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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH JAVIER ELIAS,

Defendant and Appellant.

B295383

(Los Angeles County
Super. Ct. No. BA462866)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Leslie A. Swain, Judge. Affirmed.

Law Offices of Visco & Wohl, Joshua P. Visco and David E. Wohl for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Joseph Javier Elias appeals from the trial court's order denying his motion to suppress evidence, contending that the evidence was seized by the police pursuant to an unlawful entry into his home and that the search warrant the police later obtained was based on stale information. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Investigation

On May 19, 20, and 21, 2014, Google submitted three "Cybertips" to the National Center for Missing and Exploited Children (NCMEC), indicating that someone using a particular Gmail email address (the Gmail address) had uploaded over 100 images that were of child pornography. A detective obtained and reviewed the images from NCMEC and observed that many depicted young boys between the ages of 10 to 12 engaged in various sex acts with other young boys and adult males. At least one of the images was of an adult man holding down and sodomizing a young boy.

A Los Angeles Police Department (LAPD) detective then executed a search warrant on Google and learned that the last login associated with the NCMEC Cybertips occurred on May 18, 2014, which was when the account associated with the Gmail address was "[d]eleted." According to Google, the user of the Gmail address had provided a particular alternate Hotmail email address.

On August 11, 2015, LAPD Detective Deno Amarantos obtained a warrant to search a house located on Branford Street, in Los Angeles (Branford address). Based on information that the detective received from Time Warner, he believed this was the address at which defendant resided.

On August 13, 2015, Detective Amarantos went to the Branford address and spoke to a woman who identified herself as defendant's mother (mother). Mother stated that defendant had previously lived at the Branford address but now resided with his uncle about a mile away.

At the detective's request, mother telephoned defendant and asked him to come to the Branford address so that the detective could speak to him. Mother told the detective that defendant did not have a ride; the detective offered to pick him up. Mother then gave defendant's address to the detective and told him that defendant was willing to return to the Branford address with him.

Detective Amarantos and another detective went to the address provided by mother and met with defendant outside his house. The detectives introduced themselves and asked defendant whether "he would mind bringing any of his electronic devices back to the Branford address with us." The detectives told defendant that he was free to leave. Although Detective Amarantos did not recall defendant's exact words, "he agreed to get his devices."

Defendant then turned around and walked into the house. Detective Amarantos and his partner followed defendant inside into a room that defendant stated was his bedroom. The detective had not asked defendant for permission to enter the house. Defendant then retrieved a Gateway laptop, a tablet, and

two cellular phones and handed them to Detective Amarantos. Detective Amarantos did not recall whether defendant handed him each of the electronic devices individually or handed them to him in a group.

Defendant then got into the police car with Detective Amarantos and returned to the Branford address. The detectives again told defendant that he was free to leave. Defendant was not handcuffed. Detective Amarantos asked defendant whether the Gmail address belonged to him. Defendant stated that it did. When detectives asked defendant for his consent to search the electronic devices, defendant declined.

B. *Search Warrant*

On August 19, 2015, Detective Amarantos applied for a warrant to search the electronic devices, including the Gateway laptop, that defendant had handed to him. The affidavit in support of the warrant described the investigation and included details about Detective Amarantos's training and experience. Specifically, Detective Amarantos swore that he had worked as an officer with LAPD since 1996; he was currently assigned to the Juvenile Division, Internet Crimes Against Children; and had participated in hundreds of sexual assault-related investigations. The detective had performed numerous forensic interviews of children who had been the victims of sexual assault and the perpetrators of such assaults. He had received training on investigating crimes against children, including crimes involving the internet. Further, Detective Amarantos had assisted in serving numerous search warrants and arrest warrants, participated in interviews involving child exploitation, and had

firsthand knowledge of where and how suspects obtained and stored images and videos of child pornography.

Based on his training and experience, Detective Amarantos was aware that people who produce, trade, distribute, or possess images of child pornography receive pleasure from viewing sexually explicit images of children. Thus, possessors of child pornography rarely, if ever, dispose of their collection of images and treat them as valuable possessions. They use the images as currency with other collectors and as a means of gaining acceptance, status, and trust from other people who share similar interests.

Based on this information, a magistrate issued a search warrant for defendant's electronic devices. Pursuant to that warrant, officers searched defendant's laptop computer and found approximately 17,000 files that contained images of child pornography.

C. *Procedural History*

On March 7, 2018, the Los Angeles County District Attorney filed an information charging defendant with distributing and possessing child pornography, in violation of Penal Code section 311.1.¹

On June 18, 2018, defendant filed a motion, pursuant to section 1538.5, to suppress the evidence from the laptop on the grounds that: (1) the police's initial seizure of the laptop was without a warrant and the fruit of an illegal entry into the home and (2) the warrant was not supported by probable cause. The

¹ All further undesignated statutory references are to the Penal Code.

People opposed the motion, arguing that the initial seizure of the electronic devices was proper to prevent the destruction of evidence and that the information provided in the search warrant was not stale. In the alternative, the People argued that the good faith exception to the exclusionary rule applied, such that suppression of the evidence was not appropriate.

On July 19, 2018, the trial court conducted a hearing on the motion, at which Detective Amarantos testified as described above. Defendant submitted no evidence in opposition. During the hearing, defendant's counsel did not repeat his claim that the images must be suppressed as the fruit of a warrantless entry, and argued only that the warrant was stale. At the conclusion of the hearing, the court denied the motion, finding that the information in support of the warrant was not stale. The court did not expressly rule on the alternative argument made in defendant's written motion, that the evidence was the fruit of a warrantless entry into defendant's home.

III. DISCUSSION

A. *Standard of Review*

“[I]n ruling on a motion under section 1538.5 the superior court sits as a finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences, and hence . . . on review of its ruling by appeal . . . all presumptions are drawn in favor of the factual determinations of the superior court and the appellate court must uphold the superior court's express or implied findings if they are supported by substantial evidence. [Citation.]” (*People v. Laiwa* (1983) 34 Cal.3d 711, 718; accord,

People v. Carrington (2009) 47 Cal.4th 145, 166.) On the facts so found, an appellate court exercises independent judgment in determining whether the search was reasonable under the Fourth Amendment. (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1212.)

B. *Illegal Entry*

Defendant contends that the images obtained during the search of his computer must be suppressed because they were seized by the police subsequent to the illegal entry into defendant's home. We disagree.

"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S. 573, 586.) Police may, however, seize an item based on consent, so long as the consent is freely and voluntarily given. (*Florida v. Royer* (1983) 460 U.S. 491, 497; *People v. Epperson* (1986) 187 Cal.App.3d 115, 120.)

The police here did not seize defendant's computer. Rather, the undisputed evidence established that defendant had agreed to bring his electronic devices to the Branford address, prior to the police entry into the home, and then handed the devices to the police once inside the home. Even assuming that the police entry into defendant's home, without invitation, was unlawful, there was no evidence proffered by defendant to suggest that his initial consent to bringing the devices to the Branford address was not knowingly and voluntarily made or any evidence to suggest that he had withdrawn that consent between the time the police entered the home and when he handed the devices to

them. (See *Wong Sun v. United States* (1963) 371 U.S. 471, 486 [the police may not obtain consent based on unlawful police activity].)² The trial court therefore did not err when it impliedly found that defendant had knowingly and voluntarily agreed to a seizure (although not a search) of his laptop computer and the computer evidence was not the fruit of a warrantless entry.

C. *Staleness*

Defendant additionally contends that there was no substantial evidence to support a finding that the warrant was supported by probable cause because 15 months had elapsed between the time a user had uploaded images of child pornography and the issuance of the warrant, and the information was therefore stale.

The Fourth Amendment to the United States Constitution specifies that warrants be issued “upon probable cause, supported by Oath or affirmation.” “The freshness of the information on the basis of which a warrant is sought and obtained, is one of the factors which determine whether there is probable cause to believe that the articles covered by the warrant will be found at the place that is to be searched.” (*People v.*

² Defendant contends on appeal that “it is unclear how the electronic devices taken by police from [defendant’s] bedroom were retrieved. [Detective Amarantos’s] testimony was that he doesn’t recall how they were given to Police.” We disagree with defendant’s characterization of the evidence. While Detective Amarantos could not recall whether defendant handed the devices to him individually or at one time, there was no dispute that defendant had agreed to give and had handed the devices directly to the detective.

Hernandez (1974) 43 Cal.App.3d 581, 586.) “No bright-line rule defines the point at which information is considered stale. [Citation.] Rather, ‘the question of staleness depends on the facts of each case.’ [Citation.] ‘If circumstances would justify a person of ordinary prudence to conclude that an activity had continued to the present time, then the passage of time will not render the information stale.’ [Citation.]” (*People v. Carrington, supra*, 47 Cal.4th at pp. 163–164.)

Here, the affidavit indicated that 15 months prior to the issuance and execution of the search warrant, someone using defendant’s email address had uploaded over 100 images of child pornography onto the internet. A detective opined that possessors and distributors of images of child pornography use those images as currency and thus rarely, if ever, dispose of them. (See *Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 573 [probable cause may be shown based on information and belief].) We conclude that, based on these facts, the information was sufficiently fresh to support a finding of probable cause. (See e.g., *United States v. Carroll* (7th Cir. 2014) 750 F.3d 700, 704 [“In recognition of the well-established hoarding habits of collectors of child pornography, this Court’s holding in [*United States v. Prideaux-Wentz* (7th Cir. 2008) 543 F.3d 954] and cases from other circuits make clear that under certain circumstances years can pass between information about child pornography offenses and applications for search warrants without rendering the information stale”].)

D. *Good Faith Exception*

Finally, even if the warrant were lacking in probable cause, the good faith exception described in *United States v. Leon* (1984) 468 U.S. 897 to the exclusionary rule supported the denial of the motion to suppress. The good faith exception allows the introduction of evidence obtained under a defective warrant issued by a neutral and detached magistrate if the officers who executed the warrant acted in the reasonable good faith belief that the warrant was valid. (*Id.* at p. 920; *People v. Camarella* (1991) 54 Cal.3d 592, 602.)

According to defendant, the affidavit here was so lacking in probable cause that it was unreasonable for officers to rely on it. Specifically, according to defendant, the warrant was based solely on the NCMEC tips and information from “IP utilities” and “supported by no further investigation.” We disagree with defendant’s characterization of the warrant, which did include a description of recent investigation, including: the detective’s conversations with defendant’s mother, during which mother corroborated that defendant had previously lived at the Branford address; and the detectives’ interview of defendant, during which defendant admitted that he used the email address that had been used to upload the images of child pornography on the internet.

Defendant next distinguishes the facts of this case from those in *People v. Camarella, supra*, 54 Cal.3d 592, because there was no evidence that the warrant here had been reviewed by a prosecutor. In *People v. Camarella, supra*, 54 Cal.3d at pages 606–607, our Supreme Court concluded that the fact that a prosecutor had reviewed and approved of a warrant that was based on arguably stale information was one factor that

supported application of the good faith exception. But the court in *People v. Camarella, supra*, 51 Cal.3d 592 did not state or suggest that such prosecutorial review was required for the good faith exception to apply. Nor is there a requirement that search warrant affidavits include a reference to such prosecutorial review. (See generally § 1524.) Thus, the fact that there was no evidence one way or the other as to whether Detective Amarantos had submitted the warrant for review by a prosecutor does not preclude application of the good faith exception. Instead, on these facts, we conclude that even if the information in support of the search warrant was stale—and we conclude it was not—the detective acted in good faith in conducting the search such that the exclusionary rule would not apply. (*United States v. Leon, supra*, 468 U.S. at p. 922; *People v. Camarella, supra*, 54 Cal.3d at p. 607.) The trial court therefore did not err in denying the motion to suppress.

V. DISPOSITION

The judgment is affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.