IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 18-949

Filed: 5 November 2019

New Hanover County, Nos. 15 CRS 4145, 4147, 51301; 17 CRS 791, 792

STATE OF NORTH CAROLINA

v.

RODERICK JERMAINE BOYKINS

Appeal by defendant from order entered 8 September 2017 by Judge John E. Nobles, Jr., and judgment entered 13 March 2018 by Judge Joshua W. Willey Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 27 March 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jasmine S. McGhee, for the State.

Mark Montgomery for defendant-appellant.

BRYANT, Judge.

Where the averments stated in the application for a search warrant and accompanying affidavit substantially support the findings of fact and conclusions of law made by the trial court in its order denying defendant's motion to suppress, we hold no error in the trial court's order.

On 27 February 2015, a grand jury in New Hanover County indicted defendant Roderick Boykins on five counts of human trafficking, one count of sexual servitude, five counts of promotion of prostitution, and one count of advancing prostitution. On 15 June 2015, defendant was also indicted for attaining habitual felon status. Superseding indictments were issued on 15 March 2015.

On 17 August 2017, defendant filed a pretrial motion to suppress any evidence seized as a result of a search of his vehicle performed on 6 February 2015. Defendant contended that law enforcement officers lacked probable cause to conduct a search, and the search violated the Fourth Amendment to the United States Constitution, Article I, sections 19 and 20 of the North Carolina Constitution, and General Statutes, section 15A-972. Defendant further argued that the evidence seized during the 6 February 2015 search directly resulted in search warrant applications being granted for searches performed 9 and 20 February 2015 and 16 March 2015, which should be suppressed. On 5 September 2017, a hearing was conducted in New Hanover County Superior Court before the Honorable John E. Nobles, Jr., Judge presiding.

The evidence presented during the suppression hearing tended to show that on 5 February 2015, New Hanover County Sheriff's Office Detective Evan Luther, who was assigned to the U.S. Marshals Violent Fugitive Taskforce, received

information from a confidential informant, "Mary."[1] According to Mary, defendant had been transporting Mary "up and down the east coast [to] prostitute[e] for him"—Florida, Georgia, North Carolina, New Jersey, and New York. Mary informed Detective Luther that she had gotten away from defendant once before but he had located her. When she contacted Detective Luther, Mary had gotten away from defendant again. She was in New York and wanted to come home to New Hanover County, but she was afraid defendant would find her. Defendant was from North Carolina and had ties to the New Hanover County area. Also, defendant knew where Mary's mother lived in New Hanover County. Mary described defendant as a very tall black male who wore a long gold necklace or "chain" and drove a gold Cadillac with thirty-day tags.

While speaking with Mary, Detective Luther searched the "police to police" database for information about defendant. Detective Luther obtained a picture of defendant and learned that a human trafficking alert had been issued for him. Detective Luther contacted Detective Will Campbell, also with the New Hanover County Sheriff's Office and assigned to the FBI Human Trafficking Taskforce, as well as Assistant District Attorney (ADA) Lindsey Roberson. Both ADA Roberson and Detective Campbell recognized defendant's name as a person involved in human trafficking.

[1] A pseudonym is used to protect the identity of the confidential informant.

Detective Campbell testified that Detective Luther provided defendant's cell phone number, as provided by a confidential informant. Detective Campbell testified that almost every case he had ever worked of human trafficking and prostitution involved some sort of electronic device used to access the internet and specifically, a website called Backpage.com, a website known to carry advertisements for prostitutes. Detective Campbell searched Backpage.com and discovered two advertisements associated with the phone number Detective Luther had provided. The ads depicted Mary and indicated a location in Huntington, New York.

On 6 February 2015, Detective Luther observed a man standing on a sidewalk near the corner of 4th Street and Davis Street who matched the description Mary had given and the picture of defendant Detective Luther had seen. Detective Luther also observed a gold Cadillac with thirty-day tags parked nearby. Detective Luther parked, requested assistance from other law enforcement officers, and observed defendant while he walked down the sidewalk talking on his cell phone. Defendant ended his phone call, entered the gold Cadillac, and drove away. Ultimately, he pulled over and parked on Red Cross Street, where he conducted another phone call. Law enforcement officers set up a perimeter of surveillance.

Detective Luther "ran" defendant's name and learned that defendant's driver's license had been revoked. When defendant entered his vehicle again and drove away, a deputy sheriff with the traffic unit conducted a traffic stop. Defendant was arrested

for driving with a revoked driver's license and taken into custody. Defendant's vehicle was also seized and a law enforcement officer applied for a search warrant for the vehicle. The search warrant was granted by a magistrate and the search was executed on 9 February 2015.

During the suppression hearing, the State introduced exhibits taken from defendant's vehicle, including: a receipt from a North Carolina Jiffy Lube reflecting defendant's name and service "for a 2003 Cadillac DeVille"; identification cards reflecting Mary's name as well as other women; a Red Roof Inn key; several prepaid Visa cards; a cell phone; and several car chargers.

Following the arguments of counsel, the trial court denied defendant's motion to suppress the items seized from his vehicle. For the record, defendant immediately sought to preserve his right to appeal, and during the trial, defendant renewed his objection to the admission of the items seized from his vehicle.

On 5 March 2018, the matter proceeded to a jury trial before the Honorable Joshua W. Willey, Judge presiding. The jury heard testimony from Mary, as well as three other women who worked for defendant as prostitutes. The jury returned guilty verdicts against defendant on five counts of human trafficking, one count of sexual servitude, five counts of promotion of prostitution, and one count of advancing prostitution. The jury also returned a verdict finding defendant guilty of attaining habitual felon status.

In accordance with the jury verdicts, the trial court entered a consolidated judgment on one count of human trafficking adult victim and one count of advancing prostitution and sentenced defendant to a term of 117 to 153 months. The court entered a second consolidated judgment on one count of human trafficking adult victim, one count of sexual servitude adult victim, and one count of promoting prostitution by profiting from prostitution, and sentenced defendant to a term of 146 to 188 months. The court entered a third consolidated judgment on one count of human trafficking adult victim and one count of promoting prostitution by profiting from prostitution, and sentenced defendant to a term of 117 to 153 months. The court entered a fourth consolidated judgment on one count of human trafficking adult victim and one count of promoting prostitution by profiting from prostitution, and sentenced defendant to a term of 146 to 182 months. All sentences were to be served consecutively. Defendant appeals.

On appeal, defendant argues that the trial court erred by denying his motion to suppress the fruits of the search of his vehicle. Defendant claims the initial search warrant was insufficient to establish probable cause where the hearing court relied on information not included in the search warrant to find probable cause and where the warrant application failed to indicate that evidence of criminal activity would be discovered in defendant's vehicle. Defendant contends that he is entitled to have the

evidence seized as a result of the initial 6 February 2015 search suppressed, as well as all evidence seized as a result of any subsequent search and that he be granted a new trial. We disagree.

Standard of Review

"In reviewing the trial court's order following a motion to suppress, we are bound by the trial court's findings of fact if such findings are supported by competent evidence in the record; but the conclusions of law are fully reviewable on appeal." *State v. Smith*, 346 N.C. 794, 797, 488 S.E.2d 210, 212 (1997) (citation omitted).

> Under North Carolina law, an application for a search warrant must be supported by an affidavit detailing "the facts and circumstances establishing probable cause to believe that the items are in the places . . . to be searched." N.C.G.S. § 15A–244(3) (2013). A magistrate must "make a practical, common-sense decision," based on the totality of the circumstances, whether there is a "fair probability" that contraband will be found in the place to be searched. [*Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983)]; *e.g.*, *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 598 (2014). This standard for determining probable cause is flexible, *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984), permitting the magistrate to draw "reasonable inferences" from the evidence in the affidavit supporting the application for the warrant, *see* [*State v. Riggs*, 328 N.C. 213, 221, 400 S.E.2d 429, 434 (1991)] (quoting *Gates*, 462 U.S. at 240, 103 S. Ct. at 2333, 76 L. Ed. 2d at 549), and from supporting testimony, as set out in N.C.G.S. § 15A–245(a). That evidence is viewed from the perspective of a police officer with the affiant's training and experience, *Benters*, 367 N.C. at 672, 766 S.E.2d at 603 (citing *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663, 134 L.Ed.2d 911, 920–21 (1996)), and the commonsense judgments reached by officers in light of that training and

> specialized experience, *see United States v. Ortiz*, 422 U.S. 891, 897, 95 S. Ct. 2585, 2589, 45 L. Ed. 2d 623, 629 (1975).
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> Probable cause requires not certainty, but only "a *probability or substantial chance* of criminal activity." *Riggs*, 328 N.C. at 219, 400 S.E.2d at 433 (quoting *Gates*, 462 U.S. at 244 n. 13, 103 S.Ct. at 2335 n. 13, 76 L.Ed.2d at 552 n. 13 (emphasis added)). The magistrate's determination of probable cause is given "great deference" and "after-the-fact scrutiny should not take the form of a *de novo* review." *State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 258 (1984) (citing *Gates*, 462 U.S. at 236, 103 S. Ct. at 2331, 76 L. Ed. 2d at 547). Instead, a reviewing court is responsible for ensuring that the issuing magistrate had a " 'substantial basis for . . . conclud[ing]' that probable cause existed." *Gates*, 462 U.S. at 238–39, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548 (alterations in original) (quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 2d 697, 708 (1960), *overruled on other grounds by United States v. Salvucci*, 448 U.S. 83, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980)).

State v. McKinney, 368 N.C. 161, 164–65, 775 S.E.2d 821, 824–25 (2015).

Analysis

Information In the Search Warrant

Defendant argues that the trial court erred by relying on information presented during the suppression hearing that was not included in the search warrant application. Defendant contends that the trial court's findings of fact in its order denying defendant's motion to suppress "rel[y] almost exclusively on testimony provided by Detectives Campbell and Luther," while the affiant to the warrant application, Detective J.E. Calarso, did not testify. Defendant contends that the trial court made only four findings of fact based on information contained in the affidavit filed with the search warrant application. The remaining findings of fact were

"improperly based on testimony regarding facts not presented to the magistrate who issued the search warrant."

> Before acting on the application [for a search warrant], the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official.

N.C. Gen. Stat. § 15A-245(a) (2017); *see also State v. Brown*, 248 N.C. App. 72, 75–76, 787 S.E.2d 81, 85 (2016) ("Because its duty in ruling on a motion to suppress based upon an alleged lack of probable cause for a search warrant involves an evaluation of the judicial officer's decision to issue the warrant, the trial court should consider only the information before the issuing officer. . . . [I]t is error for a reviewing court to 'rely[ ] upon facts elicited at the [suppression] hearing that [go] beyond "the four corners of [the] warrant." ' " (third through sixth alterations in original) (quoting *Benters*, 367 N.C. at 673, 766 S.E.2d at 603)).

In pertinent part, the affidavit for the warrant application to search defendant's vehicle and seize any electronic devices, hotel receipts, hotel key cards, bank cards, credit cards, or any travel documents discovered therein states the following:

> Detective Campbell interviewed the victim, [Mary], who reported that she was taken by the defendant Roderick Boykins, from Wilmington, NC to New York, against her will. Once in New York, the victim stated [defendant] paid for and posted an ad on an adult website for [Mary] for prostitution. [Defendant] was stopped for Driving While License Revoked today while in Wilmington, NC. The contents of this vehicle[, a champagne colored Cadillac DHS with thirty-day tags,] are believed to hold evidence

> that would be invaluable in the prosecution of this case, to include, but not limited to, the credit card used to pay for the adult advertisement, hotel keys or key cards, hotel receipts, electronic devices used to store pictures or media to be posted on adult sites and also electronic devices used to set up appointments for the purpose of trafficking [Mary]. Travel documents or receipts will indicate the dates traveled to and from Wilmington to New York or other areas of the east coast and will also be valuable in establishing a time line of the trafficking of [Mary].

The affidavit goes on to include types of information often stored on cell phones (phone numbers, names, text messages, picture files, etc.), how that information may evidence human trafficking, as well as the limited, temporary, and easily erasable nature of data stored on cell phones, and a statement of the affiant's law enforcement experience.

In its 17 September 2018 order denying defendant's motion to suppress, the trial court makes the following unchallenged findings of fact, which defendant contends are the only findings supported by the search warrant application affidavit.

> 3. The accusations against the defendant were made by a victim of these crimes, [Mary] . . . . ;
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> . . . .
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> 5. The victim was able to identify the offender by name, [defendant] Roderick Boykins . . . .
>
> . . . .
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> 11. Det. Luther knew the defendant's driver's license to be revoked.
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> . . . .
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> 17. On February 5, 2015, Det. Luther contacted Detective Will Campbell of the New Hanover County

> Sheriff's Office assigned with the Federal Bureau of Investigation Task Force in reference to this human trafficking investigation[.]

"[A] reviewing court is responsible for ensuring that the issuing magistrate had a substantial basis for . . . conclud[ing] that probable cause existed." *McKinney*, 368 N.C. at 165, 775 S.E.2d at 825 (second and third alterations in original) (citation omitted). We hold that the affidavit also substantially supports the trial court's following findings of fact:

> 15. Det. Luther[2] knows through his training and experience that people who engage in human trafficking, promotion of prostitution, and sexual servitude utilize hotels to facilitate these acts of prostitution;
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> . . . .
>
> 20. Det. Campbell knows through his training and experience that people who engage in human trafficking, promotion of prostitution, and sexual servitude use cellular telephones and personal computers to facilitate these crimes;
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> 21. Det. Campbell knows through his training and experience that people who engage in human trafficking, promotion of prostitution, and sexual servitude carry cellular telephones and computers with them to engage in this illegal business in a mobile manner;
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> 22. Det. Campbell knows through his training and experience that people who engage in human trafficking, promotion of prostitution, and sexual servitude utilize the internet to place

[2] "Observations of fellow officers engaged in the same investigation are plainly a reliable basis for a warrant applied for by one of their number." *State v. Horner*, 310 N.C. 274, 280, 311 S.E.2d 281, 286 (1984) (citing *United States v. Ventresca*, 380 U.S. 102, 13 L.Ed.2d 684 (1965)).

> advertisements to capture the attention of individuals who will exchange money for sexual acts, that these advertisements contain images of the women who are being marketed for these purposes, that these images are often captured and maintained on cellular telephones and personal computers, that these images are uploaded to these websites soliciting prostitution by cellular telephones and personal computers, and that the individuals who exchange money for sexual activity communicate via cellular telephone or messaging on personal computers to schedule these acts of prostitution;
>
> 23. Det. Campbell knows through his training and experience that people who engage in human trafficking, promotion of prostitution, and sexual servitude utilize hotels to facilitate these acts of prostitution[.]

We hold that both the affidavit and the testimony presented during the suppression hearing substantially support the above challenged findings of fact. To the extent defendant has challenged these findings of fact as unsupported by information provided within the four corners of the affidavit, defendant's argument is overruled. To the extent the trial court made findings of fact based solely on testimony presented during the suppression hearing beyond the information contained in the affidavit, any such error was harmless.

When the illegal activity was to have occurred

Defendant argues that the search warrant application affidavit failed to indicate when the illegal activity complained of was alleged to have occurred.

Although the affidavit is not required to contain all evidentiary details, it should contain those facts material and essential to the case to support the finding of

probable cause. *State v. Flowers*, 12 N.C. App. 487, 493, 183 S.E.2d 820, 824 (1971). "It must be remembered that the object of search warrants is to obtain evidence . . . ." *State v. Bullard*, 267 N.C. 599, 601, 148 S.E.2d 565, 567 (1966). "[T]he warrant must describe with reasonable certainty the place to be searched and the items to be seized." *State v. Warren*, 59 N.C. App. 264, 267, 296 S.E.2d 671, 674 (1982) (citation omitted).

Defendant challenges the validity of the search warrant based on the failure of the warrant application affiant to assert when the illegal conduct complained of was to have occurred. Defendant argues that absent an indication of when the illegal conduct complained of was to have occurred, the search warrant application lacks any basis for a finding of probable cause. We disagree.

"[W]hen these [underlying] circumstances are detailed, where reasons for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense manner." *Id.* at 267, 296 S.E.2d at 673 (citation omitted); *see also McKinney*, 368 N.C. at 165, 775 S.E.2d at 825 (holding unpersuasive "either individually or collectively" the defendant's challenges to a search warrant where he argued that the affiant gave no indication as to *when* the anonymous tipster observed drugs changing hands and that the anonymous tipster provided only a "naked assertion" the activities observed were

drug related, where law enforcement officers observed conduct and communication indicative of a drug transaction, as well as debris from narcotics with a suspect). *Cf. State v. Taylor*, 191 N.C. App. 587, 664 S.E.2d 421 (2008) (holding the search warrant application was insufficient to establish probable cause where the warrant affiant listed two dwellings but failed to "set forth where . . . the drug deals occurred" or if the suspect was the owner of either dwelling). Where the search warrant affidavit provides no indication that the information contained is not timely, defendant's argument is overruled.

Additionally, defendant challenges the search warrant on the basis that "the affidavit is totally hearsay." Defendant contends that the affiant merely repeated information that was provided to Detective Campbell by Mary, while neither Mary nor Detective Campbell was under oath when the affidavit was written.

Our Supreme Court has held that "[o]bservations of fellow officers engaged in the same investigation are plainly a reliable basis for a warrant applied for by one of their number." *State v. Horner*, 310 N.C. 274, 280, 311 S.E.2d 281, 286 (1984) (citation omitted).

> [Moreover,] [t]his Court has clarified that a "truthful showing of facts" does not require "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."

State v. Parson, ___ N.C. App. ___, ___, 791 S.E.2d 528, 534 (2016) (quoting *State v. Fernandez*, 346 N.C. 1, 13, 484 S.E.2d 350, 358 (1997). On this point, defendant's argument is overruled.

Defendant contends that there is no information in the affidavit regarding the reliability of Mary's statement and that the affidavit contains inaccuracies, specifically that Mary was taken to New York against her will. At trial, Mary testified that this was not a truthful statement.[3]

> [However,] [p]rior to a hearing to determine the veracity of the facts contained within the affidavit, a defendant must make a preliminary showing that the affiant knowingly, or with reckless disregard for the truth, made a false statement in the affidavit. If a further evidentiary hearing is held, only the affiant's veracity is at issue at that hearing. A defendant's claim asserting the affidavit contained false statements made knowingly or in reckless disregard for the truth, is not established merely by evidence that contradicts assertions contained in the affidavit, or even that shows the affidavit contains false statements. Rather, the evidence must establish facts from which the finder of fact might conclude that *the affiant alleged the facts in bad faith*.

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[3] At trial, Mary gave the following testimony during her cross-examination by defendant:

> Q. You decided to testify yesterday after three years of this case pending that you lied to Detective Luther when you told him that Roderick Boykins took you to New York and was holding you hostage in New York. Isn't that the truth?
>
> A. Yes.
>
> Q. Why did you do that to Detective Luther?
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> A. Because I felt like the police would not believe me if he was not with me at the time.

Id. at ___, 791 S.E.2d at 534–35 (citations omitted). Defendant challenges the hearsay nature of the information related in the search warrant affidavit and the truthfulness of the information provided. Defendant does not challenge the veracity or good faith of the affiant, Detective J.E. Calarco. We overrule defendant's argument.

Defendant argues the affidavit provides no indication that evidence of human trafficking would be found in defendant's vehicle. However, as stated in the affidavit, defendant paid for and posted an advertisement on an adult entertainment website advertising Mary for prostitution in New York. On the day the search warrant application was submitted, defendant was arrested in Wilmington, NC.

> The contents of this vehicle are believed to hold evidence . . . includ[ing] but not limited to, . . . electronic devices used to store pictures or media to be posted on adult sites and also electronic devices used to set up appointments for purpose of trafficking [Mary].
>
> Any cell phone or electronic device that is located inside the vehicle may contain evidence of human trafficking. It is known to this detective that individuals involved in these types of crimes use cell phones and media devices to pay for and post the advertisements for the victim's services on the internet. It is known to this detective that most cell phone providers do not keep or preserve text messages. This information, along with available applications that can completely wipe all information from a phone, make processing the phone critical to this investigation.

As stated above, in reviewing the warrant application, the trial court made several findings of fact we have held to be substantially supported by the affidavit (*see*

findings of fact 15, 20, 21, 22, and 23, *supra*) regarding the use of cell phones to facilitate human trafficking, promotion of prostitution, and sexual servitude in a mobile manner.

"A magistrate must 'make a practical, common-sense decision,' based on the totality of the circumstances, whether there is a 'fair probability' that contraband will be found in the place to be searched." *McKinney*, 368 N.C. at 164, 775 S.E.2d at 824. Given that cell phone usage is so common among people, we agree that there was a fair probability that defendant's cell phone would be found inside the vehicle he was driving when he was stopped for driving while license revoked. As it was known to the law enforcement officers investigating defendant that persons engaged in human trafficking, promotion of prostitution, and sexual servitude used cell phones to facilitate those endeavors, the affidavit provides strong indication that evidence of human trafficking would be found in defendant's vehicle. Accordingly, defendant's argument is overruled.

Defendant next argues that search warrants predicated on the discovery of items seized during the 6 February 2015 search of defendant's vehicle would also be presumptively unreasonable and thus, in violation of the Fourth Amendment.[4]

[4] On 9 February 2015, law enforcement officers executed a search warrant for a cell phone and a laptop found during the 6 February search of defendant's vehicle. On 9 February 2015, law enforcement officers executed a search warrant for a storage unit located in Rocky Point, North Carolina, after a business card, seized during a search of defendant's vehicle, reflected the storage facility address, a storage unit number, and access code and Mary informed Detectives Luther and

However, as we have overruled defendant's challenge to the magistrate's issuance of the 6 February 2015 search warrant, we need not address defendant's "but for" challenge to the subsequent search warrants or his request for a new trial on the same basis.

For the aforementioned reasons, we hold no error in the trial court's order denying defendant's motion to suppress.

NO ERROR.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).

Campbell that defendant stored money in a storage unit. On 20 February 2015, law enforcement officers executed a search warrant for defendant's vehicle to seize any cell phones, any hotel receipts, hotel key cards or hotel keys, any bank cards, credit cards, and prepaid credit cards, any electronic device that could be used to store media or photographs, and any travel documentation or paper documents. On 20 February 2015, law enforcement officers executed a search warrant to search defendant's "inmate property" located at the Mecklenburg County Jail and seize a cell phone located in that property. On 16 March 2015, law enforcement officers executed a search warrant to seize information from an account disclosed by the online service provider Facebook.