

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12947

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DERRICK HUNT,

a.k.a. Derrick Martin Hunt,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cr-00530-SDG-JEM-1

APPENDIX E.

Before BRANCH, ANDERSON, and EDMONDSON, Circuit Judges.

PER CURIAM:

Derrick Hunt appeals his conviction after pleading guilty to enticing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct: a violation of 18 U.S.C. § 2251(a), (e). On appeal, Hunt challenges the district court's denial of his motion to suppress evidence seized pursuant to a search warrant. No reversible error has been shown; we affirm.

Briefly stated, officers with the Roswell Police Department surveilled a fast-food restaurant after receiving information that a missing 14-year-old girl (A.P.) would be dropped off in the vicinity. Officers observed a car enter the parking lot and a girl matching A.P.'s description exit the car. Officers conducted a traffic stop, identified the car's driver as Hunt, and placed Hunt under arrest.

During an interview, A.P. told officers that she had been staying at Hunt's apartment for three weeks, during which time she had had multiple sexual encounters with Hunt in exchange for drugs. A.P. also reported that Hunt had taken nude photographs of her and had videotaped their sexual encounters.

On 7 July 2012, officers obtained a search warrant to search Hunt's apartment. The search warrant listed the items to be searched for and seized from the premises. This list included, among other things, "computers, laptops, electronic data storage

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devices, and any and all child pornographic images or data located within, photographs, VHS tapes, [and] Compact Disks containing videos.”

Later that same day, officers executed the search warrant on Hunt’s home. During the search, an officer “previewed” the contents of Hunt’s computer. After locating an image of A.P., officers seized Hunt’s computer. On 25 July, officers obtained a second search warrant authorizing a full forensic search of the contents of Hunt’s computer.

Hunt moved to suppress evidence found during the search of his home.¹ Pertinent to this appeal, Hunt argued that the officers exceeded the scope of the 7 July search warrant when they previewed the contents of his computer. Following a suppression hearing, the district court denied Hunt’s motion.

Hunt entered a conditional guilty plea, reserving his right to appeal the district court’s denial of his motion to suppress. The district court sentenced Hunt to 210 months’ imprisonment followed by a life term of supervised release.²

On appeal, Hunt challenges the district court’s denial of his motion to suppress. According to Hunt, officers exceeded the scope of the 7 July search warrant when -- during the search of his home -- officers “previewed” the contents of his computer. Hunt

¹ Hunt also moved to suppress evidence obtained during the traffic stop. The district court denied the motion; that ruling is not before us on appeal.

² Hunt raises no challenge to the lawfulness of his sentence.

argues that the plain language of the search warrant authorized officers to search only the contents of “electronic data storage devices,” not the contents of “computers.” As a result of the supposed improper search, Hunt says all evidence found on his computer must be suppressed.

When reviewing the district court’s denial of a motion to suppress evidence, we review the district court’s factual findings for clear error and the district court’s application of law to those facts *de novo*. See *United States v. Campbell*, 26 F.4th 860, 870 (11th Cir. 2022) (*en banc*). We construe the facts in the light most favorable to the prevailing party. *Id.*

Under the Fourth Amendment, a search warrant must describe with particularity “the place to be searched, and the persons or things to be seized.” See U.S. Const. amend. IV; *United States v. Travers*, 233 F.3d 1327, 1329 (11th Cir. 2000). “The permissible scope of a search is governed by the terms of the warrant, and the search may be ‘as extensive as reasonably required to locate the items described in the warrant.’” *United States v. Moon*, 33 F.4th 1284, 1296 (11th Cir. 2022).

The 7 July search warrant listed the evidence or contraband to be searched for at Hunt’s residence, including “computers, laptops, electronic storage devices, and any and all child pornographic images or data located within.” (emphasis added). The district court determined that the warrant’s “located within” language expressly permitted officers to search the contents of Hunt’s computer during the 7 July search of Hunt’s home. In addition, the district court

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concluded that officers -- at a minimum -- were permitted to preview the computer's contents to determine whether it contained the kind of evidence subject to seizure.

A plain reading of the search warrant supports the district court's ruling. The language of the search warrant can be interpreted reasonably as authorizing a search for pornographic material "located within" all three of the listed devices -- computers, laptops, and electronic storage devices -- found at Hunt's home.

Given the kind of evidence described in the search warrant, we also have no doubt that the officers were permitted to perform a "preview" search to determine whether the computer was an item subject to seizure under the warrant. *See Moon*, 33 F.4th at 1297 (concluding that a warrant authorizing the seizure of "tapes" permitted an officer to view a small portion of each tape found on the premises "to determine whether each particular tape fell within the warrant").

Considering the plain language of the search warrant and the circumstances involved in this case, the district court committed no error in determining that officers were authorized by the 7 July search warrant to preview the contents of the computer found at Hunt's apartment.

AFFIRMED.

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CRIMINAL NO. 1:19-CR-530-SDG-JEM

The United States Attorney for the Northern District of Georgia ("the Government") and Defendant Derrick Hunt enter into this plea agreement as set forth below in Part IV pursuant to Rules 11(c)(1)(A) & (C) of the Federal Rules of Criminal Procedure. Derrick Hunt, Defendant, having received a copy of the above-numbered Indictment and having been arraigned, hereby pleads GUILTY to the Indictment.

I. ADMISSION OF GUILT

1. The Defendant admits that he is pleading guilty because he is in fact guilty of the crime charged in the Indictment.

II. ACKNOWLEDGMENT & WAIVER OF RIGHTS

2. The Defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the Defendant would have the right to an attorney, and if the Defendant could not afford an attorney, the Court would appoint one to represent the Defendant at trial and at every stage of the proceedings. During the trial, the Defendant would be presumed innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the witnesses against him. If the Defendant wished, he could testify on his own behalf and present evidence in his defense, and he

Appendix A.

could subpoena witnesses to testify on his behalf. If, however, the Defendant did not wish to testify, that fact could not be used against him, and the Government could not compel him to incriminate himself. If the Defendant were found guilty after a trial, he would have the right to appeal the conviction.

3. The Defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind.

4. By pleading guilty, the Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could have been filed.

5. The Defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, the Defendant may be waiving some or all of those rights to appeal and to collaterally attack his conviction and sentence, as specified below.

6. Finally, the Defendant understands that, to plead guilty, he may have to answer, under oath, questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the Defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

III. ACKNOWLEDGMENT OF PENALTIES

7. The Defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

As to the sole charge in the Indictment (18 U.S.C. § 2251(a))

- a. Maximum term of imprisonment: 30 years.
 - b. Mandatory minimum term of imprisonment: 15 years.
 - c. Term of supervised release: 5 years to Life.
 - d. Maximum fine: \$250,000.00, due and payable immediately.
 - e. Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
 - f. Mandatory special assessment of \$100.00 for each of count of conviction, pursuant to 18 U.S.C. § 3013(a)(2)(A), due and payable immediately.
 - g. Forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense, and any property involved in the offense.
8. The Defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines and that, under certain circumstances, the Court has the discretion to depart from those Guidelines.
9. The Defendant understands that, by pleading guilty, he will be required to register as a sex offender in accordance with the relevant statutes of the State of Georgia, including OCGA § 42-1-12, and the federal provisions, including 34 U.S.C. § 20913. He shall register with the state offender registration agency in any state where he resides, is employed, works, or is a student and upon his release from prison as a condition of supervised release pursuant to

18 U.S.C. § 3583(d). He shall initially register with the state sex offender registration agency in the State of Georgia, and shall also register with the state sex offender registration agency in any state where he resides, is employed, works, or is a student, as directed by the Probation Officer. The Defendant shall comply with all requirements of federal and state sex offender registration laws, including the requirement to register and update his registration information under 34 U.S.C. § 20913 and OCGA § 42-1-12(f). The Defendant shall provide proof of registration to the Probation Officer within 72 hours of his sentencing if he is not sentenced to a term of imprisonment, or, if he is sentenced to a term of imprisonment, within 72 hours of his release. The Defendant also understands that, independent of supervised release, he will be subject to federal and state sex offender registration requirements, and that those requirements may apply throughout his life. The Defendant understands that he will be subject to possible federal and state penalties for failure to comply with any such sex offender registration requirements. The Defendant further understands that, under 18 U.S.C. § 4042(c), notice will be provided to certain law enforcement agencies upon his release from confinement following conviction.

IV. PLEA AGREEMENT

10. The Defendant, his counsel, and the Government, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

No Additional Charges

11. The United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the Defendant related to the charges to which he is pleading guilty. The Defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction.

Binding Sentencing Recommendation

12. This plea is entered under the specific provisions of Rules 11(c)(1)(A) & (C) of the Federal Rules of Criminal Procedure. As a product of negotiation between the parties and in exchange for the Government not bringing otherwise provable charges against the Defendant, the Defendant and the Government expressly recommend that the Court should impose a sentence of 210 months of imprisonment as the appropriate total custodial sentence in this case. Under the provisions of Federal Rule of Criminal Procedure 11(c)(1)(C), this recommendation would bind the Court to impose this particular custodial sentence if the Court accepts this Plea Agreement. If the Court should not accept this Plea Agreement as binding on the parties and the Court, the Government and the Defendant agree that the Court shall permit the Defendant to withdraw his guilty plea pursuant to Federal Rule of Criminal Procedure 11(c)(5)(B).

Sentencing Guidelines Recommendations

13. Based upon the evidence currently known to the Government, the Government agrees to make the following recommendations and/or to enter into the following stipulations.

Base/Adjusted Offense Level

14. The Government agrees to recommend and the Defendant agrees that:

- a. The applicable offense guideline is Section 2G2.1.

Acceptance of Responsibility

15. The Government will recommend that the Defendant receive an offense level adjustment for acceptance of responsibility, pursuant to Section 3E1.1, to the maximum extent authorized by the guideline. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the Defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the Defendant falsely deny or falsely attempt to minimize the Defendant's involvement in relevant offense conduct, give conflicting statements about the Defendant's involvement, fail to pay the special assessment, fail to meet any of the obligations set forth in the Financial Cooperation Provisions set forth below, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

Right to Answer Questions, Correct Misstatements, and Make Recommendations

16. The parties reserve the right to inform the Court and the Probation Office of all facts and circumstances regarding the Defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the parties also reserve the right to make recommendations

regarding application of the Sentencing Guidelines. The parties understand, acknowledge, and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed.

Right to Modify Recommendations

17. With regard to the Government's recommendation as to any specific application of the Sentencing Guidelines as set forth elsewhere in this Plea Agreement, the Defendant understands and agrees that, should the Government obtain or receive additional evidence concerning the facts underlying any such recommendation, the Government will bring that evidence to the attention of the Court and the Probation Office. In addition, if the additional evidence is sufficient to support a finding of a different application of the Guidelines, the Government will not be bound to make the recommendation set forth elsewhere in this Plea Agreement, and the failure to do so will not constitute a violation of this Plea Agreement.

Sentencing Recommendations

Specific Sentence Recommendation

18. Unless the Defendant engages in conduct inconsistent with accepting responsibility, as described more fully in paragraph 15, and if the Court accepts this Plea Agreement under the provisions of Rules 11(c)(1)(A) & (C) of the Federal Rules of Criminal Procedure, the Government agrees that the Court shall impose a sentence of 210 months of imprisonment.

19. The Defendant also agrees that the Court shall impose a sentence of 210 months of imprisonment if the Court accepts this Plea Agreement under the provisions of Rules 11(c)(1)(A) & (C) of the Federal Rules of Criminal Procedure.

Fine – No Recommendation as to Amount

20. The Government agrees to make no specific recommendation as to the amount of the fine to be imposed on the Defendant within the applicable guideline range.

Restitution

21. The Defendant agrees to pay full restitution, plus applicable interest, to the Clerk of Court for distribution to all victims of the offense to which he is pleading guilty and all relevant conduct, including, but not limited to, any counts dismissed as a result of this Plea Agreement. The Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing. The Defendant also agrees to cooperate fully in the investigation of the amount of restitution, the identification of victims, and the recovery of restitution for victims.

Forfeiture

22. The Defendant acknowledges that each asset listed below is subject to forfeiture, pursuant to 18 U.S.C. § 2253, and agrees that he shall immediately forfeit to the United States any property involved in the commission of the offense(s) in the Indictment, including, but not limited to, the following:

- a. computers, digital cameras, and display screens.

23. The Defendant waives and abandons all right, title, and interest in all of the property listed above (referred to hereafter, collectively, as the Subject

23. The Defendant agrees to hold the United States and its agents and employees harmless from any claims made in connection with the seizure, forfeiture, or disposal of property connected to this case. The Defendant acknowledges that the United States will dispose of any seized property, and that such disposal may include, but is not limited to, the sale, release, or destruction of any seized property, including the Subject Property. The Defendant agrees to waive any and all constitutional, statutory, and equitable challenges in any manner (including direct appeal, a Section 2255 petition, *habeas corpus*, or any other means) to the seizure, forfeiture, and disposal of any property seized in this case, including the Subject Property, on any grounds.

24. The Defendant consents to the Court's entry of a preliminary order of forfeiture against the Subject Property, which will be final as to him, a part of his sentence, and incorporated into the judgment against him.

Financial Cooperation Provisions

Special Assessment

25. The Defendant understands that the Court will order him to pay a special assessment in the amount of \$100.

Fine/Restitution - Terms of Payment

26. The Defendant agrees to pay any fine and/or restitution, plus applicable interest, imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). The Defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time,

he agrees that the custodial agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant understands that this payment schedule represents a minimum obligation and that, should the Defendant's financial situation establish that he is able to pay more toward the fine and/or restitution, the Government is entitled to pursue other sources of recovery of the fine and/or restitution. The Defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by any legal means the Government deems appropriate. Finally, the Defendant and his counsel agree that the Government may contact the Defendant regarding the collection of any fine and/or restitution without notifying and outside the presence of his counsel.

Financial Disclosure

27. The Defendant agrees that the Defendant will not sell, hide, waste, encumber, destroy, or otherwise devalue any such asset worth more than \$1,000 before sentencing, without the prior approval of the Government. The Defendant understands and agrees that the Defendant's failure to comply with this provision of the Plea Agreement should result in the Defendant receiving no credit for acceptance of responsibility.

28. The Defendant agrees to cooperate fully in the investigation of the amount of forfeiture, restitution, and fine; the identification of funds and assets in which he has any legal or equitable interest to be applied toward forfeiture, restitution, and/or fine; and the prompt payment of restitution or a fine.

29. The Defendant's cooperation obligations include: (A) fully and truthfully completing the Department of Justice's Financial Statement of Debtor form, and

any addenda to said form deemed necessary by the Government, within ten days of the change of plea hearing; (B) submitting to a financial deposition or interview (should the Government deem it necessary) prior to sentencing regarding the subject matter of said form; (C) providing any documentation within his possession or control requested by the Government regarding his financial condition and that of his household; (D) fully and truthfully answering all questions regarding his past and present financial condition and that of his household in such interview(s); and (E) providing a waiver of his privacy protections to permit the Government to access his credit report and tax information held by the Internal Revenue Service.

30. So long as the Defendant is completely truthful, the Government agrees that anything related by the Defendant during his financial interview or deposition or in the financial forms described above cannot and will not be used against him in the Government's criminal prosecution. However, the Government may use the Defendant's statements to identify and to execute upon assets to be applied to the fine and/or restitution in this case. Further, the Government is completely free to pursue any and all investigative leads derived in any way from the interview(s)/deposition(s)/financial forms, which could result in the acquisition of evidence admissible against the Defendant in subsequent proceedings. If the Defendant subsequently takes a position in any legal proceeding that is inconsistent with the interview(s)/deposition(s)/financial forms—whether in pleadings, oral argument, witness testimony, documentary evidence, questioning of witnesses, or any other manner—the Government may use the Defendant's

interview(s)/ deposition(s)/ financial forms, and all evidence obtained directly or indirectly therefrom, in any responsive pleading and argument and for cross-examination, impeachment, or rebuttal evidence. Further, the Government may also use the Defendant's interview(s)/ deposition(s)/ financial forms to respond to arguments made or issues raised sua sponte by the Magistrate or District Court.

Recommendations/Stipulations Non-binding

31. The Defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement, as well as any stipulations of fact or guideline computations incorporated within this Plea Agreement or otherwise discussed between the parties, are not binding on the Court and that the Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

Limited Waiver of Appeal

32. LIMITED WAIVER OF APPEAL: To the maximum extent permitted by federal law, the Defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any ground, except that the Defendant may file a direct appeal of:

- a. an upward departure or upward variance above the sentencing guideline range as calculated by the District Court; and/or

- b. the Court's adverse determination of his Motion to Suppress Evidence, including the seizure and search of a computer from the Defendant's residence, as described in Doc(s). No. 40 and 74.

Claims that the Defendant's counsel rendered constitutionally ineffective assistance are excepted from this waiver.

33. The Defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a direct appeal of the sentence imposed, the Defendant may file a cross-appeal of that same sentence.

Miscellaneous Waivers

FOIA/Privacy Act Waiver

34. The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

No Other Agreements

35. There are no other agreements, promises, representations, or understandings between the Defendant and the Government.

In Open Court this _____ day of _____, 2021.

JAY L. STRONGWATER
Attorney for Defendant

DERRICK HUNT
Defendant

PAUL R. JONES
Assistant U.S. Attorney

Richard S. Moultrie, Jr.
RICHARD S. MOULTRIE, JR.
Chief, Violent Crime and National
Security Section

CERTIFICATION OF DEFENDANT AND ATTORNEY

I have read the Indictment against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

SIGNATURE (Defendant)
Derrick Hunt

DATE

CERTIFICATION OF DEFENDANT AND ATTORNEY

I have read the Indictment against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

SIGNATURE (Defendant)
Derrick Hunt

DATE

No Other Agreements

36. There are no other agreements, promises, representations, or understandings between the Defendant and the Government.

In Open Court this _____ day of _____, 2022.

"Without Prejudice & Adversely Affecting"



JAY L. STRONGWATER
Defendant's Attorney

DERRICK HUNT
Defendant

PAUL R. JONES
Assistant U.S. Attorney

Richard S. Moultrie, Jr.

RICHARD S. MOULTRIE, JR.
Chief, Violent Crime & National
Security Section

NO. 22-12947

**In The
United States Court Of Appeals
For The Eleventh Circuit**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK HUNT, a.k.a. Derrick Martin Hunt,

Defendant - Appellant.

ON APPEAL FROM THE NORTHERN DISTRICT OF GEORGIA

BRIEF OF APPELLANT

**Victoria Ivory
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Counsel for Appellant

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

APPEAL NO. 22-12947-A

DERRICK HUNT,
Defendant-Appellant.

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

- a) Adams, Keith E.: Prior counsel for Mr. Hunt;
- b) Baverman, Alan J.: Former Magistrate Judge, Northern District of Georgia;
- c) Erskine, Kurt R. :former United States Attorney;
- d) Grimberg, Steven D.: United States District Judge, Northern District of Georgia;
- e) Horn, John A.: former United States Attorney;
- f) Hunt, Derrick: Defendant-Appellant;
- g) Ivory, Victoria: Attorney for Defendant-Appellant;
- h) Jones, Paul Rhinehard: Assistant United States Attorney;
- i) McBath, Elizabeth J.: Magistrate Judge, Northern District of Georgia;
- j) A.P.: Victim (*Minor at time of incident*)
- k) Pak, Byung J.: former United States Attorney

- l) Sharkey, Kimberly: Prior counsel for Mr. Hunt
- m) Sommerfeld, Lawrence R.: Assistant United States Attorney;
- n) Strongwater, Jay Lester: Prior counsel for Mr. Hunt
- o) United States of America, Appellee
- p) Yates, Sally Q.: former United States Attorney;

No publicly traded company or corporation has an interest in the outcome of the case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure, the defendant-appellant requests oral argument because it would assist the Court in resolving the issues raised herein.

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STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals has jurisdiction to consider this case pursuant to 28 U.S.C. § 1291 and Rule 4, F.R.Cr.P. This case involves a direct appeal of a criminal conviction and sentence imposed in the United States District Court for the Northern District of Georgia, Atlanta Division.

STATEMENT OF THE ISSUES

I. The District Court Erred in Denying Mr. Hunt's Motion to Suppress

STATEMENT OF THE CASE

(i) Course of Proceedings:

On December 9, 2013, Mr. Hunt was named in a magistrate complaint alleging that Mr. Hunt did, employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, said visual depiction having been produced using materials that have been mailed, shipped, or transported in or affecting interstate and foreign commerce in violation of 18 U.S.C. § 2251(a). [Doc. 1]. Mr. Hunt was arrested in Nevada on or about December 9, 2019. [Doc. 3]. On December 19, 2019, an indictment was issued alleging a single count of violating 18 U.S.C. § 2251(a). [Doc. 4].

On November 16, 2020, Mr. Hunt filed an Omnibus Motion to Suppress. [Doc. 40]. Hearings were held on May 20, 2021 and September 17, 2021. [Docs.

50, 58, 70, 71]. Both parties filed post-hearing briefs. [Docs. 74, 76]. The Court orally denied Mr. Hunt's motion to suppress on October 6, 2021 and issued a ruling denying Mr. Hunt's motion to suppress on December 2, 2021. [Docs. 77, 88, 133 at 9-10].

On May 16, 2022, Mr. Hunt entered a guilty plea pursuant to a plea agreement with the Government that specifically preserved his right to appeal the denial of his motion to suppress. [Docs. 109, 109-1, 134].

On August 29, 2022, Mr. Hunt was sentenced to 210 months in the custody of the Bureau of Prisons and supervised release for life. [Docs. 115, 116, 143].

Mr. Hunt filed his notice of appeal on August 31, 2022. [Doc. 117].

(ii) **Statement of the Facts:**

On July 6, 2012, the police learned that a minor child who had run away indicated that she would be dropped off at a Krystal restaurant. [Doc 58 at 8-9]. At approximately 2:30 a.m. a person driving a Camaro dropped off a young female matching the description given. [Doc. 58 at 9-10]. The Camaro was stopped; the driver, Mr. Hunt, was arrested for interference with custody; and, the juvenile was transported to the police station. [Doc 58 at 11-14].

The juvenile was interviewed and indicated that she had been with Mr. Hunt for 3-5 weeks and that he has been giving her drugs, having sex with her, and recording the sexual activity. [Doc. 58 at 31-32].

A search warrant was obtained for Mr. Hunt's apartment and a search was conducted on July 7, 2012. [Doc. 58 at 34, 41; Doc. 71 at 65]. The search warrant was received over video teleconferencing and was not recorded or saved. [Doc. 71 at 67-68]. The search warrant permitting the search of Mr. Hunt's apartment did not permit a search of the data on any devices. [Doc. 71 at ⁶⁵~~67~~]. Despite not having a warrant to search the devices at Mr. Hunt's residence, someone executing the warrant looked through Mr. Hunt's computer. [Doc. 71 at 73,⁷⁴~~75~~-76, 80]. A search warrant to search the contents of Mr. Hunt's devices was not obtained until July 25, 2012. [Doc. 71 at 67].

(iii) Standard of Review:

A district court's denial of a motion to suppress is a mixed question of law and fact. *United States v. Delancy*, 502 F.3d 1297, 1304 (11th Cir. 2007). The district court's factual findings are accepted as true unless clearly erroneous, and the district court's interpretation and application of the law are subject to *de novo* review. *Id.*

SUMMARY OF THE ARGUMENT

Law enforcement entered Mr. Hunt's apartment with a warrant that permitted the seizure of specified items. While in Mr. Hunt's apartment law enforcement searched files on Mr. Hunt's computer. The warrant did not authorize the search of the contents of Mr. Hunt's computer, which law enforcement knew as

they obtained a warrant to search the contents approximately eighteen (18) days after the initial warrant was executed.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The District Court Erred in Denying Mr. Hunt's Motion to Suppress

The district court erred in denying Mr. Hunt's Motion to Suppress because the content of Mr. Hunt's computer was searched without a warrant in violation of the 4th Amendment to the United States Constitution.

It is undisputed that, while executing the July 7, 2012 warrant, law enforcement perused Mr. Hunt's computer. [Doc. 71 at 73, 75] The district court found that the following language in the warrant permitted that search: "computers, laptops, electronic data storage devices, *and any and all child pornographic images or data located within*, photographs, VHS tapes, Compact Disks containing videos.... ." [Doc. 88 (emphasis in original)]. Mr. Hunt asserts that the bolded and italicized language only applied to "data storage devices" and did not apply to Mr. Hunt's computer just as it would not have applied to laptops, VHS tapes, or Compact Disks containing videos. This position is buttressed by the fact that the officer obtained a second warrant to conduct a forensic search on July 25, 2012 before conducting a full search of the seized computer. [Doc. 58 at 42; Doc. 71 at 67].

In reaching its decision, the district court relied on *United States v. Hill*, 853 Fed. Appx. 351 (11th Cir. 2021). Unlike the warrant in this case, the warrant in *Hill* permitted the search for “[e]lectronically stored communications or messages reflecting computer on-line chat sessions or e-mail messages with, or about, a minor that are sexually explicit in nature” and “any computer or storage medium whose seizure is otherwise authorized by this warrant,” which clearly authorized the search of any and all electronic devices just at this court found: “[a] plain reading of the search warrant and Attachment B supports the district court's determination that the search warrant encompassed a forensic search of Hill's computer.” 853 Fed. Appx. at 354.

Unlike *Hill*, the warrant to search Mr. Hunt's apartment permitted the seizure of computers, but permitted the search of only electronic data storage devices.

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. amend. IV. Generally, any evidence obtained in violation of the Fourth Amendment is inadmissible in court and must be suppressed as “fruit of the poisonous tree” for the purpose of deterring police misconduct. *Wong Sun v. United States*, 371 U.S. 471, 487–88, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441 (1963). Search warrants must be based on “probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

In *Riley v. California*, the Supreme Court held that “a warrant is generally required before” “the information on a cell phone” may be searched, even if the cell phone is seized incident to arrest. 573 U.S. 373, 401, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014). In so deciding, the Supreme Court noted:

The term “cell phone” is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

Id. at 393.

Riley is consistent with the string of cases that required a warrant to search the interior of closed containers after they are seized. *Chadwick v. United States*, 433 U.S. 1 (1977)(following the seizure of a foot locker, a closed container, authorities must obtain a search warrant before examining its contents; *United v. Ross*, 456 U.S. 798 (1982)(warrant required to search contents of an opaque container); *United States v. Runyan*, 275 F.3d 449, 458 (5th Cir. 2001) (assuming that computer disks are containers and subject to standards governing closed container searches).

The warrant to search Mr. Hunt’s apartment and seize specified items did not permit law enforcement to search Mr. Hunt’s computer, yet they did so

anyway. The contents of Mr. Hunt's computer were searched during the execution of the search warrant on July 7, 2012 and before the July 25, 2012 warrant that permitted the search of the contents of Mr. Hunt's computer. As such, all evidence obtained from Mr. Hunt's computer should have been suppressed by the district court.

CONCLUSION

Mr. Hunt prays that this Court will grant his appeal, suppress the evidence from his computer, and remand his case to the district court for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P.

32(a)(7)(B)(i) because:

this brief contains 1,467 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P.

32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman, 14-point.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on January 5, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the appellate CM/ECF system.

Respectfully Submitted,

/s/ Victoria Ivory

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U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	1:19-CR-530-SDG
DEFENDANT'S NAME:	DERRICK HUNT
PAY THIS AMOUNT:	\$100

Instructions:

1. Payment must be made by **certified check** or **money order** payable to:
Clerk of Court, U.S. District Court
personal checks will not be accepted
2. Payment must be made to the clerk's office by the day of sentencing.
3. Payment should be sent or hand delivered to:
Clerk, U.S. District Court
2211 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, Georgia 30303
(Do Not Send Cash)
4. Include the defendant's name on **certified check** or **money order**.
5. Enclose this coupon to insure proper and prompt application of payment.
6. Provide proof of payment to the above-signed AUSA within 30 days of the guilty plea.

No. 22-12947-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DERRICK HUNT,

Defendant-Appellant.

On appeal from the United States District Court
for the Northern District of Georgia
No. 1:19-CR-00530-SDG-JEM-1

BRIEF OF APPELLEE
THE UNITED STATES OF AMERICA

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Appendix C.

No. 22-12947-AA

United States of America v. Derrick Hunt

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

In addition to those listed in Appellant's brief, the following people
and entities have an interest in the outcome of this appeal:

Buchanan, Ryan - United States Attorney

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary in this case. The issues and positions of the parties, as presented in the record and briefs, are sufficient to enable the Court to reach a just determination.

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*Citations primarily relied upon. 11th Cir. R. 28-1(e).

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*Citations primarily relied upon. 11th Cir. R. 28-1(e).

No. 22-12947-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DERRICK HUNT,
Defendant-Appellant.

STATEMENT OF JURISDICTION

- (A) The district court had subject matter jurisdiction over the underlying criminal case based on 18 U.S.C. § 3231.
- (B) The court of appeals has jurisdiction over this direct appeal from the judgment and sentence of the district court, under 18 U.S.C. § 3742 and 28 U.S.C. § 1291.
- (C) While not jurisdictional, the notice of appeal was timely filed on August 31, 2022, within 14 days of the entry of the district court's judgment and commitment order, on August 29, 2022. Fed. R. App. P. 4(b)(1)(A).
- (D) This appeal is from a final judgment and commitment order that disposes of all the parties' claims in this criminal case.

STATEMENT OF THE ISSUES

Did the district court abuse its discretion in denying Defendant's motion to suppress the search of his computer when the police searched pursuant to a warrant that established probable cause that a crime had been committed and that evidence of child pornography would be found in his apartment?

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

On January 9, 2013, a complaint and arrest warrant were taken out against Defendant, Derrick Hunt, charging him with employing, using, persuading, inducing, enticing or coercing a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, in violation of 18 U.S.C. § 2251(a). (Doc. 1). Defendant was arrested in Nevada and made his initial appearance in federal court on December 9, 2019. (Doc. 3). He was subsequently indicted on a single count of employing, using, persuading, inducing, enticing or coercing a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, in violation of 18 U.S.C. §§ 2251(a) and 2251(e). (Doc. 4).

Defendant filed an Omnibus Motion to Suppress. (Doc. 40). The district court held evidentiary hearings on May 20, 2021, and September 17, 2021. (Docs. 50, 70). The district court then issued an order denying Defendant's suppression motion. (Doc. 88). Defendant entered a conditional plea, preserving for appeal the issue of the denial of his motion to suppress. (Doc. 109-1). On August 29, 2022, the district court sentenced Defendant to 210 months in custody to be followed by a lifetime term of supervised release. (Doc. 116). He timely filed a notice of appeal. (Doc. 117). He remains in custody.

B. Statement of the Facts

1. The Evidentiary Hearings

On the evening of July 6, 2012, a man contacted the Gwinnett County (Georgia) Police Department to report that his minor daughter, a runaway, was going to be dropped off at a Krystal's restaurant by an unidentified man. (Doc. 58 at 8-9). Because the drop location was not in Gwinnett County, the information was passed on to the Roswell (Georgia) Police Department. (*Id.* at 9). Roswell Police set up surveillance at several nearby locations. (*Id.*). Around 2:30 a.m., a Camaro drove around the Krystal's parking lot, and a person matching the description of the missing juvenile got out of the car. (*Id.* at 10, 26). Sargent Andy Reach with the Roswell Police Department initiated a traffic stop of the Camaro. (*Id.* at 10). The driver eventually identified himself as Derrick Hunt. (*Id.* at 12). Sargent Reach contacted Master Police Officer Mark Macdonald because, "In my eyes, he's the subject-matter expert on dealing with crimes against juveniles." (*Id.* at 13). Officer Macdonald advised Sargent Reach to take the juvenile to the police station to an interview room and to transport Defendant to jail on charges of interference with custody. (*Id.*).

Officer Macdonald went to the Roswell Police Department station where he learned that the juvenile had run away from home and had

been staying with an unknown man. (*Id.* at 30). He then spent several hours interviewing the minor. (*Id.* at 31). She stated that she had been at Defendant's home for the previous three to three and a half weeks. (*Id.* at 32). During that time, he had sex with her multiple times, and he had also given her drugs. (*Id.*). She also said that Defendant had several cameras in the house and that he frequently recorded their sex acts so that he could replay the recordings afterwards. (*Id.*).

Based on this information, Officer Macdonald obtained a search warrant from Judge Maureen Malone of the Magistrate Court of Fulton County (Georgia). The warrant, issued on the morning of July 7, 2012, described the items to be searched:

Illegal narcotics, hashish, prescription medication, pills, marijuana, marijuana seeds, lights and lamps used in the growth of marijuana, all containers, soils and apparatuses used in the growth of marijuana, any and all devices used in the smoking or ingestion of marijuana and hashish, computers, laptops, electronic data storage devices, and any and all child pornography images or data located within, photographs, VHS tapes, Compact Disks containing videos, and bed sheets located in the main bedroom, dildos and or vibrators or other common devices, firearms and ammunition.

(Doc. 58, Doc. 40-1). The affidavit identified the violations of state law to include statutory rape (O.C.G.A. § 16-6-3), distribution of child

pornography (O.C.G.A. § 16-12-100(b)(5)(f)), and enticing a child for indecent purposes (O.C.G.A. § 16-6-5).

The affidavit also included the following:

The juvenile was transported to the Roswell Police Department and interviewed. The child admitted to a sexual relationship (sex for drugs) with HUNT and stated that she had been at his apartment for the past three weeks. She was not allowed to leave and stated that she had some form of sex, whether oral or vaginal, with HUNT at least twice a day. She also stated that he took nude photographs of her and believed that he had also video taped their encounters.

(Doc. 58, Doc. 40-1).

After obtaining the search warrant, Officer Macdonald, Sargent Reach and several other officers went to Defendant's apartment to execute it. (*Id.* at 35). The computer was one of the items taken, and during the search it appears that a preview was done, which showed that the computer had at least one image of the victim. (Doc. 71 at 80; Def. Exs. 8 and 9).

Following the execution of the search warrant, another officer at the Roswell Police Department recommended that Officer Macdonald obtain a second search warrant for the computer itself, allowing for a search of the data. (Doc. 71 at 65; Def. Ex. 6). That warrant was signed on July 25, 2012, and a full forensic search of the computer occurred only after the second warrant was signed. (*Id.* at 66, 69, 80).

2. The District Court's Findings

The district court rejected Defendant's argument that the failure to record the warrant application process rendered the warrant void. (Doc. 88 at 6-8). Specifically, the failure of a state-court judge to comply with state procedure does not lead to suppression of evidence obtained from the warrant in a federal proceeding. (*Id.* at 8).

The court further determined that the warrant authorizing the search of Defendant's apartment allowed the police to seize and search the computers. (*Id.* at 9-11). In the warrant, the affiant stated that he had reason to believe that the premises contained "computers, laptops, electronic data storage devices, and any and all child pornographic images or data located within" (*Id.* at 10). The warrant therefore permitted the police to search the electronic devices to see if there was data and contraband images "located within" them. (*Id.*) At the very least, it gave the police authorization "to (at a minimum) preview the computer's contents to determine whether it contained the type of images or data authorized to be seized." (*Id.*) Accordingly, the police were not required to obtain a supplemental warrant authorizing the full search of the electronic devices. (*Id.* at 11).

C. Standard of Review

This Court reviews a district court's denial of a motion to suppress evidence as a mixed question of law and fact. *United States v. Holloway*,

290 F.3d 1331, 1334 (11th Cir. 2002). The district court's findings of fact are reviewed under the clearly erroneous standard, whereas its application of the law is subject to *de novo* review. *Id.* This Court construes the facts in the light most favorable to the prevailing party below. *Id.* A factual finding is clearly erroneous if, after reviewing all the evidence, the Court has a definite and firm conviction that the district court made a mistake. *United States v. Creel*, 783 F.3d 1357, 1359 (11th Cir. 2015).

SUMMARY OF THE ARGUMENT

A runaway minor reported to the police that she had spent at least three weeks in Defendant's apartment. While there, they had sex on multiple occasions, and she believed that he had recorded much of their sexual activity. The police used this information to obtain a warrant that authorized not just the seizure but also the search of Defendant's computer. The district court did not err in finding that the warrant established probable cause to believe a crime was committed and that evidence of the crime would be found in Defendant's apartment, including on his computer. The district court did not err in finding that, at a minimum, the warrant allowed the police to perform a preview of the computer to look for child pornography.

ARGUMENT AND CITATIONS OF AUTHORITY

The district court did not err in denying the motion to suppress when the police obtained a warrant supported by probable cause allowing them to search Defendant's electronic devices for evidence that he had produced child pornography.

The Fourth Amendment mandates that search warrants “particularly describ[e] the place to be searched, and the persons or things to be seized.” The point of the Fourth Amendment's particularity requirement is to protect individuals from being subjected to general, exploratory searches. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

Where a “common sense and realistic” interpretation of the affidavit supports a reasonable likelihood that evidence of a crime might be found in a particular place, probable cause is not lacking. See *United States v. Khanani*, 502 F.3d 1281, 1290 (11th Cir.2007) “To obtain a warrant, police must establish probable cause to conclude that there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *United States v. Gibson*, 708 F.3d 1256, 1278 (11th Cir. 2013). This standard does not require certainty, but rather only “a fair probability.” *United States v. Martin*, 297 F.3d 1308, 1314 (11th Cir. 2002). “It is universally recognized that the particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a

description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit.”

United States v. Wuagneux, 683 F.2d 1343, 1349 (11th Cir. 1982) (collecting cases).

The warrant in this case established that there was a fair probability that evidence of a crime would be located in Defendant’s apartment, especially evidence related to the recording of Defendant’s sexual activity with the minor victim. According to the affidavit to the search warrant, the minor victim had been living in Defendant’s apartment for the previous three weeks, and she had vaginal and oral sex with him on a daily basis during that time. Moreover, he had recorded their sexual encounters. This information established probable cause to believe that the police would find in Defendant’s apartment evidence of the recordings of statutory rape, child pornography, and enticement of a child for indecent purposes, such evidence being located on a computer. *See Khanani*, 502 F.3d at 1290 (holding that sufficient probable cause existed to search and seize office computers pursuant to a warrant seeking evidence of immigration and tax fraud violations, even though “the affidavit submitted to obtain the warrant order provided no fact-specific reason to believe there were computers in [defendant's] office, or that his computers had been used to facilitate the commission of any criminal

violation”); *see also United States v. Goodfleisch*, 723 F. App’x 931, 934 (11th Cir. 2018) (when investigating child pornography downloads, a warrant authorizing a search for all computers on the property is reasonable).

Defendant argues that the police illegally searched the computer when they first located it in his apartment. This argument fails for several reasons. First, the affidavit established probable cause to both seize and search the computer. The affidavit laid out why the police believed that evidence of a crime would be found on a computer. Based on the facts presented, the judge authorized the warrant. The warrant itself did not contain any limiting language on what the police must do after they located evidence. The lack of such limitations supports the police’s right to search the computer as soon as they seized it.

The second defect in Defendant’s argument is that he conflates a preview with a search. When executing a search warrant, the police must ensure that the items taken are the very items whose seizure the search warrant authorizes, and they need to confirm that each item is evidence of one of the crimes listed in the warrant. Here, finding a photo of the victim on the computer confirmed that that computer was indeed the computer that the police wanted to seize. This point is underscored by Officer Macdonald’s testimony that a full forensic

search of the computer was not done until after the police obtained the second search warrant. If a full search was not done until after the second warrant was signed, the earlier search is at most a preview done to verify that the officers were seizing the correct computer.

The final flaw with Defendant's argument is that a subsequent warrant is not necessary to search the contents of the computer. The district court relied on this Court's decision in *United States v. Hill*, 853 F. App'x 351 (11th Cir. 2021). There, the defendant claimed that the first warrant only authorized the seizure of his computer and that the agents needed a second warrant to actually search it. *Id.* at 353. The court found that the warrant authorized both the seizure and the search of the computer; as a consequence, there was no need for a subsequent warrant to perform a forensic search of the computer. *Id.* at 354. See also *United States v. Pearson*, 832 F. App'x 679, 687 (11th Cir. 2020) (rejecting defendant's argument that the agents needed a second warrant to search password-protected computers). Like *Hill*, the district court here properly found that the warrant authorized both the seizure and search of evidence of child pornography.

Defendant argues that the police were allowed to seize computers but somehow only allowed to search electronic storage devices. (Def.'s Br. at 5). Federal law defines a computer as "an electronic, magnetic, optical, electrochemical, or other high speed data processing device

performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device” 18 U.S.C.

§ 1030(e)(1). In other words, a computer is an electronic storage device. If the officers were allowed to search electronic storage devices, they were authorized to search Defendant’s computer for evidence of child pornography. Defendant’s argument does not advance his cause.

Finally, Defendant relies on *Riley v. California*, 573 U.S. 373 (2014), for the proposition that the police could not search his computer. This reliance is misplaced. In *Riley*, the police arrested a suspect and searched his cell phone incident to arrest; no officer ever obtained a warrant to search the cell phone. *Id.* at 379. The Court held that the police needed to obtain a search warrant to search the phone’s contents. *Id.* at 387-88. In contrast to *Riley*, the police in this case did in fact obtain a warrant. As the district court found, the officer stated in the affidavit that he had reason to believe that the premises contained “computers, laptops, electronic data storage devices, and any and all child pornographic images or data located within” (Doc. 88 at 10). The warrant therefore permitted the police to search the electronic devices to see if there was data and contraband images “located within” them. (*Id.*) It at least gave the police authorization “to (at a minimum) preview the computer’s

contents to determine whether it contained the type of images or data authorized to be seized.” (*Id.*) Because this case involved a warrant that authorized the seizure and search of electronic evidence, *Riley* does not apply, and the district court did not abuse its discretion when it denied Defendant’s motion to suppress.

CONCLUSION

The police sought and obtained a search warrant for electronic devices after a minor reported that she had had sexual encounters with Defendant and that he had recorded them. The warrant allowed the police to search for and seize evidence of child pornography. The district court did not err in denying Defendant’s motion to suppress evidence, and Defendant’s conviction should be affirmed.

Respectfully submitted,

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United States Attorney

/s/Paul R. Jones

PAUL R. JONES

Assistant United States Attorney

CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 word processing software in 14-point Goudy Old Style.

This brief complies with the 13,000 word type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, according to the word processing software, it contains 2,710 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Today, this brief was uploaded to the Court's website using the CM/ECF system, which automatically sends notification to the parties and counsel of record:

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February 6, 2023

/s/ Paul R. Jones

PAUL R. JONES

Assistant United States Attorney

NO. 22-12947

**In The
United States Court Of Appeals
For The Eleventh Circuit**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK HUNT, a.k.a. Derrick Martin Hunt,

Defendant - Appellant.

ON APPEAL FROM THE NORTHERN DISTRICT OF GEORGIA

REPLY BRIEF OF APPELLANT

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff-Appellee,**

v.

APPEAL NO. 22-12947-A

**DERRICK HUNT,
Defendant-Appellant.**

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

- a) Adams, Keith E.: Prior counsel for Mr. Hunt;
- b) Baverman, Alan J.: Former Magistrate Judge, Northern District of Georgia;
- c) Erskine, Kurt R. :former United States Attorney;
- d) Grimberg, Steven D.: United States District Judge, Northern District of Georgia;
- e) Horn, John A.: former United States Attorney;
- f) Hunt, Derrick: Defendant-Appellant;
- g) Ivory, Victoria: Attorney for Defendant-Appellant;
- h) Jones, Paul Rhinehard: Assistant United States Attorney;
- i) McBath, Elizabeth J.: Magistrate Judge, Northern District of Georgia;
- j) A.P.: Victim (*Minor at time of incident*)
- k) Pak, Byung J.: former United States Attorney

- l) Sharkey, Kimberly: Prior counsel for Mr. Hunt
- m) Sommerfeld, Lawrence R.: Assistant United States Attorney;
- n) Strongwater, Jay Lester: Prior counsel for Mr. Hunt
- o) United States of America, Appellee
- p) Yates, Sally Q.: former United States Attorney;

No publicly traded company or corporation has an interest in the outcome of the case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure, the defendant-appellant requests oral argument because it would assist the Court in resolving the issues raised herein.

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Pursuant to the government's response to the appeal of Derrick Hunt, the following is submitted for this Honorable Court's consideration.

COURSE OF PROCEEDINGS

[Appellee Brief: p. 2]

Mr. Hunt has no response to the Government's Court of Proceedings.

STATEMENT OF THE FACTS

[Appellee Brief: pp. 3-6]

Mr. Hunt notes that the Government's statement of the facts, while an accurate recitation of the suppression hearing evidence, include information irrelevant to the issue raised by Appellant and serve only to inflame the reader.

ARGUMENTS AND CITATIONS OF AUTHORITY

ISSUE I

The District Court Erred in Denying Mr. Hunt's Motion to Suppress

[Appellee Brief: pp. 9-14]

Mr. Hunt raised one issue regarding the district court's denial of his motion to suppress: that the plain language of the search warrant did not authorize the "preview" of Mr. Hunt's computer during the execution of the warrant.

The Government first argues that the warrant was supported by probable cause. [Appellee Brief at 10-11]. As Appellant did not argue that the warrant was not supported by probable cause, the only possible reason to include this argument

is so that the Government could again, go into the facts of Appellant's conduct underlying his conviction.

The Government urges that “[t]he warrant itself did not contain any limiting language on what the police must do after they located evidence. The lack of such limitations supports the police’s right to search the computer as soon as they seized it.” [Appellee Brief at 11]. The warrant at issue contained the following pertinent language: “computers, laptops, electronic data storage devices, *and any and all child pornographic images or data located within*, photographs, VHS tapes, Compact Disks containing videos....” [Doc. 88 (emphasis in original)]. As such, it is clear that the search warrant only permitted law enforcement to search the contents of “electronic data storage devices.” The Government urges that computers are “electronic data storage devices.” [Appellee Brief at 12-13]. While that may be true, the warrant in this case distinguished computers from “electronic data storage devices.”

The Government urges that law enforcement only did a “preview,” not a search and the warrant authorized that activity. [Appellee Brief at 11]. That is exactly the question before this Court: was the preview a search that was permitted by the plain language of the warrant in this case?

Finally, the Government urges that Appellant’s reliance on *Riley v. California*, 573 U.S. 373 (2014). [Appellee Brief at 13-14]: Appellant relies on *Riley*

to address what law enforcement can and cannot search without a warrant and, if the warrant did not authorize the search, then *Riley* means no search could occur.

CONCLUSION

Mr. Hunt prays that this Court will grant his appeal, suppress the evidence from his computer, and remand his case to the district court for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P.

32(a)(7)(B)(i) because:

this brief contains 462 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

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Respectfully Submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on February 23, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the appellate CM/ECF system.

Respectfully Submitted,

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