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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1311**

State of Minnesota,
Respondent,

vs.

Michael John Clausen,
Appellant.

**Filed June 11, 2012
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CR109672

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Allen H. Caplan, Hillary B. Hujanen, Caplan & Tamburino, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Following a bench trial, appellant challenges his conviction of one count of second-degree criminal sexual conduct, arguing that (1) the district court erred by

denying his motion to suppress evidence seized by way of an allegedly unconstitutional search and (2) the state failed to present sufficient evidence to corroborate his confession. Because the totality of the circumstances indicate that the judge who issued the search warrant had a substantial basis to conclude that probable cause existed and corroboration of every element of the crime is not necessary, we affirm.

FACTS

In February 2009, Detective Craig Martin of the Hennepin County Sheriff's Office received documentation from Special Agent Rachel Lepovetsky of the United States Naval Criminal Investigative Service relating to an undercover internet investigation that she conducted. During the course of the investigation—ranging from October 2007 until February 2009—Special Agent Lepovetsky communicated with an individual later identified as appellant Michael John Clausen in a Yahoo! chat room, during which appellant talked about sexual fantasies involving young children and told her that he sometimes rubs his six-year-old son's penis during baths and showers.

On March 25, 2009, the district court issued a search warrant for appellant's home, permitting the search for evidence of "children being enticed on-line or the distribution of child pornography." While executing the warrant, police seized a digital camera, a Sony video camera with tapes and CDs, and appellant's computer. On May 26, the district court issued a second search warrant to conduct a forensic examination of the computer, which resulted in the location and identification of seven images of child pornography.

On July 15, appellant was charged with one count of felony possession of pornographic work involving a minor in violation of Minn. Stat. § 617.247, subd. 4(a)

(2008). The district court granted appellant's motion to suppress the evidence seized through the two searches based on deficiencies in the search-warrant affidavit. In granting appellant's motion, the district court specifically commented that the four-corners of the affidavit contained "really very little that was anything other than general training and experience and the conclusory statements that—such as from the affidavit, 'Your affiant is aware that people who are engaged in chat conversations involving sexual exploitation of minors will often collect and/or distribute child pornography.'" The district court concluded that such conclusory statements were insufficient to link appellant to possession of child pornography and dismissed the charge.

In the fall of 2009, Detective Martin was contacted by a Carver County Child Protective Service Worker who knew that the detective had conducted an investigation of appellant regarding the child-pornography charge. The social worker indicated that, during a mental-health therapy session, appellant's son had disclosed information about being sexually assaulted by appellant. Detective Martin initiated a second investigation. Appellant's son allegedly stated that appellant "had touched him in the shower and that [the child] didn't want it to happen anymore."

Detective Martin interviewed appellant's son on December 4, 2009. During the interview, the child did not say anything about appellant touching his genitalia. But ten minutes after the child and his mother (appellant's ex-wife) left the interview, the mother called Detective Martin and said that the child wanted to write something down. The two returned to the office and the child wrote out that appellant had touched his private parts.

When Detective Martin sought clarification of what the child meant by “private parts,” the child indicated the penis.

On February 16, 2010, appellant was charged by complaint with one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2006).¹ The state sought to admit evidence of chat-room activities that had been seized through execution of the first search warrant. Appellant moved to suppress the evidence arguing that the first warrant was based “entirely on the conclusory statements of the affiant and lacked the requisite information to create a nexus between [appellant’s] online activities and either child pornography or criminal sexual conduct” and therefore “lacked probable cause.” Appellant also argued that because the second search warrant was based on evidence found through execution of the first warrant, evidence uncovered by way of the second search warrant was also inadmissible under the fruit-of-the-poisonous-tree doctrine.

On March 3, 2011, the district court denied appellant’s suppression motion on the grounds of an unconstitutional search.² A bench trial was held in April 2011, and appellant was convicted of second-degree criminal sexual conduct. This appeal follows.

¹ The record is not clear as to when the offense occurred, the complaint stating that the conduct occurred “on or about January 1, 2006 through September 4, 2009.” The statute remains substantively unchanged throughout this period, and we therefore cite to the 2006 statute in conducting our analysis.

² The district court did, however, grant the motion in part, suppressing some of the chat-log evidence as being unfairly prejudicial, irrelevant, or cumulative. This conclusion is not challenged on appeal.

DECISION

I.

Appellant first challenges the district court's denial of his suppression motion on the grounds that the search was unconstitutional. "When reviewing pretrial orders on motions to suppress evidence, [an appellate court] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Both the United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained by an unconstitutional search and seizure is inadmissible. *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978). In general, a search is valid only if it is conducted pursuant to a valid search warrant issued by a neutral and detached magistrate after a finding of probable cause. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). A warrant for a search of a home may be issued only "upon probable cause . . . particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10.

A court determines whether probable cause for a search exists by examining the totality of the circumstances:

The 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 [the court], 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. Souto, 578 N.W.2d 744, 747 (Minn. 1998) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). Both the district court and the reviewing court may consider only the information in the application for the search warrant to determine whether probable cause exists. *State v. Secord*, 614 N.W.2d 227, 229 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000).

“Determinations of probable cause by the issuing judge are afforded ‘great deference’ by [an appellate] court and are not reviewed de novo.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995); *see also State v. Rochefort*, 631 N.W.2d 802, 805 (Minn. 2001) (holding that the appropriate standard of review for an appellate court reviewing a district court’s probable cause determination made upon issuing a warrant is the deferential, substantial-basis standard). “[T]he resolution of doubtful or marginal cases should be ‘largely determined by the preference to be accorded to warrants.’” *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (quoting *United States v. Ventresca*, 380 U.S. 102, 109, 85 S. Ct. 741, 746 (1965)).

However, the deference accorded to the issuing judge is not without limits. *State v. Gabbert*, 411 N.W.2d 209, 212 (Minn. App. 1987).

Even if [a] warrant application [were] supported by more than a ‘bare bones’ affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant [is] invalid because the magistrate’s probable-cause determination reflected an improper analysis of the totality of the circumstances.

Id. (quoting *United States v. Leon*, 468 U.S. 897, 915, 104 S. Ct. 3405, 3416 (1984)).

The state must provide sufficient information to the magistrate to determine whether

probable cause exists. *Gates*, 462 U.S. at 239, 103 S. Ct. at 2333 (explaining that “[the magistrate’s] action cannot be a mere ratification of the bare conclusions of others”).

Appellant’s primary argument is that the district court had previously held that the search warrant was not supported by probable cause, that the search in execution of that warrant was therefore unconstitutional, and “[t]here was nothing in the record to vitiate an already dead warrant.” But the district court’s ruling that the search warrant was invalid was made in the child-pornography case. Appellant cites to no authority, and we are unaware of any, that a district court’s ruling in one case compels a particular holding in a different case. *Cf. In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) (stating that law-of-the-case doctrine provides that “when a court decides upon a rule of law, that decision should continue to govern the *same issues* in subsequent stages in the *same case*” (quotation omitted)). And the language of the district court’s ruling in the child-pornography case indicates that the rationale was limited to that case. Therefore, the district court’s suppression of the evidence in the child-pornography case has no bearing on our review of the district court’s admission of the evidence in the criminal-sexual-conduct case.

An appellate court’s task on appeal is to “ensure that the issuing judge had a ‘substantial basis’ for concluding that probable cause existed” under the totality of the circumstances. *Zanter*, 535 N.W.2d at 633 (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). When analyzing the sufficiency of the affidavit, a reviewing court must review the affidavit as a whole rather than each component in isolation. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). “Because [appellate courts] examine the totality of the

circumstances, ‘a collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause.’” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quoting *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004)). If a warrant is void for lack of probable cause, the evidence seized in execution of the search warrant must be suppressed. *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989).

Here, the search-warrant affidavit contained chat logs in which appellant—via the chat-room handle “mrloveswetwomen” and the alias “mr L”—discussed the contact with his son in the shower in a sexual manner. The affidavit indicated that Detective Martin had learned that the usernames were registered to appellant. The affidavit indicated that, in Detective Martin’s experience, he learned “that individuals who interact with others involved in the exploitation of minors, or have sexual contact with minors, often retain chat logs and images for the purpose of reliving the incident,” and that “[c]omputers and the Internet are used as a tool to conduct child exploitation and also a modem to store information.” And unlike Detective Martin’s conclusory statements regarding the possession of child pornography, appellant’s online discussion of sexual activities with his son—logs of which were included with the search-warrant affidavit—lend credence to the detective’s conclusions as related to the criminal-sexual-conduct charge.

Based on this information, the issuing judge determined that probable cause supported a search warrant, and issued the warrant. This determination is entitled to great deference by this court. *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). In view of the totality of the circumstances and this deference, the issuing judge had a substantial basis to conclude that probable cause existed. The warrant was therefore

valid, the search was therefore constitutional, and the district court did not err by denying appellant's motion to suppress the evidence.

II.

Appellant also argues that the evidence was insufficient as a matter of law to support his conviction. We review a challenge to the sufficiency of the evidence by determining whether the evidence—viewed in the light most favorable to the conviction—is sufficient to allow the fact-finder to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989) (discussing jury trial). A verdict will not be disturbed if the fact-finder, acting with due regard for the presumption of innocence and the requirement for proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988) (discussing jury trial). When reviewing a sufficiency-of-the-evidence claim on appeal, this court's standard of review for a bench trial is the same as it is for a jury trial. *State v. Lehikoinen*, 463 N.W.2d 770, 772 (Minn. App. 1990).

As a matter of law, “[a] confession of the defendant shall not be sufficient to warrant a conviction without evidence that the offense charged has been committed.” Minn. Stat. § 634.03 (2006). This requirement is a codification of the common-law requirement that the state establish the corpus delicti—or “body of the crime”—by evidence independent of the confession. *State v. Lalli*, 338 N.W.2d 419, 420 (Minn. 1983). The dual purposes of this statute are to (1) dissuade coercive confessions and (2) ensure a confession's reliability. *In re Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984).

Here, appellant does not dispute that the act itself—touching his son’s penis while the two were in the shower—occurred. Rather, appellant argues that the evidence is insufficient to sustain the conviction because there is no evidence other than his online admission that shows that appellant did so with sexual intent, and his confession on that element is not sufficiently corroborated under the statute. His argument therefore rests on the assertion that the statute requires not only corroboration that appellant touched his son’s penis, “but also corroboration that [appellant] touched his son with sexual intent, the mens rea element of the offense that is required to prove that a crime has been committed.”

This argument is inconsistent with Minnesota caselaw. The supreme court has recently held that the statute does not require the state to independently corroborate a defendant’s admission as to each element of the charged offense. *State v. Heiges*, 806 N.W.2d 1, 13 (Minn. 2011). And appellant’s argument that the state must introduce evidence that independently corroborates each element of the charged offense was rejected by the supreme court as early as 1984. *M.D.S.*, 345 N.W.2d at 735 (noting that district court correctly rejected the argument that “each element of the [charged] offense . . . must be independently corroborated to meet the [statutory] standard” as “not all or any of the elements ha[ve] to be individually corroborated”). Rather, the statute “only requires ‘independent evidence of attending facts or circumstances from which the [fact-finder] may infer the trustworthiness of the confession.’” *Heiges*, 806 N.W.2d at 13 (quoting *M.D.S.*, 345 N.W.2d at 735) (other quotation omitted).

The supreme court's holdings in *Heiges* and *M.D.S.* compel a similar disposition here. As the district court found, the child testified that appellant touched his penis while the two were showering, and reported that it "felt weird" and that he "did not want the touching to continue." This evidence of the act of appellant touching his son's penis while they were in the shower is sufficient to meet the corroboration requirement of Minn. Stat. § 634.03. *See, e.g., Heiges*, 806 N.W.2d at 13–14 (evidence regarding defendant's change of clothing style and weight fluctuations corroborates pregnancy, suicide attempt that "tends to show that [defendant] felt severe regret and sadness" and presence of garbage chute in defendant's apartment building corroborates appellant's admission to drowning child and disposing of body in a garbage chute); *M.D.S.*, 345 N.W.2d at 735–36 (testimony that defendant had been to location of shooting corroborates admission that defendant gave shooter the address for the location; evidence that bullets matched firearm found at a third person's parents' house corroborates defendant's description of the firearm used in shooting).

While the child's testimony does not directly establish appellant's sexual intent behind the touching, it does establish that the touching took place at the time and place to which appellant admitted, and lends credence to the remainder of appellant's confession. The state has therefore met its burden of corroboration under Minn. Stat. § 634.03, and appellant's argument on this ground is without merit.

Affirmed.