FOR PUBLICATION

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. MICHAEL A. JACKSON, Defendant.	CRIMINAL CASE NO. 10-0197 ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

A/D
PDD
AJJNC

I. INTRODUCTION

THIS MATTER came before the Court on September 5, 2012, for a hearing on a motion to suppress. Michael A. Jackson ("Defendant") was represented by Assistant Public Defender, Daniel T. Guidotti. The Commonwealth was represented by Assistant Attorney General, Nicole D. Driscoll. Defendant now moves to suppress evidence seized from a search of Defendant's car arguing that the warrant was so facially deficient in failing to state the things to be seized that evidence seized pursuant to the warrant must be suppressed. Based on a careful review of the record, arguments, applicable law and for the reasons set forth herein, the Court **GRANTS** the motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

On the morning of October 9, 2010, police responded to a report of a sexual assault and kidnapping in As Lito. Detective Melissa M. Bauleong ("Det. Bauleong") interviewed

the victim, R.N.N., a minor, who reported that a stranger forced her into his car, drove her to a field near the airport and raped her in the front seat of the car. R.N.N. described the car, and picked out the defendant in a photo line-up. The Department of Public Safety ("DPS") learned that the defendant owned a car matching the victim's description. After arresting the defendant DPS secured his vehicle and impounded it. (Def.'s Ex. A at 1; 3.)

Det. Bauleong's sought a search warrant for the vehicle because that is where the rape is alleged to have occurred.[1] To that end, she drafted an Affidavit of Probable Cause in Support of the Issuance of a Search Warrant ("affidavit") and filled out a form search warrant ("warrant"). The affidavit and warrant were both taken to the Attorney General's office and reviewed by then Assistant Attorney General Brian Gallager, who indicated that there were "no mistakes."[2] Det. Bauleong took the affidavit and warrant to the Superior Court for review. On October 13, 2010 Associate Judge Kenneth L. Govendo reviewed and signed the warrant (Def.'s Ex. B.) The face of the search warrant reads in part:

> Proof by (X) affidavit ( ) oral statement under oath, having been made before me by Detective **Melissa Bauleong**, that there is probable cause for the issuance of a search warrant;
>
> 1) For the SILVER 1997 HONDA CIVIL [LICENSE PLATE NUMBER ACH-726] – registered to Michael Anthony Jackson – to produce evidence pertinent to the case.

(Def.'s Ex. B.)

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[1] This statement is based on Det. Bauleong's testimony at the suppression hearing on September 5, 2012. There is no written transcript of the proceeding; therefore the Court relies on the September 2, 2012 audio recording for courtroom 220.

[2] *See* note 1.

Neither the warrant, nor the affidavit contains a list of items "pertinent" to the case.[3] The affidavit notes that the declaration of probable cause is made in reference to a criminal case against Defendant, and that an arrest warrant issued in relation to charges of Kidnapping, Rape, Sexual Abuse of a Minor, Assault and Battery and Disturbing the Peace. (Def.'s Ex. A at 1;1.) The affidavit also contains details of the crime as follows: "[p]reliminary findings indicate on October 9, 2010 between the hours of 1:00 AM to 3:00 AM, JACKSON kidnapped and raped a 15-year old (sic) minor with initials RNN . . . inside a silver Honda Civic that had a white colored 'star' design on the lower left corner of the front windshield. . ." (*Id.* at 1;2.) The affidavit also indicates that "[a]ffiant believes that evidence essential to the prosecution of this case would be recovered from inside the said vehicle." (*Id.* at 1.)

Det. Bauleong sought the assistance of the Federal Bureau of Investigations ("FBI") in order to process the car because she knew that DPS did not have the equipment necessary to execute the search.[4] On October 15, 2010 Det. Bauleong along with three FBI agents executed the search warrant. Prior to executing the search, Det. Bauleong briefed the agents regarding the case.[5] The affidavit accompanied the search team while they executed the search.[6] Along with the warrant and affidavit agents had access to the case file, a copy of the investigative report and a report from the responding officers.[7] According to Det.

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[3] There are no items mentioned in reference to the vehicle search at issue here. The search warrant also seeks a buccal swab from Defendant which is not at issue.

[4] *See* note 1.

[5] *Id.*

[6] *Id.*

[7] *Id.*

Bauleong's testimony the search team was looking for hair, bodily fluids, fingerprints and any other evidence from Defendant or R.N.N.'s body.

The items seized were: the front passenger seat, the front passenger floor mat, the rear driver floor mat; a shoulder bag containing two empty Doral cigarette packs, rolling papers and container of limestone; one piece of cardboard removed from the passenger front seat; two square mirrors; the front driver's side door mat; hairs and fibers which may belong to the victim; two headrests from front seats; two packs of Doral cigarettes; a piece of carpet removed from the front passenger side; one used plastic syringe; one used paper towel that may contain DNA; the rear passenger floor mat; a plastic visor removed from passenger's side front door; the door panel from the interior passenger's side front door; the trim panel from the interior passenger's front door; the kick plate from the interior passenger's front door; a door jam from the interior passenger's front door. (Def.'s Ex. C at1-2.)

The passenger seat and the cardboard were seized because when illuminated they revealed the presence of bodily fluids.[8] Det. Bauleong testified that the floor mats were taken because there was hair on them, and the cigarette pack was taken for possible fingerprints. Det. Bauleong's testified that her role in the search was to itemize and bag evidence collected by two FBI agents.

On October 15, 2010, the Commonwealth charged Defendant with Kidnapping, Sexual Assault in the First Degree, and Assault. Subsequently, evidence retrieved from the search warrant was sent to the FBI lab in Quantico, Virginia to be tested to determine if Defendant's DNA was on the victim, her clothing or in Defendant's vehicle.

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[8] *Id.*

On August 14, 2012, Defendant filed the instant Motion to Suppress Evidence. On September 5, 2012, at the suppression hearing, the Court heard testimony from Det. Bauleong and arguments from counsel.

III. DISCUSSION

Defendant contests the validity of the search warrant. Where a search is made pursuant to a warrant, the defendant bears the initial burden of showing the warrant was constitutionally defective. *Illinois v. McArthur*, 531 U.S. 326, 338 (2001) (Souter, J., concurring) ("[M]ost states follow the rule which is utilized in the federal courts: if the search or seizure was pursuant to a warrant, the defendant has the burden of proof; but if the police acted without a warrant the burden of proof is on the prosecution.") (quoting 5 W. LaFave, Search and Seizure § 11.2(b), p. 38 (3d ed. 1996)). The standard of poof in a suppression hearing is "preponderance of the evidence." *United States v. Matlock*, 415 U.S. 164, 177, 178 n. 14. A preponderance of the evidence exists where a given fact is more probable than not. *See In re Barcinas*, 4 NMI 149, 154 (1994). Thus, to meet his burden the defendant must demonstrate that the search was unconstitutional by a preponderance of the evidence.

Defendant argues that the warrant violates the Fourth Amendment and the Commonwealth Constitution in failing to state the things to be seized with particularity and must be suppressed because it is so facially deficient that no objectively reasonable officer could have relied on it in good faith. The Commonwealth counters that the warrant expressly incorporates the affidavit which states the items to be seized with sufficient particularity, and suppression is inappropriate because the officers relied on the warrant in good faith.

A. INCORPORATION BY REFERENCE

Initially, the Court addresses whether the affidavit was incorporated by reference. Where a warrant incorporates supporting documents by reference, courts evaluate the warrant and documents as a whole. *See United States v. SDI Future Health, Inc.*, 568 F.3d 684, 699 (9th Cir. 2009) ("If [the affidavit] was incorporated, then we evaluate the affidavit and the warrant as a whole, allowing the affidavit to "cure" any deficiencies in the naked warrant") (citing *United States v. Towne*, 997 F.2d 537, 544 (9th Cir. 1993)).

"Court[s] may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant." *Groh v. Ramirez*, 540 U.S. 551, 557-558 (2004). Thus, an affidavit is incorporated only if "(1) the warrant expressly incorporated the affidavit by reference and (2) the affidavit either is attached physically to the warrant or at least accompanies the warrant while agents execute the search." *Id.* (citations omitted).

An affidavit is expressly incorporated through words of incorporation such as "[u]pon the sworn complaint made before me there is probable cause to believe that the crime . . . has been committed." *United States v. Vesikuru*, 314 F.3d 1116, 1120 (9th Cir. 2002).

First, the warrant here states "[p]roof by affidavit . . . under oath, having been made before me by Detective Melissa Bauleong, that there is probable cause for the issuance of a search warrant" (Def.'s Ex. B). This is adequate language of incorporation. *Vesikuru*, 314 F.3d at 1120.

Second, the affidavit must be physically attached or accompany the warrant during the execution of the search. *Groh*, 540 U.S. at 561. Here, Det. Bauleong indicated that the

affidavit was shown to Judge Govendo along with the warrant and accompanied the officers when they conducted the search of the car. Her testimony establishes that the executing officers and agents received a copy of the warrant and the affidavit. Det. Bauleong also reviewed the case file with the other officers prior to conducting the search. The Court finds the affidavit used appropriate words of reference and accompanied the executing officers during the search and was therefore incorporated by reference. Consequently the warrant and affidavit are viewed as a whole.

B. PARTICULARITY IN THE THINGS TO BE SEIZED

The next issue is whether the description of the things to be seized in the warrant satisfies the particularity requirement. The Fourth Amendment to the United States Constitution provides that "No Warrants shall issue, but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. The United States and Commonwealth Constitutions[9] require particularity in the things to be seized. U.S. Const. amend. IV; NMI Const. art. I, § 3(a).

Particularity is the requirement that the warrant must clearly state what is sought. *United States v. Towne*, 997 F.2d 537, 544 (9th Cir. 1993) (citations omitted). General searches are prohibited. *Commonwealth v. Pua*, 2009 MP 21 ¶ 20. The general purpose of the requirement is to prevent an exploratory rummaging through a person's belongings. *Andresen v. Md.*, 427 U.S. 463, 480 (1976) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)). It also assures the individual whose property is searched of the lawful

[9] Article I, Section 3 of the Commonwealth Constitution is modeled after the Fourth Amendment, made applicable in the Commonwealth by the Fourteenth Amendment and section 501 of the Covenant. *See Commonwealth of the N. Mariana Islands v. Pua*, 2009 MP 21, ¶ 19.

authority of the executing officer, the need to search, and the limits of the officer's power to do so. *Groh*, 540 U.S. 551 at 561 (citations omitted).

The Supreme Court has required a description sufficient to leave "nothing . . . to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). In practice, however, "the search warrant need only be reasonably specific, rather than elaborately detailed." *United States v. Brobst*, 558 F.3d 982, 993 (9th Cir. 2009) (citations omitted). "The description must be specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized." *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. Nev. 1986) (citations omitted). The degree of specificity required varies depending on the particular circumstances and the type of items involved. *Id.* at 963.

To determine whether a warrant is sufficiently particular the Ninth Circuit has focused on one or more of the following: "(1) whether probable cause exists to seize all items of a particular type described in the warrant; (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not; and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued [.] *Spilotro*, 800 F. 2d at 963 (citations omitted).

Here, Defendant argues that the warrant lacks particularity because it fails to satisfy the last two considerations (Def.'s Mot. Supp. 4.) The Commonwealth responds that the list of crimes contained in the affidavit "naturally limits" the scope of the search. (Opp'n 4-5.)

1. Objective Standards

At issue is whether the warrant and affidavit set out objective standards by which executing officers can differentiate items subject to seizure from those which are not. "Reference to a specific illegal activity can, in appropriate cases, provide substantive guidance for the officer's exercise of discretion in executing the warrant." *Spilotro*, 800 F. 2d at 964; *see also, e.g.*, *United States v. Washington*, 782 F.2d 807, 818 (9th Cir. 1986) (holding warrant satisfied particularity requirement where it was limited to items demonstrating "involvement and control of prostitution activity"); *United States v. Young*, 745 F.2d 733, 758 (2d Cir. 1984) (holding warrant particular which contained a list of specific items followed by boilerplate language allowing the seizure of evidence of narcotics conspiracy); *United States v. Johnson*, 541 F.2d 1311, 1315 (8th Cir. 1976) (per curiam) (holding warrant sufficiently particular where context limited search for "paraphernalia" to items related to marijuana use).

"Mere reference to 'evidence' of a violation of a broad criminal statute or general criminal activity [by contrast] provides no readily ascertainable guidelines for the executing officers as to what items to seize." *United States v. George*, 975 F.2d 72, 76 (2d Cir. 1992); *see*, *e.g.*, *United States v. Cardwell*, 680 F.2d 75, 77 (9th Cir. 1982) (holding warrant insufficiently particular where the only limitation on the search and seizure of business papers was that they be the instrumentality or evidence of violation of the general tax evasion statute); *United States v. Leary*, 846 F.2d 592, 601 (10th Cir. 1988) (holding warrant facially overbroad where warrant sought evidence of "'the purchase, sale and illegal exportation of materials in violation of the' federal export laws.")

Here, the face of the warrant allows seizure of "evidence pertinent to the case." (Def.'s Ex. B). This is extremely broad. No mention of any specific evidence is made on the face of the warrant or in the affidavit. The affidavit mentions evidence "essential to the prosecution of this case" (Def.'s Ex. A at 1.) The language "pertinent to the case" in the warrant, and "essential to the case," in the affidavit are not limited by any language indicating what actual evidence or type of evidence is sought. Neither is there any list of items from which a comparison could be made in order to determine what items are subject to seizure.

The affidavit references the criminal case number, indicates the charges for which an arrest warrant issued in the case, and indicates that the Defendant was arrested and his car was impounded. The list of charges may give officers some clue as to what is "pertinent" or "essential" to the case, however, the affidavit does not limit the evidence to be seized in reference to any of the listed charges. Even if we assume the executing officers could reasonably infer that the general description of items "pertinent to the case," was made in reference to the affidavit containing a list of crimes for which police had probable cause, the list of charges here is not particularly helpful in setting an objective standard. The affidavit lists: Kidnapping, Rape, Sexual Abuse of a Minor, Assault and Battery, and Disturbing the Peace. Each of these five crimes can be done in a myriad of different ways—the charges themselves do not readily indicate the instrumentalities which may have been used to commit them, or what police reasonably believed they would find in the car. *See United States v. Crozier*, 777 F.2d 1376, 1381-82 (9th Cir. 1985) (holding that a warrant authorizing seizure of "[m]aterial evidence of violation 21 U.S.C. 841, 846, (manufacture and possession with intent to distribute Amphetamine and conspiracy)," was facially deficient);

Spilotro, 800 F.2d at 965 (concluding search warrant lacked particularity because the only limit was the requirement that evidence relate to a violation of any one of thirteen broad statutes). Accordingly, the list of crimes, without more, does not provide an objective standard.

The brief description of the crime in the affidavit also does not provide objective criteria by which executing officers would know what is subject to seizure. Warrants which contain a description of a crime can indicate the things to be seized with sufficient particularity. *See, e.g.*, *United States v. Anderson*, 2011 U.S. Dist. LEXIS 117159, 6-8 (E.D. Tenn. Oct. 11, 2011) (finding warrant particular where "The seizure paragraph includes clothing worn by the robber, the weapon used to facilitate the robbery, and the money stolen during the robbery as the items to be seized.")

Here, unlike the situation in *Anderson*, there is no indication of what things police believed they would find in relation to the rape. The description of the crime indicates the approximate date and time of the rape and that the rape occurred in the car (Def.'s Ex. A at 1;2) but does not contain a single item, or category of items sought to be recovered from the car, or any other limitation on the search. As a result there are no sufficiently objective criteria from which an officer could tell what was intended to be included and what was impermissible under the warrant. Anything in the car could have been seized. On its face the warrant read together with the affidavit permit the kind of unfettered discretion the particularity requirement is intended to guard against.

2. Ability to Describe the Items More Particularly

The Court next considers whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was

issued. *See Spilotro*, 800 F. 2d at 963. Generic categories of items are invalid only if a more precise description of the items subject to seizure is not possible. *Id.* at 964.

In this case, on October 13, 2010, the day the warrant issued, Det. Bauleong knew exactly what she was looking for, and could have described the things to be seized with sufficient particularity. *United States v. Barnes*, 749 F. Supp. 2d 1124, 1134 (D. Idaho 2010) (concluding that it is constitutionally improper for a warrant to authorize a broad search where the government knew exactly what it needed and wanted). On October 9, 2010, the day of the attack, Det. Bauleong learned details of the crime from the victim, and DPS identified and impounded the vehicle based on the victim's description. At the time Det. Bauleong applied for the warrant she may not have known precisely which portions of the passenger or drivers seats, floor mats or other material would contain evidence of sexual assault such as bodily fluids, but her testimony makes clear that she knew she was looking for the parts of the car or other items within it, that contained such material. Her testimony demonstrates that she sought assistance from the FBI precisely because they have forensic equipment capable of determining the presence of bodily fluids. There is no conceivable excuse for failing to include a description or a list of what was sought.

Given the information Det. Bauleong had at the time she applied for a warrant, she could have easily listed the items to be seized with reference to the possibility of finding what she actually sought. For example, since she knew she was looking for fingerprints, bodily fluids or genetic material left behind from the sexual assault, she could have simply listed items from which police could obtain fingerprints, hair, semen, other bodily fluids, or genetic material from the victim or the Defendant.

Accordingly, because (1) there is no discernable standard in the warrant and affidavit by which an executing officer could determine what items could properly be seized; and (2) Det. Bauleong knew enough about the case to have stated the items to be seized much more particularly, the Court finds the search warrant facially invalid for failing to state the items to be seized with particularity.

C. GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE

Lastly, the Court having found the warrant facially deficient addresses the appropriate remedy. Finding that a warrant is invalid does not automatically require application of the exclusionary rule. *Herring v. United States*, 129 S. Ct. 695, 700 (2009). The rationale behind the exclusionary rule is deterrence. *Id.* at 702. Thus, suppression is "justified only to the extent that it deters police from violations of constitutional and statutory protections ..." *Commonwealth v. Pua*, 2006 MP 19, ¶ 27. Evidence should only be suppressed if law enforcement had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment. *Herring*, 129 S. Ct. at 701 (citations omitted). Where by contrast, the constitutional error is the result of isolated negligence attenuated from the search, the exclusionary rule does not apply. *Id.* at 698-99, 702.

In *United States v. Leon*, the Supreme Court held that where officers act in good faith and objectively reasonable reliance on a facially valid warrant later found to be constitutionally defective, evidence obtained in reliance thereof should not be excluded, 468 U.S. 897, 905-925 (1984). The exception allows the prosecution to use evidence for its case in chief obtained in reliance on a constitutionally deficient warrant so long as (1) the officer's actions were in good faith; and (2) the officer's reliance is objectively reasonable.

Id. at 922 (citations omitted). "The government . . . bears the burden of proving that its agents' reliance upon the warrant was objectively reasonable." *Michaelian*, 803 F.2d 1042, 1048 (9th Cir. 1986).

The test of reasonableness is an objective one; the Court asks whether "a reasonably well trained officer would have known that the search was illegal despite the [judge's] authorization." *Leon*, 468 U.S. at 922 n.23. Reasonableness is determined with respect to the officers who executed the warrant and the officer who provided the affidavit. *Id.* at 923, n.24.

Suppression remains appropriate and an officer's actions cannot be considered reasonable where, "a warrant [is] so facially deficient -- *i. e.*, in failing to particularize the place to be searched or the things to be seized -- that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U.S. at 923. Thus, where a warrant utterly fails to state the things to be seized with particularity, good faith does not apply.[10] *Id.*; *See also, e.g.*, *Crozier*, 777 F.2d at 1381-82 (holding that a warrant authorizing seizure of

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[10] The Commonwealth cites cases applying good faith in situations where the warrant application was approved by an attorney prior to submission to a magistrate but where the court later found that the more narrow supporting affidavits were not incorporated. (Opp'n 8-9.); *See e.g.*, *United States v. Allen*, 625 F.3d 830, 838 (5th Cir. 2010) (applying good faith where officers had reasonable belief that the affidavit was incorporated, and affidavit listed the things to be seized); *United States v. Tracey*, 597 F.3d 140, 153 (3d Cir. 2010) (reasoning that warrant was not so facially deficient that no reasonable officer could rely on it where officers could have held a reasonable belief that the warrant incorporated the narrower affidavit). These cases expand the good faith doctrine. *Groh*, 540 U.S. at 557 ([where affidavit not incorporated] "the fact that the application adequately described the "things to be seized" does not save the warrant from its facial invalidity."). Moreover, in this case the affidavit was incorporated by reference but still does not cure the deficient warrant. To the extent that the Commonwealth relies on *Otero* and *Hallam*, its reliance is also misplaced. *See United States v. Otero*, 563 F.3d 1127, 1134-1136 (10th Cir. 2009) (applying good faith where a reasonable officer could have applied the limits in a specific part of the warrant to another part containing overbroad categories, and where an unincorporated affidavit expressly limited the search to instrumentalities of certain offenses); *United States v. Hallam*, 407 F.3d 942, 947 (8th Cir. 2005) (applying good faith where officer relied on prosecutor's probable cause determination). First, in *Otero* unlike here the face of the warrant contained a list of items that was sufficiently limited along with overbroad categories. Second, *Hallam*, like *Leon* deals with a probable cause challenge not a facial challenge.

"[m]aterial evidence of violation 21 U.S.C. 841, 846," was so facially deficient no reasonable officer could rely on it).

There is no question that Det. Bauleong subjectively acted in good faith. *Leon*, 468 U.S. at 922 ("a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search") (citations omitted). The salient issue is whether the reliance here was objectively reasonable. The particularity requirement is stated in the text of the United States Constitution and in the Commonwealth Constitution. A reasonably well-trained officer should be well aware of the requirement. The face of the warrant here does not contain a single item to be seized, or even a generalized category of items. The affidavit does little more than name five different charges without limiting the search to evidence pertinent to any or all of those charges. No reasonably well-trained officer could believe this warrant—which plainly did not comply with the particularity requirement—was valid. *See Groh*, 540 U.S. at 563 ("Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid.")[11]

The warrant here gave executing officers unbridled authorization to seize whatever they believed was "pertinent to the case." The affidavit does not provide any meaningful limits. Moreover, suppression of the evidence will serve the deterrent function of the exclusionary rule. This is not a case where the officer's negligence was so attenuated from the error that suppression would be of little deterrent value. *Herring*, 129 S. Ct. at 698-99. Rather, Det. Bauleong who drafted the affidavit and prepared the warrant, and the executing

[11] The quoted analysis from *Groh* deals with the qualified immunity doctrine not the good faith exception to the exclusionary rule. However, the Court in *Groh* notes that "the same standard of objective reasonableness that we applied in the context of a suppression hearing in Leon defines the qualified immunity accorded an officer." *Groh*, 540 U.S. at 565 (citing *Malley v. Briggs*, 475 U.S. 335, 344 (1986).

federal agents can be charged with knowledge of the particularity requirement. *Id.* at 701. It would have been clear to a reasonably well-trained officer from glancing at the warrant and the affidavit that there was no specificity in the things to be seized. The fact that Det. Bauleong and the three federal agents who assisted in executing the search relied on such an obviously deficient warrant indicates a serious need for police training.

Accordingly, the good faith exception does not apply and the Defendant's motion is **GRANTED**. The Commonwealth may not use the items seized pursuant to the vehicle search during its case in chief.

IT IS SO ORDERED this 7th day of November, 2012.

Joseph N. Camacho, Associate Judge