

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DANIEL BRIAN MASSON,)
DOC #T95854,)
Appellant,)
v.)
STATE OF FLORIDA,)
Appellee.)

Case No. 2D17-4021

Opinion filed January 23, 2019.

Appeal from the Circuit Court for
Hillsborough County; Nick Nazaretian,
Judge.

Howard L. Dimmig, II, Public Defender, and
Julius J. Aulizio, Assistant Public Defender,
Bartow, for Appellant.

Daniel Brian Masson, pro se.

Ashley Brooke Moody, Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

Affirmed.

KHOZAM, BLACK, and BADALAMENTI, JJ., Concur.

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

April 03, 2019

**CASE NO.: 2D17-4021
L.T. No.: 16-CF-14687**

DANIEL BRIAN MASSON

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa Julius J. Aulisio, A.P.D.
Pat Frank, Clerk

Daniel Brian Masson

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

CASE NUMBER: 16CF014687A

v.

DANIEL BRIAN MASSON

DIVISION: A

MOTION TO SUPPRESS EVIDENCE BASED ON INVALID SEARCH WARRANT

COMES NOW, the Defendant, DANIEL BRIAN MASSON, pursuant to Rule 3.190(h) and (i) of the Florida Rules of Criminal Procedure, and respectfully moves this Court to suppress all evidence seized by law enforcement in this case from search of the Defendant's and as grounds therefore states as follows:

I. CHARGES

The Defendant, DANIEL BRIAN MASSON, is charged with 100 counts of Possession Of Child Pornography, 10 Or More Images.

II. EVIDENCE AND STATEMENTS TO BE SUPPRESSED

The defendant respectfully requests this Honorable Court suppress any and all evidence (specifically, images believed to be child pornography) derived from the search of 9309 N. 9th Street, Tampa, FL, as well as statements and purported "admissions" made by the defendant to any law enforcement agent or agent of the State of Florida, specifically: "Masson told me all of the computers inside the residence belonged to him, not his roommate, Otis Nix. Masson stated that we will find child pornography on the computers, but that none of it was produced by him. Masson said the child pornography he views and collects comes from the internet. During the interview, Masson told me each computer located in the room and the associated passwords that he could remember. Mason said that two of the Emachine model EL 1356G-51w's were the ones

he used to view/download child pornography. Masson also told me of external memory devices in the room. Masson told me that most of his child pornography collection was kept on the 2TB Seagate external hard drive. Masson told me there are two folders titled "CSIA Review" and "CSVA Review" which contain the child pornography....Masson acknowledged that there may be thousands of images of child pornography on the storage devices. Masson told me the pornography was mostly of girls between the ages of 8 and 10 years old. However, there may be some images of girls as young as 6 years old. Masson also told me that he had a stack of printed pornographic photographs of children in his bottom dresser drawer." See Police Report, summary, p. 32-33.

III. GROUND FOR SUPPRESSION

The Defendant had a reasonable expectation of privacy in his person and the residence, and therefore, has standing to assert his rights under the Fourth and Fourteenth Amendments to the United States Constitution and under Art. I, §9 and 12 of the Florida Constitution to be free from unreasonable searches and seizures. See Rakas v. Illinois, 439 U.S. 128 (1978).

Furthermore, the Defendant did not knowingly, voluntarily, and intelligently waive his constitutional right to remain silent or his right to counsel as interpreted by the due process clause of the Fifth Amendment to the United States Constitution and Article I, §9 of the Florida Constitution.

IV. FACTUAL BASIS

Without stipulating to any fact contained therein, the defense notes that a Criminal Arrest Affidavit and a police report were prepared in conjunction with the Defendant's arrest and depositions were taken in preparation of the case. The facts as alleged in the police reports and sworn to in deposition are as follows:

1. On 10/17/16, Tampa Police Department Detective Larson presented a search warrant to

the Honorable Paul Huey.

- a. The search warrant is based on an August 8, 2016 cyber tip provided by Microsoft/Skype on 7/9/2016 between 4:36:17-4:39:36, regarding the Defendant's known address and IP address. (Police Report, p. 29).
- b. Specifically, images "(1) tmp8164.jpg, (2) tmp833B.jpg, (3) tmp828E.jpg, (4) tmp804A.jpg, and (5) tmp85FC.jpg" were identified as child pornography.
- c. The uploaded account had used name, "daniel.masson.1965,82a9ddf097c4b5b8"
- d. The Defendant maintains these images are not, in fact, child pornography.

2. Pursuant to the warrant, on 10/18/16, Tampa Police Department Officer Jenne and Officer Bors conducted surveillance at 9309 N. 9th Street, Tampa, FL, pursuant to Detective Larson obtaining a court authorized search warrant for the residence. (Police Report, p. 31).
3. The Defendant was identified leaving from and returning to the residence. (Id).
4. The Defendant was detained, and according to Officer Jenne's report, advised of his Miranda rights from standard TPD 310 form. (Id).
5. The Defendant made certain admissions relevant to the criminal investigation. (See Section II above).

V. LEGAL AUTHORITY

I. The Warrant Lacked Any Probable Cause

Florida Statute § 933.04 (2008) states that no warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person or things to be seized. The sworn affidavit must set forth the facts tending to establish the grounds for the issuance of a search warrant or probable cause for believing that they exist. *See*

Fla. Stat. § 933.06.

The Defendant maintains these images are not in fact child pornography. The Defendant requests the Court to make an independent analysis as to whether in fact the images amount to probable cause of possession of child pornography.

WHEREFORE, for the reasons stated in this motion, the Defendant moves this Honorable Court to suppress as both physical evidence (photographs alleged to be child pornography) and any and all statements or admissions obtained from the Defendant by law enforcement or other agents of the State of Florida.

I HEREBY CERTIFY that a copy of the foregoing motion has been furnished to LINDSEY MICA HODGES via e-mail to mailprocessingstaff@SAO13th.com, Assistant State Attorney, Office of the State Attorney of the Thirteenth Judicial Circuit, on this 28th day of June, 2017.

Respectfully submitted,

LAW OFFICE OF JULIANNE M. HOLT
PUBLIC DEFENDER

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**Additional material
from this filing is
available in the
Clerk's Office.**