REL: May 29, 2020

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0886

State of Alabama

v.

Jeffrey Dale Hunt

Appeal from Lauderdale Circuit Court
(CC-17-215)

On Application for Rehearing

McCOOL, Judge.

This Court's opinion of March 13, 2020, is withdrawn, and the following opinion is substituted therefor.

The State of Alabama, pursuant to Rule 15.7, Ala. R. Crim. P., appeals a pretrial order of the Lauderdale Circuit

Court that granted, in part, a motion to suppress filed by Jeffrey Dale Hunt. For the reasons set forth herein, we reverse and remand.

Facts and Procedural History

On December 27, 2016, Drew Harless, a detective with the Florence Police Department in Lauderdale County, submitted to a judge of the Lauderdale Circuit Court an affidavit in which Det. Harless sought a warrant authorizing the search of Hunt's home in Florence. In that affidavit, Det. Harless stated:

> "I was contacted by Julie Fuller, an Intelligence Analyst with the Alabama Law Enforcement Agency (ALEA), on November 30, 2016. She told me that the Internet Crimes Against Children (ICAC) Taskforce had received a cyber tip about child pornography being sent from an Internet Protocol (IP) address in Florence. She forwarded the cyber tip to me. I learned the following from the cyber tip: It originated from Yahoo! Inc. They reported to the National Center For Missing & Exploited Children (NCMEC) on October 8, 2016, that an apparent image of child pornography had been uploaded to Yahoo messenger. Yahoo provided NCMEC with the IP address from where the image was located and the date and time of when it was uploaded. ... The cyber tip included 2 images. It also included a NCMEC report that has a line in it that reads, 'I reviewed the uploaded file and found what appears to be CHILD PORNOGRAPHY.' I reviewed the 2 images. One image shows a female lying on her back with her legs up and spread, exposing her vagina. It is possible that she is over the age of 17. The other image shows a different female lying on her back with her legs up and spread, exposing her vagina and

> anus. Her breasts are also exposed. She appears to be under the age of 17.
>
> "ALEA had already sent a subpoena to AT&T, the internet service provider (ISP) associated with the IP address, requesting subscriber information. AT&T identified the subscriber as Jeff Hunt [and provided an address for Hunt's home]. ALEA also ... located Jeffrey Dale Hunt with [that address]. I drove past [the address,] and there was a 2008 Hyundai Accent parked in the drive way. The tag [on that automobile] was registered to Jeffrey Dale Hunt. There was also a 1999 Toyota Tacoma parked on the street in front of the address. That tag [on that automobile] was registered to Jeff Hunt."

(C. 61-62.) Relying on those facts, Det. Harless requested a warrant authorizing the search of Hunt's home for evidence of child pornography, and that same day the Lauderdale County circuit judge issued the search warrant ("the Lauderdale warrant") to Det. Harless and directed the warrant "TO ANY LAW ENFORCEMENT OFFICER OF THE STATE OF ALABAMA." (C. 66.) (Capitalization in original.)

Also on December 27, 2016, Det. Harless submitted to a judge of the Colbert District Court an affidavit setting forth the same facts Det. Harless set forth in his affidavit seeking the Lauderdale warrant. In addition to those facts, Det. Harless stated that "included in the cyber tip was information showing that" Hunt worked for Martin Supply Company ("Martin

Supply"), which is located in Colbert County. (C. 70.) Det. Harless further stated:

> "I drove past [Martin Supply] on December 27, 2016, and there was a black Hyundai Accent parked in front of the business. It was backed into a parking spot in front of the building so I could not see the tag, but it appeared to be the Hyundai Accent that was previously parked in the drive way at [Hunt's home].
>
> "I am also applying for a search warrant in Lauderdale County for [Hunt's home]. I plan on executing the search warrant during business hours when Jeffrey Hunt will more than likely be at work [at Martin Supply]. At the time the search warrant is executed at [Hunt's home], I want to seize any cell phones, computer laptops, computer tablets, or other electronic devices that may be on Jeffrey Hunt's person, or in his vehicle, that could access computers he may have at his home ..., as it is possible to erase or delete data or information on one computer from another different computer in a different location.
>
> "I therefore request a search warrant for the person of Jeffrey Dale Hunt and whichever of his vehicles that he may drive to his place of employment at [Martin Supply] ... in order to seize any electronic data storage devices, his cell phone or phones, laptop computers, tablet computers, or other electronic devices capable of connecting to the internet or computers that Jeffrey Hunt owns. Because computer files and data are sometimes password protected or encrypted and due to the extensive time involved in data recovery and analysis, I request that if electronic storage devices such as computers are seized as a result of this search warrant, that the court authorize the seizure and the removal of the devices to a laboratory environment for the forensic examination

> of the same by persons qualified to conduct said examination."

(C. 70.) That same day, the Colbert County district judge issued a search warrant ("the Colbert warrant") to Det. Harless and directed the warrant "TO ANY LAW ENFORCEMENT OFFICER OF THE STATE OF ALABAMA." (C. 72.) (Capitalization in original.) The Colbert warrant authorized the search of Hunt's person and any of Hunt's automobiles located at the premises of Martin Supply for "[e]lectronic data storage devices, cell phone or cell phones, laptop computers, tablet computers, and other electronic devices capable of connecting to the internet or computers owned by Hunt." (C. 72.)

On December 28, 2016, the Lauderdale and Colbert warrants were executed simultaneously by officers of the Florence Police Department. Det. Harless and another officer from the Florence Police Department executed the Colbert warrant, but no Colbert County law enforcement officers were involved in the execution of the Colbert warrant. When Det. Harless arrived at Martin Supply's premises, he told an employee he needed to speak with Hunt, and the employee took him to Hunt's office, where Det. Harless observed Hunt "holding his cell phone in his hand" and observed Hunt's laptop computer

"sitting on the ground ... in a laptop bag ... at [Hunt's] feet." (R. 49.) Det. Harless "told [Hunt] ... that [he and the other officer] were there in regards to child pornography and that [they] did have a search warrant for [Hunt's] items," but Det. Harless also "told [Hunt] he wasn't under arrest and he didn't have to speak with [Det. Harless]." (R. 78.) According to Det. Harless, he then asked Hunt if the laptop computer at Hunt's feet belonged to Hunt, and Hunt answered affirmatively and "said there was child pornography on it." (R. 81.) Det. Harless then seized Hunt's cellular telephone, Hunt's personal laptop computer, and two external data-storage devices, and Det. Harless then returned to the Florence Police Department, followed by Hunt in his own automobile. At the Florence Police Department, Det. Harless again explained that Hunt was not under arrest and was not required to speak with Det. Harless. (R. 84.) Nevertheless, according to Det. Harless, Hunt admitted that he "had sent pictures of child pornography ... to someone he'd met on the internet." (R. 85.) Subsequent searches of Hunt's laptop computer, cellular telephone, and electronic devices seized from Hunt's home unearthed multiple images of child pornography.

On May 24, 2018, a Lauderdale County grand jury indicted Hunt for 2,169 counts of production of obscene matter containing a visual depiction of a person under 17 years of age involved in obscene acts, a violation of § 13A-12-197, Ala. Code 1975, and 4,378 counts of possession of obscene matter containing a visual depiction of a person under 17 years of age involved in obscene acts, a violation of § 13A-12-192(b), Ala. Code 1975.

On May 29, 2019, Hunt filed a motion to suppress all evidence resulting from the Lauderdale County and Colbert County searches. As grounds for suppressing the evidence resulting from the Colbert County search, Hunt cited § 15-5-1 et seq., Ala. Code 1975, for the proposition that a search warrant may be executed only by the sheriff or any constable of the county where the search occurs. Thus, Hunt argued, because Det. Harless was not the sheriff or a constable of Colbert County, Det. Harless "did not have the authority to take any action outside the county of his police jurisdiction," i.e., Lauderdale County. (C. 15.) In addition, Hunt noted that the cyber tip indicated that the images suspected to be child pornography had been uploaded

from an IP address traced to Hunt's home. Thus, Hunt argued, Det. Harless did not have probable cause to believe Hunt was in possession of child pornography at the premises of Martin Supply, Hunt's place of employment. Hunt also argued that the Colbert warrant was limited to searches of Hunt's person and automobile and therefore did not justify a search of Hunt's office. Hunt further argued that the Colbert warrant authorized Det. Harless to search for Hunt's electronic devices but did not authorize the search of those devices. Thus, Hunt argued, after Det. Harless seized Hunt's cellular telephone and laptop computer, Det. Harless was required to obtain a second warrant authorizing him to search the contents of those devices. Finally, Hunt argued: "Yahoo! and NCMEC have an agency relationship. NCMEC is without question a government entity. NCMEC was required to get a warrant before conducting a search. Because no warrant was obtained before the initial search in this case, all evidence seized is due to be suppressed." (C. 37.)

On June 4, 2019, the Lauderdale Circuit Court held a hearing on Hunt's motion to suppress and heard testimony from

Det. Harless, who testified to the facts set forth above. That same day, the court entered an order that states:

> "This Court, after consideration of the live testimony, exhibits, Code of Alabama, caselaw and Alabama Rules of Criminal Procedure, hereby GRANTS the Defendant's Motion to Suppress all evidence resulting from the Colbert County search and search warrant because, among other things, the detective executing the search was not 'a sheriff or any constable of the county' of Colbert County (See Code of Alabama 15-5-1, 15-5-5, and Committee Comments to Rule 3.6 of the Alabama Rules of Criminal Procedure). The Defendant's Motion to Suppress with regard to the Lauderdale County search warrant and the conduct of NCMEC, Yahoo! is DENIED."

(C. 57.) The State filed a timely notice of appeal.

Standard of Review

> "In State v. Landrum, 18 So. 3d 424 (Ala. Crim. App. 2009), this Court explained:
>
> > "'"This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute. See State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996); State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999)." State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004). In State v. Hill, 690 So. 2d 1201 (Ala. 1996), the trial court granted a motion to suppress following a hearing at which it heard only the testimony of one police officer. Regarding the applicable standard of review, the Alabama Supreme Court stated, in pertinent part, as follows:

> > > "'"'Where the evidence before the trial court was undisputed the ore tenus rule is inapplicable, and the Supreme Court will sit in judgment on the evidence de novo, indulging no presumption in favor of the trial court's application of the law to those facts.' Stiles v. Brown, 380 So. 2d 792, 794 (Ala. 1980) (citations omitted). ..."
>
> > "'State v. Hill, 690 So. 2d at 1203-04.'
>
> "State v. Landrum, 18 So. 3d at 426. Here, [Det. Harless] was the sole witness to testify at the suppression hearing, and his testimony was undisputed. Therefore, the only issue before this Court is whether the circuit court correctly applied the law to the facts set forth in [Det. Harless's] testimony, and we afford no presumption in favor of the circuit court's ruling."[1]

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[1]Although Hunt contends that the facts "are most definitely disputed," Hunt's brief, at 14, his brief does not direct this Court's attention to any disputed fact. In addition, the only allegedly disputed "fact" raised by Hunt's counsel at oral argument was the parties' disagreement as to whether the Colbert warrant was supported by probable cause. However, whether a given set of facts is sufficient to give rise to probable cause to search is a legal conclusion, Ex parte State, 121 So. 3d 337, 351 (Ala. 2013), and a disagreement over that legal conclusion does not constitute a disputed fact. See Garza v. State, 126 S.W.3d 79, 86 (Tex. Crim. App. 2004) ("That appellant 'disagrees with the conclusion that probable cause was shown as a matter of law' is not the same as appellant controverting the facts." (citation omitted)).

State v. Cheatwood, 267 So. 3d 882, 884-85 (Ala. Crim. App. 2018).

Analysis

On appeal, the State argues that the circuit court erred by suppressing the evidence resulting from the Colbert County search on the basis that Det. Harless was not the sheriff or a constable of Colbert County. For the reasons set forth herein, we agree.

I.

In support of its ruling suppressing the evidence resulting from the Colbert County search, the circuit court relied on § 15-5-1, Ala. Code 1975, and § 15-5-5, Ala. Code 1975. Section 15-5-1, which defines a search warrant, provides:

> "A 'search warrant' is an order in writing in the name of the state signed by a judge, or by a magistrate authorized by law to issue search warrants, and directed to the sheriff or to any constable of the county, commanding him to search for personal property and bring it before the court issuing the warrant."

(Emphasis added.) Section 15-5-5, which governs the issuance and execution of a search warrant, provides:

> "If the judge or the magistrate is satisfied of the existence of the grounds of the application or

> that there is probable ground to believe their existence, he must issue a search warrant signed by him <u>and directed to the sheriff or to any constable of the county</u>, commanding him forthwith to search the person or place named for the property specified and to bring it before the court issuing the warrant."

(Emphasis added.)

Relying on the language in § 15-5-1 and § 15-5-5 that we have emphasized above, the circuit court concluded that, because Det. Harless was not the sheriff or a constable of Colbert County, he could not lawfully execute the Colbert warrant. However,

> "[a]lthough a legislative act generally controls over a court rule, Section 6.11 of Amendment 328 of the Alabama Constitution of 1901 confers on [the Alabama Supreme] Court the authority to 'make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts,' subject to the rules being changed by the legislature only 'by a general act of statewide application.' See, also, <u>Ex parte Foshee</u>, 246 Ala. 604, 21 So. 2d 827 (1945); <u>Holsemback v. State</u>, 443 So. 2d 1371 (Ala. Crim. App. 1983); Committee Comments to Rule 1.1, Ala. R. Crim. P. The Alabama legislature has recognized the <u>supremacy of [the Alabama Supreme] Court's Rules of Criminal Procedure over statutory provisions on the same subject</u>, stating in § 15-1-1, Ala. Code 1975: 'Any provision of this title ["Criminal Procedure"] regulating procedure shall apply only if the procedural subject matter is not governed by rules of practice and procedure adopted by the Supreme Court of Alabama.'"

Ex parte Oswalt, 686 So. 2d 368, 370-71 (Ala. 1996) (emphasis added). Thus, in order to determine whether Det. Harless could lawfully execute the Colbert warrant, we begin by looking to the Alabama Rules of Criminal Procedure to determine whether those rules govern the same procedural matter governed by § 15-5-1 and § 15-5-5, i.e., to whom a search warrant is to be directed. See Ex parte Oswalt, supra (Alabama Supreme Court looked to the language of Rule 3.8, Ala. R. Crim. P., instead of the language of § 15-5-2, Ala. Code 1975, to determine whether a search warrant was authorized under Alabama law).

As does § 15-5-1, Rule 3.6, Ala. R. Crim. P., also defines a search warrant and, for the most part, defines the term in the same language used in § 15-5-1 -- with one significant exception. Rule 3.6 defines a search warrant as follows:

> "A search warrant is a written order, in the name of the state or municipality, signed by a judge or magistrate authorized by law to issue search warrants, directed to any law enforcement officer as defined by Rule 1.4(p), [Ala. R. Crim. P.,] commanding him to search for personal property and, if found, to bring it before the issuing judge or magistrate."

(Emphasis added.) Thus, whereas § 15-5-1 provides that a search warrant is to be directed to the sheriff or any constable of the county where the search is to occur, Rule 3.6 provides that a search warrant is to be directed to any law enforcement officer as defined by Rule 1.4(p), Ala. R. Crim. P. Therefore, as one commentator has noted:

> "Rule 3.6 is almost identical with Alabama Code 1975, § 15-5-1, except that Rule 3.6 states that the search warrant is directed to 'any law enforcement officer,' and § 15-5-1 states that the search warrant is directed to 'the sheriff or any constable of the county.' The Rule, therefore, substantially expands the group of persons to whom a search warrant may be directed."

H. Maddox, Alabama Rules of Criminal Procedure § 3.6 (5th ed. 2011) (emphasis added). Similarly, both § 15-5-5 and Rule 3.10, Ala. R. Crim. P., address to whom a search warrant must be directed. However, whereas § 15-5-5 provides that a search warrant is to be directed to the sheriff or any constable of the county where the search is to occur, Rule 3.10 provides that a search warrant "shall be directed to and served by a law enforcement officer, as defined by Rule 1.4(p)." (Emphasis added.) Thus, because Rule 3.6 and Rule 3.10 regulate the same procedural subject matter regulated by § 15-5-1 and § 15-5-5, those rules govern to whom a search warrant

is to be directed. Ex parte Oswalt, supra. Accordingly, it was proper for the Colbert County district judge to direct the Colbert warrant "to any law enforcement officer of the State," and therefore the dispositive question in determining whether Det. Harless could lawfully execute the warrant is not whether he was the sheriff or a constable of Colbert County but, rather, is whether he was a law enforcement officer as defined by Rule 1.4(p).

Rule 1.4(p) provides:

> "'Law Enforcement Officer' means an officer, employee or agent of the State of Alabama or any political subdivision thereof who is required by law to:
>
> > "(i) Maintain public order;
> >
> > "(ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
> >
> > "(iii) Investigate the commission or suspected commission of offenses."

Clearly, Det. Harless, a detective with the Florence Police Department, is a law enforcement officer as defined by Rule 1.4(p), and the City of Florence is a political subdivision of the State of Alabama. See State v. City of Birmingham, [Ms. 1180342, November 27, 2019] ___ So. 3d ___ (Ala. 2019) (noting

that cities are political subdivisions of the State). Indeed, Hunt does not dispute that Det. Harless is a law enforcement officer as defined by Rule 1.4(p). Thus, under the Alabama Rules of Criminal Procedure, Det. Harless could lawfully execute the Colbert warrant because, consistent with Rule 3.6 and Rule 3.10, the warrant was directed "to any law enforcement officer of the State." Accordingly, we hold that the circuit court erred by suppressing the evidence resulting from the Colbert County search on the basis that Det. Harless was not the sheriff or a constable of Colbert County. This holding is consistent with caselaw from the Alabama Supreme Court that recognized the validity of a search warrant directed to any law enforcement officer of the State. See Ex parte State, 121 So. 3d 337 (Ala. 2013).[2]

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[2]Of course, the fact that Rule 3.6 and Rule 3.10 expanded the group of people to whom a search warrant may be directed does not change the fact that a search warrant must still be "executed by any one of the officers to whom it is directed, but by no other person except in aid of such officer at his request, he being present and acting in its execution." § 15-5-7, Ala. Code 1975. See Anderson v. State, 212 So. 3d 252, 257 (Ala. Civ. App. 2016) (noting that Rule 3.10 does not supersede § 15-5-7 and holding that police officers with the Mobile City Police Department had not lawfully executed the search warrant in that case because the warrant "was directed to the sheriff of Mobile County, not to the Mobile Police Department or to 'any law-enforcement officer,'" and because

II.

Although the circuit court erred by suppressing the evidence resulting from the Colbert County search on the basis that Det. Harless was not the sheriff or a constable of Colbert County, Hunt also argues that the evidence must be suppressed because, he says, the Colbert County search violated his rights under the Fourth Amendment to the United States Constitution. Specifically, Hunt argues (1) that the Colbert warrant was not supported by probable cause, (2) that the Colbert warrant did not authorize the search of Hunt's office at Martin Supply's premises, and (3) that Det. Harless was required to obtain a second warrant authorizing a search of the contents of Hunt's electronic devices seized during the Colbert County search. The State argues, however, that the Colbert County search did not violate Hunt's Fourth Amendment rights. We address each of these arguments in turn.

A.

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the officers had neither received assistance from the Mobile County Sheriff's Office nor been deputized by the Mobile County sheriff). Here, because the Colbert warrant was directed "to any law enforcement officer of the State" and because Det. Harless is a law enforcement officer as defined by Rule 1.4(p), Det. Harless's execution of the Colbert warrant did not violate § 15-5-7.

Hunt argues that the Colbert warrant was not supported by probable cause as required by the Fourth Amendment, which provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"Probable cause exists when the facts and circumstances known to the officer are sufficient to warrant a person of reasonable caution to conclude that contraband will likely be found in the place to be searched." State v. Black, 987 So. 2d 1177, 1180 (Ala. Crim. App. 2006). Stated differently, "'[p]robable cause exists when the facts and circumstances within the knowledge of the officers and of which they had reasonably trustworthy information are sufficient to cause the officers to conscientiously entertain a strong suspicion that the object of the search is in the particular place to be searched.'" Woods v. State, 695 So. 2d 636, 640 (Ala. Crim. App. 1996) (quoting Sterling v. State, 421 So. 2d 1375, 1381 (Ala. Cr. App. 1982)). "In dealing with probable cause, ... as the very name implies, we deal with probabilities. These

are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Brinegar v. United States, 338 U.S. 160, 175 (1949).

> "'[P]robable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would "warrant a man of reasonable caution in the belief" that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A "practical, nontechnical" probability that incriminating evidence is involved is all that is required.'
>
> "Texas v. Brown, 460 U.S. 730, 742, 103 S. Ct. 1535, 75 L.Ed. 2d 502 (1983) (citations omitted; emphasis added)."

Ex parte State, 121 So. 3d at 357 (some emphasis omitted).

In support of his argument that the Colbert warrant was not supported by probable cause, Hunt argues that "[t]he IP address linked to the suspicious images obtained by NCMEC from Yahoo [was] found to have been registered to Hunt's home address in Lauderdale County, and not his work address in Colbert County." Hunt's brief, at 37. Thus, Hunt essentially argues that probable cause to believe child pornography had been uploaded from an IP address traced to Hunt's home did not

constitute probable cause to believe there was evidence of child pornography at the premises of Martin Supply, Hunt's place of employment.[3] However, in making this argument, Hunt overlooks a significant fact -- namely, that the Colbert warrant did not authorize a search of Martin Supply's premises. Rather, the Colbert warrant authorized the search of Hunt's person and automobile when Hunt merely happened to be present at Martin Supply's premises. Thus, the dispositive question is not whether the cyber tip provided probable cause to search Martin Supply's premises for Hunt's electronic devices but, rather, is whether the tip provided probable cause to search Hunt's person and his automobile for such devices. To the extent Hunt argues that the cyber tip did not provide probable cause to search his person and automobile for

[3]Hunt makes only a cursory argument that the cyber tip did not give rise to probable cause to support the search of his home by arguing that the credibility of the tip is questionable. See Hunt's brief, at 47-48. We note, however, that this Court recently held that a similar cyber tip reporting child pornography was presumptively reliable when the tip was reported by an Internet company to NCMEC, which then passed the tip to a law enforcement officer who reviewed the images and verified the name and physical address of the person to whom the IP address was registered. See Adams v. State, [Ms. CR-18-1083, February 7, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020).

electronic devices capable of accessing the Internet, we disagree.

Current technology provides multiple electronic devices capable of accessing and storing material from the Internet -- including, unfortunately, child pornography. Many of these devices are now easily portable -- most notably, cellular telephones and laptop computers -- and it belies reality to suggest that many people do not habitually keep such devices on their person or in their automobiles. In fact, Det. Harless testified that that was his reason for applying for the Colbert warrant:

> "Q. So what was the basis of getting the warrant in Colbert County?
>
> "A. The fact that Mr. Hunt lived at the residence where the cyber tip came from ... and that cyber tips are regarding IP addresses that are specific to that address, but it doesn't say what devices connect to or don't connect to or ... where what images were uploaded or downloaded from. It just merely says it came from that IP address and that cell phones and laptops are able to go to that IP address, connect, disconnect, upload, download and then take whatever away from there that ... it was used for at that time ..., it's common practice. I don't know what the percentage is, 99 or 99.99 that the people that have a cell phone with them that, you know, has Wifi internet available or ready that can connect to an IP address one place, upload, download something then take it to another place. So I wanted the devices that Mr. Hunt had, whether

> that be a cell phone, laptop, whatever he would have that would -- could connect to that internet -- or that IP address and then disconnect from it and be taken elsewhere. I didn't ... ask for anything concerning computers or anything from [Martin Supply] and I wouldn't feel like a desktop computer with Martin Supply would have any relation to an IP address at [Hunt's home] but his cell phone and his personal laptop would."

(R. 47-48.) Consistent with Det. Harless's testimony, the United States Supreme Court has acknowledged that cellular telephones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." Riley v. California, 573 U.S. 373, 385 (2014). Likewise, laptop computers and other easily portable devices capable of accessing the Internet are unquestionably a prevalent part of people's daily lives, not only in their homes but wherever they may travel. Indeed, it is now commonplace to see people using such devices in coffee shops, bookstores, restaurants, libraries, shopping centers, parks -- in short, virtually anywhere people may be. Thus, we hold that probable cause to believe child pornography had been uploaded from an IP address traced to Hunt's home could cause "'a person of reasonable caution,'" Black, 987 So. 2d at 1180, to "'conscientiously

entertain a strong suspicion,'" Woods, 695 So. 2d at 640, that evidence of child pornography could be found on Internet-capable electronic devices located on Hunt's person or in his automobile. To conclude otherwise would be to ignore the common-sense standard underlying a probable-cause determination. Ex parte State, 121 So. 3d at 357. Accordingly, this argument does not provide a basis for suppressing the evidence resulting from the Colbert County search.

Hunt also argues that the Colbert warrant was not supported by probable cause because, he says, Det. Harless could not be certain that it was Hunt who actually uploaded the images included in the cyber tip. Specifically, Hunt argues that "[t]here was just as much chance that [the images] had been uploaded by one of the other members of the household or by someone else while visiting the Hunt home." Hunt's brief, at 38-39. However, as noted, "[i]n dealing with probable cause, ... as the very name implies, we deal with probabilities," not certainties. Brinegar, 338 U.S. at 175. Thus, the mere possibility that another occupant of Hunt's home had uploaded the images of child pornography did not

preclude a finding of probable cause to believe that the images had been uploaded by Hunt, the subscriber of the Internet service identified in the cyber tip, and that Hunt had evidence of child pornography on his electronic devices. See Ex parte State, 121 So. 3d at 357 (noting that the belief that probable cause exists to search for contraband "'does not demand any showing that such a belief be correct or more likely true than false'" (quoting Texas v. Brown, 460 U.S. at 742 (emphasis omitted)). Accordingly, this argument also does not provide a basis for suppressing the evidence resulting from the Colbert County search.

B.

Hunt argues that the circuit court correctly suppressed the evidence extracted from his laptop computer, which Det. Harless seized from Hunt's office at Martin Supply's premises. In support of that argument, Hunt notes that the Colbert warrant authorized the search of only Hunt's person and automobile and that "[n]othing in the language of the warrant ... gave officers authority to search Hunt's office." Hunt's brief, at 35. Thus, Hunt argues, any evidence extracted from the laptop computer seized from his office was due to be

suppressed as the fruit of an illegal search. The problem for Hunt, however, is that Det. Harless did not discover Hunt's laptop computer pursuant to a search of Hunt's office.

When a law enforcement officer is in a place where he or she has a right to be and observes objects in plain view, such observation does not constitute a search under the Fourth Amendment. See Arizona v. Hicks, 480 U.S. 321, 328 (1987) ("[A] truly cursory inspection -- one that involves merely looking at what is already exposed to view, without disturbing it -- is not a 'search' for Fourth Amendment purposes."); Horton v. California, 496 U.S. 128, 133 n.5 (1990) (noting that "an officer's mere observation of an item left in plain view ... generally involves no Fourth Amendment search"); Duck v. State, 518 So. 2d 857, 858 (Ala. Crim. App. 1987) ("Generally, merely to observe what is in plain view is not a 'search' at all. Since mere observation of contraband is not a search, it is not restricted by the Fourth Amendment." (internal citation omitted)); Harbor v. State, 465 So. 2d 455, 458 (Ala. Crim. App. 1984) (noting that "to see that which is patent and obvious is not a search" when observed from a place where the law enforcement officer has a right to be).

In this case, when Det. Harless arrived at Martin Supply's premises, he told a Martin Supply employee that he needed to speak with Hunt, and the employee took Det. Harless to Hunt's office. Although Hunt argues that Det. Harless did not have authority to search Hunt's office, Hunt does not argue that Det. Harless did not have a right to be present in Hunt's office, i.e., that Det. Harless was unlawfully in Hunt's office. Upon arriving at Hunt's office, Det. Harless noticed a laptop computer in plain view "sitting on the ground ... in a laptop bag ... at [Hunt's] feet." Det. Harless did not initially touch or otherwise disturb the laptop computer but, instead, merely asked Hunt if the laptop computer belonged to him, and Hunt voluntarily admitted that the laptop computer was his and that it contained child pornography. At that point, Det. Harless seized the laptop computer. Thus, because Det. Harless was lawfully in Hunt's office and observed Hunt's laptop computer in plain view, the circumstances by which Det. Harless discovered Hunt's laptop computer simply do not constitute a search of Hunt's office within the meaning of the Fourth Amendment. Hicks, supra; Horton, supra; Duck, supra; Harbor, supra.

In addition, when a law enforcement officer is in a place where he or she has a right to be and observes an incriminating object in plain view, the officer may seize the object without a warrant provided that the incriminating nature of the object is immediately apparent and that the officer has a lawful right of access to the object. See Minnesota v. Dickerson, 508 U.S. 366, 375 (1993) ("Under [the plain-view] doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant."); Kentucky v. King, 563 U.S. 452, 462-63 (2011) ("[W]e have held that law enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made."); and Washington v. Chrisman, 455 U.S. 1, 5-6 (1982) ("The 'plain view' exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be."). Here, as we have already

noted, there is no allegation that Det. Harless was unlawfully present in Hunt's office, and Hunt admitted that the laptop computer belonged to him and that it contained child pornography. Thus, by virtue of Hunt's own admission, the incriminating nature of the laptop computer, which was in plain view, was immediately apparent and obvious. Thus, Det. Harless did not violate the Fourth Amendment by seizing Hunt's laptop computer. Dickerson, supra; King, supra; Chrisman, supra. Accordingly, this argument does not provide a basis for suppressing the evidence extracted from the laptop computer seized from Hunt's office.

C.

Finally, Hunt argues that the Colbert warrant authorized only the search for his electronic devices and did not authorize the search of those devices. Thus, according to Hunt, once Det. Harless seized the devices, he was required to obtain a second warrant authorizing a search of the contents of the devices. In support of that argument, Hunt relies primarily on Riley, supra, in which the United States Supreme Court held that law enforcement officers must generally obtain a search warrant before searching the contents of a cellular

telephone seized incident to arrest. Riley, 573 U.S. at 403. However, whereas there was no search warrant at all in Riley, here Det. Harless obtained a warrant authorizing him to search for Hunt's electronic devices. Thus, the dispositive question in this case is whether a warrant that authorizes the search for electronic devices believed to contain child pornography also authorizes a search of those devices. The holding of Riley does not, in our opinion, provide guidance on this issue.[4] However, cases from the federal circuit courts have directly addressed this specific issue, and we find the analysis in those cases to be persuasive.

In United States v. Grimmett, 439 F.3d 1263 (10th Cir. 2006), the United States Court of Appeals for the Tenth Circuit addressed the same argument Hunt makes here. In that case, a law enforcement officer sought a warrant authorizing him to search Stephen Grimmett's home for Grimmett's computer, among other electronic devices, which the officer had probable

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[4]Hunt also cites Carpenter v. United States, 585 U.S. ___, 138 S. Ct. 2206 (2018), in support of this argument. However, Carpenter held that the government generally must obtain a search warrant before it acquires a person's cellular-telephone location data from the person's wireless-service provider. 585 U.S. at ___, 138 S. Ct. at 2221. Thus, Carpenter, which did not address the search of the contents of a cellular telephone, is inapplicable here.

cause to believe contained child pornography. Id. at 1266. The officer's affidavit submitted in support of the search warrant also sought permission to search the contents of any computers he seized during the search. Id. The search warrant issued to the officer authorized the officer to search Grimmett's home for computer hardware, and after the officer seized a hard disk drive from a computer in Grimmett's home, a subsequent forensic examination of the hard drive unearthed 1,642 images and videos of child pornography. Id. On appeal from Grimmett's multiple convictions for child-pornography offenses, the Tenth Circuit addressed Grimmett's argument that the evidence discovered during the search of the hard drive was due to be suppressed:

> "Mr. Grimmett argues that the warrant authorized only the seizure, but not the subsequent search, of his computer and computer storage devices (collectively, 'the computer'). Although not couched in 'particularity' terms, Mr. Grimmett appears to argue that the warrant was not sufficiently particular to authorize a search of the computer.
>
> "Mr. Grimmett relies on United States v. Carey, 172 F.3d 1268, 1270 (10th Cir. 1999) for his argument that a second warrant is required to search a properly seized computer. In Carey, the original warrant authorized a search of the computer for evidence related to illegal drug sales. But, when the officers found evidence of another crime --

possession of child pornography -- another warrant was needed to search for this evidence, which was beyond the scope of the original warrant. Id. at 1271, 1273-74 ('[I]t is plainly evident each time [the officer] opened a subsequent JPG file, he expected to find child pornography and not material related to drugs .... Under these circumstances, we cannot say the contents of each of those files were inadvertently discovered.').

"Carey does not support Mr. Grimmett's argument, but simply stands for the proposition that law enforcement may not expand the scope of a search beyond its original justification. In this case, unlike the search in Carey, where the probable cause that permitted the search related to drugs, the original justification for the search and seizure of the computer was the probable cause to believe the defendant possessed child pornography. We hold that the evidence obtained in the search of the defendant's computer was consistent with the probable cause originally articulated by the state court judge; hence, the search was permissible under Carey.

"Moreover, the affidavit underlying the application for a search warrant clearly states that Detective Askew sought the authority to search both the premises and the computers:

> "'This affidavit is made in support of an application for a warrant to search the entire premises located at 920 SE 33rd Street, Topeka, Shawnee County, Kansas. Additionally, this application is to search any computer media found therein.'

"The affidavit also made clear that the search of the computer would be off-site in a laboratory setting: 'It is only with careful laboratory examination of electronic storage devices that it is possible to recreate the evidence trail.' In turn,

> the warrant expressly refers to the 'evidence under oath before me,' which is, of course, a direct and explicit reference to the affidavit. Accordingly, we hold that the warrant authorized both the seizure and search of the computer."

Id. at 1268-69 (internal citations to appellant's brief omitted).

The United States Court of Appeals for the Sixth Circuit also addressed the same argument in United States v. Evers, 669 F.3d 645 (6th Cir. 2012). In Evers, law enforcement officers who believed Ovell Evers, Sr., was in possession of child pornography obtained a search warrant authorizing them to search Evers's home for computers and other electronic devices. Id. at 650. Upon executing the search, officers found a black computer, which they seized, and a subsequent search of the computer revealed sexually explicit images of a 13-year-old female. On appeal from his multiple convictions of child-pornography offenses, Evers argued that the images seized from the black computer were due to be suppressed because, he argued, "although the search warrant authorized the seizure of his computers, ... it did not authorize a search of the black computer's hard drive, and the police therefore unlawfully exceeded the scope of the warrant when

they searched the contents of the computer without obtaining a second warrant." Id. at 652. In rejecting that argument, the Sixth Circuit, citing Grimmett, supra, held that "a second warrant to search a properly seized computer is not necessary 'where the evidence obtained in the search did not exceed the probable cause articulated in the original warrant.'" Id. (quoting United States v. Richards, 659 F.3d 527, 539 n.10 (6th Cir. 2011)). Thus, after noting that Evers did not argue that there was not probable cause to believe there would be evidence of child pornography on his computer, the Sixth Circuit concluded:

> "The warrant was, as the district court properly concluded, 'specifically designed not simply to permit the officers to seize the computer ..., but to view the computer and ... to have access to [it].' We agree with the district court that the search for, and extraction of, illegal images from the black computer's hard drive fell within the lawful parameters of the warrant."

Evers, 669 F.3d at 653.

We hold, as the Tenth Circuit and Sixth Circuit held under similar circumstances in Grimmett and Evers, respectively, that in cases involving the seizure and search of electronic devices containing data, such as cellular telephones and computers, a second search warrant is not

required to search the contents of such devices when the initial search warrant is based on an affidavit that demonstrates probable cause to believe that the evidence sought is contained within those devices. This determination will of necessity depend on the specific facts of each case, but "'where the evidence [sought to be] obtained in the search [does] not exceed the probable cause articulated in the original warrant,'" Evers, 669 F.3d at 652 (quoting Richards, 659 F.3d at 539 n.10), then the original search warrant is sufficient to permit a law enforcement officer not only to seize the electronic device, but also to view the contents of the device and to extract data consistent with that search warrant. Evers, supra.

Accordingly, in this case, we hold that a second search warrant was not required to search the contents of Hunt's electronic devices because, as we have already concluded, there was probable cause to believe Hunt's electronic devices contained child pornography, which, of course, could be discovered only by searching the contents of the devices. Thus, the Colbert warrant clearly contemplated "the search for, and extraction of, illegal images" contained within

Hunt's electronic devices, and, as a result, the search for such images "fell within the lawful parameters of the warrant." Evers, 669 F.3d at 653. See also United States v. Upham, 168 F.3d 532, 535 (1st Cir. 1999) ("As a practical matter, the seizure and subsequent off-premises search of the computer and all available disks was about the narrowest definable search and seizure reasonably likely to obtain the images."). In addition, we note that Det. Harless's affidavit clearly sought authority to search the contents of Hunt's electronic devices. Specifically, Det. Harless's affidavit states: "I request that if electronic storage devices such as computers are seized as a result of this search warrant, that the court authorize the seizure and removal of the devices to a laboratory environment for the forensic examination of the same by persons qualified to conduct said examination." (Emphasis added.) Although the Colbert warrant does not expressly authorize the search of the contents of Hunt's electronic devices, the warrant does expressly refer to the "[a]ffidavit in support of application for a search warrant" (C. 72), which, as noted, sought such authority. As was the case in Grimmett, such facts further strengthen the conclusion

that the Colbert warrant "authorized both the seizure and search of the computer." Grimmett, 439 F.3d at 1269 (emphasis added).

We emphasize that our holding that a second search warrant was not required in this case does not mean that a second search warrant is never required before law enforcement officers may search the contents of electronic devices seized pursuant to a search warrant that does not expressly authorize such a search. However, under the specific facts of this case, neither the lack of language in the Colbert warrant expressly authorizing a search of Hunt's electronic devices nor the lack of a second warrant authorizing such a search provides a basis for suppressing the evidence resulting from the Colbert County search. Grimmett, supra; Evers, supra.

Conclusion

The circuit court erred by concluding that Det. Harless could not lawfully execute the Colbert warrant, and Hunt's Fourth Amendment rights were not violated by the Colbert County search. Accordingly, we reverse the circuit court's order insofar as it granted Hunt's motion to suppress the evidence resulting from the Colbert County search, and we

remand the case for further proceedings consistent with this opinion.

APPLICATION FOR REHEARING OVERRULED; OPINION OF MARCH 13, 2020, WITHDRAWN; OPINION SUBSTITUTED; REVERSED AND REMANDED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.