COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	**:**	
Plaintiff	**:**	**CASE NO. 2013 CR 00348**
vs.	**:**	**Judge McBride**
TEDDY MARK REYNOLDS	**:**	**DECISION/ENTRY**
Defendant	**:**	

Catherine Adams, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Nichols, Speidel & Nichols, Todd S. Stoffel, attorney for the defendant Teddy Mark Reynolds, 237 Main Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to suppress filed by the defendant Teddy Mark Reynolds on July 9, 2013.

The court scheduled and held a hearing on the motion to suppress on August 23, 2013. At the conclusion of this hearing, counsel requested additional time to submit written closing arguments. Upon the submission of the final written argument on September 27, 2013, the motion to suppress was taken under advisement.

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The defendant Teddy Mark Reynolds is charged in a twenty-six count indictment with nine counts of Receiving Stolen Property in violation of R.C. 2913.51(A); eight counts of Tampering with Identifying Numbers to Conceal Identity of Vehicle or Parts Replacement in violation of R.C. 4549.62(A); eight counts of Tampering with Evidence in violation of R.C. 2921.12(A)(1); and one count of Insurance Fraud in violation of R.C. 2913.47(B)(1).

On April 25, 2013, William Scharber, a former Clermont County Sheriff's Deputy, contacted Lieutenant Stephen Leahy of the Clermont County Sheriff's office. Scharber informed Lt. Leahy that he had received information that stolen items, including a track hoe reported missing from a local cemetery and a bobcat that was stolen from a job site near Anderson Mercy Hospital, were located at the defendant's lawn service property on State Route 125. Scharber did not tell Lt. Leahy at the time from whom he received this information. This information was given to Scharber by Bob Ramsey, who had given Scharber information several times in the past when Scharber was a deputy.

Lt. Leahy then passed this information on to a group of investigators, including Investigators Mike Robinson, Greg Moran, and Matt Farmer. Investigator Robinson was given the general location of the property and he was able to locate the exact address

of the lawn service. Investigator Robinson also found a report of a stolen Bobcat from a cemetery in Monroe Township.

Investigator Moran spoke with Scharber prior to going to the premises and Scharber told him that a stolen track hoe and possibly other stolen items were located at the subject property. Scharber did not tell Investigator Moran at that time from whom he received that information.

As Investigators Robinson and Moran were driving eastbound on State Route 125 toward the defendant's property, Investigator Robinson saw a large piece of construction equipment with an arm, possibly an excavator, located on the subject property. Investigators Robinson and Moran entered the driveway to the subject property located at 1880 St. Rt. 125, Amelia, Clermont County, Ohio.

Neither investigator observed the No Trespassing sign posted near the front of the property at that time. The sign is located on one side of the driveway, is clearly visible to anyone entering the property, and states "Private Property[,] No Trespassing[,] No Soliciting[,] Violators will be prosecuted or shot[.]"[1]

Investigator Robinson drove his car to the rear of the home, which he testified appeared to him to be the most popular place of access to the home as the access was wider and he observed all of the vehicles parked to the side in that area. Investigator Moran also noted that it appeared that the access to the house was in the rear of the property.

The picture of the defendant's home taken from the front of the property shows that a paved parking area can be seen to the left of the home.[2] It appears that this

[1] Joint Exhibit 6.
[2] Joint Exhibit 5.

paved parking area is essentially parallel to the side of the home.[3] There is paved access from this parking area going both toward the front of the home and the rear of the home.[4]

The Bobcat could be observed from the paved parking area and was located in a grassy island behind the home in the center of a driveway loop, near an outbuilding.[5] The area is not visible when standing in the front of the property due to large trees providing privacy.[6]

Investigator Farmer arrived on the subject property shortly after Investigators Robinson and Moran. He testified that, as he entered the property, he did not see the No Trespassing sign. Investigator Farmer testified that it did not appear that the front door was the access to the home; instead, it appeared to him that the back door was what was used.

Investigator Farmer spoke to Investigators Robinson and Moran in the paved parking section toward the rear of the home. After they spoke for a short time, Investigator Robinson approached the back door to try to make contact with a resident, and Investigators Farmer and Moran walked over to look at the Bobcat.

Investigator Robinson approached the back door and knocked on the door. Tonna Reynolds, the defendant's wife, was home at the time and answered the door several minutes later. Investigator Robinson informed her that he had reason to believe the mini-excavator on the property may be stolen and asked if they could look at it. Mrs. Reynolds agreed to the request and told him to do what he needed to do.

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[3] Joint Exhibit 16.
[4] Id.
[5] Joint Exhibits 8 and 10.
[6] Joint Exhibit 5.

Prior to this conversation, Ms. Reynolds had heard the driveway alarm go off. She initially thought that the vehicles would just turn around and leave because that is what a lot of people do. When she saw the investigators, who were in plainclothes, park and exit their vehicles, she went outside to ask who they were, and they identified themselves as police officers and asked if they could look at the mini-excavator.

Ms. Reynolds testified that she told the investigators that they could go ahead and look at the excavator. She acknowledged at the hearing on this matter that the private property sign located on the property was not erected to keep police from coming to her home.

Investigators Moran and Farmer had walked over to the excavator to observe its exterior prior to Investigator Robinson's conversation with Ms. Reynolds. Investigator Moran testified that he looked at the exterior of the excavator prior to Investigator Robinson's conversation with Ms. Reynolds, but he did not look inside the excavator at that time. When Investigator Moran and Investigator Robinson looked at the excavator together after Robinson's conversation with Ms. Reynolds, Investigator Moran noted that it appeared that the identification plate on the Bobcat had been removed.

Investigator Robinson contacted the complainant who had reported the excavator stolen from the Monroe Township cemetery and asked him to describe the excavator to him. The complainant described a large crack in the engine cover which Investigator Robinson noted appeared on the excavator on the defendant's property. Investigator Robinson then requested that the complainant come to the defendant's property in order to identify the Bobcat located thereon.

Investigator Robinson testified that, once he walked down the defendant's driveway from the rear of the home, he observed the No Trespassing sign near the entrance, and he then photographed it as part of his investigation.

Investigator Farmer completed the affidavit for the first search warrant for the defendant's property, which states in pertinent part as follows:

> "April 25, 2013 Lt. Steve Leahy of the Clermont County Sheriff's Office was contacted by Bill Scharber who is a retired Clermont County Deputy Sheriff, in reference to the location of some stolen equipment. Bill Scharber provided information that another party had provided him information that an excavator and a Bobcat were at a location known as Ted's Lawn and Tree Service which is located on S.R. 125 across from a John Deere dealer. There was also information that there was a trailer that may have been stolen that had the VIN tampered with is also on the property. Initial Information was that the Bobcat may have been stolen from somewhere in the area of Anderson Mercy Hospital in Hamilton County, and also that the trailer may have been stolen near the cemetery in Laurel in Clermont County.
>
> Investigator Robinson searched Clermont County Sheriff's Office reports and found an offense report #1101029 that was made March 26, 2011. A 2005 Bobcat excavator model 430 G * * * was reported stolen by an Archie Ireton who was working for Monroe Township * * *. Investigators contacted Hamilton County Sheriff's Office and they were not able to located the theft of a trailer or excavator near Anderson Mercy Hospital due to limited information.
>
> Investigators from the Clermont County Sheriff's Office responded to 1880 State Route 125 in Amelia which is marked with a sign in front of the residence indicating Reynolds Lawn Service with a phone number. To the rear of the house in plain view was a Bobcat excavator 430. Investigator Robinson attempted contact at the door of the residence and was not able to make contact with anyone. * * * It was clear that the plate that was containing the VIN number had been removed and there were empty holes where the plate had been riveted to the front of the Bobcat. There were no other VIN numbers visible on the exterior of

> the Bobcat. Investigator Robinson made contact with Archie Ireton who was the complainant in the theft of the Bobcat that described some prior damage to the Bobcat that Investigator Robinson was able to confirm. After a short period of time a female came outside who is Ted Reynold's wife. She gave permission to look at the Bobcat further to see if a VIN could be located inside the vehicle. No VIN number could be located. Inv. Moran asked Mrs. Reynolds if she could locate a receipt or any paperwork for the vehicle and she was not able to produce anything. Inv. Moran also looked at a utility trailer near the driveway that was also in plain view and had the VIN tampered with. He described the utility trailer as what looked like a VIN number stamped over a VIN number that was on the trailer prior.
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> Ted Reynolds who is the owner of the property arrived on scene and claims he purchased the Bobcat Excavator, and produced a receipt showing the exact date of the purchase which was the same date as the reported theft. Ted Reynolds purchased the Bobcat for $9500 which had a reported value of $45,000 at the time of the report. Ted Reynolds further stated he bought the excavator after dark. When questioned about the utility trailer with the tampered VIN, Ted Reynolds told Investigator Moran he bought it off of Craig's list. Affiant is requesting to seize and further inspect any vehicles, utility trailers, and construction/farm equipment on the property described in order to determine rightful ownership and determine if any of the items are stolen property. * * * "[7]

The search warrant was issued by Judge James Shriver of the Clermont County Municipal Court. Execution of this warrant led to the request for and issuance of three additional search warrants.[8] These three additional search warrants relied partially upon Investigator Farmer's affidavit in support of the original search warrant.

The defendant now moves this court to suppress any and all evidence obtained and/or seized pursuant to the four search warrants executed on his property. At the

[7] Joint Exhibit 1.
[8] Joint Exhibits 2-4.

hearing on this matter, the defendant withdrew his request to suppress evidence based upon any custodial interrogation.

LEGAL ANALYSIS

The defendant argues that the evidence seized pursuant to the search warrants must be suppressed because the affidavits filed in support of those search warrants fail to establish probable cause for the issuance of the warrants.

"In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, the task of the issuing judge or magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."[9]

The Twelfth District Court of Appeals has noted with regard to hearsay information in affidavits that "while it is desirable to have the affiant provide as much information as possible from his own knowledge, practical considerations often require the affiant to rely on hearsay information and/or information provided by other sources."[10] "The basis of knowledge and the veracity of the person supplying hearsay information are circumstances that must be considered in determining the value of the

[9] *State v. Redelman* (Feb. 25, 2013), 12th Dist. No. 2012-04-010, 2013-Ohio-657, ¶ 38, citing *State v. Prater,* 12th Dist. No. CA2001–12–114, 2002–Ohio–4487, ¶ 4, citing *State v. George,* 45 Ohio St.3d 325 (1989), paragraph one of the syllabus.
[10] Id. at ¶ 41, citing *State v. Young* (April 10, 2006), 12th Dist. No. CA2005–08–074, 2006–Ohio–1784, ¶ 21.

information and whether probable cause exists."[11] "The fact that the affiant's knowledge may be the result of double or multiple levels of hearsay does not, *per se,* invalidate the resulting search warrant."[12]

" * * * Indicia of veracity or reliability of an informant's statements can also be provided through independent police investigation."[13] " * * * [T]he United States Supreme Court acknowledged that its decisions applying the totality-of-the-circumstances analysis 'have consistently recognized the value of corroboration of details of an informant's tip by independent police work.' "[14] "Furthermore, '[o]bservations of fellow law enforcement officers are plainly a reliable basis for a warrant applied for by one of their number.' "[15]

In the case at bar, the affidavit supporting the first search warrant states that Lt. Leahy was provided information by William Scharber, a former Clermont County Deputy Sheriff. The affidavit mentions that another party provided this information to Scharber but does not identify the party nor attest to the veracity or reliability of this party.

However, the informant provided information that the Bobcat may have been stolen from somewhere near Anderson Mercy Hospital and the trailer may have been stolen near a cemetery in Laurel. While Investigator Robinson was unable to verify the theft near Anderson Mercy Hospital due to insufficient information, he was able to locate an offense report for the theft of a Bobcat excavator from a cemetery on Clermontville Laurel Road. While either or both Bob Ramsay and William Scharber confused which piece of equipment was stolen from which site, the fact that one of the named items was

[11] Id., citing *George*, supra, 45 Ohio St.3d at 329.
[12] Id., citing *Prater*, supra, at ¶ 7.
[13] Id. at ¶ 42.
[14] Id., citing *Illinois v. Gates* (1978), 462 U.S. 213, 241, 103 S.Ct. 2317.
[15] Id., citing *Young*, supra, at ¶ 21.

stolen from one of the named locations helps to establish the veracity and reliability of the information provided by the informant to William Scharber.

The defendant also argues that there is no indication in the affidavit as to the timeliness of the information being provided by Scharber and the informant. No arbitrary time limit dictates when the information becomes stale and the "test is whether the alleged facts establish probable cause that the evidence sought will be found on the premises to be searched."[16] " 'The likelihood that the evidence sought is still in place is a function not simply of 'watch and calendar but of variables that do not punch a clock,' including the character of the crime, the criminal, the thing to be seized, as in whether perishable and easily transferable or of enduring utility to its holder, or of the place to be searched.' "[17]

The information provided from Scharber is that the items were at the subject location, meaning that they were believed to be located there at that time. These are large pieces of equipment that are not easily transferred from place to place. The court finds that this information was not stale and that there was a likelihood that the items were still at the location.

After doing their initial investigation, the investigators went to the subject property. The items that the investigators found at the defendant's property, including the pieces of equipment identified by the informant, and the fact that the identification numbers on the items had been removed, also verified the statements made by the informant and provided sufficient probable cause for the issuance of the warrant. The

[16] *Young* at ¶ 23.
[17] Id., quoting *Prater*, supra, 2002-Ohio-4487 at ¶ 13.

question then becomes whether the officers were permitted to go onto the defendant's property in order to perform this investigation.

"The Fourth Amendment's protection against warrantless home entries extends to the 'curtilage' of an individual's home."[18] " 'Curtilage' has been defined as an area 'so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection.' "[19] "The central inquiry is whether the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life."[20] The four factors to determine whether a certain area outside the home should be treated as curtilage are as follows: "(1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by."[21]

The areas at issue in this case are within the curtilage of the home. They are in close proximity to the home and the homeowners took steps to protect the areas from observation, including planting large trees to provide privacy and posting a "No Trespassing" sign in the front of their property. In this regard,

> " * * * [T]he application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action. * * * This inquiry, as Mr. Justice Harlan aptly noted in his *Katz* concurrence, normally embraces two discrete questions. The first is whether the individual, by his conduct, has 'exhibited an actual (subjective) expectation of privacy,' * * * -whether,

[18] *State v. Cook* (April 8, 2011), 5th Dist. Nos. 2010-CA-40 and 2010-CA-41, 2011-Ohio-1776, ¶ 63, citing *United States v. Dunn* (1987), 480 U.S. 294, 300, 107 S.Ct. 1134, 1139, 94 L.Ed.2d 326.
[19] Id., citing, *State v. Payne* (1995), 104 Ohio App.3d 364, 368, 662 N.E.2d 60, quoting *U.S. v. Dunn*, 480 U.S. 294, 301, 107 S.Ct. 1134, 1140.
[20] Id., citing *Dunn* at 300.
[21] Id. at ¶ 64, citing *Dunn* at 301.

> in the words of the *Katz* majority, the individual has shown that 'he seeks to preserve [something] as private.' * * * The second question is whether the individual's subjective expectation of privacy is 'one that society is prepared to recognize as "reasonable," ' * * * -whether, in the words of the *Katz* majority, the individual's expectation, viewed objectively, is 'justifiable' under the circumstances."[22]

It has been held that "that the only areas of the curtilage where officers may go are those impliedly open to the public[,]" which includes walkways, driveways, or access routes leading to the residence.[23]

In *State v. Woljevach*, 160 Ohio App.3d 757, 828 N.E.2d 1015, 2005-Ohio- 2085 (Ohio App. 6th Dist., 2005), deputies drove to the defendant's farm and approached the barn located closest to the road.[24] Finding the front door to that barn padlocked, the deputies went to the rear of the barn where one of the deputies reported detecting the odor of marijuana.[25] The barn at issue was posted with signs stating "keep out" and "private property – no trespassing."[26] The court discussed the issue as follows:

> "Because the curtilage of a property is considered to be part of an individual's home, the right of officers to come into the curtilage is highly circumscribed. Absent a warrant, police have no greater rights on another's property than any other visitor has. Thus, it has been held that the only areas of the curtilage where officers may go are those impliedly open to the public. This area includes walkways, driveways, or access routes leading to the residence. * * * The guiding principal is that a police officer on legitimate business may go where any 'reasonably respectful citizen' may go."[27]

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[22] *City of Maumee v. Detmers* (Aug. 20, 1993), 6th Dist. No. L-92-233, 1993 WL 313589, *3, quoting *Smith v. Maryland* (1979), 442 U.S. 735, 740, 99 S.Ct. 2577, 61 L.Ed.2d 220, quoting *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576.
[23] Id. at ¶ 65, citing *State v. Birdsall* (May 28, 2010), Williams App. No. WM–09–016, 2010–Ohio–2382 at ¶ 13.
[24] *Woljevach*, supra, at ¶ 4.
[25] Id.
[26] Id. at ¶ 28.
[27] Id. at ¶ 29.

The court stated that "no trespassing" signs indicate that a property owner or occupier expects privacy within a certain area of the curtilage and that it reasonably follows that areas so designated are places into which the public is expressly not invited.[28] The court then noted that the officers did not go to the front door or use a walkway and, as such, "[t]hey did not confine themselves to areas where the public is impliedly welcome."[29] The court found that the officers ignored the no trespassing and keep out signs and moved into the curtilage of the defendant's home.[30] As such, the court concluded that the officer's odor detection could not properly form the basis of a valid search warrant.[31]

As stated previously, a police officer on legitimate business may go where any reasonably respectful citizen may go.[32] "Police are privileged to go upon private property when in the proper exercise of their duties."[33]

In the case at bar, the police observed that the driveway to the defendant's home led to the rear of the home and that there was a paved area cut out of the driveway for cars to park. Despite listening to the recorded testimony several times, this court is unable to discern if the investigators parked in the paved cut-out parking area or if they parked in the driveway in the rear of the home. Regardless, Investigator Robinson approached the back door to attempt to make contact with a resident while the other two investigators walked over to inspect the Bobcat.

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[28] Id. at ¶ 30.
[29] Id. at ¶ 31.
[30] Id.
[31] Id.
[32] *Cook*, supra, at ¶ 65.
[33] Id. at ¶ 65, citing *State v. Chapman*, 97 Ohio App.3d 687, 647 N.E.2d 504 (Ohio App. 1st Dist., 1994).

The state notes in its written closing argument that "[n]otwithstanding barrier signs, police officers with legitimate business may enter areas surrounding the home impliedly open to the public and typical visitors."[34] The case cited for this proposition also notes that "[a] home can be surrounded by a chain link fence with four 'no trespassing' signs on it, but the front door area that visitors ordinarily use is not considered protected curtilage."[35]

However, in the case at bar, the investigators did not go to the front door, they went to the rear of the home and Investigator Robinson approached the rear sliding glass door. This is not a front door area that visitors would ordinarily use and which would be impliedly open to the public. Even if one were to drive to the paved parking cut-out and exit their vehicle, they would be to the side of the home and could walk to the front door via a paved walkway. While there was also a paved walkway to the back door, given the no trespassing signs at the front of the property, the court cannot conclude that this area would be impliedly open to the public or that a reasonably respectful citizen would go to this back sliding glass door. There is case law in Ohio finding valid an officer's decision to go to a rear door to attempt contact after there was no answer at the front door; however, that did not occur in the present case.

The state also cites favorably to the case of *Oliver v. United States* (1984), 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214. In that case, the court noted that the framers of the constitution " 'did not intend that the Fourth Amendment should shelter criminal activity wherever persons with criminal intent choose to erect barriers and post 'No

[34] *U.S. v. Walters*, 529 F.Supp.2d 628, 641 (E.D.Tex.,2007).
[35] Id.

Trespassing' signs.'"[36] However, that case dealt with marijuana found in visible open fields, which is not analogous to the case at bar.[37]

The investigators' decision to walk over and inspect the Bobcat located in the curtilage of the home was in violation of the protections afforded the defendant under the Fourth Amendment. While there are plain view exceptions to the protection afforded to the curtilage of a home, those exceptions exist when the items in plain view are observed from an area where a police officer has a legal right to be.[38] Put another way, "[e]ven if property is within the curtilage, a visual inspection of that property *from outside the curtilage* does not constitute a search."[39] In the case at bar, the Bobcat was observed by the officers and noted to be the same model as the Bobcat reported stolen from the cemetery when they were already on the property behind the home and, therefore, improperly in the curtilage.

However, that does not end the court's analysis in this case. Only a few minutes after the investigators arrived at the home and Investigator Robinson knocked on the back door, Tonna Reynolds exited the home and gave her consent to search the Bobcat.

The defendant cites to the case of *State v. McLemore*, 197 Ohio App.3d 726, 968 N.E.2d 612, 2012-Ohio-521 (Ohio App. 2nd Dist., 2012), for the following discussion:

> "We have held that even when a consent is not the product of some more specific coercion or duress, and therefore was voluntary in the usual sense, evidence seized in a search performed after the consent was given remains subject to suppression when it was tainted by the fact of a prior illegal

[36] *Oliver*, supra, 466 U.S. at 182, n. 13.
[37] Id. at 179.
[38] *State v. Peterson*, 173 Ohio App.3d 575, 879 N.E.2d 806, 2007-Ohio-5667, ¶ 13 (Ohio App. 2nd Dist., 2007), quoting *Lorenzana v. Superior Court* (1973), 9 Cal.3d 626, 634, 108 Cal.Rptr. 585, 511 P.2d 33.
[39] Id. at ¶ 15, citing *United States v. Hatfield* (C.A.10, 2003), 333 F.3d 1189.

> entry upon the premises that were searched. * * * 'The question is whether the consent was 'sufficiently an act of free will to purge the primary taint of the unlawful invasion.' * * * '[S]uppression is required of any items seized during the search of the house, unless the taint of the initial entry has been dissipated before the consents to search were given'; dissipation of the taint resulting from the illegal entry 'ordinarily involves some showing that there was some significant intervening time, space, or event.'"[40]

However, in that same case, the court concluded that, although the defendant was in custody when he gave written consent and although the police violated the Fourth Amendment when they conducted a protective sweep of the home, the defendant's consent was voluntary and suppression of the seized evidence by the trial court was improper.[41] The court's conclusion on that issue is as follows:

> "The fruit-of-the-poisonous-tree doctrine, or derivative-evidence rule, applies when a Fourth Amendment or other constitutional violation has occurred. The trial court correctly found that the protective sweep presented a Fourth Amendment violation. However, the court also found that defendant's subsequent consent was voluntary. That voluntary consent was a decision by defendant to not assert his Fourth Amendment rights with respect to the search and seizure to which he consented. Having done so, defendant waived his right to invoke Crim.R. 12(C)(3) to ask the court to suppress the evidence seized in the course of the consensual search on a claim that the evidence the officers seized was tainted by the prior protective sweep and the violation of defendant's Fourth Amendment rights that sweep involved."[42]

"[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought

[40] *McLemore* at ¶ 26, quoting, *State v. LaPrairie*, Greene No. 2010CA0009, 2011-Ohio-2184, 2011 WL 1753195.
[41] Id. at ¶¶ 27-30.
[42] Id. at ¶ 30.

to be inspected."[43] There is no question in this case that Tonna Reynolds had the authority to consent to the search at issue. The question, therefore, becomes whether her consent was voluntary.

"The state must show by clear and convincing evidence that the consent was freely and voluntarily given which is more than a mere preponderance but less a certainty than is required to prove guilt beyond a reasonable doubt. Consent may be oral or written."[44]

As noted in one of this court's prior decisions, "the fact that the defendant's consent was obtained shortly after law-enforcement officers illegally gained entry into his residence is one factor in the totality of the circumstances that should be considered when determining whether the defendant's consent to search was freely and voluntarily given;" however, it is not necessarily a determinative factor.[45] In the case at bar, Tonna Reynolds exited her home and spoke with Investigator Robinson. He explained to her that the Bobcat may have been stolen and asked if they could look at it. She consented and did not indicate any duress in doing so. While she did say something during her testimony to the effect of "you don't say no to the police," that is merely a reflection of her opinion on how one should act when dealing with law enforcement officials and that idea was not imparted to her by any of the investigators. Ms. Reynolds had the opportunity to tell the officers that they could not look inside the Bobcat and to ask them to leave her property, to ask more questions of the officers, or to contact her husband or another individual before deciding whether or not to give consent. Instead, she chose to

[43] *State v. Sneed* (1992), 63 Ohio St.3d 3, 7, 584 N.E.2d 1160.
[44] *McLemore*, supra, at ¶ 24, quoting Katz, *Ohio Arrest, Search and Seizure,* Section 19:1 (2008).
[45] *State v. Winston*, 160 Ohio Misc.2d 61, 938 N.E.2d 114, 2010-Ohio-5723, ¶ 28 (Ohio Com.Pl. Clermont County,2010).

give her consent and told the officers to do what they needed to do. Under the totality of the circumstances, the court finds that the consent to search was given freely and voluntarily by Ms. Reynolds.

While two of the investigators had already looked at the outside of the Bobcat for a few minutes prior to Tonna Reynolds exiting the home and giving consent, they didn't acquire any information during that time that could not have been acquired two minutes later when Ms. Reynolds gave her consent. The investigators had only looked at the outside of the Bobcat to see if it had a visible VIN number. The court finds that the consent to search given by Ms. Reynolds cured any potential violation of the officers observing the outside of the Bobcat several minutes before consent was given.

As a result, the search on the day in question was a proper warrantless search under the voluntary consent exception. As already noted above, the information provided in the affidavit supporting the search warrant, which properly includes the observations of the Bobcat and its removed VIN plate and the fact that it had prior damage consistent with the stolen Bobcat, was sufficient to provide probable cause for the issuance of the search warrant. Based on the information contained in the affidavit, there was clearly a fair probability that contraband would be found on the defendant's property.

As such, the issuance of that warrant and the three warrants thereafter was supported by probable cause and there is no basis for suppression of the evidence seized as a result of the execution of those warrants.

CONCLUSION

Based on the above analysis, the defendant's motion to suppress is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 7th day of November 2013 to all counsel of record and unrepresented parties.

_____
Administrative Assistant to Judge McBride