

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH JACK CALABRESE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56593

**FILED**

JAN 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *H. Anderson*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a bench trial, of sexual assault of a child under 14 years of age, use of a minor in production of pornography, and four counts of lewdness with a child under 14 years of age. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Joseph Calabrese raises three issues.

First, Calabrese claims that no evidence was adduced at his trial to support the charge of using a minor in the production of pornography. Calabrese errs. Many photographs were admitted into evidence that showed the five-year-old victim in various states of undress and posing "seductively." We therefore conclude that the district court, acting as the trier of fact, could have rationally found the elements of the crime beyond a reasonable doubt. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); NRS 200.700; NRS 200.710(2).

Second, to the extent that Calabrese asserts that his confession should have been suppressed as involuntary because he was on prescribed medications, the record shows that he was read a detailed version of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), stated clearly that he understood those rights, and that he was coherent

and fluent during the interview. Therefore, his claim that the district court erred in admitting evidence of his confession lacks merit.

Third, Calabrese claims that the district court erred in denying his motion to suppress evidence and in not granting him an evidentiary hearing. We agree and reverse, concluding that because the district court failed to hold an evidentiary hearing on disputed factual issues and to make appropriate findings, we cannot meaningfully review the denial of Calabrese's suppression motion. See State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (stating that because "[t]his court does not act as a finder of fact," the district court must "issue express factual findings when ruling on suppression motions so that this court [will] not have to speculate as to what findings were made below").

This case began when Calabrese called police to report that two men had broken into his home, tied him up, and stole a large amount of cash and several electronic devices. Police eventually discovered the two men while investigating an unrelated robbery and linked some of the property found with the men to the Calabrese burglary. One of the items recovered was a camera, and an officer decided to look through the pictures contained in the camera while he was waiting for robbery detectives to arrive. Depicted therein were pictures of Calabrese and what the officer characterized as child pornography. One of the detained burglars then declared to the officer that they stole from Calabrese because he was a known drug dealer and pedophile. Detectives used this information, and Calabrese's prior convictions for drug trafficking and statutory sexual seduction, as the basis for two warrants to search Calabrese's residence for further evidence of child pornography and drugs. The warrants were approved and, while officers were executing them,

Calabrese sat in a detective's vehicle and confessed to lewdly touching and sexually assaulting the 5-year-old girl who was depicted in the camera photographs.

Calabrese filed a motion to suppress all of the evidence against him, contending that because the initial search of his camera was in violation of the Fourth Amendment, all of the subsequently-discovered evidence must be suppressed as fruits of an illegal search. Additionally, Calabrese requested an evidentiary hearing both in his written suppression motion and during argument to the district court. After considering the parties' arguments—but taking no evidence—the district court stated that the warrants were issued in good faith and denied Calabrese's motion in a summary order.<sup>1</sup>

Claims that a Fourth Amendment violation resulted from an illegal search or seizure present mixed questions of law and fact and therefore the district court “must make specific factual findings” to enable our effective review. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 158 (2008). The State claims that the search of the camera was constitutionally permissible because the officer was attempting to verify the camera's ownership. This may have been reasonable under the circumstances, see U. S. v. Sumlin, 909 F.2d 1218, 1220 (8th Cir. 1990) (holding that officer's search of defendant's stolen property for the purpose of identifying ownership was a “legitimate governmental interest” that

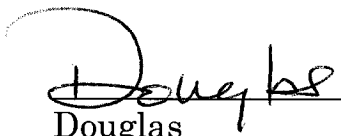
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<sup>1</sup>One result of the summary nature of the district court's order denying the motion to suppress is that it is unclear from the court's oral statements of its rationale whether it understood that the search of the camera was not part of the warranted search but rather was the event that provided the basis for the affidavits supporting the warrants.

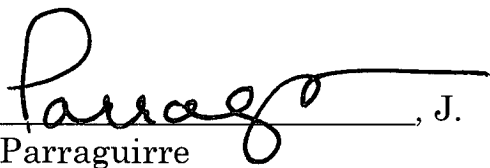
outweighed defendant's reasonable expectation of privacy in that property), but there are no facts in the record to support the State's assertion that this is what occurred and factual determinations cannot be made in the first instance by this court.<sup>2</sup> See Rincon, 122 Nev. at 1177, 147 P.3d at 248. Nor can we, as a result, express an opinion on the validity of the search warrant and whether issuance of the warrants cured any initial unlawful search of the camera. See U.S. v. Hill, 55 F.3d 479, 481 (9th Cir. 1995) (explaining that for a search pursuant to a warrant to be untainted by an earlier unlawful search, what was learned during the unlawful search must not be what prompted the decision to seek the warrant).

Accordingly, we

ORDER the judgment of conviction REVERSED and REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>2</sup>In its answering brief to this court, the State merely cited to its brief in the district court to support its contention that the officer's search was for a permissible purpose.

<sup>3</sup>We also deny Calabrese's December 19, 2011, motion to file documents in proper person.

cc: Hon. Michael Villani, District Judge  
Robert E. Glennen, III  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk