**Rel: February 7, 2020**

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

# ALABAMA COURT OF CRIMINAL APPEALS

**OCTOBER TERM, 2019-2020**

---

**CR-18-1083**

---

**Christopher Allen Adams**

**v.**

**State of Alabama**

**Appeal from Baldwin Circuit Court**
**(CC-18-2765)**

KELLUM, Judge.

The appellant, Christopher Allen Adams, pleaded guilty to possessing obscene material, a violation of § 13A-12-192(b), Ala. Code 1975, and was sentenced to 120 months in prison. The trial court split the sentence and directed that Adams be

given credit for the time he had served in jail and that he serve one additional day and be released on probation for five years. Before pleading guilty, Adams specifically reserved his right to appeal the trial court's ruling denying his motion to suppress. See Green v. State, 200 So. 3d 677, 679 (Ala. Crim. App. 2015) ("The only way to invoke the limited right to appeal a guilty-plea conviction and sentence is to reserve and preserve an issue or to file a motion to withdraw the guilty plea.").

Adams was indicted in November 2018 for four counts of possessing obscene material that contained "visual depictions of a person under the age of 17." (C. 20-23.)[1] Adams moved to suppress the evidence obtained from the search of his electronic devices because, he argued, the information in the warrant affidavit was stale. He further argued that the information was not reliable because law enforcement had no firsthand knowledge regarding the information and did not corroborate that information. The trial court denied the motion to suppress. This appeal followed.

[1]The indictment cited § 13A-12-191, Ala. Code 1975. However, the State moved that the indictment be amended to cite the correct code section, § 13A-12-192(b), Ala. Code 1975.

At the suppression hearing, Agent Britney Roberts, an officer with the Alabama Law Enforcement Agency ("ALEA"), testified that ALEA had received a cyber tip on August 23, 2016, from the National Center for Missing and Exploited Children ("NCMEC")[2] regarding child pornography. The tip, forwarded to NCMEC from the company operating the Internet Website Chatstep.com,[3] stated that one of its users was in

[2]Agent Roberts testified that "NCMEC is a nonprofit organization that was created by Congress in the early '80s. It's basically a local resource for agencies who are involved in investigations for child abductions and online exploitation of children." (R. 12.)

> "Federal statutes authorize NCMEC to act as 'the official national clearinghouse for information about missing and exploited children,' including by operating 'the CyberTipline as a means of combating Internet child sexual exploitation.' See United States v. Ackerman, 831 F.3d 1292, 1296 (10th Cir. 2016) (citing 42 U.S.C. § 5773(b)). Regarding the CyberTipline, NCMEC 'is statutorily obliged to maintain an electronic tipline for [internet service providers] to use to report possible Internet child sexual exploitation violations to the government,' and NCMEC must 'forward every single report it receives to federal law enforcement agencies and it may make its reports available to state and local law enforcement as well.' Id. (citing 18 U.S.C. § 2258A(c))."

Burwell v. State, 576 S.W.3d 826, 828 n.2 (Tex. App. 2019).

[3]The affidavit executed by Agent Roberts explained: "Chatstep is a program utilized on computer, phones, and other electronic media which allows files and images to be shared

possession of child pornography. She testified that NCMEC was required by federal law to report "anything that comes across as a child exploitation." (R. 12.) The tip, she said, contained the name of the company operating Chatstep.com, which had provided the information to NCMEC, the Internet protocol "IP" address "of the individual using that website that [the owner of Chatstep.com] suspected to be involved with child exploitation or child pornography, and also the user name on the website that the suspect used at the time." (R. 13.) The tip, Agent Roberts said, also contained the actual images. She reviewed those images, she said, and determined that they were child pornography. Agent Roberts further testified that when the tip was received it was submitted to an analyst at ALEA and that a subpoena was issued to the Internet service provider that serviced the IP address. ALEA found that the IP address was registered to Dorothy Adams, and it obtained her physical address. ALEA obtained a search warrant for Adams's premises. Agent Roberts testified that

---

among groups of people. The files and images can be sent either to an individual or to a group anonymously, however, Chatstep does capture the users Internet Protocol (IP) number." (C. 127.) Agent Roberts testified that, at the time of the suppression hearing, the Chatstep.com Web site was no longer in service.

she had obtained approximately 50 warrants using the same protocol as she used in this case. (R. 16.) In all 50 cases, she said, the NCMEC tip had never been found to be unreliable.

Agent Roberts stated the following in the affidavit to support the issuance of the search warrant:

> "Upon reviewing the information in the CyberTip and verifying that the file did appear to constitute a violation of Alabama Criminal Code 13A-12-192, a subpoena was issued to CenturyLink demanding that they identify their customer that was assigned the IP address of 99.194.148.71. CenturyLink identified their customer as Dorothy Gene Adams and the service address.... The investigation revealed that Dorothy Adams established service with CenturyLink on August 7, 2014 at the [service] address.
>
> "On Wednesday, October 5, 2016, I reviewed the file reported by Chatstep on CyberTip (#13327815) and found that it did appear to contain a visual depiction of children engaged in sex acts. For example, one file depicted a prepubescent female, between 6 and 8 years of age sitting nude on the floor exposing her breast and vagina.
>
> "Based on the information above, your affiant believes that some person using the internet connection at [the service address] did possess and upload a file containing a visual depiction of children engaged in obscene acts. Furthermore, based on the information regarding Internet Protocol (IP) number associated with the Chatstep account, I suspect that someone else at the listed address is responsible for this offense."

(C. 128.)

The search warrant was executed on November 2, 2016, approximately three months after the owner of Chatstep.com discovered child pornography on its site.[4] When police executed the warrant, two individuals, Christopher Adams and his wife Dorothy Adams, were discovered inside the residence. Agent Roberts said that the officers specifically looked for any electronic devices that could contain child pornography. During the search, Agent Roberts said, images of child pornography were easily found on Christopher Adams's iPhone and similar images were later discovered on his computer. In total, approximately 360 images were retrieved from Adams's devices. After a lengthy discussion, the trial court denied the motion to suppress the images.

"This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute." State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004).

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures, and it provides

[4]The search warrant and accompanying affidavit were very lengthy. (C. 115-134.) The affidavit executed by Agent Roberts is 13 pages. (C. 121-134.)

that search warrants shall be issued only upon a finding of probable cause." McIntosh v. State, 64 So. 3d 1142, 1145 (Ala. Crim. App. 2010).

> "[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 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 (1983). In determining whether there is probable cause to support the issuance of a warrant, we must evaluate the "totality of the circumstances" in each case. See Illinois v. Gates, 462 U.S. 213, 231-32 (1983).

I.

Adams first argues that the information in the cyber tip that was used to support the issuance of the warrant was not reliable because, he says, Agent Roberts had no firsthand knowledge of the information and did not corroborate the information.

> "Whether the information provided by an informant in a particular case is sufficient to establish reasonable suspicion is to be determined by applying

> the 'totality of the circumstances' test set out in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). Alabama v. White, 496 U.S. [325] at 330–31, 110 S.Ct. [2412] at 2416, 110 L.Ed.2d 301 [(1990)]. Under this test, which was formulated in the context of probable cause, the informant's 'veracity,' 'reliability,' and 'basis of knowledge' are 'highly relevant' factors to be considered. Gates, 462 U.S. at 230, 103 S.Ct. at 2328. However, because reasonable suspicion is a lower standard, there need not be as strong a showing with regard to these factors as is required for the establishment of probable cause, Alabama v. White, 496 U.S. at 330–31, 110 S.Ct. at 2415."

Wilsher v. State, 611 So. 2d 1175, 1179 (Ala. Crim. App. 1992).

Alabama has not addressed the reliability of a cyber tip from an Internet company. However, other courts have found that similar tips are reliable and, in fact, are "presumed reliable." A Florida Court stated in State v. Woldridge, 958 So. 2d 455 (Fla. Dist. Ct. App. 2007):

> "The reliability of the tip from AOL can be presumed because federal law compelled AOL's report to NCMEC. Although not mentioned by either party in their briefs, AOL was required to report the attempted transmission of these child pornography images to NCMEC for forwarding to law enforcement. Under 42 U.S.C. § 13032(b)(1) (2004),[5] any internet service provider that obtains facts from which a violation of federal child pornography laws is apparent must report the facts and circumstances to the Cyber Tip

[5]This statute was repealed in 2008. The mandatory reporting requirements are now contained in 18 U.S.C. § 2258A.

> Line at NCMEC. NCMEC then forwards the reported information to both state and federal law enforcement officials. 42 U.S.C. § 13032(b)(1), (b)(3). An internet service provider that fails to report such facts is subject to significant fines. 42 U.S.C. § 13032(b)(4).
>
> "We find that this statutory reporting requirement supports the reliability of AOL's tip. Contrary to Woldridge's position at oral argument, the possibility of the imposition of fines for failing to report the transmission of child pornography does not make AOL's tip less reliable. Nothing about the possible imposition of fines would encourage AOL to make false reports to NCMEC. Further, while it is true that the search warrant affidavit does not reference this statutory mandate, the magistrate and the trial court, like all citizens, are charged with knowing the applicable law.
>
> "In addition, AOL was acting in a manner analogous to that of a citizen informant when it forwarded the information to NCMEC.[6] 'A citizen-informant is one who is "motivated not by pecuniary gain, but by the desire to further justice."' State v. Maynard, 783 So. 2d 226, 230 (Fla. 2001) (quoting State v. Evans, 692 So. 2d 216, 219 (Fla. 4th DCA 1997) (quoting State v. Talbott, 425 So. 2d 600, 602 n. 1 (Fla. 4th DCA 1982), and Barfield v. State, 396 So. 2d 793, 796 (Fla. 1st DCA 1981))). A citizen informant is one who 'by

---

[6]Alabama has likewise held that "'[t]he veracity of the "citizen-informant" is easily established, for "the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case."'" McCants v. State, 459 So. 2d 992, 994 (Ala. Crim. App. 1984) (quoting Crawley v. State, 440 So. 2d 1148, 1149 (Ala. Crim. App. 1983)).

> happenstance finds himself in the position of a victim of or a witness to criminal conduct and thereafter relates to the police what he knows as a matter of civic duty.' Evans, 692 So. 2d at 219 (quoting Wayne R. LaFave, Search and Seizure § 3.3 (3d ed. 1996)). As a general rule, the reliability of a tip from a citizen informant is presumed, and corroboration of the tip is not generally required. Maynard, 783 So. 2d at 228; [State v.] Gonzalez, 884 So. 2d [330] at 334 [Fla. 2nd DCA 2004)].
>
> "Here, AOL discovered pornographic images of children attached to an e-mail that an AOL subscriber with a particular screen name attempted to transmit through the AOL server. At that point, AOL was in possession of the images, which it forwarded along with the subscriber's screen name to law enforcement through NCMEC. Thus, the information did not come to law enforcement from an anonymous source; it came from a recognized, well-established internet service provider. Moreover, AOL essentially witnessed the crime when it received the images from the subscriber. Under these circumstances, AOL was in substantially the same position as a citizen informant, whose reliability can be presumed for purposes of the magistrate's probable cause determination. See State v. Sisson, 883 A.2d 868, 880 (Del. Super. Ct. 2005), aff'd, 903 A.2d 288 (Del. 2006)."

Woldridge, 958 So. 2d at 459-60.

In State v. Sisson, 883 A.2d 868 (Del. Super. Ct. 2006), a Delaware court stated:

> "AOL provided law enforcement with two pieces of information, the image of child pornography sent by user name 'letsrolearound' and the subscriber information for 'letsrolearound.' The affidavit of probable cause clearly reveals the circumstances that led AOL to conclude that criminal activity had

> occurred. AOL discovered the pornographic image of a child that was an attachment to an email sent by an AOL subscriber using a particular screen name. AOL was in possession of the image -- the corpus delicti of the criminal activity. AOL then forwarded the image and screen name to the Sheriff's Office. This information did not come from an anonymous source; it came from a recognized, well-established Internet provider.
>
> "Again, it is important to emphasize the deference afforded to the magistrate's determination of probable cause as well as the standard of review. The burden is on Mr. Sisson to demonstrate that the warrant lacked probable cause and, more specifically, that AOL and the information it provided to law enforcement were unreliable. Yet he has offered no basis for the Court to conclude that AOL lacked reliability. To the contrary, the record reveals that AOL discovered the image, identified it as child pornography, and forwarded it to the police along with the screen name of the person who sent the image. AOL was essentially a citizen witness to a crime and, as such, is presumed to be reliable. Accordingly, the Court finds that, under the circumstances, AOL was a reliable informant and no independent corroboration of the information provided by AOL was required."

883 A.2d at 880 (footnotes omitted). See also State v. Silverstein, 378 Wis. 2d 42, 59, 902 N.W.2d 550, 558 (Wis. Ct. App. 2017) ("[T]he observational reliability is well established here. Not only is Tumblr required to report criminal images from blogs it hosts, its employees are in the position to see the blogs and know identifying features of the blog poster. Here its own records identified the name of

Silverstein's blog, his email address (ssilver58@att.net), and his IP address.").

The Wisconsin Court of Appeals in Silverstein also noted that the information from the Internet company had been corroborated by police actions similar to the police action in this case.

> "[P]olice corroboration did occur here in that [law enforcement] did review the Tumblr images and confirmed they depicted criminal activity and verified that the email name and address were consistent with the identity of the individual who lived at the residence to be searched. Furthermore, Silverstein has not provided any basis for the warrant-issuing magistrate to conclude that the Tumblr source was not credible."

Silverstein, 378 Wis. 2d at 60, 902 N.W.2d at 559 (emphasis added).[7]

[7]Nor was Agent Roberts required to corroborate the reliability of NCMEC. "The NCMEC did not provide the Delaware State Police with any additional information; it simply performed its statutorily prescribed role as a 'clearinghouse' of information regarding potential child pornography or exploitation. Hence, the NCMEC was not an informant and its reliability is not relevant to a determination of whether there was sufficient probable cause to issue the search warrant in this case." Sisson, 883 A.2d at 880-81. See also Woldridge, 958 So. 2d at 459 ("AOL was the only 'tipster' involved, and the critical question for the issuing magistrate was the reliability of AOL, not NCMEC.").

We adopt the reasoning of the Florida court in Woldridge and hold that the tip from the Internet company was presumed reliable based on the mandatory federal reporting requirements. Also, Agent Roberts corroborated the tip by reviewing the images and verifying the IP address and the user's name and physical address. Moreover, there was no "basis for the warrant-issuing magistrate to conclude that the ... source was not credible." Silverstein, 378 Wis. 2d at 59, 902 N.W.2d at 559. Accordingly, we hold that the motion to suppress was correctly denied on this basis and that Adams is due no relief on this claim.

II.

Adams next argues that there were not sufficient facts to establish probable cause to support the issuance of the warrant because, he says, three months had elapsed between the alleged incident and the issuance of the warrant and, thus, the information was too stale to support a finding of probable cause.

Agent Roberts wrote the following in her affidavit:

> "When a person 'deletes' a file on a home computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data.

> Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space -- that is, in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space -- for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of a deleted data in a 'sway' or 'recovery' file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or 'cache.' The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed and more on a particular user's operating system, storage capacity, and computer habits."

(C. 124-25.)

In addressing staleness as it relates to the issuance of a search warrant, the Alabama Supreme Court has stated:

> "Whether the circumstances recited in an affidavit offered in support of an application for a search warrant are such that the probable cause that might once have been demonstrated by them has grown 'stale' is a matter that 'must be determined by the circumstances of each case.' Sgro v. United States, 287 U.S. 206, 53 S.Ct. 138, 77 L.Ed. 260 (1932).
>
> "....
>
> "'[T]he "basic criterion as to the duration of probable cause [or staleness] is the inherent nature of the crime."' United States v. Magluta, 198 F.3d 1265, 1271 (11th Cir. 1999) (quoting United States

> v. Bascaro, 742 F.2d 1335, 1345 (11th Cir. 1984)). In Moore v. State, 416 So. 2d 770 (Ala. Crim. App. 1982), Alabama recognized that a determination of 'staleness' must turn on the circumstances of each case."

Vinson v. State, 843 So. 2d 229, 233 (Ala. 2001).

The majority of the Alabama cases on staleness relate to searches for drugs or similar substances that can be easily destroyed. See Harrelson v. State, 897 So. 2d 1237 (Ala. Crim. App. 2004); Pratt v. State, 851 So. 2d 142 (Ala. Crim. App. 2002); Thomas v. State, 353 So. 2d 54 (Ala. Crim. App. 1977). Alabama has yet to address the issue whether information in an affidavit is stale when the subject of the warrant consists of images stored on a computer.

Other state and federal courts have addressed this issue and have found that the traditional concepts of staleness do not apply to data stored on a computer. The Wisconsin Court of Appeals has stated:

> "Gralinski next contends that the warrant was invalid because it was based on stale information such that no inference could be drawn that the items sought in the warrant would be located in his home two and one-half years after the membership to the Regpay website was purchased. ...
>
> "In deciding whether probable cause is stale, 'timeliness is not determined by a counting of the days or months between the occurrence of the facts

relied upon and the issuance of the warrant.' State v. Ehnert, 160 Wis. 2d 464, 469, 466 N.W.2d 237 (Ct. App. 1991). Even old information can support probable cause. See [State v.] Multaler, 252 Wis. 2d 54, ¶ 36, 643 N.W.2d 437 [(2002)] (noting the distinction between stale information and stale probable cause).

> "'Stale probable cause, so called, is probable cause that would have justified a warrant at some earlier moment that has already passed by the time the warrant is sought.
>
> "'There is not, however, any dispositive significance in the mere fact that some information offered to demonstrate probable cause may be called stale, in the sense that it concerns events that occurred well before the date of the application for the warrant. If such past fact contributes to an inference that probable cause exists at the time of the application, its age is no taint.'

"State v. Moley, 171 Wis. 2d 207, 213, 490 N.W.2d 764 (Ct. App. 1992) (citation omitted).

"To determine whether probable cause is sufficient where a staleness challenge is raised requires a review 'of the underlying circumstances, whether the activity is of a protracted or continuous nature, the nature of the criminal activity under investigation, and the nature of what is being sought.' Multaler, 252 Wis. 2d 54, ¶ 37, 643 N.W.2d 437 (citing Ehnert, 160 Wis. 2d at 469–70, 466 N.W.2d 237). No single aforementioned consideration is dispositive given that, as noted above, probable cause determinations are made on a case-by-case basis, 'looking at the totality of the circumstances.' Id., ¶ 34.

"In Multaler, as part of their investigation of homicides that took place twenty years prior, police obtained a warrant to search the defendant's home for evidence of those crimes. Id., ¶ 3. While executing the warrant, the police discovered computer disks containing child pornography. Id. The defendant moved to suppress the disks arguing, in part, that the information in the affidavit supporting the warrant was stale because no inference could be drawn that evidence related to the murders would remain in his home twenty years after the murders occurred. Id., ¶ 10. The Multaler court disagreed that the information was stale, and to support its conclusion that the affidavit provided probable cause, emphasized the 'unusual tendency of serial homicide offenders, as stated in the affidavit, to collect and retain items that constitute evidence of their crimes.' Id., ¶ 40. In noting the variety of factors and circumstances to be considered in a staleness challenge, the Multaler court offered the following example: '"The observation of a half smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later."' Id., ¶ 37 (citations omitted).

"Just as the court in Multaler found that the issue of staleness in that case depended, in part, upon the tendencies of serial killers to collect and retain items evidencing their crimes, id., ¶ 40, here, the issue of staleness depends, in part, upon the tendencies of collectors of child pornography, as detailed in the special agent's affidavit. Gralinski does not contest the special agent's description of the habits of collectors of child pornography in the affidavit supporting the search warrant. In this regard, the affidavit provided 'that individuals who are involved with child pornography are unlikely to ever voluntarily dispose of the images they possess, as those images are

> viewed as prized and valuable materials.' Given the specific factual information obtained when Regpay's customer databases were seized that Gralinski's credit card had been used to purchase a membership to sites containing child pornography, it was reasonable for the magistrate to infer that Gralinski downloaded visual child pornography from the websites to his computer.
>
> "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. See [State v.] Ward, 231 Wis. 2d 723, ¶ 23, 604 N.W.2d 517 [(2000)]. The affidavit explains that '[o]nce an individual opens an image of child pornography on his computer or accesses such an image through the Internet, that image is saved in the computer's "cache."' The affidavit further states 'that each time an individual views an online digital image, that image, or remnants of that image, are automatically stored in the hard-drive of the computer used to view the image ... even if those images have been deleted by the computer operator.' Thus, at the time the warrant issued and was executed, the probable cause to search Gralinski's residence was not stale."

State v. Gralinski, 306 Wis. 2d 101, 118-123, 743 N.W.2d 448, 457-459 (Wis. Ct. App. 2007).

Similarly, a New York Court explained staleness as it relates to child-pornography images stored on a computer:

"The nature of an investigation into the transmission and collection of child pornography over the internet is distinguished from most other investigations by the subject matter and the nature of the vehicle for the criminal activity. 'When a defendant is suspected of possessing child pornography, the staleness determination is unique because it is well known that images of child pornography are likely to be hoarded by persons interested in those materials in the privacy of their homes' (United States v. Irving, 452 F.3d 110, 125 [(2d Cir. 2005)] [internal quotation marks omitted]). Thus, 'evidence that such persons possessed child pornography in the past supports a reasonable inference that they retain those images -- or have obtained new ones -- in the present' ([United States v.] Raymonda[, 780 F.3d 105] at 114 [(2d Cir. 1998)]). 'Crucially, however, the value of that inference in any given case depends on the preliminary finding that the suspect is a person "interested in" images of child pornography. The alleged proclivities of collectors of child pornography ... are only relevant if there is probable cause to believe that [a given defendant] is such a collector' (id. [internal quotation marks omitted]). The Third Circuit was quick to note when considering the compulsion to hoard that '[w]e do not hold, of course, that information concerning child pornography crimes can never grow stale. We observe only that information concerning such crimes has a relatively long shelf life. It has not been, and should not be, quickly deemed stale' ([United States v.] Vosburgh[, 602 F.3d 512] at 529 [(3d Cir. 2010)]).

"The staleness inquiry is also very much colored by the reliance of child pornographers on computers and the internet. 'Images stored on computers can be retained almost indefinitely, and forensic examiners can often uncover evidence of possession or attempted possession long after the crime has been completed' (id.). Moreover, computers and

> computer equipment are 'not the type of evidence that rapidly dissipates or degrades' (id.). 'Therefore, the passage of weeks or months here is less important than it might be in a case involving more fungible or ephemeral evidence' (id.)."

People v. Hayon, 62 N.Y.S.3d 754, 762-63, 57 Misc. 3d 963, 972-73 (Sup. Ct. 2017). See also Barrett v. State, 367 S.W.3d 919, 926 (Tex. Ct. App. 2012) ("[W]e conclude the issuing magistrate had a substantial basis to find that a fair probability existed that images depicting child pornography would continue to be on or recoverable from a computer device that would be readily accessible to one of the suspected parties at the residential address stated in the search warrant. ... Accordingly, we conclude the information contained in [the officer's] affidavit was not stale."); Commonwealth v. Hoppert, 39 A.3d 358, 364 (Pa. Super. Ct. 2012) ("While the e-mails were sent six months prior to the issuance of the warrant, the information sought was not easily disposable and there was a fair probability that AOL had retained it."); Mehring v. State, 884 N.E.2d 371, 380 (Ind. Ct. App. 2008) ("[W]e conclude the information in this case was not stale. While a ten-month lapse between the initial discovery of child pornography on Mehring's IP address and the

application for the search warrant is, on its face, cause for concern, this is just one factor in our determination of staleness. Considering the nature of the crime (possession of child pornography, which is a crime commonly committed in secret and the evidence of which is likely to be kept in a safe and private place like a home) and the nature and type of evidence sought (digital or computer images saved to a computer hard drive or to other types of digital media that can be shared yet still retained), in conjunction with the information provided by [the law-enforcement officer who signed the affidavit in support of the warrant] -- based on his training and experience as a vice detective -- regarding the retention habits of people having child pornography, we agree with the trial court that the ten-month time period did not render the information stale."); United States v. Miller, 450 F. Supp. 2d 1321, 1335 (M.D. Fla. 2006) ("[T]raditional concepts of staleness that might apply to the issuance of search warrants for contraband or drugs do not mechanically apply to situations, as here, where the object of the search is for images of child pornography stored on a computer."); Buckley v. State, 254 Ga. App. 61, 62, 561 S.E.2d 188, 190

(2002) ("Although three months had passed since the eight pornographic images were received in Germany, the Columbus police had information that Buckley continued to reside at the place to be searched. In addition, the information sought was stored on a computer and not a perishable item.").

In this case, only three months had elapsed from the date the child pornography was discovered by the Internet company to the date that the search warrant was executed. We adopt the reasoning of the courts in Gralinski and Hayon, supra. Certainly, it was reasonable to assume that the images were still recoverable. As noted in the cases cited above, child-pornography images are typically saved and, if erased, are easily recoverable from a computer or electronic device. In fact, as noted in Hayon, supra, most individuals in possession of child pornography "hoard" those images. The information in this case was not stale because of the passage of three months and it furnished sufficient probable cause for the issuance of the search warrant. The motion to suppress was properly denied.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED.

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