

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

ROBERT CAESAR

CRIMINAL ACTION
NO. 18-525

PAPPERT, J.

November 26, 2019

MEMORANDUM

Over several months in 2018, the Chester County District Attorney charged Robert Dean Caesar with various sexual offenses involving minors and with producing, possessing and disseminating child pornography. Later that year, the United States Attorney's Office adopted the case, and a federal grand jury returned an indictment charging Caesar with producing, receiving and possessing child pornography. The charges against Caesar are based on evidence that the Pennsylvania State Police gathered while executing three search warrants. Those warrants sought physical evidence related to the sexual-abuse allegations, a DNA sample from Caesar and images of child pornography or of the minor victims from Caesar's home. Caesar now moves to suppress all evidence derived from the three warrants. For the reasons that follow, that Motion is granted in part and denied in part.

I

In July of 2017, the Pennsylvania State Police received a tip from the National Center for Missing and Exploited Children ("NCMEC") that an eBay user was buying children's used underwear and swimwear. *See* (Mot. to Suppress Ex. A, at 3, ECF No. 40-1). Investigators discovered that the eBay account being used—"horses357"—was

registered to Robert Caesar of 906 Street Rd., Oxford, Pennsylvania, and linked to the email address rcaes@vet.upenn.edu. *See (id.* at 3). Driver license records and an interview with the owner of the 906 Street Rd. home confirmed that Caesar had rented that house for roughly four years. *See (id.* at 4). Caesar's landlord also told Pennsylvania State Trooper Stefano Gallina that Caesar worked on horses as a veterinary technician at the University of Pennsylvania and that he had no children. *See (id.)*

Through his eBay account, Caesar messaged other eBay users about buying children's used underwear. *See (id.* at 3). In these messages, he requested pictures of the inside of the underwear, as well as information about the age and identity of the children who had worn them. *See (id.)* Caesar sometimes pretended to be buying the underwear for his (nonexistent) son; other times, he posed as that fictional son to solicit images of children in their underwear. *See (id.* at 3–4). In one message, Caesar (again posing as a child) asked if the seller's son "would like to exchange email addresses." (*Id.*) Although investigators tied the internet protocol (IP) address associated with Caesar's eBay account to a computer network located somewhere in Oxford, Pennsylvania, they could not identify the "[e]xact physical address." (*Id.*)

Six months after NCMEC reported Caesar's suspicious eBay activity, Trooper Gallina learned that two brothers had accused Caesar of sexual abuse. *See (id.)* Days later, Gallina interviewed the brothers, who were sixteen and fourteen years old at the time. *See (id.* at 4–5). The older brother explained that for the last few years, Caesar had periodically hired him to do odd jobs around the house. *See (id.* at 4). The boy stated that beginning around June of 2015, Caesar began plying the then-fourteen-

year-old with alcohol and performing oral sex on him. *See (id.)* Though the older brother rebuffed Caesar's requests to have sex with him, Caesar continued to "perform oral sex or masturbate him to completion." (*Id.*) This abuse, the boy recounted, occurred on Caesar's bed, onto which the older brother sometimes ejaculated. *See (id.)* Along with the physical abuse, Caesar also allegedly asked for and received a few pieces of underwear from the older brother. *See (id.)* The younger brother recounted nearly identical abuse. *See (id. at 5)*. Both boys claimed that the sexual abuse continued until late December of 2017. *See (id. at 4–5)*. Though she could not corroborate the allegations of abuse, the boys' mother confirmed that the younger brother once smelled of alcohol after returning from Caesar's home in late 2017. *See (id. at 5)*.

On January 18, 2018, Gallina applied for two search warrants, both seeking evidence that Caesar had committed aggravated indecent assault of a minor. *See (id. at 1)*; (*id. Ex. B, at 1, ECF No. 40-2*) (both citing 18 Pa. Stat. and Cons. Stat. Ann. § 3125(a)(8)). The first warrant—number 12195A—sought approval to search Caesar's residence for "[s]emen and bodily fluid belonging to the victims, children's underwear and swimwear." (*Id. Ex. A, at 1*.) In addition, Gallina wanted permission to look for "images of child pornography, child erotica or nudity and/or any images of the victims." (*Id.*) The second warrant—number 12195B—was for a sample of Caesar's DNA. *See (id. Ex. B, at 1)*.

The affidavits of probable cause described Gallina's training and experience as a Pennsylvania State Trooper and a Federal Air Marshal. *See (id. Ex. A, at 2–3)*. Most of this training and experience involved investigating drug crimes and interviewing witnesses and analyzing criminal behavior in violent (non-sexual) crimes. *See (id.)*

Drawing on this background, Gallina averred that “those involved in the sexual abuse of children” often keep children’s clothing as a sexual stimulant. (*Id.* at 3.) He added that these individuals generally have pictures or videos “of children posed in various stages of undress performing sexual acts”; these images, he explained, can be stored either as hard copies or on electronic devices.¹ (*Id.*) According to Gallina, persons who sexually abuse children usually do so in a consistent location, “where physical evidence such as semen . . . and other bodily fluids will be present.” (*Id.*) Based on this information and the facts described above, Gallina stated that there was probable cause to believe that police would find (1) the items listed in the first warrant in Caesar’s residence and (2) Caesar’s DNA on his person. *See (id. at 5); (id. Ex. B, at 5).*

A Chester County Magisterial District Judge approved and issued the first two warrants on January 18, 2018. *See (id.); (id. Ex. A).* The Pennsylvania State Police (including Gallina) executed the warrants the same day. While searching Caesar’s home, police seized six pairs of stained children’s underwear and stained sheets and pillow cases, as well as several electronic devices.² *See (id. Ex. D, at 5, ECF No. 40-4).* The police did not search the electronic devices at that time. *See (Tr. of Suppression Hr’g 74:1–6, ECF No. 60).*

¹ In the affidavit supporting the first warrant application, Gallina noted that persons who sexually abuse children search the internet for children’s used clothing and for child pornography, which they discuss, share and view through websites such as eBay and Facebook Marketplace. *See (Mot. to Suppress Ex. A, at 5).*

² The specific devices were: “[A]n Apple iMac (silver with keyboard), a Desktop CPU tower (blue and tan) custom made, WD Passport external hard drives, 6 external hard drives, LG Cellular Phone, 9 VHS cassettes, compact discs, spindle of compact discs, and an Olympus digital camera.” (*Mot. to Suppress Ex. D, at 5.*) For convenience, the Court refers to these items collectively as the “electronic devices.”

Gallina arrested and interviewed Caesar that same day. *See* (Tr. of Interview 1:34–45, ECF 30-2). During the interview, Gallina informed Caesar of his rights, but when Caesar invoked his right to remain silent, Gallina continued to question him. *See (id. at 78:20–24)*. In response to those post-invocation questions, Caesar confessed to performing oral sex on and masturbating both brothers, buying children’s used underwear on eBay and keeping that and the brothers’ underwear to ejaculate into. *See* (Mot. to Suppress Ex. D, at 5). After Gallina pressed him on the electronic devices found in his home, Caesar also admitted to viewing child pornography on his computer and the hard drives as recently as two days earlier. *See (id.)*

Five days later, Gallina applied for a third search warrant. *See* (Mot. to Suppress Ex. D). Like the first two warrants, this one—number 12195C—sought evidence that Caesar committed aggravated indecent assault of a minor. *See (id. at 1)*. But this time the police asked to search the electronic devices they had previously seized from Caesar’s home for “[i]mages of child pornography, child erotica or nudity and/or any images of the victims.” (*Id.*) Until the final four paragraphs, the third affidavit repeated the information from the earlier affidavits. *Compare (id. at 1–5)*, *with (id. Exs. A & B, at 1–5)*. The new paragraphs recounted the fruits of the earlier search and Caesar’s admissions made in response to Gallina’s interrogation after Caesar had stated he wished to remain silent. *See (id. Ex. D, at 5)*. From these facts (new and old), Gallina asserted that there was probable cause to believe that police would find child pornography or images of the victims on the electronic devices. *See (id.)*

The same state-court judge approved the third warrant on January 23, 2018. *See (id.)* Police then found over 70,000 images and videos of child pornography on the electronic devices, including sexually explicit pictures of the younger brother taken from Caesar’s computer and cell phone. *See* (Gov’t Trial Mem. 4–5, ECF No. 47).

II

The Fourth Amendment guarantees that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. “Probable cause is a fluid concept that turns on the assessment of probabilities in particular factual contexts.” *United States v. Stearn*, 597 F.3d 540, 554 (3d Cir. 2010) (internal quotation marks and alterations omitted). A magistrate “must make a practical, common-sense decision whether . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* (quotation and internal quotation marks omitted). Direct evidence linking the crime with the place to be searched is unnecessary; probable cause often is inferred from the circumstances and commonsense. *See id.* But all inferences and facts regarding probable cause must be drawn from the four corners of the affidavit. *See Virgin Islands v. John*, 654 F.3d 412, 420 (3d Cir. 2011)

A district court conducts “a deferential review of the initial probable cause determination made by the magistrate.” *Stearn*, 597 F.3d at 554. The reviewing court does not decide probable cause *de novo*; it asks if “the magistrate had a substantial basis for concluding that probable cause existed.” *Id.* (quotation omitted). Without acting as a “rubber stamp,” a district court must resolve “doubtful or marginal cases” in favor of the magistrate’s conclusion. *Id.* (quotation omitted).

Even if the magistrate issued a warrant without probable cause, a reviewing court need not suppress evidence derived from that warrant if the police acted in good

faith reliance on the warrant's validity. *See Zimmerman*, 277 F.3d at 436. There are, however, four situations in which this good-faith exception does not apply. *United States v. Hodge*, 246 F.3d 301, 308 (3d Cir. 2001). First, if "the magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit." *Zimmerman*, 277 F.3d at 436. Second, if "the magistrate abandoned his or her judicial role and failed to perform his or her neutral and detached function." *Id.* Third, if "the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 437. And fourth, if "the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized." *Id.* In reviewing for good faith, a court must "consider not only any defects in the warrant but also the officer's conduct in obtaining and executing the warrant and what the officer knew or should have known." *United States v. Franz*, 772 F.3d 134, 147 (3d Cir. 2014).

III

Caesar, believing the police lacked probable cause, moves to suppress all evidence obtained from the three warrants. Again, those warrants sought: (1) physical evidence—semen and bodily fluids of the victims and children's underwear and swimwear; (2) a sample of Caesar's DNA; and (3) images of child pornography or of the victims.

A

The magistrate had a substantial basis for finding that there was probable cause to search for the physical and DNA evidence. The first and second warrants alleged that Caesar had committed aggravated indecent assault of a minor. *See* (Mot. to Suppress Ex. A, at 1); (*id.* Ex. B, at 1). Gallina's affidavits recounted the brothers'

allegations that Caesar sexually abused them in his home, that he kept pairs of their underwear, that they ejaculated on Caesar's bed and that Caesar would masturbate himself. *See (id. at 4–5)*. Those facts provided probable cause to believe that semen and bodily fluids from the brothers, children's underwear and Caesar's DNA were evidence of an aggravated indecent assault and would be found in Caesar's home and on his person. The Court therefore denies Caesar's Motion to Suppress the DNA sample and the evidence found while searching for semen and bodily fluids of the victims and children's underwear and swimwear in his home.

B

1

The government argues that probable cause also supported the first warrant's authorization to search for child pornography and images of the victims. *See (Gov't Resp. to Mot. to Suppress 5, ECF No. 44)*. It cites the information in the affidavits that Caesar posed as a child while buying children's used underwear on eBay and the brothers' allegations of sexual abuse, which the boys' mother partially corroborated. *See (id. at 6–7)*. The government then makes the leap that those facts together with the "common sense" inference that those who sexually abuse children also possess child pornography provided more than enough probable cause. *See (id. at 7–8)*. But even if the warrants lacked probable cause, it asks the Court to deny the Motion to Suppress because the police "relied in good faith on the warrants in conducting the search." (*Id.* at 8.)

At oral argument on the Motion, when asked for its best argument as to why Gallina's affidavit established probable cause to search Caesar's home for images of child pornography or of the victims, the government relied on "the general tendency of

child molesters to keep these kinds of images around,” (Tr. of Suppression Hr’g 75:11–19), and argued that probable cause can be based on the inference that one who sexually abuses minors would possess such images, *see (id. at 75:15–76:11)*. As the government pointed out, that inference was exactly the one Gallina stated in his affidavit and which he “[b]ased on his experience and training.” (Mot. to Suppress Ex. A, at 3.) According to the government, from this “very logical and close inference,” the magistrate could have concluded that there was “a fair probability” that Caesar would have child pornography or images of the victims in his home. (Tr. of Suppression Hr’g 82:1–14.)

2

After neither party cited it in their papers or at oral argument, the Court asked the parties to submit letter briefs addressing *United States v. Zimmerman*, 277 F.3d 426 (3d Cir. 2002). *See (id. at 77:2–21)*. The police there suspected that Zimmerman, a high school teacher, had assaulted and sexually abused children, a crime that “includes possession of child pornography.” 277 F.3d at 431. In pursuit of evidence of those crimes, police applied for a warrant to search Zimmerman’s home “for adult and child pornography.” *Id. at 429*. The affidavit recounted allegations by Zimmerman’s students that he had repeatedly sexually abused them and had shown them a video on his home computer at least six months earlier of an adult woman “performing oral sex on a horse.” *Id. at 430*. It also included an opinion from a postal inspector that “persons with a sexual interest in children may possess child pornography and keep it in their homes for extended periods of time.” *Id. at 431*. After a magistrate issued the warrant, police found child pornography in Zimmerman’s home. *See id. at 429*.

The district court denied Zimmerman’s motion to suppress the evidence of child pornography, but the Third Circuit reversed. *See id.* Though the government conceded on appeal that “there was no probable cause to search Zimmerman’s home for child pornography,” *id.* at 432, the Circuit emphasized that “there was absolutely no information in the affidavit or anywhere else indicating that child pornography was—or ever had been—located [in Zimmerman’s home],” *id.* at 433. The court added that the postal inspector’s inference that those who sexually abuse children also keep child pornography at home “may have added fat to the affidavit, but certainly no muscle.” *Id.* at 433 n.4 (quotation omitted). Indeed, the appeals court noted that the only evidence of pornography (adult or child) in the home was that Zimmerman had allegedly shown students a single pornographic video at least six months earlier. *See id.* at 437. But because that “information was stale,” *id.*, the police lacked probable cause to search for even adult pornography. *Id.* As for child pornography, the court reiterated that the affidavit—even with its conclusory statement that those who sexually abuse children also keep child pornography at home—“so lacked the requisite indicia of probable cause that it was ‘entirely unreasonable’ for an official to believe to the contrary.” *Id.* Thus, the court held that “the good faith exception d[id] not apply and the fruits of the search must be suppressed.” *Id.* at 438.

In its letter brief, the government again relies on the inference that “those who sexually molest children are also likely to possess” child pornography. (Gov’t Letter Br. 2, ECF No. 61.) It reasons that, because the government in *Zimmerman* conceded that no probable cause existed, the Third Circuit declined to say whether a statement that those who sexually abuse children also collect child pornography at home could provide

probable cause. *See (id.* at 1–2). If anything, the government posits, *Zimmerman* teaches that a statement attesting to the link between molestation and child pornography merits “significant weight” in any probable-cause analysis. (*Id.* at 2.) According to the government, *Zimmerman*’s skepticism about such a statement turned exclusively on the postal inspector’s lack of apparent personal involvement in the underlying case. *See (id.)* And even if the molestation-child pornography inference is insufficient, the government reasons, the affidavit here includes independent probable cause through Gallina’s recitation of Caesar’s solicitation of images of children in their underwear from eBay users. *See (id.)*

The government subsequently submitted a second, unsolicited letter brief. *See* (Suppl. Post-Hr’g Letter Br., ECF No. 64). This time the government points out that Caesar’s sexual abuse, unlike *Zimmerman*’s, occurred in his home. *See (id.* at 1–2). And the only reasonable inference from Caesar’s solicitation of images of children in their underwear from other eBay users, the government says, “is that Caesar previously collected videos and/or photographs of young boys modeling underwear.” (*Id.* at 2.) Going further, the government insists that “as a matter of common sense, it was probable that Caesar, who had asked for videos and photographs of the previous wearers of boy’s underwear, would take images of the victims he abused in his home.” (*Id.*) The government claims that these distinctions render *Zimmerman* inapposite. *See (id.* at 2–3).

3

The government (twice) misses *Zimmerman*’s central lesson. True, *Zimmerman* did not hold that a statement linking sexually abusing children and child pornography cannot establish probable cause. But it went a step further. It held that a warrant

reciting allegations of sexual abuse and stating that those who sexually abuse children also keep child pornography at home “so lacked the requisite indicia of probable cause that it was ‘entirely unreasonable’” for police to think otherwise. 277 F.3d at 437. The first warrant here does exactly that; it recites allegations that Caesar sexually abused children and claims that this conduct means that he also has child pornography. *See* (Mot. to Suppress Ex. A, at 2–5). *Zimmerman* commands that reliance on such an affidavit is unreasonable.³ *See* 277 F.3d at 437.

As in *Zimmerman*, nothing in the first affidavit hinted that Caesar ever had child pornography or images of the victims in his home. Nowhere in the affidavit did Gallina suggest that Caesar took pictures or videos of the victims or that those who molest children usually keep images of their victims. Nor did he suggest that Caesar used child pornography to aid in the abuse. The only movies mentioned in the affidavit were the “westerns” that one of the brothers said Caesar watched with them. *Cf. John*, 654 F.3d at 421–22 (distinguishing *United States v. Colbert*, 605 F.3d 573 (8th Cir. 2010), in which defendant lured victims with movies that the Eighth Circuit reasoned included child pornography). Considering that Gallina’s search warrant application sought evidence of aggravated indecent assault of a minor, a crime with no connection to child pornography, the warrant application itself did not accuse Caesar of possessing sexually explicit images of children in his home. *See* (Mot. to Suppress Ex. A, at 1)

³ The Third Circuit reiterated in *John* that the existence of “an ‘intuitive relationship’ between two distinct crimes [molestation and child pornography] is suspect.” 654 F.3d at 422 (quoting *United States v. Colbert*, 605 F.3d 573, 578 (8th Cir. 2010)). There, the court held that allegations that a teacher had “committed sex crimes against his students on school property, and that he kept two particular pieces of evidence of those crimes in his home” were “not sufficient to establish—or even hint at—probable cause as to the wholly separate crime of possessing child pornography.” *Id.* at 419. Reliance on such an affidavit, the court continued, was so unreasonable as to preclude application of the good-faith exception. *See id.* at 422.

listing 18 Pa. Stat. and Cons. Stat. Ann. § 3125(a)(8) as the only provision Caesar violated). In sum, the government was right the first time when it said that “the only sort of evidence that directly addresses [child pornography or images of the victims]” was “the general tendency of child molesters to keep these kinds of images around.” (Tr. of Suppression Hr’g 75:16–19.) But that general tendency, without more, cannot establish probable cause, and under Third Circuit precedent, Gallina’s reliance on the magistrate’s contrary conclusion was entirely unreasonable.⁴ *See Zimmerman*, 277 F.3d at 437; *see also John*, 654 F.3d at 422 (calling the inference “suspect”).

Contrary to the government’s suggestion, at least some of the alleged abuse in *Zimmerman* occurred “at [Zimmerman’s] home.” 277 F.3d at 439 (Alito, J., dissenting). But even if all the abuse happened outside the home, that fact is unimportant given the court’s reasoning that Zimmerman’s sexual misdeeds “had nothing to do with whether there was *pornography* in his home.” *Id.* at 437 (emphasis added). That Gallina, unlike the postal inspector in *Zimmerman*, had personal knowledge of the details of the investigation is also irrelevant. *See* (Gov’t Letter Br. at 2). Gallina claimed that those who sexually abuse children often possess child pornography, but he did not tailor this opinion “to the specific facts of the case.” *Zimmerman*, 277 F.3d at 433 n.4. Aside from this boilerplate statement, the affidavit lacked any facts tying Caesar’s home to child

⁴ Even if Gallina’s statement linking sexual abuse and child pornography supported a search for images of the victims or child pornography, it failed to tie those images to Caesar’s home. The affidavit in *Zimmerman* averred that those who sexually abuse children also keep child pornography “in their homes.” 277 F.3d at 431. Gallina’s affidavit, by contrast, said that those who sexually abuse children keep child pornography, but it does not say where they keep it. *See* (Mot. to Suppress Ex. A, at 3, 5). Without that connection to Caesar’s home, the first affidavit lacked any hint that Caesar ever had images of the victims or child pornography in his home. *See John*, 654 F.3d at 420 (explaining that affiants cannot “draw an inference from facts not stated in the affidavit or . . . rely on her own personal knowledge” but must “state all the relevant facts in the warrant affidavit and submit them to judicial scrutiny”).

pornography or to images of the victims. *Id.* Such “boilerplate recitations designed to meet all law enforcement needs’ do not produce probable cause.” *Id.* (quoting *United States v. Weber*, 923 F.2d 1338, 1345 (3d Cir. 1990)); see *John*, 654 F.3d at 420 (explaining that affiants must allege connections they wish magistrates to draw along with an evidentiary reason to believe in the connection).

That Caesar allegedly asked eBay users for images of children in their underwear neither constitutes probable cause nor distinguishes *Zimmerman*. The police received the tip about Caesar’s suspicious eBay activity in June of 2017. *See* (Mot. to Suppress Ex. A, at 3). That timeline places Caesar’s solicitation of images of children in their underwear at least six months before Gallina applied for the first warrant. *See id.* Because Gallina did not allege that the eBay images qualified as child pornography, there is no reason to think that Caesar would still have these non-pornographic images six months later.⁵ *See Zimmerman*, 277 F.3d at 433–36 (discussing staleness). Possible staleness aside, the affidavit never linked soliciting non-pornographic images of children in their underwear to possession of child pornography or images of victims. *Cf. United States v. Edwards*, 813 F.3d 953, 969 (10th Cir. 2015) (holding that affidavit stating that “child pornography collectors also collect child erotica” failed to provide probable cause to search for child pornography); *John*, 654 F.3d at 419 (holding good-faith exception inapplicable to search for sexually explicit images of children even though the affidavit alleged that the suspect sexually

⁵ Even if the eBay images were child pornography, Gallina averred that he had not yet identified the “[e]xact physical location” of the IP address associated with Caesar’s eBay account. (Mot. to Suppress Ex. A, at 4.) Without a link to his home, Caesar’s suspicious eBay activity cannot supply probable cause that there was child pornography in Caesar’s home or render Gallina’s reliance on the first warrant’s validity reasonable.

abused children and “kept two particular pieces of evidence of those crimes in his home”). Nor did it allege that those who sexually abuse children also keep pictures of the victims in their homes. *See* (Mot. to Suppress Ex. A, at 3–5). While the government contends that it is “common sense” that someone who had solicited pictures of children in their underwear “would take images of the victims he abused,” (Suppl. Post-Hr’g Letter Br. 2), a magistrate could not reach that conclusion from the four corners of Gallina’s affidavit, *see John*, 654 F.3d at 419–20 (holding that officer’s reliance on affidavit that failed to explicitly draw a connection was entirely unreasonable).

4

In the end, the first warrant provided no basis for a finding of probable cause to search Caesar’s home for child pornography or images of the victims. The only conceivable bases for probable cause were the “unexamined biases and stereotypes” Gallina briefly mentioned in the affidavit. *John*, 654 F.3d at 421. But *Zimmerman* deems reliance on such insufficient affidavits entirely unreasonable and, at a minimum, grossly negligent. *See* 277 F.3d at 437–38; *John*, 654 F.3d at 419–22. The same is true here. Gallina applied for warrants to investigate a crime unrelated to the production, receipt or possession of sexually explicit images of children, but he nevertheless asked to search for those images. *See* Pa. Stat. and Cons. Stat. Ann. § 3125(a)(8); (Mot. to Suppress Ex. A, at 1). He did so even though neither victim had accused Caesar of taking pictures or videos of them and no evidence suggested Caesar had child pornography in his home. *Cf. United States v. Pavulak*, 700 F.3d 651, 664 (3d Cir. 2012) (holding good-faith exception applied because a warrant, though deficient, included a witness statement that the suspect had viewed child pornography at the location to be searched). By relying on a warrant so lacking in indicia of probable cause

as to render official belief in its existence unreasonable, Gallina acted, at a minimum, with gross negligence.

C

The question remains whether the illegal seizure of the electronic devices merits suppression of the images later found on those devices. Ordinarily, the unlawful seizure of the electronic devices would render any evidence on those devices inadmissible. *See Utah v. Streiff*, 579 U.S. ----, 136 S. Ct. 2056, 2061 (2016). But because Gallina obtained a third warrant specifically authorizing the search of the devices, the government argues that the images found on the devices are admissible under either the independent source or the attenuation doctrine. *See* (Gov't Letter Br. at 2–3 (arguably raising these arguments)). Neither exception applies.⁶

1

The independent source doctrine allows admission of “evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial illegality.” *United States v. Price*, 558 F.3d 270, 281 (3d Cir. 2009) (quoting *Murray v. United States*, 487 U.S. 533, 537 (1988)). To determine if a later warrant is an independent source, courts first “purge” the second warrant affidavit of any “tainted facts and conclusions.” *United States v. Perez*, 280 F.3d 318, 340 (3d Cir. 2002). If the untainted affidavit supports a finding of

⁶ In its supplemental letter brief, the government seems to argue that the evidence found on the electronic devices is admissible because Gallina relied in good faith on the validity of the third warrant. Indeed, the government portrays Gallina as having “proceeded carefully and with restraint” “at every step.” (Suppl. Post-Hr’g Letter Br. at 3.) It even calls his conduct “commendable” for its “fidelity to the Fourth Amendment.” (*Id.*) The facts paint a different picture. As explained above, Gallina was grossly negligent in relying on the first warrant. He then used the unlawfully seized evidence to extract a confession after a suspect had invoked his right to remain silent. And that ill-gotten confession served as probable cause to get the third warrant to search the unlawfully seized evidence. Such conduct is neither “commendable” nor faithful to the Fourth Amendment.

probable cause, then the evidence uncovered while executing the later warrant is admissible. *See United States v. Stabile*, 633 F.3d 219, 243–44 (3d Cir. 2011).

The police unlawfully seized Caesar’s electronic devices without probable cause while executing the first warrant. But before finding the child pornography and images of the victims, Gallina obtained the third warrant. *See* (Mot. to Suppress Ex. D). All but the final four paragraphs of the affidavit of probable cause supporting the third warrant application were identical to those in the affidavit upon which the first warrant was issued. *Compare* (*id.* at 1–5), *with* (*id.* Ex. A, at 1–5). In those new paragraphs, Gallina stated that Caesar had confessed to viewing “child pornography on his computer and on the hard drives found in his residence.” (*Id.* Ex. D, at 5.) The government contends that this admission provided probable cause, independent of the unlawful seizure, to believe “that child pornography would be found on [Caesar’s] electronic devices.”⁷ (Gov’t Letter Br. 3.)

Caesar’s admission was, however, derivative of the unlawful seizure. Despite Caesar’s unequivocal, repeated invocations of his right to remain silent, Gallina continued to question him.⁸ *See, e.g.*, (Tr. of Interview 78:20–24). These post-

⁷ At oral argument, the government acknowledged that probable cause for the third warrant was based “in part” on the evidence seized pursuant to the first warrant, with the other part coming from Caesar’s confession. *See* (Tr. of Suppression Hr’g 91:13–20). That understates the third warrant’s dependence on the first.

⁸ The Court suppressed these admissions because they were elicited in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981). *See* (Order, ECF No. 36). Under current Third Circuit law, the “fruit of the poisonous tree” doctrine does not apply to evidence derived from statements made before police informed a suspect of her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). *See United States v. DeSumma*, 272 F.3d 176, 180–81 (3d Cir. 2001). Neither the Supreme Court nor the Third Circuit has extended that reasoning to statements made after a suspect invoked the right to remain silent under *Edwards*. But several other circuits have held that the fruit of the poisonous tree doctrine does not apply to *Edwards* violations. *See, e.g., United States v. Gonzalez-Garcia*, 708 F.3d 682 (5th Cir. 2013); *Howard v. Moore*, 131 F.3d 399 (4th Cir. 1997), *abrogated on other grounds by Miller-El v. Dretke*, 545 U.S. 231 (2005). The Court need not consider whether Gallina’s willful violation of Caesar’s right to remain silent requires suppression of the images on the electronic devices. Even if

invocation questions included several about the “hard drive found between the mattress and the box spring of [his] bed.” (*Id.* at 88:43–45.) Gallina even warned that Caesar “need[ed] to explain it because [the police would] find everything” and figure out “when things were accessed” on the electronic devices. (*Id.* at 90:8–18.) Only after Gallina had leveraged the fruits of the unlawful seizure did Caesar admit to having child pornography on the electronic devices. *See* (Gov’t Resp. to Mot. to Suppress Statements 7–8, ECF No. 33 (walking through the timeline of events leading to Caesar’s admissions)). Caesar’s admission was not independent, but derivative, of the unlawful seizure. Without that admission, Gallina’s affidavit in support of his application for the third warrant affidavit offers nothing to support a finding of probable cause, and the independent source doctrine does not apply.

2

The attenuation doctrine allows admission of unlawfully obtained evidence if the “connection between the unconstitutional police conduct and the evidence is so remote or has been interrupted by some intervening circumstance” that suppression would not serve the interest of the violated constitutional guarantee. *Strieff*, 136 S. Ct. at 2061. Three factors guide this analysis: (1) “the ‘temporal proximity’ between the unconstitutional conduct and the discovery of evidence”; (2) “the presence of intervening circumstances”; and (3) “the purpose and flagrancy of the official misconduct.” *Id.* at 2062 (quoting *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975)).

Each factor favors suppression. The Supreme Court requires a “substantial time” to elapse “between the unlawful act and when the evidence is obtained.” *Id.*

the fruit of the poisonous tree doctrine does not apply to the *Edward*’s violation, Caesar’s admission was itself derived from the unlawful seizure of the electronic devices.

(quoting *Kaupp v. Texas*, 538 U.S. 626, 633 (2003) (per curiam)). Five days separated the unlawful act (seizing the electronic devices) from the issuance of the third warrant and discovery of the images. *See* (Mot. to Suppress Ex. D, at 5). Given that Caesar was incarcerated and the electronic devices in police custody for those five days, the passage of time did little to distance the unlawful seizure from the discovery of the images. Nor was there an intervening event to dissipate the taint. The only relevant events were Caesar's admission to viewing child pornography and the issuance of the third warrant. But those events did not intervene so much as flow from the unlawful seizure. And the purpose and flagrancy of the official misconduct strongly favors suppression. "The exclusionary rule exists to deter police misconduct." *StriEFF*, 136 S. Ct. at 2063. As noted, Gallina did not make a good-faith mistake in unlawfully seizing the electronic devices. *See Zimmerman*, 277 F.3d at 437; *John*, 654 F.3d at 417–22. Compounding his earlier misconduct, Gallina ignored Caesar's repeated invocations of his right to remain silent, leveraged the unlawfully seized evidence to coax a confession and then exploited that confession to get a warrant to search the evidence he had unlawfully seized.

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

ROBERT CAESAR

CRIMINAL ACTION
NO. 18-525

ORDER

AND NOW, this 26th day of November 2019, upon consideration of Robert Caesar's Motion to Suppress Physical Evidence (ECF No. 40), the government's Response (ECF No. 44), the parties' arguments at the suppression hearing (ECF No. 60), the parties' Post-Hearing Letter Briefs (ECF Nos. 58, 61) and the government's Supplemental Post-Hearing Letter Brief (ECF No. 64), it is **ORDERED** that Caesar's Motion is **GRANTED IN PART AND DENIED IN PART**. Specifically, the Motion is:

1. **DENIED** as to the DNA sample taken from Caesar's person and the evidence found in Caesar's home as authorized by the portion of the warrant to search for semen and bodily fluids of the victims and children's underwear and swimwear; and
2. **GRANTED** as to the images of child pornography, child erotica or nudity and any images of the victims.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.