STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: May 13, 2016]

STATE OF RHODE ISLAND	:	
	:	
v.	:	**No. K2-2015-0791A**
	:	
RALPH REISNER	:	

DECISION

STERN, J. Before the Court is Ralph Reisner's (Defendant) motion to suppress evidence seized within his home, arguing that the affidavit in support of the search warrant (the Affidavit) did not establish probable cause. Conversely, the State of Rhode Island (the State) maintains that the Affidavit was sufficient and established probable cause. Jurisdiction is pursuant to G.L. 1956 § 8-2-15. For the following reasons, the Court denies Defendant's motion to suppress.

I

Facts[1] and Travel

Detective Brian Macera (Detective Macera) is a ten-year veteran of the Rhode Island State Police (RISP), and is currently assigned to the Computer Crimes Unit (CCU) and the Rhode Island Internet Crimes against Children (ICAC) Task Force.[2] Aff. at 3. Members of the CCU and ICAC Task Force engage in undercover investigation of computer-related crimes to identify criminals trading child pornography on the Internet using peer-to-peer networks. Id.

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[1] Pursuant to the applicable standard of review, the following facts are garnered from the Affidavit. State v. Byrne, 972 A.2d 633, 638 (R.I. 2009); State v. Verrecchia, 880 A.2d 89, 94 (R.I. 2005).

[2] The ICAC Task Force is administered by the RISP and "supports a national network of multi-agency, multi-jurisdictional task forces engaged in investigations, forensic examinations, and prosecutions related to Internet crimes against children and technology-facilitated child sexual exploitation." Id.

Peer-to-peer networks facilitate the sharing of electronic files between participating members over the Internet. Id. To be a participating member, a computer user must install a file-sharing software and "sharing folder" in which files can be stored and shared with other participating members of the peer-to-peer network. Id. Members of the peer-to-peer network can search the network and download any shared file in that network. Id. at 3-4. Each file in the peer-to-peer network is attached to the Internet Protocol (IP) address[3] of the computer that is sharing the file. Id. at 2. Further, each file in the peer-to-peer network is identifiable by a "hash" value, which is an "alpha-numeric string . . . that is calculated by applying a mathematical algorithm to the electronic data that is contained in the electronic file." Id. Therefore, if an electronic file has identical content to another file, their hash values will also be identical. As a result, hash values are "commonly referred to as electronic fingerprints." Id. Any changes to the content of an electronic file, no matter how slight, will change the file's hash value. Id. Law enforcement, the National Center for Missing and Exploited Children (NCMEC), and the ICAC Task Force have identified certain hash values as confirmed child pornography. Id.

In June 2015, Detective Macera was contacted by Detective Lieutenant Stephen Riccitelli—a detective in the North Smithfield Police Department and member of the ICAC Task Force—who informed him that the ICAC Task Force computer system had downloaded a file suspected to be child pornography from IP address 100.10.41.6.[4] Id. at 5. Detective Macera

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[3] An IP address is a "unique routing number associated with a computer connected to the Internet which functions in the routing of data between source and destination. IP addresses are assigned to Internet service providers . . . who, in turn, assign them to customers for Internet access." Id.

[4] At the evidentiary hearing, Detective Macera explained that the ICAC Task Force subscribes a system of computers to common peer-to-peer file sharing programs. These computers are programed to continuously look for child pornography files on the peer-to-peer network, and will download files from another participating member's computer when such files contain certain hash values or descriptions that match child pornography. When an ICAC Task Force computer downloads a child pornography file from another computer, a member of the ICAC Task Force is

viewed the downloaded file and confirmed that it contained child pornography as defined in § 11-9-1.3 of Rhode Island's General Laws. Id. Detective Macera described the file as follows:

> "**File Name**: Jamtien.mpeg
> **Date/Time**: June 15, 2015 at 11:42 PM (UTC)
> **HASH Value**: 2aad88e182cc9c66ccd7ba15aa186ecfac39f370
> **Description**: This video file depicts a prepubescent female on the beach removing her bathing suit exposing her genitals." Id.

Detective Macera conducted a search of the American Registry of Internet Numbers (ARIN) and determined that IP address 100.10.41.6 was owned by Verizon Internet Services, 2701 South Johnson Street, San Angelo, Texas 76904 (Verizon). Id. Verizon was served with a subpoena, which directed it to provide to RISP the name, address, and telephone number of the subscriber of IP address 100.10.41.6. Id. Verizon identified the subscriber of the IP address 100.10.41.6 as Heather Reisner (Heather) of 15 Harding Street, West Warwick, Rhode Island. Id.

Detective Macera searched law enforcement databases and confirmed that Heather resided at 15 Harding Street, West Warwick, Rhode Island 02893. Id. Although Heather's driver's license indicated that her address was 8 ½ Lachance Street, West Warwick, Rhode Island, she indicated in a previous communication with the West Warwick Police Department that her residence was 15 Harding Street, West Warwick, Rhode Island. Id. at 5-6. Detective Macera also confirmed with the United States Postal Service that Heather was receiving mail at 15 Harding Street, West Warwick, Rhode Island. Id. at 6. On several occasions in July 2015, Detective Macera set up surveillance at 15 Harding Street, West Warwick, Rhode Island and observed a female exiting the residence. Id. Detective Macera recognized the female exiting the house as Heather from her driver's license photograph. Id.

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notified and the download is documented in a log file along with the IP address from which the child pornography file was downloaded.

On July 29, 2015, Detective Macera used the above information to apply for a search warrant (the Search Warrant) of 15 Harding Street, West Warwick, Rhode Island and requested that a member of the RISP CCU conduct an on- and off-site forensic review of seized evidence related to the possession and transfer of child pornography. On the same day, the Search Warrant was approved. Subsequently, on August 3, 2015, RISP executed the Search Warrant, seizing Defendant's computer—a Mac Pro desktop (serial number WCAU40341527) (Defendant's Computer). A police forensic examination of Defendant's Computer revealed seven videos of child pornography. Based on this evidence, the RISP obtained an arrest warrant for Defendant, and Defendant was subsequently arrested. On December 24, 2015, the State filed a criminal information, charging Defendant with possession of child pornography, in violation of § 11-9-1.3(b)(2); and delivery or transfer of child pornography, in violation of § 11-9-1.3(b)(1).

II

Standard of Review

"The Fourth Amendment to the United States Constitution and article 1, section 6 of the Rhode Island Constitution, prohibits the issuance of a search warrant absent a showing of probable cause." Verrecchia, 880 A.2d at 94. "The United States Supreme Court has indicated that the existence of probable cause should be determined pursuant to a flexible 'totality-of-the-circumstances analysis.'" Id. (quoting Illinois v. Gates, 462 U.S. 213, 238-39 (1983)). The Supreme Court of the United States explained:

> "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . .

> conclud[ing]' that probable cause existed." Gates, 462 U.S. at 238-39.

"In other words, the approach to the probable cause question should be pragmatic and flexible." Verrecchia, 880 A.2d at 94 (citing State v. Spaziano, 685 A.2d 1068, 1069 (R.I. 1996); State v. Correia, 707 A.2d 1245, 1249 (R.I. 1998); State v. Hightower, 661 A.2d 948, 959 (R.I. 1995)). Therefore, "[t]he magistrate is permitted to draw reasonable inferences from the affidavit presented to him or her." Id. (citing State v. Pratt, 641 A.2d 732, 736 (R.I. 1994)).

"Because there is 'a strong preference for searches conducted pursuant to a warrant,' affidavits are to be interpreted in a realistic fashion that is consistent with common sense, and not subject to rigorous and hypertechnical scrutiny." Byrne, 972 A.2d at 638 (quoting Gates, 462 U.S. at 235-39); see also United States v. Ventresca, 380 U.S. 102, 109 (1965) ("[W]hen a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner."). In fact, "[i]t is incumbent upon the trial justice and the reviewing court to accord great deference to the issuing magistrate's probable-cause determination, so long as there is a showing of 'a substantial basis from which to discern probable cause.'"[5] Id. (citing State v. Correia, 707 A.2d 1245, 1249 (R.I. 1998)). "[I]n close cases, the validity of the warrant should be upheld." Id. at 642. "'Probable cause exists when the affidavit demonstrates in some trustworthy fashion the likelihood that an offense has been or is being committed.'" Id. (quoting United States v. Santana, 342 F.3d 60, 65 (1st Cir. 2003)).

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[5] Our Supreme Court has held that "a deferential standard of review should be applied when reviewing a magistrate's decision to issue a warrant because '[t]he Fourth Amendment demonstrates a strong preference for searches conducted pursuant to a warrant . . . and the police are more likely to use the warrant process if the scrutiny applied to a magistrate's probable-cause determination to issue a warrant is less than that for warrantless searches.'" Id. (internal citations omitted).

III

Analysis

Defendant argues that evidence seized as a result of the Search Warrant should be suppressed because (1) Detective Macera's description of the video was insufficient; (2) the video was not child pornography as defined by § 11-9-1.3(c)(1)(ii); and (3) the issuing magistrate did not view the video to determine if it was, by law, child pornography. The State maintains that the Search Warrant was supported by probable cause because (1) the Affidavit established a fair probability that the evidence of crime would be located at 15 Harding Street; (2) the issuing magistrate is not required to view the video to establish probable cause; and (3) suppression is not warranted because the RISP relied upon the Search Warrant in good faith.

A

Issuing Magistrate's Review of Alleged Child Pornography

The Court first addresses Defendant's argument that because the issuing magistrate did not view the video himself, the Search Warrant should be deemed invalid. The State counters that the issuing magistrate need not view the alleged child pornography to make a "pre-charge decision" as to whether the video constitutes child pornography.

Whether or not an issuing magistrate of a search warrant needs to review an alleged image or video of child pornography is a matter of first impression in Rhode Island. In instances of first impression, and when there is a nearly identical federal statute, our Supreme Court has looked to federal court jurisprudence for guidance. State v. Brown, 62 A.3d 1099, 1109 (R.I. 2013). It has been noted that the State's child pornography statute is substantially similar to its federal counterpart, 18 U.S.C. § 2256(2)(B)(iii). Byrne, 972 A.2d at 641 n.11. Therefore, the Court looks to United State v. Brunette, 256 F.3d 14, 17-18 (1st Cir. 2001), in which the First

Circuit discussed the necessity of a magistrate to review alleged child pornography images or video when issuing a warrant in a child pornography investigation.[6]

In Brunette, an investigator applied for a search warrant after discovering that a defendant had downloaded thirty-three images of child pornography. 256 F.3d at 15-16. The affidavit submitted in support of the search warrant application did not append any of the allegedly pornographic images and did not contain a description of them. Id. at 16. Rather, the affidavit merely asserted that the images "met the statutory definition of child pornography." Id. The warrant issued and other allegedly pornographic images were found on the defendant's computer. Id. Subsequently, the defendant moved to suppress the images contained on the computers seized under the warrant, arguing that the affidavit had a "nondescript legal conclusion" and the warrant lacked probable cause because the issuing magistrate did not view the images and determine that they were child pornography. Id.

In its review of the grant of the search warrant, the First Circuit held that "[a]lthough the affidavit included sufficient indicia to link the images to the defendant, i.e., that the postings originated from the defendant's [] Internet access account, it did not specify with any detail the

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[6] Defendant has alleged violations of the Fourth Amendment of the United States Constitution, and article I, section 6 of the Rhode Island Constitution, both of which prohibit unreasonable searches and seizures. The applicability of Brunette in the instant suit is illustrative of the protections awarded by the Federal and State Constitutions. For instance, the First Circuit has held Brunette awards certain protections to citizens under the Fourth Amendment. As "[t]he Federal Constitution only establishes a minimum level of protection," the Rhode Island Constitution must provide the same protections as the Federal Constitution, and thus utilize the standard set forth in Brunette in analyzing searches and seizures. Pimental v. Dep't of Transp., 561 A.2d 1348, 1350 (R.I. 1989). The Supreme Court of the United States clarified that "state courts [are] final interpreters of state law 'to impose higher standards on searches and seizures [under state constitutions] than required by the Federal Constitution.'" Id. (citing Cooper v. California, 386 U.S. 58, 62 (1967)). Accordingly, the State Constitution may offer protections against searches and seizures that award more protection than Brunette, but Brunette must be found as the minimum protections under the Fourth Amendment, and thus any state constitution.

basis for believing that those images were pornographic."[7] Id. at 17. Further, the First Circuit noted that "[t]he evidence on the nature of the images consisted solely of [the investigator's] legal conclusion parroting the statutory definition." Id. The Brunette court concluded the following:

> "[a] court reviewing a warrant application to search for pornographic materials ordinarily is unable to perform the evaluation required by the Fourth Amendment if the application is based on allegedly pornographic images neither appended to, nor described in, the supporting affidavit . . . If copies cannot feasibly be obtained, a detailed description, including the focal point and setting of the image, and pose and attire of the subject, will generally suffice to allow a magistrate judge to make a considered judgment." Id. at 20.

Here, Detective Macera's description of the "Jamtien" video as "a prepubescent female on the beach removing her bathing suit exposing her genitals" is sufficient to withstand the requirements of Brunette, and the issuing magistrate thus was not required to view the video before issuing the warrant. See 256 F.3d at 20. Detective Macera described the setting of the video—a beach; the pose of the female—undressing; the attire the female was wearing—a bathing suit; and the focal point of the video—a prepubescent female and her genitals. See id.; Aff. at 5. While sparse, Detective Macera's definition does not merely "parrot" the statutory definition of child pornography. Instead, it describes the contents of the "Jamtien" file. See Brunette, 256 F.3d at 17. The Court notes that while Detective Macera's description meets the requirements of Brunette, it barely does so. See id. In fact, the Court deems such description as the bare minimum—anything less would not be sufficient to provide an issuing magistrate with enough information to make a probable cause determination. Accordingly, the Court finds

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[7] The image was described as "a prepubescent boy lasciviously displaying his genitals." The Brunette court held that this was "an attempt on [the investigator's] part to mirror the language" of the child pornography statute. Id. at 17.

Detective Macera's description of the "Jamtien" file sufficient under Brunette. See id. However, the sufficiency of the description is a question separate from whether the Affidavit as a whole was supported by probable cause.

B

Affidavit Supported by Probable Cause

Defendant avers that the Affidavit did not establish probable cause because Detective Macera did not provide a sufficient description of the video to enable a magistrate to determine that the video constituted "child pornography" as statutorily defined. Specifically, Defendant maintains that based on Detective Macera's description of the video in the Affidavit, the video was not a graphic or lascivious exhibition of the genitals. The State argues that the Affidavit need only establish probable cause, not a certainty, that the picture is child pornography.

The possession, transfer or production of child pornography is prohibited by § 11-9-1.3. A finding that an image or video depicts child pornography "requires more than mere nudity." United States v. Amirault, 173 F.3d 28, 33 (1st Cir. 1999). Under § 11-9-1.3, child pornography is defined as:

> "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:
>
> [. . .]
>
> "(ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct . . ."

"Sexually explicit conduct" is defined as actual "[g]raphic or lascivious exhibition of the genitals or pubic area of any person." Sec. 11-9-1.3(c)(6) (emphasis added). "Graphic," "when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part

of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted."[8] Sec. 11-9-1.3(c)(8). Despite defining what constitutes a "graphic" image, § 11-9-1.3 does not define what amounts to a "lascivious" depiction of the genitals.

In defining "lascivious,"[9] state courts have looked to federal jurisprudence and have employed the six factors articulated in United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), which was adopted by the First Circuit in Amirault, 173 F.3d at 33. See Byrne, 972 A.2d at 641 n.11 (noting the similarities between § 11-9-1.3 and its federal counterpart, 18 U.S.C. § 2256(2)(B)(iii)). In Dost, a defendant sought to dismiss the indictment against him, arguing that the images that he possessed did not display or constitute a lascivious exhibition of the genitals or pubic area of the minor that he photographed. 636 F. Supp. at 830. In denying the motion to dismiss, the Dost court considered the following factors instructive on whether the image depicted "lascivious" conduct:

> "(1) whether the focal point of the visual depiction is on the child's genitalia or pubic area;
> "(2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
> "(3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;
> "(4) whether the child is fully or partially clothed, or nude;

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[8] The Court recognizes that the application of the definition of "graphic" is circular. See § 11-9-1.3(c)(8). For instance, "sexually explicit conduct" is a "graphic" exhibition of the genitals; and a "graphic exhibition of the genitals" means a depiction of any part of the genitals or pubic area during "any part of the time that the sexually explicit conduct is being depicted." Compare §§ 11-9-1.3(c)(6) with (8). Simply, an image is sexually explicit conduct when it is graphic, and the image is graphic when it is sexually explicit. See id.

[9] Our Supreme Court has addressed "lascivious" only once, observing that "visual depictions of clothed genitalia may fall within the meaning of 'lascivious exhibition of the genitals or pubic area,' and thereby qualify as child pornography." Byrne, 972 A.2d at 640 n.11 (quoting United States v. Knox, 32 F.3d 733, 743-51 (3d Cir. 1994)).

"(5) whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity;
"(6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer." Id. at 832.

The Dost court explained that "[o]f course, a visual depiction need not involve all of these factors to be a 'lascivious exhibition of the genitals or pubic area.' The determination will have to be made based on the overall content of the visual depiction, taking into account the age of the minor." Id. Further, in employing the Dost factors, the Amirault court cautioned that the factors are "neither comprehensive nor necessarily applicable in every situation." 173 F.3d at 32. The court explained that "[a]lthough Dost provides some specific, workable criteria, there may be other factors that are equally if not more important in determining whether a photograph contains a lascivious exhibition. The inquiry will always be case-specific." Id.

While § 11-9-1.3 and Dost may be instructive on what constitutes child pornography, such a determination is not required for a finding of probable cause for a search warrant. See Byrne, 972 A.2d at 642 ("Probable cause exists when the affidavit demonstrates in some trustworthy fashion the likelihood that an offense has been or is being committed"). The question before the Court is not whether the "Jamtien" video constitutes child pornography under § 11-9-1.3, but whether the Affidavit was sufficient to establish probable cause for the issuance of the Search Warrant. It is important that the instant task of the Court not be confused with that of the jury, whose task is to decide beyond a reasonable doubt whether the "Jamtien" and other images or videos found on Defendant's computer constitute child pornography. State v. Guzman, 752 A.2d 1, 4 (R.I. 2000) ("[T]he existence of probable cause . . . does not require the same degree of proof needed to determine whether that person is guilty of the crime in question."); see also United States v. Frabizio, 459 F.3d 80, 85 (1st Cir. 2006) ("it is up to the

jury to determine whether the images identified in the bill of particulars . . . constitute visual depictions of 'sexually explicit conduct.'").

In fact, in the purview of child pornography, our Supreme Court has held that in addition to the fact alleged in the Affidavit, the nature of the offense can lend reasonable inferences to support probable cause for a search warrant. Byrne, 972 A.2d at 640-42. The Byrne Court explained that "'[t]he requisite nexus between the criminal article or activity described in the affidavit and the place to be searched need not be based on direct observation.'" Byrne, 972 A.2d at 640 (quoting Commonwealth v. Anthony, 883 N.E.2d 918, 926 (Mass. 2008)). Instead, "it may be found in 'the type of crime, the nature of the . . . items [sought], the extent of the suspect's opportunity for concealment, and normal inferences as to where a criminal would be likely to hide [items of the sort sought in the warrant].'" Id. (quoting Anthony, 883 N.E.2d at 926). For instance, child pornography, like the crime of voyeurism, "is, by its nature, a solitary and secretive crime." Id. at 641. The Court noted that:

> "The observation that images of child pornography are likely to be hoarded by persons interested in those materials in the privacy of their homes is supported by common sense and the cases. Since the materials are illegal to distribute and possess, initial collection is difficult. Having succeeded in obtaining images, collectors are unlikely to destroy them. Because of their illegality and the imprimatur of severe social stigma such images carry, collectors will want to secret them in secure places, like a private residence." Id. (quoting United States v. Riccardi, 405 F.3d 852, 861 (10th Cir. 2005)).

The type of the crime, viewed in conjunction with any instrumentality sought to be seized, also may provide reasonable inferences necessary to establish probable cause. Id. at 641-42. For example, it would be a reasonable inference that a camera containing sexually explicit material would be in a defendant's residence, charged with the illegal possession of the sexually explicit images. Id.

Here, the Court finds that the Affidavit established probable cause. The definitions in § 11-9-1.3(c) and the factors in Dost provide guidance on what constitutes child pornography, although such an affirmative finding on the merits is not necessary at this stage in the proceedings. See Byrne, 972 A.2d at 642. Still, the Court looks to § 11-9-1.3 and Dost to "guide the inquiry" in determining whether the Affidavit supplied information that amounted to establishing probable cause. See Brunette, 256 F.3d at 18.

At the outset, the Court notes that the "Jamtien" video file is likely "graphic" as defined by § 11-9-1.3(c)(8) because the minor female's genitals can be seen during the video. See Aff. at 5; § 11-9-1.3(c)(8). While the definition of "graphic" may appear circular in its application, the Court also finds that the video is likely lascivious. See supra n.6.

Turning to the factors in Dost, the Court notes that the first factor is not necessarily met as the description of "Jamtien" does not state whether the focus of the video is on the minor female's genitals or pubic area. See Aff. at 5; Dost, 636 F. Supp. at 832. It also cannot be said with certainty that the beach is a place that is sexually suggestive or generally associated with sexual activity. See Aff. at 5; Dost, 636 F. Supp. at 832. Despite the fact that the beach may be a place for romantic encounters, Detective Macera's description does not provide any details to allow the Court to make such an inference as to the setting of the photograph. See Aff. at 5. However, a prepubescent female taking off her bathing suit in a public place (such as a beach) does seem to be an unnatural pose for a person of her age. See Aff. at 5; Dost, 636 F. Supp. at 832. Furthermore, Detective Macera described the female in the video as "removing her bathing suit" and "exposing her genitals," allowing the Court to infer that the female was either nude or partially nude at the time the "Jamtien" video was being taken. See Aff. at 5; Dost, 636 F. Supp. at 832. A female undressing in front of a camera also likely suggests some degree of sexual

coyness or willingness to engage in sexual activity, making the "Jamtien" video likely to be intended or designed to elicit a sexual response in the viewer. See Aff. at 5; Dost, 636 F. Supp. at 832. In reviewing Detective Macera's description of the "Jamtien" video file in conjunction with all the Dost factors, and without making an affirmative finding that the "Jamtien" video file is child pornography, the Court is satisfied that the Affidavit and Detective Macera's description therein were sufficient to provide and trustworthy information to demonstrate a likelihood that child pornography images or videos were in 15 Harding Street.

As previously stated, at the search warrant stage of the investigation, all that was required was that the Affidavit demonstrate "in some trustworthy fashion the likelihood" that child pornography was in 15 Harding Street, which it did. See id. The Affidavit asserted that the Jamtien video file—which is likely to be child pornography—was downloaded from IP address 100.10.41.6, a member of a peer-to-peer sharing network that was suspected of containing child pornography. See Aff. at 5. IP address 100.10.41.6 was registered to Heather, who lived at 15 Harding Street, West Warwick, Rhode Island. Id. The video downloaded was named "Jamtien" and was described as "a prepubescent female on the beach removing her bathing suit exposing her genitals." Id. Based on these facts, the Affidavit has provided sufficient and trustworthy facts to establish a "likelihood" that a resident of 15 Harding Street, West Warwick, Rhode Island was downloading and possessed child pornography. See Byrne, 972 A.2d at 642.

The facts of the Affidavit are further supported by the reasonable inferences that may be made by the inherent nature of the crime and the instrumentalities used in the commission of the crime. See id. at 641. The nature of the crime of child pornography reasonably infers that evidence of the crime is within the defendant's personal residence. See id. Specifically, evidence of the crime would be on a device that was capable of connecting to IP address

100.10.41.6, including a computer or cellphone. See id. The Search Warrant was directed at "the premises located at 15 Harding Street, West Warwick, Rhode Island 02893," which identified the Defendant's home. See Aff. at 2; Byrne, 972 A.2d at 641. Further, it was directed at "mobile devices, computer hardware, computer software, computer-related documentation," among others, all of which are used in the commission of an Internet-related crime, and able to connect to IP address 100.10.41.6. See id.; Byrne, 972 A.2d at 641.

In viewing the information in the Affidavit in the totality of the circumstances, awarding appropriate deference to the issuing magistrate's finding of probable cause, and making reasonable inferences from the inherent nature of the crime and instrumentalities used, the Court finds that the Affidavit provided the issuing magistrate a "substantial basis from which to discern probable cause." See Gates, 462 U.S. at 238-39; see also Byrne, 972 A.2d at 638.

IV

Conclusion

In conclusion, the Court denies Defendant's motion to suppress because the issuing magistrate was not required to review the alleged child pornography and the Affidavit established a substantial basis from which the issuing magistrate could conclude that probable cause existed. Counsel shall submit an appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	State of Rhode Island v. Ralph Reisner
CASE NO:	K2-2015-0791A
COURT:	Kent County Superior Court
DATE DECISION FILED:	May 13, 2016
JUSTICE/MAGISTRATE:	Stern, J.

ATTORNEYS:

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