





UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 13-8082-DLB

UNITED STATES OF AMERICA

vs.

DONTAVIOUS MINGEL BLAKE and
TARA JO MOORE,

Defendant.

_____ /

CRIMINAL COVER SHEET

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? _____ Yes X No
2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? _____ Yes x No

Respectfully submitted,

[REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-80054-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONTAVIOUS BLAKE,
TARA JO MOORE,

Defendant.

_____ /

ORDER ON MOTION TO SUPPRESS EVIDENCE

THIS CAUSE is before the Court upon Defendants' Motions to Suppress Evidence and for an Evidentiary Hearing [DE's 166 and 173]. An evidentiary hearing was held before the Court. This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED as follows:

Law enforcement authorities had probable cause to believe that Defendants engaged in the criminal activity for which they have been charged in this case justifying the issuance of arrest warrants for them. Law enforcement authorities also had probable cause to believe that Defendants used at least one cell telephone and computer internet technology in carrying out the alleged criminal activity. At the time law enforcement authorities executed the arrest warrants on Defendants at their residence, Special Agent Michael Donohoe of the Federal Bureau of Investigation saw, in plain view, one five month old infant child seated in a chair for infants. He also saw in plain view what he was able to identify as a 'smart phone' on the coffee table in the

living room area of the apartment in which Defendants were found. The law enforcement authorities were advised by Defendants that there was another child in the apartment who was not visible to the arresting officers. The second child was two years and nine months old at the time.

After Defendants were secured, Agent Donohoe entered the apartment to insure the safety of the one infant child who was visible to the arresting officers, and to locate and insure the safety of the other minor child of whom he was made aware, but who was not visible. While attending to the safety of the minor children, Agent Donohoe saw, in plain view, other cell phones, an Apple tablet and a iPad¹.

Upon securing Defendants and the minor children, the arresting officers contacted the Florida Department of Children and Families ("DCF") in order to arrange for someone responsible to take custody of the minor children. Upon seeing the cell phones and computers in plain view, items which law enforcement already had probable cause to believe were used by Defendants in carrying out the alleged illegal activity, the law enforcement officers sought and obtained a search warrant for the premises where Defendants were located at the time of their arrest. Defendants challenge the search of the premises as being the result of an illegal warrantless entry into their residence.

The Court rejects Defendants' challenge to the search of their residence and to the seizure

¹ Other law enforcement officers entered the premises at the

of the items obtained as a result of the search. As previously indicated, law enforcement authorities had probable cause to believe Defendants used at least one cell phone in carrying out the alleged criminal activity. At the time of Defendants' arrest, before Agent Donohoe entered the premises, he saw a cell phone, in plain view on the coffee table of the apartment. This information, combined with the agents' prior knowledge of how the alleged crimes were carried out, was sufficient to seek and obtain a search warrant to seize that particular cell phone and other instrumentalities located on the premises that could have been used in the commission of the alleged crimes.

Moreover, the discovery of two infant children on the premises was an exigent circumstance which justified Agent Donohoe's warrantless entry into the residence to insure their safety. While justifiably in the premises to secure the two infant children, Agent Donohoe saw additional items in plain view which were consistent with the manner law enforcement authorities had probable cause to believe Defendants used to carry out the alleged crimes. This also provided a valid legal basis to obtain a search warrant for the premises.

The Court rejects Defendants' contention that law enforcement was required to have a DCF representative or other neutral responsible authority on hand to take custody of the infant children at the time of the arrest so as to avoid law enforcement's entry into the premises. The Court concludes that such a requirement would place an unreasonable and impractical burden on law enforcement whenever there was a potential for child abuse or neglect. 10-0017 usda/ny irp/00 um

orchestrate the arrest so as to use the presence of the minor children as a subterfuge to gain access to the premises.

Additionally, the Court rejects Defendants' assertion that the law enforcement authorities could have simply turned the children over to a family member or neighbor in order to avoid entering the premises to tend to the children. When Defendants were taken into custody for all intents and purposes, so were the infant children. Thus, the law enforcement authorities became responsible for their care and had to assure themselves that anyone into whose custody they were transferred were fully capable and responsible. Law enforcement authorities are not equipped to make subjective determinations.²

Furthermore, the Court concludes that the seizure of the evidence in question would have been inevitable in any event. Once again, the law enforcement authorities had probable cause to believe that Defendants used at least one cell phone and a computer because the alleged criminal acts involved use of the internet. Such items are mobile and ordinarily are located with the users, not at a particular location. Thus, it logically followed that the instruments the law enforcement had probable cause to believe Defendants used in the commission of the alleged crimes were with them. Hence, once Defendants were arrested, law enforcement inevitably would have sought a search warrant for the premises where they were found. Even without the information learned

² The Court also rejects Defendants' suggestion that law enforcement could have uncuffed Ms. Moore to allow her to enter the residence, obtain the children and bring them out to the law enforcement officers so they would not have had to enter the premises. Such a course of action could have jeopardized officer safety, since Ms. Moore would have been able to enter the premises, unaccompanied by law enforcement, and obtain a weapon.

on the date of the arrest, law enforcement had probable cause to obtain one

Lastly, the Court rejects Defendants' contention that the Magistrate Judge's ex parte order directed to Apple, Inc. to provide the password to the Apple iPad found in the residence was not authorized under the All Writs Act, 28 U.S.C. § 1651. In *United States v. New York Telephone Company*, 434 U.S. 159 (1977), the Court held that the All Writs Act provided authority for a court, acting pursuant to Fed. R. Crim. P. 41, the rule dealing with the issuance of search warrants, to direct a third party to assist in the execution of a court ordered pen register. The Court stated that the register order "was predicated upon a proper finding of probable cause" *Id.* at 168-69. The Court also recognized that without ordering the telephone company's assistance "there is no conceivable way in which the surveillance authorized by the District Court could have been successfully accomplished." *Id.* at 175.

Here, there was probable cause for the issuance of a search warrant for the contents of the I-Pad. Without assistance from Apple, Inc., the contents of the I-Pad for which a search was properly authorized could not have been accomplished. Use of the All Writs Act was properly invoked in this case.

For all of the foregoing reasons, Defendants' Motions to Suppress Evidence [DE 166 and 173] are **DENIED**. Defendant Tra Jo Moore's Motion to Adopt Motion to Suppress Evidence

and foran Evidentiary Hearing [DE 172] is GRANTED.

DONE and ORDERED in West Palm Beach, Florida, this 13 day

A small, low-resolution image showing a signature and a date stamp. The signature is written in black ink and appears to be "J. A. ...". The date stamp is in red and shows "10/13/11".