COURT OF APPEALS
DECISION
DATED AND FILED

November 22, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2785-CR **Cir. Ct. No. 2002CF2632**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT JOHN HICKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: R. ALLEN BATES, Judge. *Affirmed*.

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Robert Hicks appeals from a judgment convicting him on five counts of possessing child pornography. The judgment resulted from picture files and other evidence discovered on a computer. He contends on appeal

that the trial court erroneously denied his motion to suppress the computer evidence. We affirm.

¶2 Hicks lived with Melanie Morgan, who owned a computer that Hicks used. Police officers asked her for permission to examine it, and Morgan consented. A computer expert's examination of the computer hard drive revealed the digital images used to convict Hicks.

¶3 Hicks filed a pretrial motion to suppress the images and other evidence obtained from the computer, arguing that Morgan, even as the computer's owner, could not validly consent to a search of his password-protected files. The trial court concluded that Morgan's consent was sufficient to allow a search of any and all data on the computer hard drive, because she owned it. The court made its ruling without an evidentiary hearing, after concluding that one was not necessary.

¶4 On appeal, Hicks renews his argument that police unlawfully searched his password-protected files. However, there is no evidence in the record that his files were, in fact, password protected, and there is no evidence showing whether Morgan knew the password, or whether his protected files contained the inculpatory evidence police found. When asked at the suppression hearing what evidence he would produce if given the opportunity, counsel for Hicks stated only that he would call Morgan as a witness, without elaborating on what she might say. Therefore, Hicks cannot claim error in the trial court's ruling denying an evidentiary hearing. In seeking relief from the trial court, the moving party must state an evidentiary hypothesis supported by a sufficient statement of facts to warrant the requested relief. *See* ***State v. Robinson***, 146 Wis. 2d 315, 327-28, 431 N.W.2d 165 (1988). Hicks failed to do so here.

¶5 In any event, if the trial court erroneously denied the motion without an evidentiary hearing, the error was harmless. The harmless-error rule applies to suppression issues. *See* ***State v. Curbello-Rodriguez***, 119 Wis. 2d 414, 425, 351 N.W.2d 758 (Ct. App. 1984). The test for harmless error is whether it is reasonably possible that the error contributed to the conviction. ***State v. Jones***, 2002 WI App 196, ¶49, 257 Wis. 2d 319, 651 N.W.2d 305. Here, the State's computer expert testified at trial that all of the evidence the State used against Hicks came from either the computer operating system, or files Hicks deleted, which were then consigned to unallocated common space on the computer hard drive. Therefore, none of it came from files stored on the computer that Hicks could arguably claim as within his password-protected area of privacy. Proving that such an area existed would have provided him no benefit.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.