

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE WILLIAM BAUMANN,

Defendant-Appellant.

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UNPUBLISHED

October 15, 2013

No. 312714

Ogemaw Circuit Court

LC No. 11-003623

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

After waiving his right to a trial by jury, defendant was convicted following an uncontested bench trial of two counts of possession of child sexually abusive material, MCL 750.145c(4).<sup>1</sup> He was sentenced to 60 months of probation with the first 12 months to be served at the county jail. Defendant appeals by right, and we affirm.

Police originally began to investigate defendant after an informant told police that defendant had shown him a nude video of a mutual acquaintance in the shower. The person whom the informant identified as being videotaped denied that she ever gave defendant permission to videotape her.<sup>2</sup> Based on this information, the police obtained a search warrant to search defendant's home and records and to seize evidence of several crimes including possession of child sexually explicit material. The police executed the warrant and seized defendant's home computer.

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<sup>1</sup> Defendant's counsel did not make an opening statement, cross-examine witnesses, present a defense, or give a closing argument. Apparently, defendant intended to only appeal the denial of his motion to suppress evidence and absent the exclusion of that evidence, he was not contesting the adequacy of proofs. The prosecutor merely "walked through" its proofs before the trial court, and the judge found the defendant guilty.

<sup>2</sup> It was never established by either party how old this person was at the time of the video-taping. Defense counsel made statements at the motion to suppress that suggest she was an adult at the time of the police investigation. The affidavit does state that it was her father who originally informed police of the video-taping, suggesting that she could be a minor.

During an initial search of the computer the officer only looked for evidence related to the video observed by the informant. During a second search of the computer, the officer specifically looked for evidence of child pornography and found over 70 images in unallocated disc space.<sup>3</sup> A web search then revealed that defendant had searched for and visited numerous child pornography websites.

Defendant challenges the denial of his motion to suppress. While we review the trial court's factual findings related to the denial of the motion for clear error, we review de novo the ultimate decision on a motion to suppress. *People v Wilkens*, 267 Mich App 728, 732; 705 NW2d 728 (2005), citing *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001).

Defendant first argues that the averments in the affidavit at most establish probable cause for a search related to the violation of privacy laws but not for evidence of child pornography. It was alleged that defendant had taken a nude video of someone in the shower without her permission, and there was no averment in the affidavit that this person was less than 18 years old. Even if the averments were deficient, Michigan recognizes an exception to the exclusionary rule where officers rely in good faith on a warrant issued by a magistrate. *People v Goldston*, 470 Mich 523, 542-543; 682 NW2d 479 (2004). The *Goldston* Court adopted the reasoning of *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984), and held that the purpose of the exclusionary rule would not be furthered where police recovered evidence in which they in good faith relied on a search warrant. *Goldston*, 470 Mich at 525-526, 543. Suppression of evidence can still be granted where it is found that the affiant provided false information in the affidavit or had reason to know the information in the affidavit was false. *People v Hellstrom*, 264 Mich App 187, 197; 690 NW2d 293 (2004), citing *Leon*, 468 US at 922-924. Suppression may also be appropriate where the magistrate completely abandons his or her judicial role or where the warrant is so facially deficient that officers could not in good-faith rely on it. *Id.*; *Goldston*, 470 Mich at 531;

In the present case, defendant has made no assertion that the affiant provided false information in the affidavit or that the magistrate abandoned his or her judicial role. Defense counsel stated during the original motion to suppress that there was no evidence the affiant was dishonest. Moreover, while the affidavit is silent as to the age of the person alleged to have been videotaped without consent, an inference arises from the affidavit that the victim was young if not underage. Search warrants and the underlying affidavits should be read in a common-sense, realistic manner, and not invalidated on basis of a hypertechnical interpretation. *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992). The affidavit and search warrant in this case are not so facially deficient that the police officers could not in good faith rely on the search warrant. The warrant clearly authorizes the search of the house, the seizure of the computer, and the

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<sup>3</sup> Unallocated disc space is space where deleted files are temporarily stored. When a user deletes files they are not permanently deleted, although they are inaccessible to the average user without special software. The deleted files remain in unallocated disc space until they are written over by another file.

search of the computer for evidence of child sexually explicit material. Therefore, the trial court properly declined to suppress the evidence.

Defendant next argues that suppression should have been granted because a second warrant was not obtained before a second search of the seized hard drive, and the “reasonable continuation” doctrine did not authorize a second search. The “reasonable continuation” doctrine requires that in order for a second entry onto already searched premises to be valid it must (1) be a continuation of the first search and not a “new and separate search,” and (2) the continuation must be “reasonable under the totality of the circumstances.” *United States v Keszthelyi*, 308 F3d 557, 568 (CA 6, 2002). In this case the police were not re-entering premises, such as a house or place of business; they were conducting a second examination of seized property and were searching for evidence of a crime explicitly authorized by the search warrant. While defendant argues that searches of computers should be analyzed similarly to searches of houses or places of business given their unique nature, our prior precedent indicates otherwise. In *People v Dagwan*, 269 Mich App 338, 344-345; 711 NW2d 286 (2005), we stated that searching the data stored in a computer is similar to searching a container. In *Dagwan*, the defendant had given police consent to “conduct a complete search of [his] motor vehicle . . . and all containers therein.” *Id.* at 344. This Court stated that “[b]ecause a computer can store data in its memory, and thus act as a container, here of illegal child sexually abusive material” the search was reasonable. *Id.* at 345. We held that this consent was sufficient for police to conduct a search of a laptop located in defendant’s motor vehicle. *Id.* at 344, 346.

Defendant relies on *United States v Carey*, 172 F3d 1278 (CA 10, 1999) to support his claim that a second search of a computer requires a second search warrant. In *Carey*, the warrant authorized the search of the defendant’s computer for evidence of drug dealing. *Id.* at 1270. While searching, evidence of child pornography was found; the search for evidence of drug dealing was abandoned, and the search for child pornography continued. *Id.* at 1271. The Tenth Circuit held that only a search for evidence of drug dealing was judicially authorized. *Id.* at 1273. The Tenth Circuit, however, also cautioned that its decision was “predicated upon the particular facts of [the] case, and a search of computer files based on different facts might produce a different result.” *Id.* at 1276. In this case, the warrant specifically authorized a search for evidence of child pornography. Therefore the police could not have been acting without judicial authority because they were doing exactly what the warrant authorized them to do. Other federal circuits have also distinguished *Carey* when the officers were searching for exactly what the warrant authorized. See *United States v Williams*, 592 F3d 511, 520 (CA 4, 2010). The police did not need to obtain a second search warrant to re-examine seized property in order to search for evidence for which the warrant explicitly allowed them to search. Therefore, the trial court properly denied defendant’s motion to suppress.

We affirm.

/s/ Michael J. Riordan  
/s/ Jane E. Markey  
/s/ Kirsten Frank Kelly