IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JORDAN MATTHEW HOFMAN,
Appellant.

No. 2 CA-CR 2016-0036
Filed February 10, 2017

Appeal from the Superior Court in Pinal County
No. S1100CR201301792
The Honorable Jason R. Holmberg, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Jonathan Bass, Assistant Attorney General, Tucson
Counsel for Appellee

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By Alison Stavris
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Miller concurred.

S T A R I N G, Presiding Judge:

¶1 After a jury trial, Jordan Hofman was convicted of ten counts of sexual exploitation of a minor resulting from his possession of child pornography. He was sentenced to consecutive, fifteen-year prison terms for each count. On appeal, he argues the trial court erred by allowing the state to introduce evidence seized during the search of his home pursuant to a warrant because the warrant affidavit allegedly contained a deliberate or reckless misstatement of fact. We affirm.

¶2 In October 2012, an Illinois police detective, Sarah Sullivan, determined a computer with an internet protocol (IP) address located in Arizona was offering to share child pornography on a peer-to-peer sharing network. She communicated this information to law enforcement officers in Arizona, which led to a search warrant being issued for the home of the subscriber associated with the IP address. No child pornography was found on any electronic device in the home. One of the home's occupants, however, informed the investigating detective, Steven Jeansonne, that Hofman, her neighbor, had regularly used their internet connection, sometimes using his own laptop. Jeansonne then obtained a search warrant for Hofman's residence, and child pornography was found on a hard drive seized from his bedroom.

¶3 The search warrant affidavit by Jeansonne for Hofman's home stated Sullivan had "download[ed] five (5) child pornography files" from the Arizona IP address. At trial, however, Sullivan testified she had not downloaded the files, but instead had confirmed they were child pornography by comparing their secure

hash algorithm (SHA) value to a database of SHA values for known child pornography files.[1]

¶4 Hofman argues on appeal that the evidence discovered during the search must be suppressed because the statement by Jeansonne that Sullivan had downloaded the files was a "deliberate or reckless" misstatement of a material fact. As set forth in *Franks v. Delaware*, a search pursuant to a warrant obtained by false statements can violate the Fourth Amendment if the defendant proves, by a preponderance of the evidence, that the affiant "knowingly and intentionally, or with reckless disregard for the truth" made a false statement to obtain the warrant and that the false statement was necessary to a finding of probable cause. 438 U.S. 154, 155-56 (1978); *see also State v. Spreitz*, 190 Ariz. 129, 145, 945 P.2d 1260, 1276 (1997).

¶5 Although he challenged the search of his home on other grounds, Hofman acknowledges he did not raise this argument below. We therefore review the issue for fundamental, prejudicial error.[2] *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). Hofman has not established error, much less fundamental error. Even assuming Jeansonne's misstatement about Sullivan's investigation is material, Hofman has identified nothing in the record requiring the conclusion it was reckless or deliberate.

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[1]Sullivan testified the chance of two files having different content but the same SHA value is roughly one in 340 undecillion, in contrast with a one in sixteen billion chance for deoxyribonucleic acid (DNA) comparisons.

[2]The state argues we may decline to address Hofman's claim because the record is "wholly inadequate to permit review" due to Hofman's failure to raise the issue in the trial court. We agree that, in the absence of a suppression hearing, our ability to review the issue is limited. *See State v. Estrella*, 230 Ariz. 401, n.1, 286 P.3d 150, 153 n.1 (App. 2012). Our supreme court has stated, however, that we may "review a suppression argument that is raised for the first time on appeal for fundamental error." *State v. Newell*, 212 Ariz. 389, ¶ 34, 132 P.3d 833, 842 (2006).

¶6 We affirm Hofman's convictions and sentences.