

IN THE SUPREME COURT OF THE STATE OF NEVADA

STANLEY LYLE MILLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62987

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felon in possession of a firearm and two counts of possession of visual presentations depicting sexual conduct of a person under 16 years of age. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Stanley Mills' son, L.M., sent multiple harassing emails and Facebook messages to a teacher at his school. Based on the messages, law enforcement successfully obtained a warrant to search L.M.'s home and computers for weapons or other evidence of his threats. Once inside the home, law enforcement discovered weapons and electronic devices which were not covered by the language of the first warrant, and obtained a second warrant authorizing the seizure of the additional items. Several firearms and electronic devices were removed from the home.

While reviewing a "thumb" drive removed from the home, law enforcement discovered images in a folder associated with Mills which appeared to depict sexual conduct of persons under 16 years of age. A third warrant was obtained allowing for a more thorough search, and additional images were discovered. Mills was arrested for possessing the firearms and images. Mills moved to suppress, alleging that the evidence

was obtained pursuant to an unconstitutional search. After the district court denied Mills' motion to suppress, he pleaded guilty to the instant charges, reserving the right to appeal the denial of his motion. See NRS 174.035(3).

First, Mills contends that the district court abused its discretion by denying his motion to suppress because the first search warrant was not supported by probable cause.¹ Probable cause to support a search warrant exists where the facts and circumstances within an officer's knowledge warrant a reasonable belief that an offense has been or is being committed, *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949), and that "there is a fair probability that contraband or evidence of [the] crime will be found in a particular place," *Illinois v. Gates*, 462 U.S. 213, 238, (1983). When reviewing a magistrate's probable cause determination, "[t]he reviewing court is not to conduct a de novo probable cause determination but instead is merely to decide whether the evidence viewed as a whole provided a substantial basis for the magistrate's finding." *Keese v. State*, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994). When reviewing a district court's ultimate decision regarding a motion to suppress, this court reviews findings of fact for clear error, but the legal consequences of those facts de novo. *State v. Beckman*, 129 Nev. ___, ___ 305 P.3d 912, 916 (2013).²

¹We note that neither party, either below or on appeal, has raised the issue of standing.

²We reject Mills' contention that the district court's factual findings are not entitled to the appropriate level of deference.

Mills contends that the first search warrant lacked probable cause because L.M.'s messages were merely offensive and did not warrant a search of each computer in Mills' home. We disagree with both contentions. The warrant application included the messages L.M. sent to his teacher, in which L.M. stated his desire to see the teacher dead, challenged his teacher to a fight, discussed hatred of the teacher and his family, and possibly referenced the teacher's home. These messages were sent over the course of several months, in escalating frequency and hostility. The officer applying for the warrant averred that, based upon her training and experience, such messages were often preludes to "more active forms of violence," and that L.M. likely sent the messages from one of the computers in his home. These facts, among others, support the court's probable cause determination. See Carson City Municipal Code (C.C.M.C.) 8.04.015 (defining harassment); see *United States v. Terry*, 522 F.3d 645, 648-49 (6th Cir. 2008) (it is reasonable to infer that a suspect used a computer in his home to send messages over the internet); see generally *Keesee*, 110 Nev. at 1004, 879 P.2d at 68 (probable cause to search extends to all areas under a suspect's control). We conclude that the district court did not abuse its discretion by denying Mills' motion to suppress on this basis.

Second, Mills contends that the district court abused its discretion by denying his motion to suppress because the second warrant was not sufficiently precise, rendering it a general warrant. We review de novo a district court's determination whether a warrant lacked sufficient particularity. *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986). Although evidence obtained pursuant to warrant that is deemed invalid may be suppressed as a remedial measure, the evidence need not be

suppressed if an officer relied in good faith on the warrant's validity. *United States v. Leon*, 468 U.S. 897, 922 (1984); *State v. Allen*, 119 Nev. 166, 172, 69 P.3d 232, 236 (2003) ("Exclusion is only appropriate where the remedial objectives of the exclusionary rule are served.").

We agree that the warrant lacked sufficient particularity because it authorized the seizure of items for which there was no probable cause to seize. *See Spilotro*, 800 F.2d at 963. The second warrant allowed law enforcement to seize computer monitors, printers, VCRs, and cassette tapes—devices which could not reasonably contain evidence of the crimes L.M. allegedly committed. However, we conclude that the officer's good faith reliance on the warrant was reasonable under the circumstances and does not support exclusion of the evidence obtained in this case. Although the warrant was not a model of precision, the officer who requested it did so telephonically, while at the scene, *see United States v. Weber*, 923 F.2d 1338, 1346 (9th Cir. 1990) (time pressure is a factor to be considered when analyzing good faith), after consulting with a prosecutor, *see United States v. Pappas*, 592 F.3d 799, 802 (7th Cir. 2010) (consulting with a prosecutor prior to applying for a search warrant provides objective evidence of good faith). As a result, the district court did not abuse its discretion by denying Mills' motion to suppress on this basis.

Having considered Mills' contentions, and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. James E. Wilson, District Judge
Kenneth A. Stover
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk