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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2027**

State of Minnesota,
Respondent,

vs.

Brandon Michael Kramer,
Appellant.

**Filed January 4, 2021
Affirmed
Bratvold, Judge**

Goodhue County District Court
File No. 25-CR-17-734

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Stephen F. O’Keefe, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from final judgments of conviction for eight counts of possessing pornographic work involving minors, appellant argues that the district court erred by denying his motion to suppress evidence obtained after executing an amended

search warrant for his apartment. First, appellant argues that officers acted outside the scope of the original search warrant for a single-family home when they entered his apartment on the lower level. Second, appellant argues that the amended search warrant for his apartment impermissibly relied on information from the initial warrantless entry. We assume, without deciding, that officers violated the Fourth Amendment by entering appellant's apartment. Applying the independent-source doctrine, we determine that the affidavit supporting the amended warrant, redacted of tainted information, independently provided probable cause for the search of appellant's apartment. Thus, we affirm without considering the parties' alternative arguments.

FACTS

The following summarizes the evidence and testimony received at the contested omnibus hearing.

In early 2017, the Bureau of Criminal Apprehension (BCA) conducted a statewide investigation into child pornography. A Goodhue County Sheriff's Office investigator testified that the BCA informed him about child pornography linked to an IP address at a Pine Island home. Specifically, the BCA informed the investigator that they had recovered eight images of child pornography from file-sharing technology that allowed the BCA to download the images directly from this particular IP address.

The investigator searched the property and tax records for the home and found it was "a single-family dwelling" owned by C.C. and his spouse. The investigator surveilled the home and, on March 14, 2017, saw a vehicle registered to appellant Brandon Michael Kramer parked outside the house. The investigator testified that he "ran [Kramer's]

plate . . . ran his driver's license, and saw his picture." The investigator agreed that he knew only that Kramer's vehicle was parked outside the residence.

The investigator applied for and obtained a search warrant that identified "the premises to be searched" as "the residence" of C.C. and his spouse, and stated the home's street address in Pine Island. A copy of the warrant and affidavit was received into evidence. The investigator and other officers executed the warrant on March 15, 2017. Kramer answered the door and officers detained him outside the home.

The investigator explained that, while executing the search warrant, the officers first "cleared the house" for safety reasons. This entailed entering the home, walking through, finding anyone inside, and temporarily detaining them outside while they searched the home. Officers cleared the upper level and detained C.C. At about the same time, other officers, including the investigator, cleared the lower level.

The investigator testified that he walked down a short flight of stairs to reach the lower level. The hallway led to a "wide open" door. As soon as the investigator walked through the doorway of the apartment, he "became immediately aware" it was a separate apartment. The investigator agreed that, at the same time, he said, "[w]e got to get a warrant for this." The investigator continued to walk into the apartment to clear it. The investigator testified that "when [he] walked into that room, [he] saw a computer to [his] left side, which had child pornography playing on it"

The investigator testified that he spoke with C.C., learned Kramer paid rent, and then applied for and obtained an amended warrant to search Kramer's apartment. The

amended warrant and affidavit was received into evidence and was similar to the original warrant. Like the original warrant, the amended warrant identified the “premises to be searched” as “the residence” of C.C. and his spouse, and stated the home’s street address in Pine Island. But the amended warrant added: “including the areas of the residence occupied” by Kramer. In the affidavit attached to the amended warrant, the investigator stated that he entered the apartment on the lower level and, “inside the bedroom,” he “observed a computer screen projecting images of pre-pubertal females, ages 3 to 6 years of age, running around.” The investigator learned the naked images were on a “live feed directly into the residence.”

C.C., the homeowner, testified that he, his spouse, and their children live on the upper level of a split-level home. C.C. also agreed that the home appears from the outside to be a single-family residence. The lower level has a “mother-in-law” apartment that has a door with a lock; the lower level also has storage rooms, a utility room, and a shared laundry room. C.C. testified that Kramer lived on the lower level. Kramer is C.C.’s first cousin and their living arrangement was informal—Kramer never signed a lease and paid C.C. \$350 a month as rent “under the table” as well as some utilities. C.C. testified that they had one internet account for the entire home and wireless access throughout the home.

After testimony ended, Kramer argued that the evidence obtained with the amended warrant was tainted because the investigator’s initial entry of his apartment was outside the scope of the original warrant and he used information discovered in the illegal entry to secure the amended warrant. In a memorandum opposing the motion to suppress, the state

contended that the investigator acted within the scope of the initial warrant because he reasonably believed the home was a single-family residence, the information in the initial search-warrant application provided probable cause to search the entire residence, and “the search of the space occupied by the defendant did not occur until the second search warrant was signed by a District Court Judge.”

In a written decision, the district court made key factual findings before its legal determinations. The district court found that, “from the outside,” the home “appears to be a single family residence” and no “clear indicators” suggested that the home was a multiple-occupancy residence. The district court also found that when the investigator “got to the bottom of the basement steps, he saw the door to the rental area. He could tell immediately that this was a separate unit. Because the door to this unit was wide open, he proceeded into the apartment because he was ‘still focused on safety.’” According to the district court’s findings, “after the entire house was cleared, [the investigator] was told by the owners that [Kramer] was the occupant of the basement apartment. He then applied for and obtained an amended search warrant.” The district court also found that the “search of the area occupied by [Kramer] did not take place until after the amended search warrant was obtained.”

Addressing Kramer’s arguments, the district court determined that the original and amended affidavits “had more than sufficient probable cause” to support the warrants. The district court found the initial entry of the apartment “was done for safety reasons and did not violate [Kramer’s] constitutional rights.” Once the investigator entered the apartment,

the district court determined that “there was plain view of child pornography displayed on the computer screen.” Finally, the district court determined that, “in the exercise of caution, [the investigator] obtained an amended search warrant,” therefore “the officers acted reasonably by applying for a second search warrant after learning while executing the search warrant that the home contained a mother-in-law apartment where [Kramer] was living.” The district court denied Kramer’s motion to suppress.

After a five-day trial, the jury found Kramer guilty of eight counts of possessing pornographic work involving minors in violation of Minn. Stat. § 617.247, subd. 4 (2018). The district court sentenced Kramer to 54 months in prison. Kramer appeals.

DECISION

Kramer argues the officers exceeded the scope of the original search warrant when they entered his basement apartment, and then relied on the fruits of that warrantless search to obtain an amended warrant authorizing a search of Kramer’s apartment. Kramer contends the initial illegal entry requires exclusion of all evidence obtained while executing the amended search warrant. Kramer also argues that the independent-source doctrine does not save the evidence because the original warrant did not provide a nexus between the criminal activity and the place to be searched.

The state responds that the officers did not exceed the scope of the original search warrant because the warrant identified the Pine Island home, police entered Kramer’s apartment only to “clear” it before executing the valid original search warrant, found child

pornography in plain view, and acted reasonably when they secured an amended warrant before searching Kramer's apartment.¹

When reviewing a district court's pretrial order denying a motion to suppress evidence, "we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). Appellate courts independently review facts that are not in dispute, and determine, "as a matter of law, whether the evidence need be suppressed." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)).

Generally, evidence obtained as the direct or indirect result of an unlawful search under the Fourth Amendment must be suppressed and may not be introduced at trial. *Murray v. United States*, 487 U.S. 533, 536-37, 108 S. Ct. 2529, 2533 (1988). The independent-source doctrine, however, permits "evidence obtained pursuant to a warrant that is genuinely independent of a prior unlawful search and would have been obtained 'even if what actually happened had not occurred.'" *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996) (quoting *Murray*, 487 U.S. at 542 n.3, 108 S. Ct. at 2536 n.3). "The ultimate question, therefore, is whether the search pursuant to warrant was in fact a

¹ The state did not adequately brief the independent-source doctrine. Still, "it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted).

genuinely independent source of the information and tangible evidence at issue”
Murray, 487 U.S. at 542, 108 S. Ct. at 2536.

The independent-source doctrine requires a two-step analysis. *Id.*; *State v. Lozar*, 458 N.W.2d 434, 439-40 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). The “court must determine (1) whether the decision of the issuing magistrate was ‘affected’ by the tainted information, and (2) whether that information prompted law enforcement officials to seek the warrant.” *Lieberg*, 553 N.W.2d at 55.²

The first step requires us to determine whether the amended warrant application, redacted of tainted information, established probable cause. *Id.* Probable cause determinations involve “a practical, common-sense decision whether, given all the circumstances set forth . . . there is a fair probability that contraband or evidence of a crime

² Kramer contends that this court has established two separate standards by which to measure the first *Murray* prong: an “effect on the magistrate test” and a “sanitized affidavit” test. We disagree because *Lieberg* connected the two tests.

[T]he trial court must determine (1) whether the decision of the issuing magistrate was “affected” by the tainted information, and (2) whether that information prompted law enforcement officials to seek the warrant. In performing this two-step analysis, the trial court may answer the first question by determining whether a sanitized affidavit would establish probable cause, but must conduct a factual inquiry into whether the unlawful search prompted the authorities to seek a warrant.

553 N.W.2d at 55. The “sanitized affidavit” test determined whether the tainted information affected the magistrate’s decision to issue the warrant, and whether probable cause to issue the warrant existed without the tainted information. The “ultimate question” is the same: “whether the search pursuant to warrant was in fact a genuinely independent source of the information and tangible evidence at issue.” *See Murray*, 487 U.S. at 542, 108 S. Ct. at 2536.

will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983). The Minnesota Supreme Court explained that probable cause requires “a direct connection, or nexus, between the alleged crime and the particular place to be searched.” *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). “An appellate court reviews a district court’s decision to issue a warrant only to consider whether the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. McClain*, 862 N.W.2d 717, 727 (Minn. App. 2015) (quoting *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001)).

Here, the district court found the original warrant “provided more than sufficient probable cause,” and Kramer did not challenge the original warrant. The district court also found that the “amended warrant described the rented area and added it to the search area. The affidavit described the circumstances of discovering that the house contained a separate rented area. The affidavit provided *more than sufficient probable cause* for the Judge to sign the amended search warrant.” (Emphasis added.)

Two cases instruct our analysis. In *Lozar*, an informant told police that the defendant’s greenhouse contained growing marijuana plants. 458 N.W.2d at 437. Police used details from the informant to find the greenhouse in a rural location, opened the greenhouse door without a warrant, and saw marijuana plants inside. *Id.* Police then obtained a search warrant that relied in part on the officers’ observations. *Id.* The state did not dispute that the officers’ first entry of the greenhouse was an unlawful search. *Id.* at 438. But this court determined that the district court correctly denied the motion to suppress

because the search-warrant affidavit, “redacted of the tainted information, *independently provides probable cause* for the warrant’s issuance” because the affidavit summarized the details provided by the informant. *Id.* at 439 (emphasis added).

In *State v. Hodges*, the defendant concealed stolen vehicles in a warehouse that he rented from a third party. 287 N.W.2d 413, 414 (Minn. 1979). The third party saw the stolen vehicles and informed police. *Id.* at 415. Police entered the warehouse without a warrant using the third party’s key. *Id.* Police later obtained a search warrant for the warehouse based in part on their observations during the warrantless entry. *Id.* The supreme court first determined that the warrantless entry of the warehouse violated the Fourth Amendment because the third party’s consent was insufficient to legally enter. *Id.* at 415-16. Even so, the supreme court held that the district court correctly denied suppression of the evidence because the information provided by the third party and recited in the affidavit, “*by itself and without the information the police had obtained pursuant to the warrantless entry*, would have justified the issuance of the warrant.” *Id.* (emphasis added).

Here, the amended affidavit included the investigator’s observations from inside Kramer’s apartment of “a computer screen projecting images of pre-pubertal females, ages 3 to 6 years of age, running around.” But that was only one paragraph in an 18-page warrant and is easily redacted. The sanitized, amended affidavit detailed the BCA’s investigation and its confirmation that officers downloaded child pornography from the particular IP address located at C.C.’s Pine Island home, and explained the need to seize every electronic device connected with this IP address.

More specifically, without the tainted information, the amended affidavit provided probable cause because it included the following information: (1) the BCA's findings that "a device at [the home's] IP address . . . was discovered to be sharing torrents³ containing files of images believed to be child pornography" through BitTorrent;⁴ (2) "using a computer running investigative BitTorrent software, a direct connection was made to the device at [the home's IP address]"; (3) the BCA downloaded three "file(s) that the device at [the home's IP address] was making available" through BitTorrent; (4) that those files "contain[ed] videos that depict minor children engaging in sexual acts"; (5) "that searches and seizures of evidence from computers and other internet access devices . . . require agents to seize most or all electronic items [using the IP address] . . . to be processed later by a qualified digital evidence expert in a controlled environment"; (6) "electronic data contained on cell phones or other portable electronic devices are easily transferred to other electronic mediums such as computers, flash drives, removable storage devices, and other devices"; (7) "collectors of child pornography often maintain their collections, in a digital or electronic format, in a safe, secure, and private environment"; (8) child pornography collectors "often maintain [their collections] for many years"; (9) "[c]ollectors frequently

³ As described in the warrant affidavit, "[a] torrent file is a small file that contains information about the file(s) and provides a method for a user to download the file(s) referenced in the torrent from other BitTorrent users." Put simply, a "torrent" is an electronic file that contains information about other files and how to access them.

⁴ As stated in the warrant affidavit, BitTorrent is a peer-to-peer (P2P) file-sharing platform that "allows people using P2P software to download and share files with other P2P users using the same or compatible P2P software."

keep their collection close by”; (10) collectors share collections with other “similar minded individuals” as “part of the validation process that their behavior is normal.”

Without the tainted information obtained by the first entry of Kramer’s apartment, the amended affidavit provided more than a “fair probability” that evidence of digital child pornography on an electronic device may be found anywhere in C.C.’s home, including the area rented by Kramer. *See Gates*, 462 U.S. at 238, 103 S. Ct. at 2332. Thus, the sanitized affidavit provided a nexus between Kramer’s apartment and the criminal activity. *See Souto*, 578 N.W.2d at 747. We conclude that the tainted information in the amended affidavit did not affect the judge’s decision to issue the amended warrant.

Next, we consider the second step of the independent-source doctrine: whether the tainted information prompted the officers to seek a warrant for Kramer’s apartment. This is a factual determination for the district court. *Lieberg*, 553 N.W.2d at 58. Kramer’s brief to this court does not challenge the application of the doctrine under the second step. The district court determined that “as soon as the investigator discovered the existence of a mother-in-law apartment within the residence . . . he stopped and applied for a second search warrant with the updated information.” The record supports the district court’s finding because the investigator testified that, upon noticing the separate apartment, he stated, “[w]e got to get a warrant for this.”

The amended search warrant, redacted of tainted information, also supports the district court’s determination that officers planned to search the entire residence, including the mother-in-law apartment once they found it on the lower level. As discussed above, the sanitized affidavit established that all electronic devices connected to the IP address must

be seized for forensic analysis. Thus, the tainted information did not prompt the officers to obtain a warrant for Kramer's apartment; police obtained the amended search warrant based on the investigator's discovery of the apartment and the information in the original affidavit.

We also conclude that applying the exclusionary rule here would put police and society in a worse position than if no warrantless entry had occurred. *Murray* provides instructive reasoning:

Knowledge that [child pornography] was in the [apartment] was assuredly acquired at the time of the unlawful entry. But it was also acquired at the time of entry pursuant to the warrant, and if that later acquisition was not the result of the [unlawful] earlier entry there is no reason why the independent source doctrine should not apply. Invoking the exclusionary rule would put the police (and society) not in the *same* position they would have occupied if no violation occurred, but in a *worse* one.

See Murray, 487 U.S. at 541, 108 S. Ct. at 2535. Because the amended affidavit, minus the tainted evidence, provided probable cause to search Kramer's apartment, there was an independent source to justify the search.⁵

Even if we assume that the amended affidavit used to obtain the amended search warrant included tainted information, the tainted information did not affect the judge's

⁵ We rest our decision on a different rationale than that of the district court. The district court concluded probable cause existed for both warrants, relied alternatively on the plain-view doctrine, and determined the officers acted reasonably within the scope of the original warrant. Our decision rests on the independent-source doctrine because it is an alternative ground supported by the facts in the record, addressed by parties' legally supported arguments, and which does not require this court to expand any relief. *See State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

decision to issue the amended warrant, nor did it prompt police to apply for the amended search warrant. Thus, the district court did not err in denying Kramer's motion to suppress the evidence, and we do not reach or decide the alternative arguments raised by the parties.

Affirmed.