2013 IL App (2d) 111310-U
No. 2-11-1310
Order filed June 6, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-364
WILLIAM S. MUTH,	)	Honorable David R. Akemann,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to suppress his statements as tainted by an illegal arrest, as the police had probable cause after they executed a search warrant at his home, he told the police where his computers were, and those computers revealed child pornography.

¶ 2 Defendant, William S. Muth, appeals from the denial of his motion to suppress statements made following his arrest. He contends that there was no probable cause for his arrest, that his statements were therefore inadmissible as being tainted by the illegal arrest, and that the taint from the illegal arrest was not purged by circumstances following the illegal arrest. Because we conclude

that there was probable cause for the arrest, we affirm the denial of defendant's motion to suppress statements.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted in the circuit court of Kane County on 23 counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2008)). The charges arose out of the search, pursuant to a search warrant, of two laptop computers at his home. He filed a pretrial motion to suppress his statements, contending that his arrest was unlawful and that it therefore tainted his subsequent statements. The trial court denied that motion, and his trial ended in a hung jury.

¶ 5 Prior to his retrial, defendant filed a second motion to suppress statements, contending this time that his statements were the product of improper promises of leniency. That motion was also denied, and defendant was tried and found guilty of 22 of the 23 counts charged. Defendant was then sentenced to concurrent terms of three years in prison on each conviction. After the denial of his motion to reconsider his sentence, defendant filed this timely appeal, contending that his first motion to suppress was incorrectly denied where his statements were tainted by his unlawful arrest.

¶ 6 The facts relevant to our disposition are as follows. At approximately 5 a.m. on February 6, 2008, law enforcement officers from South Elgin and the Department of Homeland Security executed a search warrant at defendant's home, seeking evidence of possession of child pornography. After entering the home, the officers showed defendant the search warrant and asked him where any computers were located. Defendant responded by telling them where he thought "[his] computers were." Based on this information, the officers located three computers in the home, including an Apple laptop and an IBM laptop.

¶ 7 Once the computers were located, Special Agent Robert Butterfield of the Department of Homeland Security performed a "preview," in which he analyzed the hard drives of the two laptops to determine if they appeared to contain child pornography. He did so using a device that allowed him to directly access the hard drives and search for such images. Agent Butterfield identified what appeared to be 11 images of child pornography on the two laptops. He then showed the images to one of the other officers and also printed the images at the scene.

¶ 8 After the officers observed the images, they handcuffed defendant and transported him and his wife, along with their three young children, to the South Elgin police station. Once at the police station, defendant was given his *Miranda* rights; defendant waived those rights and spoke with the officers. During the course of the interview, and after being confronted with his PayPal receipts related to the purchase of the images of child pornography, as well as the images taken from the two laptops, defendant admitted to possessing the images.

¶ 9 Subsequently, defendant filed a motion to suppress his statements, contending that they were inadmissible because they were tainted by his unlawful arrest. He maintained that he was under arrest at his home and that the officers did not have probable cause to arrest him for possession of child pornography at that time. The trial court denied the motion, ruling that, although defendant was under arrest while still at his home, there was probable cause to arrest him then for possession of child pornography. The trial court did not address the alternative issue of whether, had the arrest been unlawful and had it tainted the subsequent statements, the taint had been sufficiently purged to render the statements admissible.

¶ 10 II. ANALYSIS

¶ 11 In this appeal, defendant contends that the trial court erred when it denied his first motion to suppress because there was no probable cause for his arrest, which in turn tainted his later statements to the police. Relatedly, he asserts that the taint was insufficiently attenuated to permit admission of the statements.

¶ 12 A trial court's ruling on a motion to suppress statements is reviewed under the two-part test of *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Hunt*, 2012 IL 111089, ¶ 22. The trial court's factual findings are upheld unless they are against the manifest weight of the evidence. *Hunt*, 2012 IL 111089, ¶ 22. A reviewing court then assesses the established facts in relation to the issues presented and reaches its own conclusions as to what relief, if any, should be allowed. *Id.* Accordingly, the ultimate legal question of whether suppression is warranted is reviewed *de novo*. *Id.*

¶ 13 An illegal arrest will taint subsequent statements that bear a sufficiently close relationship to that illegality. *People v. Lovejoy*, 235 Ill. 2d 97, 130 (2009). Tainted statements nonetheless will be admissible if it is shown that such taint has been attenuated or purged. *Id.* An attenuation analysis is unnecessary, however, where the facts readily show that a defendant's statements were not obtained as a result of an illegal arrest. *Id.*

¶ 14 A warrantless arrest is valid only if supported by probable cause. *People v. Grant*, 2013 IL 112734, ¶ 11. Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *Id.* In determining whether the officer has probable cause, the factual knowledge, based on the officer's experience, is relevant. *Id.* The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Id.* Whether probable cause exists is governed

by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. *Id.*

¶ 15 Probable cause to believe that a defendant has committed a possession offense consists of evidence tending to show that a defendant knew of the presence of the contraband and that it was in his or her immediate and exclusive control. *People v. Juarbe*, 318 Ill. App. 3d 1040, 1053-54 (2001). Where two or more people share immediate and exclusive control of contraband, they jointly possess it. *Id.* at 1054. Even where there is no actual physical possession, constructive possession exists if there is an intent and capacity to maintain control and dominion over the contraband. *Id.* Constructive possession can be shown by evidence that the defendant controlled the premises where the contraband was found. *Id.* Additionally, where contraband is discovered during a search, probable cause to arrest exists if a defendant can be linked to such contraband via joint or constructive possession. *People v. Drake*, 288 Ill. App. 3d 963, 968 (1997).

¶ 16 In our case, there were several facts known to the police prior to and at the time of defendant's arrest that, when viewed in their totality, would lead a reasonable person to believe that defendant possessed images of child pornography. The police went to defendant's residence armed with a search warrant based on probable cause that there was at least one computer containing images of child pornography. Clearly, the police strongly suspected at that point that defendant possessed such images. Additionally, when defendant was shown the search warrant and was asked where the computers were located within the home, he told the officers where *his* computers were. The examination of the hard drives of the two laptops revealed the presence of what appeared to be child pornography. These facts, in their totality, demonstrated to the officers that defendant

possessed images of child pornography found on the laptops and provided the probable cause necessary to arrest defendant for that offense.

¶ 17 Such a conclusion was also reasonable if the officers considered defendant to have jointly possessed the illegal images. This is so because the officers could have reasonably concluded, based on defendant and his wife sharing immediate and exclusive control of the premises, and therefore the laptops, that defendant jointly possessed with his wife the laptops, and hence the images found thereon. See *Juarbe*, 318 Ill. App. 3d at 1053-54; see also *People v. Bell*, 403 Ill. App. 3d 398, 406-08 (2010).

¶ 18 Finally, the officers could have reasonably believed that defendant constructively possessed the images because he controlled, in part, the premises where those images were found. This, combined with the other evidence, provided an alternative basis to arrest defendant for possession of child pornography.

¶ 19 Although defendant has cited a handful of cases in his brief related to the issue of probable cause for arrest, those cases provide general support only and do not factually compel a different result in this case. Because we hold that defendant's arrest in his home for the offense of possession of child pornography was supported by probable cause, and thus was lawful under the fourth amendment, we need not address the alternative attenuation argument.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the denial of defendant's first motion to suppress statements.

¶ 22 Affirmed.