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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1570**

State of Minnesota,  
Respondent,

vs.

Christian Charles Lange,  
Appellant.

**Filed June 25, 2012  
Affirmed  
Kalitowski, Judge**

Anoka County District Court  
File No. 02-CR-10-6946

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Assistant County  
Attorney, Anoka, Minnesota (for respondent)

Kelly J. Keegan, Brandt Criminal Defense, Anoka, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and  
Chutich, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

On appeal from his conviction of possession of pornographic work involving  
minors, appellant Christian Charles Lange argues that the district court erred in applying

the inevitable-discovery exception to the exclusionary rule to admit evidence obtained pursuant to an invalid warrant. We affirm.

## D E C I S I O N

On review of a pretrial order denying a motion to suppress evidence, this court “review[s] the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Buckingham*, 772 N.W.2d 64, 70 (Minn. 2009) (quotation omitted). We review the facts independently 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).

On February 25, 2009, Minneapolis Police Officer Dale Hanson, a member of the Internet Crimes Against Children Task Force, located a computer that was offering child-pornography files for download. He determined the computer’s Internet Protocol (IP) address and sent an administrative subpoena to the internet-service provider requesting the location of the IP address. The internet-service provider reported that the IP address was registered to S.L. at 131 83rd Avenue Northeast, Apartment Number 204, Fridley, Minnesota.

Officer Hanson forwarded the results of his investigation to Detective Patrick O’Hara, a fellow member of the task force who was employed by the Anoka County Sheriff’s Office. Detective O’Hara learned that S.L. had died on February 3, 2009.

On March 26, 2009, Detective O’Hara contacted the manager of the apartment complex located at 131 83rd Avenue Northeast. The manager told Detective O’Hara that

S.L. had a son, appellant, who lived with him in apartment 204 in February 2009, and that in March 2009, appellant moved to apartment 107 in the same complex.

Based on this information, Detective O'Hara drafted a search warrant application for apartment 107, explaining that appellant "ha[d] taken over" his father's lease "and now resides" in apartment 107. The affidavit noted that the files were downloaded on February 25, 2009, which was after S.L.'s death. The warrant was signed on August 10, 2009, and executed on August 12. Officers seized a computer that contained images of child pornography from appellant's apartment.

Meanwhile, on June 22, 2009, Officer Hanson located a computer at a different IP address offering child-pornography files for download and determined that the IP address was registered to appellant at apartment 107. Officer Hanson forwarded the results of his investigation to Detective O'Hara in August 2009, after the search of apartment 107 had occurred.

Appellant was charged with six counts of possession of pornographic work involving minors in violation of Minn. Stat. § 617.247, subd. 4(a) (2008). At a pretrial omnibus hearing, appellant argued that the evidence should be suppressed because the warrant was invalid. The district court determined that the warrant was unsupported by probable cause because the warrant affidavit lacked facts establishing a nexus between the evidence sought and apartment 107. But the district court found that the evidence seized on August 12 would inevitably have been discovered, and denied appellant's suppression motion. Specifically, the court found that Detective O'Hara would have obtained a valid warrant to search apartment 107 based on the June 22 investigation.

Appellant entered a *Lothenbach* plea and was convicted of one count of possession of pornographic work involving minors. *See State v. Lothenbach*, 296 N.W.2d 854, 857-58 (Minn. 1980). On appeal he argues that the district court erred in denying his motion to suppress the seized evidence.

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures and require that search warrants be supported by probable cause. U.S. Const. amends. IV, XIV, § 1; Minn. Const. art. I, § 10. When a warrant application is not supported by probable cause, the evidence seized during a search executing that warrant is “unlawfully obtained.” *State v. Carter*, 697 N.W.2d 199, 212 (Minn. 2005). Unlawfully obtained evidence is inadmissible to support a conviction, unless an exception to the exclusionary rule applies. *James v. Illinois*, 493 U.S. 307, 311-12, 110 S. Ct. 648, 651-52 (1990).

“The inevitable discovery doctrine permits the inclusion of evidence otherwise excluded under the exclusionary rule if the police would have inevitably discovered the evidence, absent their illegal search.” *State v. Martinez*, 579 N.W.2d 144, 148 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. July 16, 1998). “If the state can establish by a preponderance of the evidence that the fruits of [the] search ‘ultimately or inevitably would have been discovered by lawful means,’ then the seized evidence is admissible even if the search violated the warrant requirement.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984)). Inevitable discovery ““involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment.”” *Id.*

(quoting *Nix*, 467 U.S. at 444-45 n.5, 104 S. Ct. at 2509 n.5). The rationale underlying the inevitable-discovery exception is that “the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse*, position tha[n] they would have been in if no police error or misconduct had occurred.” *Nix*, 467 U.S. at 443, 104 S. Ct. at 2509.

Appellant argues that it is unlikely that the state would have discovered the evidence by lawful means. We disagree.

The district court found that, absent the August 12 search, the state would have obtained a valid warrant to search appellant’s apartment based on the June 22 investigation. Probable cause to support the issuance of a search warrant exists when there is a “fair probability that contraband or evidence of a crime will be found in a particular place.” *Carter*, 697 N.W.2d at 205 (quotation omitted).

Appellant argues that the files located on June 22 would not have provided probable cause to support the issuance of a warrant. He asserts that an IP address alone is insufficient, and even if the subscriber is identified, the subscriber may not have been the person using the computer at the time the files were offered for download. But the record establishes that law enforcement determined that the IP address offering files for download on June 22 was registered to appellant, at apartment 107. And because probable cause to support the issuance of a search warrant requires a nexus between the evidence and “a particular place,” rather than a particular person, the fact that a person

other than appellant could use the computer located in appellant's apartment is immaterial. *Carter*, 697 N.W.2d at 205.

We conclude that the district court's finding that the state would have obtained a valid warrant based on the June 22 investigation is not clearly erroneous. The IP address connected with the computer from which the files were offered for download on June 22, the IP address's registration to appellant at apartment 107, and Detective O'Hara's testimony that he would have confirmed the name of the tenant in apartment 107 with apartment management prior to drafting a warrant application collectively establish a nexus between evidence of the crime and the location to be searched and support a probable-cause determination.

Appellant argues that by the time a warrant application would have been completed, the evidence may have been stale. We disagree.

The time limit for obtaining a warrant is flexible and determined by the circumstances of each case. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). To avoid staleness, "proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998) (quoting *Sgro v. United States*, 287 U.S. 206, 210, 53 S. Ct. 138, 140 (1932)). "Factors relating to staleness include whether there is any indication of ongoing criminal activity, . . . whether the property sought is easily disposable or transferable, and whether the items sought are of enduring utility." *Id.* "Probable cause has been held not stale even after the passage of several months where the items sought are of 'enduring utility to their taker.'" *State v.*

*DeWald*, 463 N.W.2d 741, 746 (Minn. 1990) (quoting *State v. Flom*, 285 N.W.2d 476, 477 (Minn. 1979)).

Appellant argues that the state's six-month delay between locating the files on February 25, 2009, and executing the warrant on August 12, 2009, indicated that the state would have similarly delayed several months before obtaining a warrant based on the June 22 investigation. But the record establishes that the files located on June 22, 2009, were referred to Anoka County in August 2009, which is a less-significant delay.

And even if a warrant was not obtained until several months after the files were located, the record indicates that the evidence would not have been stale. Detective O'Hara testified that it is "very common . . . for a child pornography collector to keep images and videos sometimes for years" and that it is not uncommon to find data on a computer that was obtained years before the investigation. "[W]hen things are deleted off of one medium, it's never in fact really deleted. There are bits of information that are left behind . . . a trained computer forensic examiner . . . can go back and look for that footprint of where that image or video was." Likewise, in his warrant affidavit, Detective O'Hara averred that

[i]t is common for individuals [who possess child pornography] to preserve images from an old computer and to transfer them to a newer computer, and to store images on other electronic media such as floppy disk, compact disks, etc. . . .

. . . .

. . . [D]ata files deleted from a computer system are, in fact, not deleted. The computer system merely notes that the space being occupied by the file can now be reused for other

storage purposes . . . even if some of the file space is overwritten, some portions of the original file may be present in other areas of the hard drive.

Thus, the record indicates that data files containing child pornography are not easily disposable and are likely to be intentionally or unintentionally retained for many years. Moreover, possession of child pornography provides evidence of ongoing criminal activity. We conclude that staleness would not have precluded the state from obtaining a valid warrant.

Appellant also argues that the state was not actively pursuing a substantial, alternative line of investigation at the time of the unlawful search, and so the district court erred in applying the inevitable-discovery exception. We disagree.

First, unlike the federal jurisdictions appellant relies upon for authority, Minnesota does not require that the state establish that a substantial, alternative line of investigation was ongoing in order to apply the inevitable-discovery exception. The state must demonstrate only that the evidence “ultimately or inevitably would have been discovered by lawful means.” *Licari*, 659 N.W.2d at 254 (quotation omitted); see *State v. Diede*, 795 N.W.2d 836, 850 (Minn. 2011) (describing the state’s burden as showing that the evidence “would inevitably have been discovered through some means untainted by the improper search and seizure”).

The inevitable-discovery exception “has been applied in cases where the police officers possessed lawful means of discovery and were, in fact, pursuing those lawful means prior to their illegal conduct. *State v. Hatton*, 389 N.W.2d 229, 233 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). The state must be able to show that some

lawful means for discovering the evidence existed prior to an unlawful search, so that “the narrow ‘inevitable discovery’ exception would [not] ‘swallow’ the entire Fourth Amendment protection.” *Id.* at 234. But *Hatton* does not hold that the only way to establish “lawful means” is a substantial, alternative line of investigation ongoing at the time of the unlawful search. *Id.*

Second, the record establishes that Officer Hanson’s June 22 investigation was entirely separate from the August 12 search of appellant’s apartment. The June 22 investigation could not have been tainted by evidence discovered during the August 12 search, because the June 22 investigation occurred prior to the search, and therefore the June 22 investigation would have led to lawful means of discovery.

Appellant argues that law enforcement did not take “any steps in opening an investigation” relating to the IP address identified on June 22. But the record establishes that the files located on June 22 by Officer Hanson were referred to Anoka County in August 2009. When Detective O’Hara received the information obtained on June 22, he “reviewed the material[,] . . . address and the name” and concluded that it confirmed that he “had gone to the right place and that [he] had the right person and the right computer.” Therefore, the fact that law enforcement did not apply for a warrant based on the June 22 investigation does not indicate that it would not have done so absent the unlawful search.

We conclude that the district court’s finding that the state would have inevitably discovered the unlawfully seized evidence is not clearly erroneous, and therefore the court properly denied appellant’s suppression motion.

**Affirmed.**