Prosecuting Attorneys' Council of Georgia

State Prosecution Support fyi

November 15, 2013

Mastrogiovanni v. State

The State Is Not Required To Obtain A Second Search Warrant When A Computer, Properly Seized Within 10 Days Of The Issuance Of A Search Warrant, Is Not Examined Within The Same 10 Day Period

In *Mastrogiovanni v. State*, Case No. A13A1179 (Nov. 15, 2013) appellant was convicted of eleven counts of sexual exploitation of children. The evidence showed that law enforcement executed a search warrant at appellant's home and seized his computer which was then sent to a GBI facility. At this facility, the computer was examined and multiple images depicting child pornography were discovered. Appellant contended that his trial counsel was ineffective for failing to challenge the use of the search warrant as the basis for the full forensic search of his hard drive. He conceded that the search warrant was executed at his house within 10 days after it was issued, as required by O.C.G.A. § 17-5-25, but argued that the subsequent forensic analysis of the seized computer took place more than 10 days after the warrant was issued. In other words, the computer that was seized during the search could not itself be "searched" without a warrant, and the 10-day period window defined by O.C.G.A. § 17-5-25 had expired before the forensic analysis took place. Thus, he argued, had his trial counsel made the proper motion to suppress, the results of the analysis should have been suppressed because they were obtained in a warrantless search.

The Court disagreed. First, the Court noted, appellant failed to cite any authority for the proposition that the analysis of items seized during the execution of a valid search warrant requires a second search warrant. Second, the Court stated, it was aware of no authority for the proposition that items seized from the lawful execution of a search warrant must then be analyzed, tested, or examined within the ten-day period provided for in O.C.G.A. § 17-5-25. Rather, as the State argued, the forensic analysis of appellant's computer is analogous to the chemical analysis of substances that field-tested positive for illegal drugs when seized pursuant to a search warrant. The State is not required to obtain a second warrant to analyze the substance or, for example, conduct ballistic tests on seized firearms. Similarly, the Court held, the State was not required to obtain a second warrant to analyze the computer here. Accordingly, because appellant failed to establish that a motion to suppress would have been granted on this ground, the trial court did not err in finding that trial counsel was not ineffective for failing to file a motion to suppress.

Most law enforcement agencies do not have the resources in-house to conduct a forensic examination of a computer seized pursuant to a search warrant. Thus, it is not uncommon for computers to be sent out of the jurisdiction in which the computer was seized and to a GBI facility (e.g. the GBI Crime Lab in Dekalb County) for examination. Although the issue was raised in the context of an ineffective assistance claim, *Mastrogiovanni* should put to rest the argument that in such instances, a second search warrant is needed in the county in which the GBI facility is located.