COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2016 CR 00631**
vs.	:	**Judge McBride**
MICHAEL F. BEHNE	:	**DECISION/ENTRY**
Defendant	:	

Darren Miller and Nick Horton, assistant prosecuting attorneys for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

R. Scott Croswell III, attorney for the defendant Michael F. Behne, 1208 Sycamore Street, Cincinnati, Ohio 45202

This cause is before the court for consideration of the motion to suppress filed by the defendant Michael F. Behne on March 16, 2018. The defendant filed a written memorandum in support of his motion at that time. The court held an evidentiary hearing on the motion on April 4, 2018.

The state filed a written brief opposing the motion on May 2, 2018. The defendant filed his reply on May 16, 2018. Oral argument was schedule on May 21, 2018, and at that time counsel for both sides informed the court that they were waiving oral argument and were submitting the motion to the court for consideration on the written arguments of counsel.

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

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FINDINGS OF FACT AND PROCEDURAL BACKGROUND

The defendant was involved in a motor vehicle accident on August 25, 2016. State's Ex. 1. He was transported from the scene in an ambulance. Def. Ex. 2.

Trooper Staysha Oiler, the investigating officer, did not complete a Form 2255 because any test would have been performed outside of the required time limit. *Id.* On advice from an OSP sergeant, no warrant was obtained. *Id.*

On September 2, 2016, then Asst. Pros. Atty. Lara Baron requested the OSP to obtain a search warrant for the defendant's records including all handwritten trauma notes and air care records. *Id.* Ms. Baron requested Trooper Oiler to obtain for her the name of the nurse that drew blood from the defendant at the hospital. *Id.*

On September 26, 2018, Trooper Oiler filed an affidavit seeking a search warrant in the Hamilton County Municipal Court. The affidavit and warrant are marked as State's Ex. 1. The warrant states that Trooper Oiler has good reason to believe that within the jurisdiction of Hamilton County, and within the confines of Bethesda North Hospital, there may be found as evidence of a crime medical records, including trauma notes. The affidavit refers to a two-car crash occurring on or about August 25, 2016 involving a 2008 Honda CR-V, identified as to color and vehicle identification number, driven by Michael Behne. It states that "Michael Behne was traveling westbound on Branch Hill

Loveland Road (near Branch Hill Guinea Road) in Clermont County, Ohio when he traveled left of center. Michael Behne struck a 2002 Chevrolet 2500 Pick-up, VIN 1GCHC24U42E1722220. The driver of the Chevrolet 2500 Pick-Up was seriously injured. The defendant admitted having a glass of wine and to taking a prescription that counteracts with alcohol. I observed that the defendant had blood shot glassy eyes. I could smell the odor of an alcoholic beverage coming from his breath."

On September 26, 2018, Trooper Oiler executed the search warrant at the location set forth in the warrant, which is Bethesda North Hospital located at 10500 Montgomery Road, Cincinnati, Ohio 45242, for "medical records pertaining to Michael Behne, including trauma notes located on the property, outbuildings, and curtilage, and/or any other evidence pursuant to Criminal Rule 41(B) of the Rules of Criminal Procedure." State's Ex. 1. Medical records were obtained during that search. *Id.*

Because of a possible issue related to the first affidavit, Trooper Oiler secured a second search warrant on October 7, 2016 from the Hamilton County Municipal Court for an additional search and seizure of the defendant's medical records and trauma notes at Bethesda Hospital. State's Ex. 2. The same language was contained in the warrant that was issued on that date as was contained in the warrant issued on September 26, 2016. *Id.* The language in the affidavit that was used to secure the warrant was identical to the language in the affidavit that was used on September 26th. Additional medical records were obtained at that time. *Id.*

A grand jury subpoena was issued on October 27, 2016 for the records of Gary Stewart, who was the other motorist involved in the automobile accident on August 25, 2016.

LEGAL ANALYSIS

There are four issues that have been raised in the course of the hearing and arguments on the defendant's motion, and those issues will be addressed separately:

1. Were the search warrants valid? Was there probable cause that the property to be seized was located at the place to be searched?
2. Is the good faith exception applicable?
3. Does the defendant have a reasonable expectation of privacy in his medical records as the circumstances of the case exist now?
4. What evidence is subject to exclusion under the exclusionary rule?

I. VALIDITY OF THE SEARCH WARRANTS

For all practical purposes, the two affidavits which were filed in this case are identical, and the two warrants likewise are identical. Reference herein will be made to "the affidavit" and "the warrant," and the references to these terms apply as used to both affidavits and both warrants respectively.

The defendant is contesting the validity of the search warrant which was issued in this case. In doing so, he maintains that the affidavit filed by the investigating officer lacks probable cause because it fails to state a factual basis for the officer's belief that the property to be seized is located in the place to be searched.

In determining the sufficiency of probable cause in an affidavit submitted in support

of a search warrant, "[t]he task of the issuing 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." *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph one of the syllabus, citing and quoting *Illinois v. Gates* (1983), 462 U.S. 213, 76 L.Ed.2d 527.

In reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant issued by a magistrate, neither a trial court nor an appellate court should substitute its judgment for that of the magistrate by conducting a *de novo* determination as to whether the affidavit contains sufficient probable cause upon which that court would issue the search warrant. *George*, at paragraph two of the syllabus. Rather, the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.*

In this case, there is nothing in the affidavit to show that the magistrate had a substantial basis for concluding there was a fair probability that evidence of a crime would be found at Bethesda Hospital.

There is evidence that a crime may have been committed. There is reference in the affidavit to a two car crash involving the defendant's vehicle, and that the driver of the other vehicle was seriously injured. There is a reference to the fact that the defendant had consumed alcohol, that he had taken a drug that interacts in some way with alcohol, that he had bloodshot, glassy eyes, that he exhibited the odor of an alcoholic beverage, that he was driving left of center, that his bad driving caused the accident, and that the

other motorist was seriously injured. The magistrate could infer from all of this the probability that the defendant was under the influence of alcohol at the time of the accident and that he committed an OVI offense and an aggravated vehicular assault.

However, more that that is required for the issuance of a search warrant. There must be sufficient facts provided so that from those facts, and reasonable inferences to be drawn from those facts, the magistrate can find a fair probability that contraband or evidence will be found at the location to be searched.

In this regard, the affiant makes a conclusory statement in her affidavit that "she has good cause and reason to believe that within the jurisdiction of the Court of Hamilton County, OH, and within the confines of Bethesda North Hospital, 10500 Montgomery Road, Cincinnati, Ohio, a medical treatment facility, including all outbuildings, and buildings located thereon, there is or may be found evidence of a crime or crimes, to wit: Medical Records, including trauma notes."

However, there are absolutely no facts related by the affiant to support this conclusory statement. The Ohio Supreme Court has specifically stated the necessity of including in a supporting affidavit underlying facts to support probable cause, warning that "a magistrate cannot be viewed as neutral and detached if the magistrate issues a search warrant that is unknowingly based on the police officer's conclusions." *State v. Owens*, 90 N.E.3d 189, 2017-Ohio-2590 (3rd Dist.), ¶ 18, citing *State v. Castagnola*, 145 Ohio St.3d 1, at , 2015-Ohio-1565, 46 N.Ed.3d 638, ¶ 41.

The task of the magistrate is to make this determination based on "all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information." In this case, though, there are no

circumstances, and no basis of knowledge, set forth in the affidavit to explain or provide support for Trooper Oiler's conclusory statement.

The affidavit does not indicate whose medical records may be located at Bethesda Hospital. Even if an inference can be drawn that the medical records must relate to the defendant, there is nothing in the affidavit to indicate that the defendant was injured, that he was taken to or was ever at Bethesda North Hospital, that he was examined and treated there, that any blood or urine was drawn from the defendant, that a blood analysis was performed there, or what medical records are at Bethesda North Hospital that conceivably could bear upon the accident.

Counsel for the state argues that reasonable inferences can be drawn that the defendant was at the hospital for treatment and that evidence of alcohol in his bloodstream are "stored" there. This argument, however, is an invitation to decide that there is probable cause simply because there must be a reason why the officer was seeking medical records from Bethesda North Hospital. This does not call for reasonable inferences; instead, it calls for speculation.

Based on this analysis, the court finds that the magistrate lacked a substantial basis for concluding that probable cause existed.

II. GOOD FAITH EXCEPTION

The Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate but

ultimately found to be unsupported by probable cause. *State v. George*, 45 Ohio St.3d 325, 544 N.Ed2d 640 (1989), paragraph three of the syllabus, citing *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.E.2d 677.

The rationale for the "good faith exception" is perhaps best expressed in the following language from the *Leon* decision:

> " 'The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. * * * Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.' " *George*, at 331, citing *Leon,* at 919, 104 S.Ct. at 3418, quoting *Michigan v. Tucker* (1974), 417 U.S. 433, 447, 94 S.Ct. 2357, 2365, 41 L.Ed.2d 182.

Nevertheless, in setting forth its "good faith exception" to the exclusionary rule, the United States Supreme Court has cautioned that " * * * the officer's reliance on the magistrate's probable-cause determination * * * must be *objectively reasonable* * * *." *George* at 331, citing *Leon* at 922, 104 S.Ct. at 3420.

Accordingly, suppression remains an appropriate remedy where: (1) " * * * the magistrate or judge * * * was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth * * * "; (2) " * * * the issuing magistrate wholly abandoned his judicial role * * * "; (3) an officer purports to rely upon " * * * a warrant based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable' "; or (4) " * * * depending on the circumstances of the particular case, a warrant may be 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. * * * " *George*, supra, citing *Leon,* at 923, 104 S.Ct. at 3421.

In this case, there is no suggestion of falsity or reckless disregard for the truth on

the part of the affiant. Nor is there any indication that the magistrate wholly abandoned his role in issuing this warrant.

As to the issue of whether the warrant is facially deficient, the warrant does fail to particularize the place to be searched or the things to be seized, in that it refers to any medical records of the defendant at Bethesda North Hospital with no limitation as to time period or as to subject matter. Conceivably then, the records could include records going back to the date of the defendant's birth, or records pertaining to treatment for diseases and/or conditions wholly unrelated to the automobile accident occurring on August 25, 2016.

However, the defendant did not raise the issue of particularity in his motion, and therefore it is not before the court for consideration.

With respect to the last issue, that being whether the affidavit is so lacking in probable cause as to render official belief in its existence entirely unreasonable, the court incorporates herein the discussion that was had earlier on that issue. Summarizing that discussion, there is nothing in the affidavit to indicate any connection between the facts related to the commission of a crime and the relevance of any medical records at Bethesda Hospital. The affidavit does not indicate whose medical records may be located at Bethesda Hospital. Even if an inference can be drawn that the medical records must relate to the defendant, there is nothing in the affidavit to indicate that the defendant was injured, that he was taken to Bethesda North Hospital, that he was examined and treated there, or that any blood or urine was drawn from the defendant from which a determination could be made as to its alcohol content. In essence, the affidavit includes no facts from which the court can find that the magistrate had a substantial basis for finding a fair

probability that contraband or evidence of a crime would be found at Bethesda North Hospital.

It is conceivable that Trooper Oiler did not know that she needed to include facts to support her conclusory statement as to evidence possibly being at Bethesda North Hospital. However, there is also no indication that the officer made any effort to determine what is required, and the officer's failure to include any facts to support her conclusory statement deprived the magistrate of his or her authority to determine whether probable cause existed. The three cases cited by the defense, which the state distinguishes on the facts, all stand for the proposition that the fact that an officer may think that he or she is doing the right thing fails to satisfy the good faith requirement in and of itself. See *State v. Dibble*, 2017-Ohio-9321, 92 N.E.3d 893 (10th Dist.); *State v. Dalpiaz*, 151 Ohio App.3d 257, 202-Ohio-7346 (11th Dist.); *State v. Swearingen*, 131 Ohio App.3d 124, 721 N.E.2d 1097 (3rd Dist). In this case, the court finds that the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. As such, the court finds that the good faith exception is not applicable to the facts of this case.

III. REASONABLE EXPECTATION OF PRIVACY

The state argues that there is no right of privacy to protect a person with respect to blood or urine alcohol drug test results when the person is under investigation for an OVI or OVI related offense. As a result, the state argues that no warrant was necessary for the state in this case to obtain the blood alcohol test results.

In order for the Fourth Amendment to be implicated by a governmental search, a

person must have a legitimate expectation of privacy in the thing searched. *Hannoy v. Indiana*, 789 N.E. 977, 990 (2003), citing *Illinois v. Andreas,* 463 U.S. 765, 771, 103 S.Ct. 3319, 3324, 77 L.Ed.2d 1003 (1983). Analysis of Fourth Amendment law primarily focuses on whether a person has a "constitutionally protected reasonable expectation of privacy." *State v. Peterson*, 173 Ohio App.3d 575, 2007-Ohio-5667, 879 N.E.2d 806, ¶ 11}, citing and quoting *Katz v. United States,* (1967), 389 U.S. 347, 360, 88 S.Ct. 507, 19 L.Ed.2d 576. "[T]here is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' " *Katz* at 361, 88 S.Ct. 507, 19 L.Ed.2d 576; see, also, *Hannoy*, *supra*, citing *Smith v. State,* 744 N.E.2d 437, 439 (Ind.2001).

The state argues that the defendant has no reasonable expectation in the privacy of the results of his blood test results. It cites to a statement from the Supreme Court of New Hampshire, in *State v. Davis*, 161 N.H. 292, 12 A.3d 1271, "that society does not recognize a reasonable expectation of privacy in blood alcohol test results obtained and recorded by a hospital as part of its consensual treatment of a patient, where those results are requested by law enforcement for law enforcement purposes in connection with an incident giving rise to an investigation for driving while under the influence of intoxicating liquors or controlled drugs."

However, the issue before the *Davis* court, and the court's holding, was much more limited. Although the court spoke in broad terms in referring to a lack of any reasonable expectation of privacy, the issue before the court was limited to whether a law enforcement agency could obtain blood test results without a search warrant but under a statute which reads:

> "The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications.... *This section shall also not apply to the release of blood or urine samples and the results of laboratory tests for drugs or blood alcohol content taken from a person for purposes of diagnosis and treatment in connection with the incident giving rise to the investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs.* The use and disclosure of such information shall be limited to the official criminal proceedings." RSA 329:26. (Emphasis added.)

The holding, setting forth the court's determination of the matter at hand, was the following: "Thus, we conclude that the State's request for, and acquisition of, the blood test results without a search warrant *under the circumstances presented in this case* does not implicate Part I, Article 19 of the New Hampshire Constitution." Id. at 1277. See, also, *People v. Perlos*, at 328 (approved release of blood-alcohol records prepared in accordance with a "carefully tailored statute" which only allowed chemical test results to be turned over under "narrowly tailored circumstances.")

In *State v. Guido*, 698 A.2d 729 (1997), the court approved the issuance by a grand jury using its investigative powers of a subpoena for blood-alcohol records of the defendant, relying on the fact that the defendant had neither ownership nor possession of the records. *Id.* at 737. See, also, *State v. Hardy*, 963 S.W.2d 516 (approval of issuance of grand jury subpoena for blood-alcohol records); *Tims v. State*, 711 So.2d 1118, 1122-1124 (Ala.App.1997) (approval under Alabama law of issuance of subpoena duces tecum for blood-alcohol results).

These cases do not contradict the general concept that a person has a privacy interest in his/her medical records. See *State v. Clark*, 23 N.E.3d 218, 2014-Ohio-4873, ¶28 (3rd Dist.). What they do stand for is the proposition that a person's privacy interest in his/her medical records is not absolute but must be balanced against other societal interests.

In considering whether the defendant in the within case has a reasonable expectation of privacy in his blood-alcohol results, the court finds that the defendant in general has a reasonable expectation of privacy in his medical records. In seeking treatment, and in providing medical information to the medical provider, and in submitting to tests, the defendant should have a reasonable expectation that under most certain circumstances his medical records will remain private. The court has no reason to think that most people don't feel that way when they seek medical care.

However, the court also believes that most people understand and appreciate that there are circumstances where it is not reasonable to expect that medical records will remain private. Those circumstances are present when the law permits access by the courts and/or law enforcement to medical records. In this regard, in Ohio, the defendant has no reasonable expectation that his medical records may not be obtained through judicial process (issuance of a lawful grand jury subpoena or issuance of a lawful warrant) or through compliance by law enforcement with the appropriate statutes in obtaining the records.

In this case, those appropriate statutes are R.C. 2317.02(B)(2) and R.C. 2317.022. The limitations contained in these statutes enable the statutes to comply with

constitutional privacy interests. See *City of Cleveland v. Dames*, 8th Dist. No. 82980, 2003-Ohio-6054, ¶ 5.

The state seems to be making an argument that, although the Ohio legislature has provided the specific circumstances (through compliance with R.C. 2317.02(B)(2) and R.C. 2317.022) under which law enforcement may obtain blood-test results, and although though those circumstances don't exist in this case, the defendant is waiving *any* expectation of privacy in his blood-test results, and the state is entitled to obtain and use these results, even absent any compliance by the state with R.C. 2317.02(B)(2)(a) and R.C. 2317.022. However, a citizen has a reasonable expectation that his privacy may be limited by a lawful exercise, and not by an unlawful exercise, of the state's power. The court is rejecting the state's argument.

The court finds that the defendant's reasonable expectation of privacy with respect to his medical records can only give way to the state accessing and obtaining the records through one of the lawful means set forth above.

IV. APPLICATION OF EXCLUSIONARY RULE

The Exclusionary Rule has historically applied to illegally obtained evidence as well as any evidence which was an indirect product of unlawful police conduct. *State v. Perkins*, 18 Ohio St.3d 193, 194, 480 N.E.2d 763 (1985), citing *Silverthorne Lumber Co. v. United States* (1920), 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319; *Wong Sun v. United States* (1963), 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441. The rule has not only applied to Fourth Amendment cases but also to Fifth and Sixth Amendment violations. *Perkins*,

supra, citing *Murphy v. Waterfront Comm. of New York Harbor* (1964), 378 U.S. 52, 84 S.Ct. 1594, 12 L.Ed.2d 678; *United States v. Wade* (1967), 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149. The deterrence rationale behind the principle is the refusal to put the prosecution in a better position than it would have been in the absence of illegality. *Murphy*, citing *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 [44 O.O.2d 383].

Two exceptions have been engrafted onto the Exclusionary Rule- the inevitable source doctrine and the inevitable discovery doctrine. The independent source exception allows admission of evidence that has been discovered by means entirely independent of any constitutional violation. *Perkins*, citing *Murphy, supra; Kastigar v. United States* (1972), 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212. The inevitable discovery exception allows admission of evidence that ultimately or inevitably would have been discovered by lawful means independent from the unlawful conduct. *Perkins* at 195-196.

The rationale for these exceptions is simple. "While the Exclusionary Rule is used to deny the admission of evidence unlawfully gained, and thereby to put the state in the same position it would have been absent the evidence seized, the rule should not be used to put the state in a worse position by refusing evidence that would have been subsequently discovered by lawful means." *Perkins* at 196.

On the facts of the within case, the medical evidence that was in existence at the time that the state executed on its defective search warrant, including the blood-test results, is undoubtedly in existence today. At the time that the first warrant was obtained, the state was aware of the existence of the medical evidence at Bethesda North Hospital, even though the state did not mention that it knew medical evidence was present there in

the affidavit that was filed in order to get the warrant.

The state may not have been aware that there were blood test results which were part of the medical evidence. However, the state was clearly aware that blood test results could be part of the evidence there and was attempting to obtain that evidence.

At the time of the execution of the defective search warrant, the state could have obtained the blood test results without even obtaining a warrant by making use of the procedures set forth in Sections 2317.02(B)(2) and R.C. 2317.022 of the Revised Code. The state would not have been able to obtain the additional medical evidence that is part of the medical records that is unrelated to the determination of alcohol or drugs in the defendant's system, and clearly that additional evidence is subject to the exclusionary rule and may not be used as evidence at the trial in this case.

However, counsel for the state made mention of these statutes in his written argument on the motion in arguing that the state was entitled to the blood test results because those statutes, and other statutes, reflect the state's determination that there is not a reasonable expectation of privacy in those records. As such, it seems obvious that the state would have inevitably discovered the evidence pertaining to the blood-test results through the use of the procedures set forth in R.C. 2317.02(B)(2) and R.C. 2317.022.

With the discovery of the blood test results, the state would also have inevitably obtained information as to the personnel who were involved in the blood draw and the analysis of the blood. The reason for this is that the state is entitled under R.C. 2317.022 to "any records the provider possesses that *pertain* to any test or the results of any test administered to the specified person to determine the presence or concentration of

alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question."

As such, the court finds that any evidence that the state was entitled to obtain through the procedures set forth in R.C. 2317.02(B)(2) and R.C. 2317.022 is not subject to exclusion from use at trial provided that the state demonstrates that it complied with those statutes in obtaining the evidence. However, in order to use the evidence at trial, the state must make the request as provided in R.C. 2317.02(B) and R.C. 2317.022 and demonstrate to the court prior to the admission of such evidence that the records that are presented at trial were provided in response to that request.

CONCLUSION

The court finds that the motion to suppress shall be granted as to the search warrants that were obtained and executed by the Ohio State Highway Patrol. These warrants are defective because the magistrate reviewing the affidavits lacked a substantial basis for concluding there was a fair probability that evidence of a crime would be found at Bethesda Hospital.

The court finds that the affidavits are so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. As such, the court finds that the good faith exception is not applicable to the facts of this case.

The court finds that the defendant's reasonable expectation of privacy with respect to his medical records can only give way to the state accessing and obtaining the records through one of the lawful means available in the state of Ohio for the state to obtain the records.

The court finds that the medical records other than the records that may be obtained under R.C. 2317.02(B) and R.C. 2317.022 pertaining to the blood-test results (which are not subject to exclusion under the inevitable discovery exception to the exclusionary rule) shall be excluded at trial.

The court finds that the records that the state now obtains pursuant to a request made under Revised Code Sections 2317.02(B) and 2317.022 may be admissible at trial provided the state demonstrates to the court that they were obtained pursuant to such request.

A motion has been filed by defense counsel requesting a continuance of the trial in the case and indicating that the state is not opposing the motion. The court finds that the motion is well-taken and shall be granted. The time within which the defendant must be brought to trial shall be extended through the time of the new trial date selected by counsel for the parties.

Counsel shall obtain a new trial date through the Assignment Office, with the trial to be schedule no later than 90 days from the date of this decision and the Formal Pretrial Conference to be scheduled not later than 21 days prior to the trial date.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Decision/Entry were sent on this 6th day of July 2018 by e-mail to Darren Miller, at dmiller@clermontcountyohio.gov, and Nick Horton, at nhorton@clermontcountyohio.gov, Assistant Prosecuting Attorneys, and to R. Scott Croswell III, Attorney for the Defendant, at rscroswell@gmail.com.

Bailiff to Judge McBride