



4150 North Mulberry, Suite 250
Kansas City, Missouri 64116
June 20, 2007

Dear Kansas Law Enforcement Professional:

The primary goal and mission of the Heart of America Regional Computer Forensics Laboratory (HARCFL) is to provide quality digital forensic examinations in a timely fashion. To this end, service to you has always been a key component of the above. Recently an issue has arisen with respect to the validity of search warrants issued in Kansas and executed at our laboratory in Missouri. The HARCFL, in conjunction with the Johnson County, Kansas District Attorney's Office, has taken the lead in this area and offers the following advice and guidance for your consideration.

In Kansas v. Rupnick, 280 Kan. 720, 125 P.3d 541 (2005), law enforcement seized under exigent circumstances a laptop computer in Brown County, obtained a search warrant for the computer from a magistrate judge in Wabaunsee County, then executed the warrant in Shawnee County by reviewing the contents of the laptop. When challenged by the defense, the Kansas Supreme Court held that under Kansas law, a search warrant issued by a magistrate judge may be executed only within the judicial district in which the judge resides or has been assigned. (K.S.A. 22-2503). Since the judge who signed the warrant resided in or was assigned to Wabaunsee County and the warrant was executed in Shawnee County, the court held that the jurisdictional authority of the warrant had been exceeded and suppressed the evidence obtained from the laptop.

A few prosecutors have interpreted Rupnick to imply that if a magistrate's authority is only valid within the county in which they reside or are assigned, then a district judge's authority may be interpreted to be valid only within the State of Kansas. As such, these prosecutors are concerned about relying upon a Kansas search warrant when computer evidence is examined outside the State. However, many prosecutors are not concerned, relying upon a long history of requesting and accepting out-of-state laboratory assistance without legal challenge.

For those prosecutors who expressed concern over Rupnick, and as a means to support their cases, the HARCFL embarked on an ambitious program to obtain secondary or "piggy-back" search warrants from Clay County, Missouri, where the laboratory is physically located. However, obtaining the secondary warrants has raised several other



legal and administrative issues to include the inability to place the underlying affidavits under seal, potential challenges to the warrant under Missouri law, and the additional commitment of extremely limited personnel resources by the laboratory to this effort.

The above issues have caused a re-examination of the law in this area. Approximately three months after the Kansas Supreme Court issued their decision in Rupnick, the United States Court of Appeals for the Tenth Circuit heard a very similar case in United States v. Grimm, 439 F.3d 1263 (2006). In Grimm, Kansas law enforcement obtained a search warrant from a district judge for among other things, the subject's computer hardware and all computer software. After seizing the above, the computer and software were forwarded to the Immigration and Customs Enforcement office in Missouri for analysis.

When challenged, the Tenth Circuit upheld the validity of the search warrant. While the Tenth Circuit did not reference Rupnick or directly address the issues raised therein, in rendering its opinion the court relied heavily on the fact that the affidavit in support of the warrant made it very clear to the issuing judge and the court that the search of the computer's contents would be at an off-site in a laboratory setting as "[i]t is only with careful laboratory examination of electronic storage devices that it is possible to recreate the evidence trail." *Id.* at 491.

Therefore, for those prosecutors concerned about the decision in Rupnick, it is suggested that in lieu of obtaining a secondary warrant in Missouri, the guidance from the Tenth Circuit in Grimm be followed and the following language or similar verbiage be included in the affidavit in support of a search warrant for digital evidence or that other appropriate notification be provided to the court regarding the potential utilization of a forensic laboratory:

"This request for a warrant involves the potential seizure and review of computer and/or digital media. The analysis of computer and/or digital media is an exacting scientific procedure which is designed to protect the integrity of the evidence and to recover digital information, to include hidden, erased, compressed, password protected or encrypted files. The analysis of evidence from computer and digital systems commonly require the seizure of all computer related items to be processed by a qualified computer expert in a laboratory or other controlled environment. The high volume of the contents and the potential intentional concealment of criminal activity through random ordering and deceptive file names may require the examination of all stored data. This process may take weeks or months depending on the volume of the data involved and the caseload of the computer expert.



One such forensic and controlled laboratory environment is the Heart of America Regional Computer Forensics Laboratory (HARCFL), which is physically located in Clay County, Missouri. The HARCFL is a cooperative law enforcement organization comprised of federal, state and local certified Forensic Examiners, which provide digital forensic services to law enforcement throughout Kansas and the western two-thirds of Missouri.

Recognizing that specialized and highly technical equipment and software will be needed to conduct the analysis of the previously seized digital media, the media will likely be transferred to the HARCFL or other qualified laboratory with a request that a forensic examination be conducted in this matter. Additionally, under limited situations, assistance may be required by the receiving laboratory from other qualified laboratories. For example, the HARCFL may need to request assistance from its affiliated laboratory, the FBI Laboratory in Quantico, Virginia. Should such assistance be required, the receiving laboratory will likely forward the above described digital evidence for further analysis as authorized by the requested warrant.

Upon issuance of the requested warrant, the receiving laboratory will attempt to initiate the process to facilitate the forensic examination within 96 hours. In those instances in which such cannot be accomplished due to the laboratory's case load, transportation and/or shipping delays, absence of available qualified Forensic Examiners, etc., the court will be appropriately notified. Additionally, due to the processes that must be conducted to analyze digital media, the volume of information normally associated therewith, and the laboratory's caseload, it is extremely likely that the entire forensic process will require more than 10 days to complete."

As previously mentioned, the above is guidance for your consideration and the affidavit language subject to change and modification. As our goal is provide the best possible service to our valued clientele, we welcome any comments, suggestions or changes that you may have which will benefit your fellow law enforcement professionals.

Questions, suggestions or comments regarding this matter may be directed to Kevin Steck at (816) 584-4376.

Sincerely,

The Staff of the HARCFL