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**DISTRICT II**

May 30, 2018

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You are hereby notified that the Court has entered the following opinion and order:

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2017AP641-CR

State of Wisconsin v. Brandon M. Kline (L.C. # 2014CF996)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Brandon M. Kline appeals from a judgment of conviction entered upon his guilty plea to one count of possessing child pornography. Kline argues that the circuit court erred in denying his motion to suppress evidence seized pursuant to the execution of a search warrant. Based

upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We affirm.

In August 2014, Special Agent Tamara Taubel applied for a warrant to search Kline's home and belongings for evidence of the crime of possessing child pornography. Taubel's affidavit explained that, in June 2014, the Department of Homeland Security contacted her about the posting of eighty-three images of "child erotica" to Image Source, an image sharing website. The images were posted by NINJACLOWN28, with a linked email address of Brandonfnkline2@yahoo.com. NINJACLOWN28 accessed Image Source from January 12, 2013, to March 15, 2013, when Image Source locked the account. The next week, a user from the same IP address tried to register with Image Source, this time using the name NINJACLOWN48, and an email address of Bmkline2009@gmail.com. The IP address used to access the internet and upload the images was traced to a Kim Kline located in Menomonee Falls. Taubel confirmed that Kim's son, Brandon Kline, lived at that address. Taubel reviewed the images uploaded to Image Source and observed child erotica, nude images, anime involving children in incest scenes, and nine images of child pornography. Taubel's affidavit graphically described the images alleged to be child pornography.

Based on her training and experience, Taubel averred that when a digital image is opened or accessed through the internet, it is saved in a computer's cache and investigators can review the cache to see the history of "images opened/accessed by the user of the computer long after the image has been opened or accessed." Similarly, "each time an individual views an online

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

digital image, that image, or remnants of that image, are automatically stored in the hard-drive of the computer used to view the image.” A forensic examination of the hard-drive can retrieve the stored image even years after the image is deleted.

The affidavit further asserted that Taubel’s training and experience provided her with knowledge that individuals who possess or view child pornography commonly do so in the privacy and security of their home and that individuals engaged “in the downloading, viewing, storing, uploading and possession of child pornography and child erotica, ‘collect’ the images and videos,” because they cannot easily be reacquired once deleted. Thus, the images are retained “for substantial time periods including years.”

The circuit court issued the warrant and it was executed the next day. Approximately 800 images of child pornography were discovered on an iPad in Kline’s bedroom and he was charged with ten counts of possessing child pornography. Kline moved to suppress the images alleging that the warrant was not supported by probable cause. The circuit court denied the motion. Kline appeals.

A search warrant may issue only upon a finding of probable cause by a neutral and detached magistrate. *State v. Higginbotham*, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991). A magistrate must be “apprised of sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched.” *Id.* (citations omitted). On review, we accord great deference to the magistrate’s determination of probable cause. *State v. Multaler*, 2002 WI 35, ¶7, 252 Wis. 2d 54, 643 N.W.2d 437. We will uphold the decision to issue a warrant unless the

facts in the supporting affidavit were “clearly insufficient to support a finding of probable cause.” *Id.*

We conclude that Taubel’s affidavit established probable cause to believe that evidence of the crime of possessing child pornography would be found in the places to be searched. The record before the warrant-issuing magistrate showed that NINJACLOWN28, brandonfinkline@yahoo.com, uploaded nine images of child pornography and seventy-four images of child erotica from an IP address located within Kline’s residence. Right after NINJACLOWN28 was blocked, another individual from the same IP address attempted to set up a new Image Source account using the email address, Bmkline2009@gmail.com.

Kline argues that because the Image Source activity occurred between January and March 2013, the information was stale and as such, there was insufficient probable cause to believe that evidence of child pornography would still be located at his residence in August 2014. We disagree. Given Taubel’s averment that individuals with a demonstrated interest in child pornography are unlikely to voluntarily dispose of their images, the magistrate could reasonably infer there was a fair probability that Kline still possessed child pornography. *See State v. Gralinski*, 2007 WI App 233, ¶¶30-31, 306 Wis. 2d 101, 743 N.W.2d 448. Similarly, Taubel’s assertions that forensic examiners can recover evidence of child pornography from electronic devices long after the images were accessed or destroyed supports the magistrate’s probable cause determination. *Id.*, ¶¶31-32. As stated in *Gralinski*:

Because possession of child pornography on one’s computer differs from possession of other contraband in the sense that the images remain even after they have been deleted, and, given the proclivity of pedophiles to retain this kind of information, as set forth in the affidavit supporting the request for the search warrant, there was a fair probability that Gralinski’s computer had these images on it at the time the search warrant was issued and

executed. ... Thus, at the time the warrant issued and was executed, the probable cause to search Gralinski's residence was not stale.

*Id.*, ¶31.

Kline attempts to distinguish *Gralinski*, arguing that whereas Gralinski purchased an ongoing website membership, Taubel's affidavit set forth a discrete period of time during which Kline uploaded child pornography. According to Kline, the averments do not show that he is a "collector" of child pornography likely to hold on to images for eighteen months. We are not persuaded. First, we agree with the State that when compared with Gralinski's website membership, Kline's actual possession of pornographic images provides as much or more reason to believe that stored images would be located in his home. Second, even if we do not consider the likelihood that Kline "collected" or stored images, a probable cause determination is supported by Taubel's averments concerning the ability of forensic experts to recover evidence long after images are accessed or destroyed. It can hardly be said that the facts before the warrant-issuing magistrate were "clearly insufficient to support a finding of probable cause."

*Multaler*, 252 Wis. 2d 54, ¶7.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*