

FLORIDA CASE LAW UPDATE 18-04

Case: Mardosas v. State, 43 FLW D2264b (Fla. 1st DCA)

Date: October 3, 2018

Subject: Under the "fellow officer rule," the search warrant in a child pornography investigation was not rendered invalid where the affiant did not personally view the pornographic video which had been described in the warrant affidavit, but instead relied on the description provided by a fellow detective who had personally viewed the same video in a law enforcement database, and relayed the information to the affiant

FACTS: Members of the Tallahassee Police Department conducted an extended investigation into the online distribution of child pornography which utilized a file-sharing software tool known as "BitTorrent Roundup." As part of the investigation, detectives identified a residence in Leon County where online exchanges of offending files were believed to be taking place. As part of his affidavit for a search warrant for the residence, the lead detective included a graphic description of a video containing child pornography, which the investigation revealed had been downloaded onto a computer device at the premises. The affiant was not able to personally view the video, but instead relied on a detailed description provided by another detective who had viewed the exact video on a law enforcement database maintained by the National Center for Missing and Exploited Children. The warrant was issued and later executed at the residence, resulting in the seizure of a computer and hard drive. After review of the seized items, the defendant was charged with 421 counts of aggravated possession of child pornography. At trial, the defendant moved for suppression of the warrant, arguing that the affiant's failure to personally view the described video which was the basis for probable cause rendered the warrant invalid. The trial court denied the Motion, and the defendant entered a plea of no contest, reserving his right to appeal the suppression issue.

RULING: The First District Court of Appeal upheld the trial court, holding that incorporation of the description provided by the fellow detective did not invalidate the probable cause established in the affidavit.

DISCUSSION: Citing to *State v. Bowers*, 87 So.3d 704 (Fla. 2012) and *U.S. v. Carter*, 543 F.3d 442 (8th Cir. 2008), the court applied the "fellow officer rule" to cure any deficiency which may have existed because of the affiant's failure to personally view the described video. The court explained that under the Florida Supreme Court's application of the "fellow officer rule" as contained in *Bowers*, if an officer relies on a chain of evidence to formulate his or her belief as to the existence of probable cause for a search or seizure, the rule excuses the officer from possessing personal knowledge of each link in the chain of evidence if the collective knowledge of all the officers involved supports a finding of probable cause, and the officer is aware of this collective knowledge. When applying this rationale to the facts of this case, the totality of information supported the finding of probable cause, justifying the issuance of the warrant.

COMMENTS: It is interesting to note that the detective who provided the detailed description of the video content apparently did so by identifying the Hash Algorithm of the video which was known to have been downloaded at the residence, and then matching that Hash value (basically, a unique digital fingerprint) to the exact same video being maintained in the NCMEC database. Since the Hash values prove that both digital files are identical, officers are able to provide a valid file description without actually accessing the suspect device.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.