

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO: 2015 CF 000387

STATE OF FLORIDA,

v.

KIMBERLE WEEKS,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS SEARCH WARRANT

THIS MATTER came before the Court on February 3, 2017 and continued to February 24, 2017 for hearing upon Defendant's Motion to Suppress Search Warrant Dismiss filed pursuant to Fla.R.Crim.P. 3.190(g). Defendant seeks to suppress evidence obtained as a result of a search of the Supervisor of Elections Office and computers and cellphone found in that office. The search was conducted pursuant to a search warrant executed on October 2, 2014. Defendant alleges that the search warrant was obtained upon an Affidavit that was based on material omissions or misstatements. Defendant further alleges that had the omitted facts or correct statements of fact been included in the Affidavit, that the reviewing judge would not have found probable cause. After determining Defendant had standing to raise these issues, the Court reviewed and considered the Motion, heard testimony from the author of the affidavit, heard argument of counsel and considered the case law submitted by counsel. Upon being fully advised in the premises, the Court finds as follows:

1. The Affidavit was prepared by Investigator Philip W. Lindley of the Florida Department of Law Enforcement. The Court does not find that Investigator Lindley made any misstatements, such that any alleged defect could be considered a deliberate falsehood or an intent to deceive the reviewing judge. Johnson v. State, 660 So.2d 648, 655 (Fla. 1995).

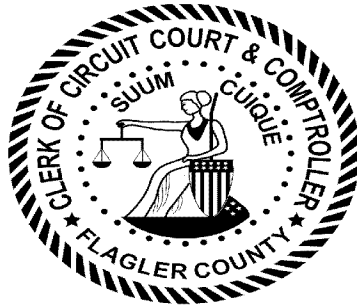
His misstatement that the recorded conversations of which he had knowledge were private conversations, rather than one made during a public meeting, relied on his understanding and interpretation of the law and did not constitute a deliberate falsehood made with an intent to deceive.

2. The Court further finds that the omissions in the Affidavit were not the result of a deliberate intent to exclude information nor a reckless disregard of the truth, but from a mistake of fact. Id. at 655-56. Defendant points to the omitted fact that a sign was posted on the front of the Supervisor of Elections Office stating "NOTICE! THESE PREMISES MAY BE SUBJECT TO AUDIO AND VIDEO MONITORING AND RECORDINGS AT ANY TIME." Investigator Lindley simply did not see the sign and the sign's omission from the affidavit cannot rise to the level of deliberate falsehood or reckless disregard of the truth. Pagan v. State, 830 So.2d 792, 807 (Fla. 2002). Furthermore, the Court finds that omission of the fact that Investigator Lindley already had a copy of the recording likewise was not a deliberate falsehood nor reckless disregard of the truth.
3. Probable cause would still exist for the issuance of the search warrant if the misstatements were corrected or omitted material included in the affidavit. Johnson v. State, supra, 660 So.2d at 656; Pagan v. State, 830 So.2d at 807. Here, the omitted fact of the sign and, perhaps more importantly, the copy of the recording¹, if included, would not have defeated probable cause. The accuracy of the affidavit, as submitted, constituted sufficient probable cause that evidence of a crime would be found in the Supervisor of Elections Office. *See, e.g., Pilioci v. State*, 991 So.2d 883, 893 (Fla. 2d DCA 2008).

¹ The reviewing judge would not have listened to the recording as it would have been outside the four corners of the Affidavit. Pagan v. State, 830 So.2d 792, 806 (Fla. 2002).

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the motion to suppress is **DENIED**.

DONE AND ORDERED in Chambers, in Bunnell, Flagler County, Florida, this 31st day of March, 2017.



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Margaret W. Hudson
MARGARET W. HUDSON
CIRCUIT JUDGE

cc: Kendell K. Ali, Esq. and Dean Bartzokis, Esq., Attorneys for Defendant, 217 E. Ivanhoe Blvd., North, Orlando, FL 32804
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