DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,

Appellant,

v.

DONALD JOHN CREBO,

Appellee.

No. 2D22-2921

June 9, 2023

Appeal from the Circuit Court for Sarasota County; Donna M. Padar, Judge.

Ashley Moody, Attorney General, Tallahassee, and Donna S. Koch, Senior Assistant Attorney General, Tampa, and Cerese Crawford Taylor, Tampa (substituted as counsel of record), for Appellant.

Daniel E. Scott of Daniel E. Scott, P.A., Sarasota, for Appellee.

LABRIT, Judge.

The State of Florida appeals a trial court order granting appellee Donald John Crebo's motion to suppress four statements Mr. Crebo made to law enforcement officers. The trial court determined that the statements were the fruit of the poisonous tree.[1] The State argues that

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[1] *See generally State v. Waiters*, 347 So. 3d 533, 541 (Fla. 2d DCA 2022) (explaining that the "fruit of the poisonous tree doctrine" is an exclusionary rule that prohibits the use of evidence that is the product of

all four statements were suppressed erroneously. Because the first of the four statements was suppressed erroneously, we reverse in part and affirm in part.

Background

In August 2019, detectives with the Sarasota County Sheriff's Office received a cyber tip regarding two images of child pornography that had been discovered on a Pinterest account. Law enforcement linked the Pinterest account to an email address that was used by Mr. Crebo, and the IP address to a residence in Sarasota where Mr. Crebo rented a room. Based on this information, law enforcement obtained a search warrant for the residence.

When law enforcement arrived at Mr. Crebo's residence, they persuaded Mr. Crebo to speak with them inside their vehicle, whereupon the officers read Mr. Crebo the search warrant and recited his *Miranda*[2] rights. They then confronted Mr. Crebo with the cyber tip while a tactical team executed the search warrant on the residence. Throughout the rest of the day, Mr. Crebo made several post-*Miranda* statements and admissions to law enforcement. In total, Mr. Crebo made three statements at the residence and a fourth after law enforcement transported him to a nearby sheriff's office.

During the search, law enforcement officers seized numerous items, including Mr. Crebo's cell phone. Text messages retrieved from the device revealed that Mr. Crebo had been communicating with a teenage coworker. Detectives interviewed the coworker, and she told

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a search, seizure, or interrogation conducted in violation of constitutional rights).

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

them about multiple times Mr. Crebo had solicited her. Shortly thereafter, Mr. Crebo was charged with lewd or lascivious conduct, possession of a controlled substance, and three counts of possession of child pornography.

Alleging that the search warrant was defective, Mr. Crebo filed a motion to suppress all physical evidence obtained as a result of the search. The trial court agreed and granted Mr. Crebo's motion.[3] Mr. Crebo then moved to suppress the post-*Miranda* statements he made to the officers. After a hearing, the trial court entered an order in which it concluded that Mr. Crebo's "post-*Miranda* statements are inadmissible as fruit of the poisonous tree." The State timely appealed.

Analysis

The State contends Mr. Crebo's first statement to the officers should not have been excluded because the officers' questions did not use any information that was gained during the search of the residence. The State reasons that law enforcement already had the cyber tip and the Pinterest photos, which were the only subjects covered during the first round of questioning. In fact, the first interview took place simultaneously with execution of the search warrant. The State is correct.

"When reviewing a motion to suppress, the standard of review for the trial court's application of the law to its factual findings is de novo, but a reviewing court must defer to the factual findings of the trial court

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[3] For purposes of this opinion, the specifics are not relevant. Generally, the trial court determined that the statements in the search warrant affidavit were so conclusory as to be insufficient to support a search warrant. *See Goesel v. State*, 305 So. 3d 821, 824 (Fla. 2d DCA 2020).

that are supported by competent, substantial evidence." *Bautista v. State*, 902 So. 2d 312, 313–14 (Fla. 2d DCA 2005).

"The fruit of the poisonous tree doctrine is a court-made exclusionary rule 'which forbids the use of evidence in court if it is the product or fruit of a search or seizure or interrogation carried out in violation of constitutional rights.' " *Hatcher v. State*, 834 So. 2d 314, 317 n.4 (Fla. 5th DCA 2003) (quoting *Craig v. State*, 510 So. 2d 857, 862 (Fla. 1987)). This bar also extends to verbal evidence, such as statements and declarations made by the accused. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963).

> [T]he question of whether the evidence in question is in fact the product or fruit of the constitutionally violative conduct depends on whether the connection between the two is a direct connection. If the connection is attenuated rather than direct, the illegality of the conduct does not always mandate application of the exclusionary rule to bar admission of the evidence.

Craig, 510 So. 2d at 862 (citing *Wong Sun*, 371 U.S. at 491).

Here—as the trial court noted in its order granting Mr. Crebo's motion to suppress—the timing of the statements is critical to determining whether they may be separated from the tainted search. We hold that the first statement Mr. Crebo made to law enforcement could not have been tainted by the search because the search had not yet occurred. *See Delap v. State*, 440 So. 2d 1242, 1248 (Fla. 1983) ("The question to be determined is whether defendant's incriminating statements were induced by [law enforcement]'s use of information secured by the officers searching defendant's home." (emphasis added)).

Mr. Crebo was not confronted with any information that resulted from the search, but only with information that had already been

discovered during the investigation up to that point. In *Delap*, our supreme court explained that

> the search did result in the discovery of evidence incriminating to the defendant. The prosecution established that they were interrogating defendant on the basis of information already in their possession from lawful sources. Even if the search had not occurred, they would have interrogated the defendant concerning the identical incriminating evidence which the illegal search produced, as the police officers also secured this information from lawful sources. Such a showing by the prosecution eliminates illegal search as the sole producing agent of the interrogation itself and the confession was properly held not to be tainted.

Id. at 1252. The same is true here. *See also United States v. Timmann*, 741 F.3d 1170, 1183–84 (11th Cir. 2013) (concluding that statements should not be excluded because the defendant learned information from his aunt and not because the officers "confronted him directly with the evidence obtained during the unlawful search").

In briefing, Mr. Crebo lumps all four statements together, and only cites the general factors articulated in *Wong Sun*. Mr. Crebo has not explained how his first statement was "induced by" the officers' use of information procured during the unlawful search. *Delap*, 440 So. 2d at 1248. For the reasons explained above, there is no causal link between the unlawfully obtained evidence and the content of the first statement. Consequently, Mr. Crebo's first statement is not "fruit of the poisonous tree" and should not have been excluded.

Accordingly, we reverse the trial court order only to the extent it excludes Mr. Crebo's first statement to the officers. We affirm without comment the trial court's rulings as to the exclusion of Mr. Crebo's subsequent statements, and we affirm the order on review in all other respects.

Reversed in part; affirmed in part; remanded.

SILBERMAN and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.