at 105).

[11] *Edwards v. State*, 320 A.2d 701, 703 (Del. 1974).

[12] *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989).

[13] 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d. 527 (1983).

viewed the rule from the perspective of the magistrate presented with a request for a search warrant:

> The task of the issuing magistrate is simply to make a **practical, commonsense decision** whether, 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. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for. . . conclud[ing] that probable cause existed."[14]

In applying *Gates*, the Delaware Supreme Court has observed that *Gates* "emphasized that the 'assessment of probabilities' that flows from the evidence presented in support of the warrant 'must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'"[15]

Discussion

The analysis of the issues presented, of course, begins by looking at the search warrant affidavit sworn to by Det. Rubin:

> 1. Your Affiant is Detective Andrew Rubin of the Newark Police Department. Detective Rubin has been a Newark Police Officer since 1997 and is currently assigned as a Detective in the Criminal Investigations Division. Detective Rubin has received advanced police training from, among other agencies, the Federal Bureau of Investigation, Delaware State Police, New Jersey Sex Crimes Officers Association & MAGLOCLEN.

---

[14] *Illinois v. Gates*, 462 U.S. at 238-39, 103 S.Ct. at 2332, 76 L.Ed.2d at 548 (1983) (emphasis added) (quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L.Ed.2d 697, 708 (1960)).

[15] *Gardner v. State*, 567 A.2d at 409 (quoting *Illinois v. Gates*, 462 U.S. at 232, 103 S. Ct. At 2329, 76 L.Ed.2d. at 544).

2. The statements contained in this affidavit are based in part upon information provided by victims, witnesses, and other law enforcement officers, along with your affiant's experience and background as a Law Enforcement Officer. Since this affidavit is being submitted for the limited purpose of securing a search warrant, you affiant has not included each and every fact known concerning this investigation. However, your affiant does not believe he has excluded any fact or circumstance that would tend to defeat the establishment of probable cause. Your affiant has set forth only the facts that you affiant believes are necessary to establish probable cause.

3. On 03/08/05, a burglary occurred at 208 Murray Rd in Newark, DE. During the burglary, the suspect entered the residence via the bathroom window. The suspect then stepped onto the toilet and then onto the floor. The suspect left a boot print on a roll of toilet paper on the floor.

4. On 04/30/05, at about 0045 hours, a burglary occurred again at 208 Murray Rd in Newark, DE. During this burglary, the suspect entered the residence via the same bathroom window.

5. On 04/30/05, at about 0130 hours, just 45 minutes after the Murray Road burglary, your affiant was notified of a home invasion burglary that had occurred at 209 W Park Place, Newark, New Castle County, Delaware. Your affiant responded to the scene and was advised that the victim was inside the residence.

6. Your affiant entered the residence and contacted the victim, who was identified as Amalia Cuadra. Your affiant conducted an interview with Cuadra. Cuadra, referred to herein as V, states that she had gone to bed in her bedroom at about 2345 hours. V then awoke and someone was shining a flashlight in her face. The subject holding the flashlight, referred to herein as S, then stated "Shut the fuck up or I'll kill you" as he continued to shine the flashlight in her face. S then stated, "Where's your money? I know you have money." V hesitated and then got out of bed, wrapping her comforter around her. V walked a few steps to her desk to her wallet, which was on the desk. V took her wallet and gave $45.00 USC from her wallet.

7. Your affiant asked V to describe S. In the initial interview and in follow-up interviews, V described S as follows: B/M, 28-33 years of age, 5"5" - 5"8", husky build, husky deep face, no facial hair and wearing a dark or grey jacket or hoody, grey wool knit gloves and a wool hat.

8. After taking the USC from V, S stated "Give me the credit cards too." V then gave S her Delta American Express Card and her University of Florida Alumni Visa Card. S moved his right hand around his side to give the impression to V that he had a gun. V began to scream for her roommate and S ran out of the bedroom.

9. While checking the residence, it was determined that S had entered the residence by removing a pane of glass from the rear door and damaged the doorframe in the process. V checked her property and found that her light blue/grey colored Jansport backpack was missing from the living room. V's Apple I-pod and bottle of Trimspa diet medication had been removed from the residence, along with her roommate, Carolina Bianco's Samsung cell phone.

10. V called her bank card company the next day and found that someone had attempted to use her Visa card on 04/30/05 at about 0419 hours at an ATM machine located at 211 Elkton Rd in Newark. Your affiant retrieved the tape from the ATM machine and viewed it. On the tape, a subject is seen walking up to the ATM machine. This subject is wearing a hooded sweatshirt that appears grey in color, wool knit gloves and sneakers.

11. A "wanted" poster containing scenes from the ATM video, along with a sketch done by a V and a police sketch artist, was distributed to areas around New Castle County.

12. On 05/31/05, Newark Police received a call from a confidential source, referred to herein as UC-1, stating that they believed James Cooke, an employee of the Payless Shoe Store in the College Square Shopping Center, Newark, was the person in the ATM photos.

13. On 06/01/05, Newark Police Detectives contacted UC-1 in person. UC-1 stated that he was sure that Cooke was the person in the ATM

photos. Specifically, UC-1 stated that the face looked like Cooke and the shoes in the photos were the same ones as sold in the Payless store. UC-1 advised that another confidential source, referred to herein as UC-2, had further information about Cooke.

14. On 06/01/05, Detectives contacted UC-2 and UC-2 advised that the ATM photo looked like James Cooke, a former employee. After UC-2 posted the "wanted" poster in the inside of the store window, it was removed by someone. After that day, Cooke never returned to work at the store, without explanation. UC-2 provided Cooke's pedigree information to Detectives. This information indicated that Cooke resides at 9 Lincoln Dr, Newark.

15. On 06/07/05, Detectives contacted Cooke's girlfriend, Rochelle Campbell, at the residence. Campbell agreed to a formal interview at Newark PD HQ. During the interview, Campbell recalled the night of 04/30/05 and stated that she and her boyfriend, James Cooke, were in their residence. At sometime in the early morning hours, Cooke left the residence for a short period of time and returned to the residence carrying a backpack. Campbell watched as Cooke went through the backpack. Inside the backpack, Campbell could see credit cards, an I-pod and a luggage tag with the name that Campbell pronounced as "Amelia." Campbell also saw a bottle of diet pills and a cellular phone.

16. Sometime early in the morning, Cooke left the residence to use the card and returned not having received any money. Cooke had diposed of the bag and its contents.

17. Campbell was shown the photos from the ATM machine and she was 100% sure that Cooke was the one depicted in the photos attempting to use the card.

18. V viewed the ATM photos and was sure that the person in the ATM photos was the one who entered her residence.

19. Cooke's physical description matches that of the suspect described by V.

20. On 050105, Newark Police and Aetna Fire Department were dispatched to 81 Thorn Lane, Apt #6, Town Court Apartments in Newark, New Castle County, Delaware, for a report of a fire. Arriving units found smoke and fire and it was extinguished by Aenta personnel. The apartment appeared to be unoccupied. Newark Fire Marshall Henry Baynum arrived on the scene and conducted a preliminary investigation. He believed that the fire began in the bathroom. Baynum was then called away to another fire. Maintenance personnel changed the lock to the apartment and the scene was secured by Baynum.

21. Baynum returned to the scene at about 1130 hours on 05/01/05. He began his investigation and immediately noticed writing on the walls of the apartment that caused him concern. He had not previously noticed the writing. Baynum then contacted the Newark Police and your affiant was notified.

22. Your affiant arrived on the scene and found that there was writing, in magic marker, on the inside of the front door and the interior of the living room walls of the apartment. Baynum advised that he believes that the statements were written prior to the fire.

23. Your affiant and Baynum continued into the bathroom and Baynum began to investigate the cause & origin of the fire. Baynum began to move charred debris from the bathtub and he located what he believed to be a human body underneath the debris.

24. Your affiant spoke with Christine Bush, a resident of the apartment, that arrived while your affiant was there. Bush advised that she had last spoken with her roommate, Lindsey Bonistall, on 04/30/05 at about 1430 hours.

25. Your affiant questioned Bush as to the statements written on the wall and Bush admitted that she has smoked Marijuana in the apartment, but they do not sell drugs from the apartment.

26. On 05/03/05, Dr. Jennie Vershvosky of the Delaware Medical Examiner's Office positively identified the human body as that of Lindsey Bonistall and ruled the incident a homicide. She also found DNA evidence, which is not the victim's, upon the victim's body.

27. On 05/02/05, the Newark Police Department received a 911 call from a subject. In this phone call, the caller details parts of both of the above listed crimes. The caller names a specific victim from the home invasion. He then details facts about the homicide that could have only been know by someone present at the homicide scene, including facts about the says the victim's body was left and about the content of the writing on the wall.

28. On 06/06/05, your affiant played a portion of the 911 call for Rochelle Campbell. Campbell advised that at that time she was 80% sure that Cooke was the caller. Campbell and Cooke have (3) children together and have been together for 9 years. She was re-interviewed on 06/07/05 and at that time she advised that she had spoken with Cooke about the call and was now sure that Cooke was the caller detailing pieces of these crimes.

29. Your affiant believes there is probable cause to take a DNA sample and suspect rape kit from Cooke to compare to the DNA found on the victim's body. In addition, your affiant believes there is probable cause to seize a pair of black State Street boots, currently being worn by Cooke, to compare to the boot print from the burglary at 208 Murray Rd.

As noted, Cooke concedes there is adequate probable cause to link him to the home invasion/burglary at 209 W. Park Place (paragraphs 5-19, 27). But, he says, that is all, and that the home invasion cannot be linked to his alleged involvement with the murder (see paragraphs 20-28). Cooke parses the affidavit too finely and not from a totality of circumstances perspective.

He focuses too much of his argument on paragraph 27. That paragraph is important, of course, but it must be read in context with the others. One of the things linking Cooke to the home invasion is his girlfriend's identification of his voice as the

caller (paragraph 28). There was more information recited in the affidavit linking Cooke to the home invasion, but the identification of his voice is part of the probable cause linking him to the murder.

That same caller made reference to facts about the murder. The link, which Cooke disputes, however, is that *it is the caller* to 911 who made the link to these two recently committed crimes, and who provided key details about both offenses in the same call. And he concedes, as he must, that there is sufficient probable cause to link him to the home invasion. The affidavit recites that there was writing on the walls in Lindsey Bonistall's apartment which caused the Newark Fire Marshall concerns, sufficient concern to prompt him to call the police (paragraph 21). Up until that point in the affidavit, it appears that no one was in the apartment during the fire; though one gleans from paragraph 20 that arson may have been suspected.

Paragraphs 22 and 23 mention the follow-up investigation and a body being found under debris in the bathtub. Det. Rubin recites that the person calling 911 gave details about ways in which Bonistall's body was left and the content of the writing on the wall.

In paragraphs 27 and 28, the affiant links Cooke to the homicide and the murder scene as set out earlier in the affidavit. These are the paragraphs in contention in his motion:

> 27. On 05/02/05, the Newark Police Department received a 911 call from a subject. In this phone call, the caller details parts of both of the above listed crimes. The caller names a specific victim from the

home invasion. He then details facts about the homicide that could have only been known by someone present at the homicide scene, including facts about the ways the victim's body was left and about the content of the writing on the wall.

28. On 06/06/05, your affiant played a portion of the 911 call for Rochelle Campbell who advised at that time that she was 80% sure that Cooke was the caller. Rochelle Campbell was re-interviewed on 06/07/05 and at that time she advised that she had spoken with Cooke about the call and was now sure that Cooke was the caller detailing pieces of these crimes.

Paragraph 29 states the affiant's belief that there is probable cause to take a DNA sample and rape kit evidence from Cooke, who was in custody at the time the affidavit was written, as well as a pair of black State Street boots being worn by Cooke to compare to the boot print from the burglary at 208 Murray Road.

A

The issue before the Court is whether, when viewing the totality of the circumstances from a practical, common sense point of view, the affidavit establishes a fair probability that Cooke's DNA, rape kit samples and boots will connect him to the homicide.[16]

Of primary importance is the fact that the 911 caller's voice was identified as that of James Cooke, as stated in paragraph 28 of the affidavit. The affidavit shows that Cooke's girlfriend recognized and identified his voice. The first time she heard the tape,

---

[16]*See Illinois v. Gates*, 462 U.S. at 238, 103 S.Ct. at 2332, 76 L.Ed.2d at 548; *Gardner v. State*, 567 A.2d at 409.

she said she was 80 percent sure the caller was Cooke. When she was re-interviewed, she had spoken to Cooke and she was able to verify that he made the call. The Court concludes that there is more than a "fair probability" that the 911 caller was James Cooke.

The next question is whether the affidavit adequately connects Cooke to the homicide. As set forth in Paragraph 27, it was the 911 caller who established a connection between the 209 W. Park Place home invasion and the homicide, which is important because the magistrate, and this Court as well, must look at the warrant as a whole not as separate paragraphs. The warrant reflects (1) more than ample probable cause connecting Cooke to the home invasion and (2) the connection between the crimes by asserting that the 911 caller mentioned the name of a victim of the home invasion, detailed the way the homicide victim's body was left and referred to the content of the writing on the wall, which appeared at the murder scene. Defendant argues that under *Dorsey's* four corners test, these facts do not establish probable cause to believe that the semen found on Lindsey Bonistall's body was Cooke's. The State argues that the anonymous phone call was the first sign that the burglary/the home invasion and the homicide were connected, and that this fact, in combination with the statements about the body and writing, establish probable cause.

No doubt the affidavit offers more information about the burglary and the home invasion than about the homicide, but this difference is not determinative. There is no state or federal requirement that a search warrant provide all the details known by the

officer preparing the warrant. Looking at the warrant as a whole, from a common sense perspective, the warrant established that Cooke was the 911 caller and that the caller was intimately familiar with both crime scenes. Although he argues that the magistrate could only trust that the affiant's conclusion was true, the Court finds otherwise.

The warrant states that the caller "details facts about the homicide that could have only been known by someone present at the homicide," and Cooke argues that this is a conclusion offered without benefit of any supporting facts. However, the sentence goes on to say that the caller provided information about how the victim's body was left and about the content of the writing on the wall at the homicide scene. In Paragraph 26, the warrant also states that Dr. Jennie Vershvovsky of the Delaware Medical Examiner's Office ruled Ms. Bonistall's death a homicide and located DNA evidence, other than Bonistall's own, upon the victim's body. Thus, the warrant communicated to the magistrate that Lindsey Bonistall was murdered and had unidentified DNA on her body; the warrant told the magistrate that the 911 caller was Cooke and that Cooke had non-public, detailed information about both the home invasion and the homicide; it told him that Cooke knew the name of the victim of the Park Place home invasion, that he knew how the homicide victim's body was left by the killer, and that the caller knew what was written on the wall of the murder scene. These are not conclusions or opinions. These are facts. The Court finds that these facts, while not detailing all the information known to Newark Police, were sufficient to enable the magistrate to form a reasonable belief that

the crimes were linked, that Cooke was connected to the them and that seizable property would be found on Cooke's person.[17]

As the *Gates* Court emphasized, a search warrant must be weighed "as understood by those versed in the field of law enforcement."[18] In this case, the affiant established a link between the crimes by way of the 911 caller, and that caller was none other than James Cooke. It strains logic to concede probable cause for the home invasion and seek to sever it for the homicide when one person linked the two crimes in one phone call. The Court concludes that under the *Gates* totality of the circumstances test and the *Dorsey* four corners test the affidavit on its face creates a connection between Cooke and the homicide and establishes probable cause to take his DNA and rape kit samples for comparison with the DNA found on Lindsey Bonistall's body.

B

As to the boots, Defendant argues that the affidavit contains no facts connecting Cooke or his boots to the burglary at 208 Murray Road. The State argues that the affidavit establishes probable cause to seize the boots and that, in addition, the boots were taken in plain view because Cooke was wearing them at the time of his arrest.

Defendant is correct that the affidavit does not state that the 911 caller knew about the burglary at 208 Murray Road, but it does state that the Murray Road burglar left a boot

---

[17]*Dorsey v. State*, 761 A.2d at 811.

[18]*Illinois v. Gates*, 462 U.S. at 232, 103 S.Ct. at 2329, 76 L.Ed.2d at 554..

print and that Cooke was wearing boots at the time the affidavit was written. In addition, the affidavit connects the crimes. On March 8, 2005, a burglar entered 208 Murray Road by way of the bathroom window and left a boot print on the floor. The same house was burglarized again on April 30, 2005, and entry was again gained by the bathroom window. Only 45 minutes later 209 West Park Place was burglarized (the home invasion), and the affidavit connects Cooke, as the 911 caller, to that home invasion. These facts are all alleged in the affidavit, and the Court concludes that the affidavit establishes probable cause to seize Cooke's boots for comparison purposes with the boot print from the Murray Road burglary.

C

***Franks v. Delaware*[19]**

On February 1 and 2, 2006, this Court held an evidentiary hearing based on Cooke's assertion that Det. Rubin made multiple false or misleading statements in the affidavit. He argues that the evidence adduced at the hearing proves that Det. Rubin made two misrepresentations: first, that only someone who was present at the homicide scene could have known about the writing on the walls and, second, that the 911 caller detailed facts about the way the victim's body was left. Cooke contends that under *Franks v. Delaware*, these statements are misleading, were recklessly made, and must be stricken from the affidavit, leaving it devoid of any link between Cooke and the homicide.

[19]438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978).

The State argues that Rubin did not make any false or misleading statements and that a *Franks* analysis is not necessary. The State further argues that even if the reference to the writing on the walls is discounted (for reasons explained below) ample evidence exists to establish probable cause.

Cooke's *Franks* argument zeros in on paragraph 27 of the affidavit, which is presented here again for clarity's sake:

> On 05/02/05, the Newark Police Department received a 911 call from a subject. In this phone call, the caller details parts of both of the above listed crimes. The caller names a specific victim from the home invasion. He then details facts about the homicide that could have only been known by someone present at the homicide scene, including facts about the ways the victim's body was left and about the content of the writing on the wall.

In *Franks*, the defendant asserted that the affiant falsely stated that he had personally interviewed two of the defendant's co-workers. The defendant further claimed that the affiant falsely attributed statements to the co-workers about the defendant's typical apparel in order to establish probable cause to search the defendant's apartment. The defendant sought a hearing on the veracity of the affiant's statements. The Delaware Supreme Court affirmed this Court's ruling that no attack upon the veracity of a warrant affidavit could be made. The United States Supreme Court granted defendant's petition for *certiorari*.

The *Franks* Court reached a two-part holding. First, if a defendant makes a substantial preliminary showing that a false statement was knowingly and intentionally, or with reckless disregard for the truth, 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.[20] Second, if the allegation is established at the hearing by a preponderance of the evidence and, with the affidavit's false material set aside, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause were lacking on the face of the affidavit.[21]

This Court has examined and considered the documentation Cooke submitted prior to the hearing relating to the first prong of *Franks*. The hearing which was scheduled also related to a number of issues raised in both of Cooke's motions to suppress. But, in part, the hearing was conducted to enable Cooke to make whatever additional record he desired on the issue of whether there was a false statement or were false statements in the affidavit and to insure completeness of that record. The scheduling of the hearing does not mean the Court finds or found Cooke made the requisite preliminary showing *Franks* requires. The hearing on this issue was not only to determine if the threshold *Franks* prong was met, but if the record, once completed, demonstrated it had been met what the Court then needed to do in the second part of the *Franks* analysis.

As a starting point, the Court notes that Cooke does not allege that Det. Rubin lied, as the officer did in *Franks*. Rather, Cooke argues that Det. Rubin overstated the facts and

---

[20] *Franks v. Delaware*, 438 U.S. at 155, 98 S. Ct at 2676, 57 L.Ed.2d at 672.

[21] *Franks v. Delware*, 438 U.S. at 156, 98 S.Ct. 2676, 57 L.Ed.2d at 672.

offered his opinion as to their weight. He contends first that Det. Rubin recklessly presented as fact his opinion that only someone present at the murder scene could have known about the writing on the walls. The evidence adduced at the hearing showed that five or six firefighters were inside the apartment and could have seen the writing on the walls. In fact, Rubin asked for a report of the writing each firefighter remembered seeing on the walls, and one of the firefighters stated in his report on May 1, 2005, that he had seen references to "KKK" and "white power." Maintenance workers were also present at the apartment to change the lock on May 1 at about 4:00 a.m., and they had the opportunity to see the writing which was on the living room wall. At about 2:00 p.m. the next day, May 2, a message was posted on a University of Delaware website indicating that the murder "was possibly drug related and there was something written on the wall about stolen weed." Later that day, the anonymous caller, now known to be Cooke, placed the 911 call at 5:42 p.m. Det. Rubin himself printed out a copy of the website posting on May 8, 2005, almost one month before he wrote the search warrant application.[22]

Thus, it is undisputed that various police officers and firefighters saw the writing; the maintenance staff may have seen the writing; and an internet posting referred to the writing being drug-related. These events occurred hours before the 911 call was placed

[22] Evidence of rumors circulating **after** the 911 call was placed is not relevant to this inquiry.

at 5:42 p.m. on May 2, 2006. Cooke also supplied to the Court a May 2, 2005, *News Journal* article reporting a Newark Police news conference. The article does not mention any writing on the walls of Bonistall's apartment or anything about her being or possibly being found tied up. However, as the State correctly points out, only the 911 caller made accurate references to the content of the writing. The caller specifically mentioned "white power" three times and also stated "And we be. . . they be writin' on the walls. Talk about "KKK," "white power." None of the rumors was to this effect. The rumors show that some knowledge of the writing had filtered into the community, but there is no evidence about the exact nature of the writing other than what the 911 caller provided.

The following passage from *Franks* is instructive on the nature and extent of the affiant's belief that what he avers is true:

> When the Fourth Amendment demands a factual showing sufficient to comprise 'probable cause,' the obvious assumption is that there will be a **truthful** showing (emphasis in original). This does not mean 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily. ***But surely it is to be 'truthful' in the sense that the information put forth is believed or appropriately accepted by the affiant as true*** (emphasis added).[23]

Using this language as a guide, the Court finds that Det. Rubin did not recklessly or otherwise misrepresent the evidence about the writing on the walls and finds that he

---

[23] *Franks v. Delaware*, 438 U.S. at 164-65, 98 S.Ct. 2681, 57 L.Ed.2d 678 (emphasis added)(quoting *United States v. Halsey*, 257 F. Supp. 1002, 1005 (S.D.N.Y. 1966).

believed that everything he stated in the affidavit was true. While there were rumors that writing existed on the walls, there is no accurate evidence regarding the content of the writing other than that provided by the 911 caller, James Cooke. The Court concludes that Det. Rubin's statement was a good faith effort to draft an affidavit that established probable cause to link Cooke to the homicide without revealing every detail about the ongoing investigation.

In further support of his claims under *Franks*, Cooke asserts that Det. Rubin made a false statement about the caller (Cooke's) reference to the home invasion. Paragraph 27 states the caller names a specific victim of the home invasion.

This, Cooke contends, is false because the 911 caller referred to "Miss Calamina." There was no one by that name in the home that was invaded. Det. Rubin testified, however, that when the intruder woke up Amalia Cuadra, she first thought it was her house-mate Carolina Bianco and uttered her name. When the intruder told Caudra to take off her clothes, she screamed Carolina's name, apparently more than once, and the intruder then fled. The book bag which the intruder may have took had her name tag on it.

While dissimilar in spelling, the difference between "Calamina" and either Amalia or especially Carolina does not rise to the level of a false statement or a reckless statement. Cooke further contends that Carolina was not a victim. That is a distinction without significance as she was in the same house.

Cooke argues that there is another misleading statement in paragraph 27. His reference here is to the sentence, "The caller names a specific victim from this home invasion." In his initial motion to suppress evidence seized through this search warrant, he quotes from a section of the transcript prepared by the State (Newark Police or Attorney General is unclear):

> Another lady named Miss Calamina, that owed us money for drugs. We went in another house but the lady wasn't there, but we didn't come there for the lady. We came there for her man. Her name was Cheryl.

He claims that this statement is misleading because the woman in the home invasion case whom the intruder asked to strip is Amalia Caudra. That, Cooke asserts, is a significantly different name from "Calamina." But as noted earlier, when the intruder first disturbed Caudra she thought it was her house-mate Carolina and spoke her name. When the intruder told Caudra to undress, she screamed Carolina and apparently more than once.

In print, the names Carolina and Calamina differ. But, even in print, caution about any difference has to be tempered with how they are pronounced. Because of the importance of this issue, subsequent to the February hearing, the Court asked to listen again to the tape or audio copy of the 911 call which is subject of paragpraph 27 and Cooke's *Franks* argument. The role of pronunciation was a factor in the Court's evaluation of this argument. Also, Cooke's argument was built around a transcript of the call not the actual voice of the caller.

At the Court's request, the State prepared of DVD of the 911 call. Another reason for wanting to listen to the actual voice of the caller is that another transcription of the call which says "Miss Carolina (sp)"[24], was introduced in the hearing. The DVD is now Court Exhibit #1.

The Court has listened to it several times.[25] There are several preliminary comments. First, the caller has an unusual accent. Two, he pronounced Newark as "Nark." Third, when the name is uttered there is a background type noise that sounds like wind.

Having listened several times again to the portion of the tape where the name is uttered, the Court finds the caller said Carolina, pronounced it as "Caroleena." He also could have said Calamina pronounced as "Calameena" but that does not seem as likely as him saying "Caroleena." There is no way to be 100 percent certain.[26]

That comment means that the Court cannot hold that Det. Rubin in paragraph 27, when noting the caller mentioned a specific victim name made a false or misleading statement or recklessly made a false statement.

---

[24] State's Exhibit 8 in the suppression hearing.

[25] The Court first heard it during the "proof positive" hearing on October 28, 2005. All counsel present in the suppression hearing were present on that occasion, too.

[26] Out of an abundance of caution, during the trial if the State or the defense wishes to introduce a transcript of the 911 call, the name part should be left blank. This admonition in no way changes the Court's findings on this matter.

Furthermore, having carefully considered the search warrant affidavit, an audio copy of the 911 call, the evidence of community rumors about the writing on the walls pre-existing the 911 call and the testimonial evidence of Det. Rubin, the Court finds that Det. Rubin did not misrepresent recklessly or otherwise the evidence when he stated that the 911 caller provided details about the writing on the wall that only someone present at the crime scene could have known.[27]

Cooke also argues that Det. Rubin falsely or recklessly stated that the 911 caller gave facts about the homicide victim's body. In paragraph 27, Rubin stated that the caller had provided details about "the ways the victim's body was left" which could only have been known by someone present at the crime scene. The transcript of the 911 call shows that the caller stated that "And I guess they tied the girl up and killed her." Cooke asserts that this statement provides no facts at all. There is, however, one crucial fact presented – that the victim was tied up. The evidence shows that being "tied up" is one of the major characteristics of this murder. When the victim's body was first discovered, the ligatures were not apparent. But gags and/or ligatures were found but seen only by police or medical examiner personnel and not by firefighters, maintenance personnel or others. One ligature made out of a tee-shirt was tied around the victim's neck. A gag was tied around her mouth. Another binding formed from a severed cord from an electric iron was found beneath her body. It was twisted and tied in a knot in the middle, apparently having been

[27] *Franks v. Delaware*, 438 U.S. at 155, 98 S.Ct. at 2676, 57 L.Ed.2d at 672.

used to tie her hands. Another binding, turned and knotted in a circular form, made from a red shirt was found on the bathroom floor. Thus the evidence shows no fewer than four separate ways in which the victim was tied up.

None of this information was released to the public or to the media, and there is no evidence of rumors or public discussion about it. The Court finds that the 911 caller did provided a highly relevant fact about the victim being tied up and that there is no evidence that anyone other than the police and the fire marshal, and perhaps the medical examiner were aware of this fact. The Court concludes that Cooke has not established by a preponderance of the evidence that Det. Rubin made a false statement with a reckless disregard of the truth about the 911 caller's statement about how the body was found.

In sum, Cooke has failed to meet the threshold preliminary showing prong of *Franks*. Assuming arguendo that he did, he has failed to meet his burden under the second prong that there was false or misleading material in the affidavit. That finding, of course, means there is nothing to excise from the affidavit.

For the reasons stated, Defendant James Cooke's motion to suppress the evidence seized under the search warrant for his DNA, rape kit evidence, and boots is **DENIED**.

Part II

Search Warrant for 9 Lincoln Drive

Background

The motion to suppress the evidence seized through this search warrant involves more than whether it established sufficient probable cause. This motion has a factual

setting leading up to its issuance and during its execution which create additional issues to be resolved. That setting needs to be described.

Det. Rubin is the chief investigating officer for this case. He has testified that the Newark Police received a "tip" on May 31, 2005 about Cooke. The police learned of a potential residence address, 9 Lincoln Drive. They learned he had a 1999 capias outstanding. Two detectives were assigned to contact Cooke and went to 9 Lincoln Drive on June 1st. He was not there.

Cooke's girlfriend, Rochelle Campbell, however, was home. She is the one to whom the electric bills are sent for 9 Lincoln Drive. Neither of those detectives was called as a witness during the suppression hearing. The girlfriend, however, did testify and she related what happened. She testified the police came in the afternoon, and told her that there was an outstanding warrant for Cooke for something that happened a "long time ago."[28] She recalled there were two male detectives and that her son may have let them in. She believes one or both detectives may have gone downstairs to the basement. Campbell believes it was this first visit where the police asked her children (three of whom are by Cooke) where he was. She was upset when her children, who had been outside when this conversation happened, came inside and told her.

The police made a second visit to 9 Lincoln Drive. But before that (as best as she could recall), two uniformed Newark officers stopped her in the street. It was in the

[28] Transcript of Suppression Hearing (February 1, 2006) at p. 34,

daytime and she had all four children with her, ages 8, 6, 3, and around one. She was told to wait which she did until some detectives arrived around a half hour later. Meanwhile, she testified, the police tried to entertain her children, but she was embarrassed because this was happening in her neighborhood.

Several days later two officers came back, one of whom was a female. Again, this was in the afternoon. The police said they wanted to talk to Cooke about some burglaries and that these were more serious than the old charge. Cooke was not there.

The police came to Campbell's home for a third time on June 6th. They did not initially have a search warrant. Det. Rubin and Campbell agree that she insisted that the police this time first get a search warrant. The police visit on this occasion was prompted by information Cooke had been in touch with Campbell.

Campbell was upset with how the police treated her before June 6th, primarily the stop and wait on the street. She says that an officer left her house to get the warrant but the others stayed. Det. Rubin testified that the officers left and that when they returned with the warrant, she was not at home. They waited for her, and she came home shortly thereafter. The Court attaches no significance to this difference in recollection. There is no evidence the police searched her house while waiting for the warrant. Campbell explained her reason for insisting on a warrant:

> Counsel: What was going through your mind during this time about the police and the whole situation with their being there and their going to get a warrant?

Campbell: I wasn't really upset that they were getting a warrant, because if I hadn't been waiting outside for that half an hour, I would have let them search again anyhow. I think I was just concerned with the whole situation and I was just trying to figure on everything.

Campbell also said she saw no reason to ask the police to leave or want to leave herself. After getting it, Det. Rubin explained the search warrant to her and at some point in the process explained that Cooke was a suspect in a murder. Det. Rubin described his initial conversation with Campbell this way:

Counsel: And what did you explain to Ms. Campbell?

Det. Rubin: I gave her her greetings page, which tells her the objects that we are looking for. I told her why we were there. She then actually pointed out to us the areas in the bathroom where she had put Mr. Cooke's belongings into some plastic containers and pointed those out to us.

Counsel: When she pointed out the area where Mr. Cooke's belongings were, approximately how long after that, that she pointed it out – did she do that from when you first arrived with the search warrant?

Det. Rubin: It was pretty quick. I mean, basically we came in, said we had this search warrant and where can we find James' stuff, and she showed it to us.

Counsel: And what in particular did she show you?

Det. Rubin: At that point she showed us these – she calls them Totes. They were blue plastic containers – I think they were blue plastic containers – large containers that she had put all his stuff into. I don't recall at this time how many there were. I think there was maybe two.

Counsel: Did she seem reluctant to you in any way to show you these blue Totes?

Det. Rubin: No.

Counsel: Did she seem annoyed or angry with you that you were asking about his belongings?

Det. Rubin: No.

Counsel: And when you arrived at the scene, is it safe to say that Ms. Campbell pointed those things out to you and did you finish conducting the search?

Det. Rubin: No. The search was mainly conducted by Detective Corcoran. Essentially what happened was while Detective Corcoran was doing the search, I was talking with Ms. Campbell down in the dining room at her dining room table. Agent Ross was essentially the baby-sitter. I remember him going by with kids on his back. He was just playing with the kids. And Detective Farrell was assisting him and assisting me at the same time. She was kind of trying to help with the interview and Agent Ross.[29]

Campbell's testimony generally, except as noted below, concurs with Det. Rubin's recitation of the events. While talking to her at the house, he played the tape of the 911 call. She was reasonably sure the voice was Cooke's. She and Det. Rubin discussed the burglaries, a wanted poster for Cooke and that he was a suspect in a murder.

They spoke over a period of an hour and a half to two hours, but it was not continuous. The telephone rang several times and interrupted their conversation. Cooke was actually one of the callers. Campbell testified that an FBI agent told her at one point,

[29] Transcript of Suppression Hearing (February 2, 2006) at pp. 54 - 55.

she could do it the easy way or the hard way. She thought, this was said around the time Det. Rubin said he wanted her to go to police headquarters to give a statement. The same agent also told her, she testified, that if she did not go willingly she might be arrested.

When asked what role the agent's threat played in her decision to go to police headquarters, she testified:

> Defense Counsel: And you were afraid if you were arrested, what was going to happen to your kids; right?
>
> Campbell: Yes.
>
> Defense Counsel: All right. So it's fair to say, isn't it, that the reason that you went from your house to the police station is because you were afraid if you didn't go, they'd put you under arrest?
>
> Campbell: I – I probably would have. I wasn't pressured to go.
>
> Defense Counsel: Well, let's back up a second.
> What I understood you to say was that you believed if you didn't go to the police station, the told you they were going to arrest you; right? That's what they told you; right?
>
> Campbell: Something to that extent.
>
> Defense Counsel: All right. And you know from a few days before that they stopped you on the street and kept you there for a half an hour against your will; right?
>
> Campbell: Yes.
>
> Defense Counsel: And so you knew when they told you something, that they had the ability and the power to act on it because they had done that to you before on the street; right?

Campbell: Yes.

Defense Counsel: And you still had that in mind when you made the decision to accompany them to the police station so you wouldn't be arrested; right?

Campbell: But I was already talking to them at the house so I didn't really see any reason why not to accompany them to the police station.[30]

Also the agent told her that if she did not do so her kids might be taken from her. Det. Rubin was not in the room when this was said, Campbell testified. Rubin, however, gave a slightly different version. The FBI agent did not say anything at her residence. At the police station, the agent said this:[31]

> "Okay. Let me talk for a few minutes. First off, there's a federal investigation involved in this. If you – I don't believe that you are part of what happened. I don't believe you are involved. You are too good a person. But I believe you know more about what your boyfriend has done than what you are admitting to. I believe you have more knowledge and I believe you can help us out. But I said that I don't believe you are involved in anything. But later on if we find out you were covering up for him, that could lead to problems for you, and you have four great children. If I – I met them tonight. They are great children. The last thing you want to do is run into trouble or end up going away for awhile and you don't get to see your children because of something your boyfriend did, not something you did. You are a religious person, aren't you? Do you think God would want you to cover up for something like that and leave your children without their mother?"[32]

---

[30] Transcript of Suppression Hearing (February 2, 2006) at pp. 105-106.

[31] Quoted from transcript of her interview at the police station.

[32] *Id*. at 78.

Detective Rubin testified that at the police station, however, he lost some patience with her because she seemed to be withholding information:

> I think in the beginning I was just making sure she understood that we were looking for him and if she knows where he is and she keeps him from us, that she could get in trouble. Towards the end of the interview and then – when we returned to the house and she gave us more information and told us that she had lied about something during that interview, I said – my tone became annoyed, like, "Hey, Rochelle, I've been trying to warn you. We're not looking to arrest you, but if you keep doing these types of things, we may have no choice."[33]

Det. Rubin had driven Campbell to the police station. She was not handcuffed. She was there about three hours. After giving a recorded interview (she knew it was being recorded), he drove her back home. They arrived there around midnight.

While she was at the police station, the police had continued their search of the residence. During that period a female officer had been minding Campbell's children at the apartment. Before going to the police station, she had been asked if this were okay and if she were comfortable with that. She indicated that it was.

According to Campbell, she was shown a picture of Cooke at an ATM machine. Gloves appear in that picture and the police asked her about them. She is not sure she recognized the gloves pictured, but of her own volition she went to a bag upstairs, retrieved some gloves and gave them to the police. In a further conversation with the police about Cooke's writing or misspelling of words, she retrieved a piece of paper on which he had written something.

---

[33] *Id.* at 67.

When Det. Rubin returned with Campbell to her home, Det. Corcoran told him of things he had found during his search while she was at the police station. The items were not contraband. Det. Rubin, therefore, took the approach of getting Campbell to sign a consent to search. On that consent form would be listed these items which were not related to the items sought through the search warrant.

Det. Rubin testified he showed and read to her a consent to search form. He said she had no hesitation in signing it. Unlike before, there were no threats about arrest. Campbell also testified that the police were still searching her house when she and Det. Rubin returned from the police station. She was shown a paper which she signed. At the suppression hearing, she could not recall if she read it with Det. Rubin or later read her copy at the house. She testified that the police said she had to sign it.

But she also testified that whether she read it at the time of the search or not, it was explained to her and she knew what it was for. While her testimony was uncertain about how much she recalls reading from the consent form, she was clear that she read the list of items on it before signing:

> I, Rochelle Campbell hereby authorize Det. A. Rubin, a member of the Newark Police, and any other officer designated to assist, to conduct a complete search of: 9 Lincoln Dr., Newark located at: 9 Lincoln Dr, Newark.
> I further authorize the above number of the Newark Police Department to remove any letters, documents, papers, materials or other property which is considered pertinent to the investigation, provided that I am subsequently given a receipt for anything which is removed.

I have knowingly and voluntarily given my consent to search without fear, threat or promise (expressed or implied). In addition, I have been advised by Det. A. Rubin #9574 that I have the right to refuse giving my consent to search.

/s/ Rochelle Campbell /s/ Det. D. Corcoran 9537

Date: 06/07/05 Time: 0020

ITEMIZED LIST OF ITEMS TAKEN AS EVIDENCE

Item No.	Location Found	Time	Officer	Description & Quantity
1	Bedroom	0010	Corcoran	Handwriting Sample
2	Bedroom	1940	"	Flashlight
3	Rear Bedroom - 2 FL	2025	"	Usher CD
4	Diaper Bag - Bedroom	0012	Rubin	Gloves
5	Living Room	2330	Corcoran	Book - "The Good Wife"
6	(1) Bedroom/(1) Bmt Bedroom	2039/2300	"	(2) Bent Screwdrivers

She signed it, according to the time which Det. Rubin wrote on it, at 12:20 a.m. on June 7th. All the items were actually "seized" or "recovered" prior to her signature. She may have been shown, prior to signing the consent form, the inventory list of items seized under the search warrant. The items seized under the search warrant are a pair of blue and white men's shoes, composition book, cassette tape, various documents, disposable camera, cell phone - Nokia, and a bicycle. She testified that she consented to the police taking those items as well. A motivation may have been her assessment of the limited or no evidentiary value of the items on the consent form.

Campbell at the end of much direct, re-direct, cross, and re-cross examination testified she was "apprehensive"[34] about the police search and, at the beginning wanted the police to get a search warrant, but once they did, she was fine with everything that happened.

Applicable Standards

When reviewing the standards applicable to the search warrant to obtain Cooke's blood sample and the boots, the Court enunciated the standards equally applicable to the review of this search warrant. They do not require repeating.

Discussion

Since the analysis of the seizure of the items seized at 9 Lincoln Drive starts with the search warrant, it needs to be quoted:

> Upon the annexed affidavit and application or complaint for search warrant, as I am satisfied that there is probable cause to believe that certain property, namely:
>
> ITEMS TO BE SEARCHED FOR AND SEIZED:
> Any and all paperwork or information, electronic or otherwise, that would indicate the whereabouts of James Cooke, including: Caller ID devices and cellular telephone address book contact information.
>
> Used or intended to be used for: Prosecution of the crimes of Shoplifting 11/0840 and/or Hindering Prosecution 11/1244 and/or Criminal Contempt 11/1271.
>
> Is being concealed on the (premises)(person) described in the annexed affidavit and application or complaint:

---

[34] Transcript of Suppression Hearing (February 1, 2006) at pp. 155-56.

1. Your Affiant is Detective Andrew Rubin of the Newark Police Department. Detective Rubin has been a Newark Police Officer since 1997 and is currently assigned as a Detective in the Criminal Investigations Division. Detective Rubin has been involved in numerous investigations that have resulted in arrests and has drafted and executed search warrants pursuant to those investigations. Detective Rubin has received advanced police training from, among other agencies, the Federal Bureau of Investigation, Delaware State Police, New Jersey Sex Crimes Officers Assocation & MAGLOCEN.

2. The statements contained in this affidavit are based in part upon information provided by victims, witnesses, and other law enforcement officers, along with your affiant's experience and background as a Law Enforcement Officer. Since this affidavit is being submitted for the limited purpose of securing a search warrant, your affiant has not included each every fact known concerning this investigation. However, your affiant does not believe he has excluded any fact or circumstance that would tend to defeat the establishment of probable cause. Your affiant has set forth only the facts that your affiant believes are necessary to establish probable cause.

3. On 1/25/99, James Cooke (DOB 12/02/70), aka James Edwards, was arrested pursuant to a warrant for that crime issued by JP Court #20. He was released on $500 unsecured bail to appear in JP Court #20 on 03/03/99 for trial. According to CJIS, Cooke never appeared for trial and a Capias was issued on 03/18/99 by JP #20.

4. On 06/01/05, Newark Police received information that Cooke has been residing at 9 Lincoln Drive in Newark, New Castle County, Delaware. Detectives contacted Rochelle Campbell (DOB 01/23/78), a resident at the premises and she advised that Cooke was not at home and had not been there for a few days.

5. On 06/06/05, Detective re-contacted Rochelle Campbell and she advised that she had spoken with Cooke over the weekend and she advised that the police had been at the residence looking for him. He told her that the warrant was "old" and was from 1998. Rochelle further advised that he had called from a "215" telephone number and that she did not know his whereabouts. Rochelle Campbell briefly checked her telephone "Caller

ID" to look for the information. She further advised that Cooke has a sister, but that she did not know her full name or address.

6. Rochelle Campbell confirmed that Cooke lives at the residence and she allowed officers to do a cursory check inside the residence to look for Cooke. Cooke was not present at the residence.

7. James Cooke is being sought by Newark Police Detectives and your affiant believes there is probable cause to search the above listed residence for information, electronic or otherwise, to indicate the whereabouts of James Cooke following his failure to appear for trial.

The Parties' Contentions

Cooke argues first that the search warrant was faulty because the affidavit did not establish probable cause to search the residence and because the warrant was a pretext for searching for evidence relating to the homicide and the burglaries. The State responds that the police had a valid interest in establishing Cooke's whereabouts in connection with the 1999 charges. The State also argues that the warrant indicated that the residence would contain evidence of Cooke's whereabouts and that it established a logical nexus between the search and the 1999 charges.

Defendant also argues that the language of the warrant is overbroad and does not fulfill the so-called particularity requirement. The State responds that the purpose of the so-called particularity requirement is to give police meaningful guidance in the search and that the warrant meets this requirement.

In addition, Cooke also argues that the items listed on the search warrant return are beyond the scope of the warrant, which refers only to items that would assist in locating

Cooke. The State replies that Campbell consented to police taking all of the items from her home, and that she voluntarily signed the consent to search form. He next argues that Ms. Campbell's consent was coerced and invalidated by the fact that the warrant itself was a pretext. The State responds by asserting that the police were lawfully in the residence pursuant to a valid search warrant and that Ms. Campbell's testimony shows that she willingly consented to the police taking any items from her home and that she was not coerced into so doing. Cooke, in turn, contends that the seizure of the items outside the scope of the warrant is not justified under the plain view doctrine because the police were not lawfully in the home and these items did not have immediate evidentiary value. Finally, the State argues that the warrant was valid and that all items listed on the search warrant return and consent were seized pursuant to the plain view doctrine.

Discussion

A

Probable Cause for Search Warrant

Cooke argues that the search warrant application did not establish probable cause because the police had no genuine interest in Cooke's 1999 shoplifting charge. The State argues that the police's concern about the earlier charges was valid and that the warrant established probable cause to believe that the residence would contain evidence of Cooke's whereabouts. On a motion to suppress challenging the validity of a residential search

warrant, the defendant bears the burden of showing by a preponderance of the evidence that the search or seizure was unlawful.[35]

A finding of probable cause will not be invalidated by a hypertechnical, rather than common sense, interpretation of a warrant affidavit.[36] The warrant application must demonstrate a logical nexus between the items sought and place to be searched.[37]

The search warrant states that probable cause exists to search for and seize the following items:

> Any and all paperwork or information, electronic or otherwise, that would indicate the whereabouts of James Cooke, including: Caller ID devices and cellular telephone address book contact information. . . .

The search warrant states that these items were to be used in connection with the prosecution of 1999 charges of shoplifting, hindering prosecution and criminal contempt.

The affidavit establishes probable cause to search 9 Lincoln Drive to determine Cooke's whereabouts. The criminal charge for which the capias was outstanding was around six years old when the affidavit for this warrant was signed. But the information was very fresh about Cooke's residence possibly being at 9 Lincoln Drive as of a few days before and on the day the warrant was sought. The affidavit specifies Cooke had been in very recent contact with the other resident at 9 Lincoln Drive. The warrant also notes that

---

[35] *State v. Sisson*, 883 A.2d 868, 875 (Del. Super. Ct. 2005).

[36] *Jensen v. State*, 482 A.2d 105, 112 (Del. 1984).

[37] *State v. Sisson*, 883 A.2d at 877 (citing *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980)).

the Newark Police are seeking Cooke. The capias was in relation to a charge lodged by the Delaware State Police, not the Newark Police.

Cooke concedes the continuing validity of the capias - that is, that it was outstanding and is a basis to arrest. He questions its staleness. But the capias is a legitimate reason to arrest him. And the police had confirmed that he had been at 9 Lincoln Drive within the last few days and learned the day this warrant was obtained that he had been in contact with a female resident in the residence within the last day or two. The affidavit makes it clear that the Newark Police were also seeking Cooke.

There was ample probable cause stated for the Justice of Peace to issue this search warrant.

B

Pretext to Search for Evidence Related to the Homicide

Cooke argues that the search warrant is invalid because Det. Rubin's subjective agenda was to find items pertaining to the burglaries and the homicide. In reviewing issues relating to allegedly pretextual searches, the United States Supreme Court in *Whren v. United States* declined to assess an otherwise valid affidavit according to the subjective motivations of individual officers: "not only have we never held. . . that an officer's motive invalidates objectively justifiable behavior under the Fourth amendment; but we have repeatedly held and asserted the contrary."[38] And again, "the fact that the officer

[38]*Whren v. United States*, 517 U.S. 806, 812, 116 S.Ct. 1769, 1774, 135 L.Ed.2d 89,97 (1996). *See also United States v. Leon*, 468 U.S. 897, 922 n. 23, 104 S.Ct. 3405, 3420 N. 23, (continued…)

does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action as long as the circumstances, viewed objectively, justify that action."[39]

Based on its line of previous cases raising the issues of law enforcement officers' subjective intent,[40] the *Whren* Court concluded that "[s]ubjective intentions play no role in ordinary probable-cause Fourth Amendment analysis."[41]

The State does not deny that the Newark Police learned about Cooke's 1999 *capias* while investigating his possible involvement in the homicide and the burglaries. The fact that police officers are investigating a person's involvement in one set of crimes does not preclude them from investigating the person's suspected participation in other crimes. The constitutional requirements, both State and Federal, must, of course, be met in either

---

[38](…continued)
82 L.Ed.2d 677, 698 n. 23 (1984)(eschewing inquiries into the subjective beliefs of law enforcement officers); *Caldwell v. State*, 780 A.2d 1037, 1045 n. 9 (Del. 2001) (acknowledging that *Whren* forecloses federal constitutional claims of a pretextual stop).

[39] *Whren v. United States*, 517 U.S. at 813, 116 S.Ct. at 1774, 135 L.Ed.2d at 98 (quoting *Scott v. United States*, 436 U.S. 128, 138, 98 S.Ct. 1717, 1723, 56 L.Ed.2d 168 (1978).

[40] *See United States v. Villamonte-Marquez*, 462 U.S. 579, 103 S.Ct. 2573, 77 L.Ed.2d 22 (1983); *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); *Scott v. United States*, 463 U.S. 128, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978).

[41] *Whren v. United States*, 517 U.S. at 813, 116 S.Ct. 1769 at 1774, 135 L.Ed.2d at 98 (also noting that the constitutional basis for claims of intentionally discriminatory applications of laws is the Equal Protection Clause rather than the Fourth Amendment).

case.[42] Having reviewed the search warrant in light of the totality of the circumstances, the Court concludes that the warrant authorized a lawful search of 9 Lincoln Drive for evidence of the whereabouts of James Cooke and that it was not tainted or otherwise invalidated by Det. Rubin's motives. As noted, while the capias was six years old the information about his potential residence was very fresh. Further, the warrant states the Newark police were looking for him. The police did not have to establish Cooke lived at 9 Lincoln Drive in 1999. He has an outstanding, valid capias and the issue was his whereabouts in June 2005.

C

Overly Broad Language

The search warrant authorized the police to search for and to seize:

> Any and all paperwork or information, electronic or otherwise, that would indicate the whereabouts of James Cooke, including: Caller ID devices and cellular telephone address book contact information.

Cooke argues that this language in the search warrant application describing the items to be searched for is overly broad and does not come close to meeting the particularity requirement found in both the State and Federal Constitutions, as well as in 11 *Del.C.* § 2306. He asserts that the search warrant is in reality a request for a general

[42] "Article I, section 6 of the Delaware Constitution, the search and seizure provision, is substantively identical to the Federal provision and unquestionably protects the same interests." *State v. Phillips*, 366 A.2d 1203, 1207 (Del. Super. Ct. 1976)(citing *State v. Moore*, 187 A.2d 807 (Del. Super. Ct. 1963)).

search for anything that might help to locate James Cooke. The State argues that the warrant states the items to be searched for and seized with sufficient particularity to give the officers meaningful guidance in the search. Both parties cite to *United States v. Clark*[43] as providing support for their opposing positions. The *Clark* Court found a search warrant to be over broad where it authorized a search for "fruits and instrumentalities of [a] violation of Title 21, U.S.C. § 841(a)(1)" because the warrant cited the statute but provided no guidance as to what constituted a violation of it.[44] That is not the case here. Thus, *Clark* has no parallel to the case at bar.

The defense cites to *State v. Phillips*,[45] which reiterates the general rule that search warrants must be sufficiently particular to prevent general exploratory searches. As previously stated, § 2306 requires that the search warrant application describe the desired items "as particularly as may be. . . ." In *Fink v. State*, the Delaware Supreme Court reiterated that particularity of language helps avoid exploratory searches and affirmed this Court's ruling that a search warrant which called for seizure of "client files including, but not limited to. . ." was neither vague nor ambiguous.[46]

---

[43] 31 F.3d 831 (9th Cir. 1994).

[44] *Id.* at 836.

[45] 366 A.2d 1203, 1207 (Del. Super. Ct. 1976).

[46] 817 A.2d 781, 786 (Del. 2003).

In the case at bar, the warrant clearly called for evidence pertaining to Cooke's whereabouts, including phone devices that might track a phone number he had recently called from, as well as paperwork, electronic information and any phone book containing contact information. From a common sense perspective, these are obvious sources of information for locating a person. Furthermore, the request for cell phone I.D. devices is based on the affiant's assertion that Cooke telephoned Campbell sometime between June 1 and June 6, and that he had called from a phone number with a 215 area code. The Court concludes that the warrant was sufficiently specific to guide the officers in their search for evidence related to locating Cooke.

The search warrant inventory return states that, among other items, "various documents" were seized during the search. At the hearing, Det. Rubin testified that the "various documents" included the following:

> [A]ssorted business cards, a New Jersey Court payment receipt, a 2004 planner, some handwritten phone numbers, a Cracker Barrel pay stub with an address on it, and ATM payroll card, some New Jersey bail paperwork with an address on it, a child support notice and a New Jersey restraining order.

Det. Rubin stated that he and his fellow officers were looking for places to search for Cooke and that these documents could help provide information or contacts that might lead to him. The Court accepts this testimony as both credible and reasonable and concludes that the items described as "various documents" were lawfully seized pursuant to a valid search warrant.

D

Exceptions to the Exclusionary Rule

In its post-hearing briefing, the State argues that all the evidence was validly seized because Rochelle Campbell consented to it.[47] The State also argues that the items listed on the search warrant inventory return were seized pursuant to the plain view exception to the exclusionary rule. Inherent in these arguments is a concession that all the items other than "various documents" are beyond the scope of the search warrant, as Cooke argues. He contends that neither consent nor plain view allows admission of any of the items because the warrant itself was invalid.

The Court has found the warrant valid and, therefore, considers the exceptions. The State has the burden of proving that either one of the exceptions to the exclusionary rule applies.[48]

---

[47]The State argues that all items were properly seized under various exceptions to the warrant requirement, "[f]irst and foremost. . . under the inevitable discovery doctrine, given that Rochelle Campbell. . . consented to the search." State's Supplemental Brief, May, 2006. Inevitable discovery is a viable exception to the exclusionary rule providing that evidence obtained in the course of illegal police conduct will not be suppressed if the prosecution can prove that the incriminating evidence "would have been discovered through legitimate means in the absence of official misconduct." *Cook v. State*, 374 A.2d 264, 267-68 (Del. 1977) (citations omitted). In *Cook*, police found money during a frisk for weapons, and the Court held that, assuming that the seizure of the currency was beyond the scope of a reasonable search for weapons, the money would have been found on the defendants in the course of an inventory search at the police station subsequent to arrest.

Although the State refers to inevitable discovery as a sort of umbrella for the exceptions of consent and plain view, these exceptions are separate and distinct from inevitable discovery. Because the State's factual arguments are based on consent and plain view, the Court addresses these exceptions but not inevitable discovery.

[48]*State v. Harris*, 642 A.2d 1242, 1245 (Del. Super. Ct. 1993) (citing *Schneckloth v.* (continued…)

At the hearing, Det. Rubin acknowledged his initial indecision regarding the evidence and the inventory and consent to search forms:

> When we returned to the residence, Detective Corcoran, when I met with him, had explained to me what he had located during his search. At that point Detective Corcoran and I kind of went back and forth talking to each other as to whether we could take those items under the search warrant but we believed them to be something that had value to us, that we could take it. However, my experience was in most – or all of those situations it has always been some sort of contraband, some – when we are doing a search warrant, we find drugs or we find weapons or what have you.
>
> So at that point I wasn't totally sure as to whether I could take those items or not. So I decided to do a consent search form to document taking those items with Rochelle, and she didn't have a problem with us taking those items. So rather than put them on the search warrant, she told me that it was fine to take them and we documented those items on the consent form.[49]

Thus, Det. Rubin conceded that he was uncertain about how to deal with the evidence seized. In addition to the "various documents" listed on the warrant return, which were lawfully taken pursuant to the warrant, the search warrant return also lists the following items:

- One pair blue and white men's shoes
- Composition book
- Cassette tape
- Three disposable cameras
- Cell phone – Nokia
- Bicycle.

---

[48](…continued)
Bustamonte, 412 U.S. 218, 222, 93 S.Ct. 2041, 2045, 36 L.Ed.2d 854, 869 (1973)).

[49] Transcript of Suppression Hearing (February 2, 2006) at pp. 83-84.

The Consent to Search form, which was signed by Rochelle Campbell at 12:20 a.m. on June 7, lists the following items and times:

- Handwriting sample (Corcoran at 12:10 a.m.)
- Flashlight (Corcoran at 7:40 p.m.)
- Usher CD (Corcoran at 8:25 p.m.)
- Gloves (Rubin at 12:12 a.m.)
- Book– *The Good Wife* (Corcoran at 11:30)
- 2 bent screwdrivers (Corcoran at 8:39 and 9:00)

E

Consent to Search

Cooke argues that the holding in *Bumper v. North Carolina*,[50] controls the outcome of the consent issue in this case. In *Bumper*, the United States Supreme Court found that the Fourth Amendment prohibits admission of evidence obtained by the consent of a person who had been deceived into believing that police officers had a search warrant.[51] The facts that gave rise to this holding were that four police officers went to the suspect's grandmother's house, entered uninvited and announced that they had search warrant, which they did not. The elderly resident, relying on the representation that there was a search warrant, acquiesced to the search. The police seized a rifle that the State later attempted to admit as evidence at trial, relying on consent rather than on a non-existent search warrant. The grandmother testified that when the officer said he had a warrant she

[50] 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968).

[51] *Bumper v. North Carolina*, 391 U.S. at 550, 88 S.Ct. at 1792, 20 L.Ed.2d at 803.

believed him. As the Supreme Court stated, "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search."[52] Cooke also relies on *United States v. Johnson*, in which the Ninth Circuit of Appeals invalidated a consensual search where the officers gave fictitious names in order to gain entry into the residence.[53]

It is undisputed that Det. Rubin was forthright in identifying himself to Rochelle Campbell as a Newark Police detective. She said she would not permit their entry without a warrant. The police obtained a warrant that this Court finds valid. There is simply no evidence of police duplicity or deceit. The Court finds that the police officers in the case at bar did not make any misrepresentations to Campbell or otherwise deceive her and that *Bumper* does not govern the consent issues in this case.

Bumper's inapplicability means the analysis turns to the issue of consent, which is governed by the voluntariness standard best articulated in *Schneckloth v. Bustamonte*.[54] In *Schneckloth*, the United States Supreme Court held that the question of whether a consent to a search was voluntary or was the product of duress or coercion, express or implied is a question of fact to be determined from the totality of the circumstances, and knowledge of the right to refuse consent is a factor to be taken into account.[55]

---

[52]*Id.*

[53]626 F.2d 753 (9th Cir. 1980).

[54]412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

[55]*Schneckloth v. Bustamante*, 412 U.S. at 227, 93 S.Ct at 2047- 48, 36 L.Ed.2d at 863.

Before analyzing the seizure of various items, the Court notes several things about Campbell and her testimony. She came across as intelligent and forthright. Even though she did not like the FBI agent's heavy-handed threat about her children, the Court is convinced by her words and demeanor that this threat did not play a role in her substantive decisions in this matter.

With several police at her door on June 6th, she refused their entry without a warrant. During the entire encounter between her and the police on the 6th and 7th, the Court finds nothing which overcame her will or invalidated her consent. That she believed some of the items seized had little or no evidentiary value is irrelevant. She was in the company of the police for several hours, but that length of time did not act as a basis to overcome her will.

The Court notes that Ms. Campbell was aware of her right to withhold consent and that she in fact asserted her right to demand a search warrant, which Det. Rubin obtained. After the search was completed, Campbell gave her consent to seizure of items beyond the scope of the warrant. The question before the Court is whether, under a totality of the circumstances perspective, this consent was voluntary and not the product of coercion or other overbearing on the part of the police.

The Court begins with the handwriting sample and the gloves because the evidence pertaining to their seizure is clear. These items are listed on the consent form and are shown to have been taken at 12:10 a.m. and 12:12 a.m., respectively, almost immediately

after Det. Rubin and Campbell returned to her house. Campbell testified that she turned over these items herself because Rubin had asked her about Cooke's gloves, based on the ATM picture in which Cooke appeared, and a hat and the handwriting sample because she knew the police were interested in Cooke's handwriting. Det. Rubin also testified that he had asked Campbell about Cooke's gloves during the interview and that Campbell of her own volition retrieved them from a diaper bag and gave them to him. Det. Rubin also testified that Campbell voluntarily gave the handwriting sample to Corcoran, although Det. Rubin did not know where she got it from. Because Det. Rubin's testimony and Campbell's testimony are consistent, the Court concludes that Campbell voluntarily consented to seizure of the gloves and the handwriting sample.

The State argues that Campbell verbally consented to the seizure of all the other items listed on both the search warrant inventory and the consent form. In general terms, the State asserts that Campbell more than once consented to the seizure of "any items from her home"[56] and "those additional items from her residence that weren't *per se* covered by the search warrant."[57] Without elaboration, the State claims consent specifically for the seizure of the shoes, the cassette tape, the disposable cameras and the bike.

At the hearing, Det. Rubin testified that after he and Det. Corcoran completed the forms, he explained the consent form to Campbell and that they read it together. He stated

---

[56] State's Supplemental Brief (May 1, 2006) at 9.

[57] *Id.* at 11.

that he did not threaten or force her to sign and that she showed no hesitation in signing it. In regard to Campbell's verbal consent to items on the consent form, he was asked only about the flashlight, and he stated that "[s]he didn't have a problem with it."[58]

In his affidavit submitted in response to the motion to suppress, Det. Rubin asserted that the disposable cameras and the Nokia cell phone were taken based on Campbell's consent, and that she told him that the cameras contained recent pictures of Cooke, which might help locate him. Rubin also believed that the cameras may have contained pictures of the crime scene, although he offered no basis for this belief. Rubin knew that the 911 call was made on a cell phone and that Cooke carried a cell phone with him.

Campbell testified that she voluntarily consented to the seizure of any items the officers needed. She stated that the police were still searching her house when she and Det. Rubin returned from the police station. Campbell testified that Det. Rubin showed her the things that had been seized in her absence. He also showed her both the search warrant return and the consent to search form. Her recollection of the two forms was vague, but she remembered seeing them. Until she saw the consent to search form, she was not aware of all the items seized. Det. Rubin explained to her that he needed to take certain items in addition to those taken under the search warrant and asked her to sign the consent form. She stated that she did not feel any pressure to sign the paper and that she understood that she was giving her permission for him to take the items.

---

[58] Transcript of Suppression Hearing (Feb. 2, 2006) at 90.

Ms. Campbell consistently testified that she was willing for the police to take the items they needed for the investigation, but she acknowledged that she was initially reluctant for them to take the C.D., the cameras and the book, which were hers and she was unsure why the police needed them. She acknowledged that the events were upsetting to her and that she did not pay attention to how the items were divided up between the two forms. Nonetheless she was willing for the officers to take what they wanted.

On cross-examination, defense counsel probed into Campbell's understanding of the difference between a voluntary consent and a consent given based on a search warrant, that is, a mere acquiescence. In regard to items that were seized while Campbell was at the police station, the following exchange took place:

> Q. Well, here's the difference and I want to–were you consenting to their taking it or were you letting them take it because they had a search warrant? That's the question.
>
> A. I was consenting to them to take it.[59]

Thus, Campbell's direct examination and cross examination show that she knowingly gave her verbal consent to items not taken under the search warrant. She voluntarily handed over some items of evidence herself, agreed to seizure of the evidence found by the police and signed the consent form for additional items. Like any reasonable person in her situation, Campbell was at first reluctant to agree to certain things proposed by the police. Accompanying Rubin to the police station meant leaving her children with

[59] Transcript of Suppression Hearing (Feb. 1, 2006) at 125.

the officers, but she agreed partly because she did not feel pressure and partly because the children were well taken care of by the officers. She was initially reluctant about the seizure of items that belonged to her, but when she understood the reasons, she willingly agreed.

Ms. Campbell repeatedly stated on both direct examination and cross examination that the police officers were polite and did not try to force her to do anything she did not want to do. She did not feel that she was pressured or coerced into anything. During the questioning at the police station, FBI Special Agent Ross made a statement that upset her. He said that if she was lying or covering up for Cooke, she and her children could have problems. This single assertion does not vitiate the otherwise non-coercive conduct of the officers, particularly Det. Rubin, who was the primary contact person with her.

The testimony of both Campbell and Det. Rubin show that Campbell did not let the officers search her home until the police obtained a warrant. The Court has found that warrant to be valid. Cooke points out that Det. Corcoran seized most of the items while Campbell was at the police station and that she did not consent to the seizure until after it had already taken place. However, Campbell knew that a search was in progress when she left the house and she did not register surprise that it had continued and was continuing when she arrived home. In fact, on cross-examination, she squarely voiced her consent when she threw back a question at defense counsel: "[w]hat do you expect them to do, leave the items there and then when I got back, to pick them back up and, you know, if

they found something that they thought was evidence, wouldn't they–shouldn't they take it?"[60] Campbell knew a search was in progress and her common sense told her that the officers would locate evidence in her absence. Searches and seizures are separate acts, and each must satisfy the constitutional requirement of reasonableness.[61] The Court is satisfied that Campbell's consent, given after she arrived back at her home, was reasonable and voluntary.[62] The Court concludes that the State has carried its burden of proving by a preponderance of the evidence that Campbell's subsequent consent to seizure of items beyond the scope of the warrant was voluntary and was not the product of duress or coercion, either express or implied.[63]

F

Plain View

Det. Corcoran of the Newark Police seized most of the items listed on the inventory and consent forms, but he did not testify at the suppression hearing. The Court, therefore, has no evidentiary basis at this point on which to rule on the issue of plain view seizure.

The Court has found that the search warrant established probable cause to search Cooke's residence for evidence of his whereabouts and that other items of evidence were

---

[60] Transcript of Suppression Hearing (Feb. 1, 2006) at 125.

[61] *Wicks v. State*, 552 A.2d 462, 464 (Del. 1988) (citing *Young v. State*, 339 A.2d 723, 724 (Del. 1975)).

[62] *See DeShields v. State*, 534 A.2d 630, 643 (Del. 1987) (where verbal consent was give on the day of the search, but unlike here, was memorialized in writing two days later).

[63] *Schneckloth v. Bustamonte*, 412 U.S. at 228, 93 S.Ct. at 2048, 36 L.Ed.2d at 863.

seized pursuant to Rochelle Campbell's voluntary consent.

CONCLUSION

For all the above-stated reasons, Defendant James E. Cooke's Motion to Suppress Evidence seized from 9 Lincoln Drive is hereby **DENIED**.

IT IS SO ORDERED.

_____

J.