

APPENDICES

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APPENDIX A
COURT OF APPEALS FOR THE EIGHTH CIRCUIT DECISION

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United States of America, Plaintiff - Appellee v. Maksim Stefanyuk, Defendant - Appellant
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
944 F.3d 761; 2019 U.S. App. LEXIS 36662
No. 18-3364
October 18, 2019, Submitted
December 11, 2019, Filed

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeal from United States District Court for the District of South Dakota - Sioux Falls. United States v. Stefanyuk, 2018 U.S. Dist. LEXIS 109794 (D.S.D., July 2, 2018)

Counsel For United States of America, Plaintiff - Appellee: Jeffrey C. Clapper, Assistant U.S. Attorney, U.S. Attorney's Office, District of South Dakota, Sioux Falls, SD; Cheryl Schrempp DuPris, Assistant U.S. Attorney, U.S. Attorney's Office, District of South Dakota, Pierre, SD.

Maksim Stefanyuk, Defendant - Appellant, Pro se, Oxford, WI.

For Maksim Stefanyuk, Defendant - Appellant: Jason J. Tupman, Assistant Federal Public Defender, Federal Public Defender's Office, Sioux Falls, SD.

Judges: Before SMITH, Chief Judge, GRUENDER and BENTON, Circuit Judges.

CASE SUMMARY Defendant's conviction and 262-month sentence for violating 18 U.S.C.S. §§ 2252A(a)(2)(A) and 2250(a) were affirmed since the district court did not err by denying his motion to suppress electronic video surveillance equipment evidence, and it did not abuse its discretion by admitting evidence about his prior child pornography conviction.

OVERVIEW: HOLDINGS: [1]-The district court did not err by denying his motion to suppress since the failure to suppress the electronic video surveillance equipment evidence did not sufficiently influence the jury to merit reversal, and thus was harmless error; [2]-The district court did not abuse its discretion by admitting evidence about his prior child pornography conviction as it was admissible under Fed. R. Evid. 414 as that conviction was basically the same crime, the same criminal type of conduct or by finding the evidence was admissible under Fed. R. Evid. 404(b).

OUTCOME: Judgment affirmed.

LexisNexis Headnotes

Criminal Law & Procedure > Pretrial Motions > Suppression of Evidence
Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review > Findings of Fact
Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review > Motions to Suppress
Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review > Motions to Suppress

An appellate court affirms the denial of a motion to suppress unless it is unsupported by substantial evidence, based on an erroneous interpretation of the law, or, based on the entire record, it is clear that a mistake was made. It reviews findings of fact for clear error and legal conclusions de novo.

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors > Definitions

An error is harmless if it does not affect substantial rights of the defendant, and did not influence or had only a slight influence on the verdict.

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > Evidence Evidence > Procedural Considerations > Rulings on Evidence

An appellate court reviews evidentiary rulings for abuse of discretion.

Criminal Law & Procedure > Criminal Offenses > Sex Crimes > Child Pornography Evidence > Relevance > Sex Offenses > Similar Crimes > Child Molestation Cases

In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant. Fed. R. Evid. 414(a). Offenses of child molestation include possession of child pornography. Fed. R. Evid. 414(d)(2)(B).

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Fed. R. Evid. 404(b) permits the admission of evidence of other crimes or similar acts if relevant to establish motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Rule 404(b) is a rule of inclusion; a district court has broad discretion to admit Rule 404(b) evidence.

Opinion

Opinion by: BENTON

Opinion

{944 F.3d 762} BENTON, Circuit Judge.

A jury convicted Maksim M. Stefanyuk of three counts of receipt and distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), and one count of failing to register as a sex offender, in violation of 18 U.S.C. § 2250(a). The district court sentenced him to 262 months' imprisonment. Stefanyuk appeals the denial of his motion to suppress and the admission of evidence about his prior child pornography conviction. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

In 2011, Stefanyuk pled guilty to possessing child pornography. In 2017, law enforcement discovered that someone{2019 U.S. App. LEXIS 2} residing in his house was viewing child pornography. Homeland Security Investigations Special Agent Charla Aramayo began physically

surveilling the house. Eventually, she requested electronic video surveillance equipment ("EVSE") across the street. The South Dakota Division of Criminal Investigation installed a hidden pole camera 15 feet off the ground in a public right of way facing the house. The camera {944 F.3d 763} operated for two weeks; it could pan, tilt, and zoom, but not see inside the house. Initially, the recordings were saved, but they were lost before trial. Stefanyuk moved to suppress evidence obtained through the EVSE. The district court denied the motion.

I.

Stefanyuk believes the "warrantless long-term around-the-clock video recordings and surveillance of [his] home violated his Fourth Amendment rights."² This court affirms the denial of a motion to suppress "unless it is unsupported by substantial evidence, based on an erroneous interpretation of the law, or, based on the entire record, it is clear that a mistake was made." **United States v. Wells**, 347 F.3d 280, 286 (8th Cir. 2003). This court reviews findings of fact for clear error and legal conclusions de novo. **United States v. Davis**, 569 F.3d 813, 816 (8th Cir. 2009).

The parties dispute whether the EVSE required a warrant and whether Stefanyuk's supervised-release{2019 U.S. App. LEXIS 3} status diminished his privacy expectations. This court need not decide these issues, however, because evidence from the EVSE did not sufficiently influence the jury, and any error was harmless. See **United States v. Davis**, 449 F.3d 842, 847 (8th Cir. 2006) ("An error is harmless if it does not affect substantial rights of the defendant, and did not influence or had only a slight influence on the verdict.") (cleaned up). See also **United States v. Martinez**, 462 F.3d 903, 910 (8th Cir. 2006) (statements should have been suppressed, but "[g]iven the other admissible evidence against Martinez, we find that failure to suppress these statements did not sufficiently influence the jury to merit our reversal, and thus was harmless error").

The only trial evidence from the EVSE was testimony from Agent Aramayo that she saw Stefanyuk "arriving at the residence in a vehicle at an early hour on two specific occasions." However, there was significant non-EVSE evidence showing he lived at that house: (1) Agent Aramayo testified that she drove by the house and saw him outside; (2) employment and internet subscriber records listed his address; (3) law enforcement testified that he lived at the same address in 2011 when he was convicted of possessing child pornography; and{2019 U.S. App. LEXIS 4} (4) he was present at the house when officers executed the search warrant. Given all the evidence, the failure to suppress the EVSE "did not sufficiently influence the jury to merit . . . reversal, and thus was harmless error." *Id.*

II.

Stefanyuk contends the district court erred in admitting evidence, specifically testimony of an investigating officer, about his prior child pornography conviction. This court reviews evidentiary rulings for abuse of discretion. **United States v. Holy Bull**, 613 F.3d 871, 873 (8th Cir. 2010). "In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant." **Fed. R. Evid. 414(a)**. Offenses of "child molestation" include possession of child pornography. See **Fed. R. Evid. 414(d)(2)(B)** (holding that "child molestation" includes "any conduct prohibited by 18 U.S.C. chapter 110"). This court has upheld the admission of Rule 414(a) evidence when it is "strikingly {944 F.3d 764} similar" to the crime charged. **United States v. Summage**, 575 F.3d 864, 878 (8th Cir. 2009). Here, the district court thoroughly considered the admissibility of the evidence about Stefanyuk's prior child pornography conviction, finding it was "basically the same crime, the same criminal type of conduct."

The district{2019 U.S. App. LEXIS 5} court also found the evidence admissible under Rule 404(b) which permits the admission of evidence of other crimes or similar acts if relevant to establish

motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. **Fed. R. Evid. 404(b)**. Rule 404(b) is a rule of inclusion; the district court has broad discretion to admit Rule 404(b) evidence. See **United States v. Butler**, 56 F.3d 941, 944-45 (8th Cir. 1995) (holding that evidence of defendant's prior, uncharged sexual contact with victim was admissible). Here, the government offered evidence of Stefanyuk's previous child pornography conviction, including testimony of the investigating officer, to show motive, opportunity, knowledge, and absence of mistake. The district court did not abuse its discretion in admitting the evidence.

The judgment is affirmed.

Footnotes

1

The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota.
2

Stefanyuk moved to suppress evidence from the EVSE at trial. However, he did not challenge the validity of the search warrant obtained for his residence even though it was obtained, in part, based on observations from the EVSE.

APPENDIX B
DISTRICT COURT DECISION

APPENDIX B

DISTRICT COURT DECISION

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UNITED STATES OF AMERICA, Plaintiff, vs. MAKSIM STEFANYUK, Defendant.
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN
DIVISION
2018 U.S. Dist. LEXIS 109794
4:17-CR-40042-KES
July 2, 2018, Decided
July 2, 2018, Filed

Editorial Information: Subsequent History

Affirmed by United States v. Stefanyuk, 2019 U.S. App. LEXIS 36662 (8th Cir., Dec. 11, 2019)

Editorial Information: Prior History

United States v. Stefanyuk, 2018 U.S. Dist. LEXIS 110080 (D.S.D., June 15, 2018)

Counsel {2018 U.S. Dist. LEXIS 1}For Maksim Stefanyuk, Defendant: Jason J. Tupman, LEAD ATTORNEY, Federal Public Defender's Office, Sioux Falls, SD.
For USA, Plaintiff: Jeffrey C. Clapper, LEAD ATTORNEY, U.S. Attorney's Office (Sioux Falls, SD), Sioux Falls, SD.

Judges: KAREN E. SCHREIER, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: KAREN E. SCHREIER

Opinion

ORDER ADOPTING REPORT AND RECOMMENDATION

On May 29, 2018, defendant, Maksim Stefanyuk, filed a motion to suppress evidence. Docket 45. On June 14, 2018, Magistrate Judge Veronica Duffy held an evidentiary hearing on the motion to suppress. On June 15, 2018, Magistrate Judge Veronica Duffy issued a report and recommendation recommending that defendant's motion to suppress be denied. Docket 55. Stefanyuk was notified in the report and recommendation that he had 14 days to file objections to the report. Even though no objections were filed that would require *de novo* review under *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990), the court reviewed the matter *de novo* and finds that Magistrate Judge Duffy's report and recommendation is adopted in full. Thus, it is

ORDERED that:

1. The report and recommendation of Magistrate Judge Duffy (Docket 55) is adopted in full.
2. Defendant's motion to suppress (Docket 45) is denied.

DATED July 2, 2018.

BY THE COURT:{2018 U.S. Dist. LEXIS 2}

/s/ Karen E. Schreier

KAREN E. SCHREIER

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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3364

United States of America

Appellee

v.

Maksim Stefanyuk

Appellant

Appeal from U.S. District Court for the District of South Dakota - Sioux Falls
(4:17-cr-40042-KES-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 10, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans