APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JACOB PAUL BERMEL, Defendant.	)	Case No. 3:21-cr-00110-SMR-SBJ-1 ORDER DEFENDANT'S MOTION TO SUPPRESS

A hidden camera was discovered in one of the bathrooms in Defendant Jacob Paul Bermel's home. The camera and its SD memory card were then turned over to the Muscatine Police Department ("MPD"). A detective with the MPD obtained two search warrants based on the video contents of the SD card. The FBI also used the videos to support a search warrant application. Based on the evidence yielded from the SD card and the three search warrants, Defendant was charged with production, possession, and distribution of child pornography. He now seeks to exclude this evidence, arguing law enforcement procured it in violation of his rights protected by the Fourth Amendment to the United States Constitution. For the reasons described below, the Motion to Suppress is DENIED.

I. BACKGROUND

On May 6, 2021, a mother contacted the MPD regarding a hidden camera discovered by her daughter in a bathroom at her father's home. The father is Defendant. He and his ex-wife shared custody of their 14-year-old daughter. The camera was discovered during one of the daughter's visits to her father's home. After seeing the camera, the daughter called her mother to pick her up because she was not comfortable staying there any longer. She also removed the camera from the bathroom and took it with her, concealing the camera in her sock when she left.

sent to client 4/19/22 APPENDIX A

Defendant leaves for work early in the morning so the daughter rides the bus to school when she stays there. The excuse she gave Defendant for leaving was that she did not want to ride the bus to school the following day.

Officer Jacob Elliott and his partner met with the mother and daughter after the mother's report to the MPD. The daughter handed Officer Elliott a plastic ziplock bag containing the camera. She did not know how to operate the camera and was unsure if it was still recording when she took it, so she placed a piece of duct tape over the lens. Although her mother's home was the daughter's primary residence at the time of the incident, they informed Officer Elliott that she frequently stayed at Defendant's residence as there was no structured custody schedule. The daughter said the bathroom where the camera was found is the bathroom she used when staying at Defendant's residence. She reported Defendant primarily used a second bathroom.

Officer Elliott took the camera back to the police station and viewed the contents of the SD memory card. He testified that the video begins with Defendant's face as he was apparently mounting the camera. Officer Elliott said it appeared that Defendant was looking at another unidentified device during this process, consistent with him positioning the angle of the camera through a video feed. The next image seen on the video was the daughter undressing before entering the shower.

The following day, Detective Adam Raisbeck obtained and executed a search warrant signed by a state district court judge, authorizing the search of Defendant's residence, vehicles, and person for evidence of child pornography. [ECF No. 32] (sealed). It also authorized the seizure of electronic devices. During the search, a cellular phone and a laptop computer were seized from Defendant's residence. Officers observed that the bathroom at the residence was identical to the bathroom visible in the videos.

Officers conducted an interview with Defendant at his employer while the search warrant at his residence was executed. He was informed of his *Miranda*[1] rights and a different cellular phone was seized from his person. Defendant admitted that there was a camera in the bathroom but claimed it was not operable. He said he last used it in February, testing it to see if it "flashed" but simply left it in the bathroom. Defendant confirmed he purchased the camera in February from Amazon, noting it cost $22. When asked if he had child pornography on his phone, Defendant responded there "shouldn't be," continuing that porn sites should only show girls over the age of 18.

After he was asked if any of the electronic devices at his home contained sexual depictions of underage girls, Defendant invoked his Fifth Amendment rights and requested to speak to an attorney. Officers then terminated the interview and placed Defendant under arrest. He was charged with sexual exploitation of a minor under Iowa law and released on his own recognizance.

On May 10, 2021, the FBI met with officers from the MPD and viewed the videos. The next day, Detective Raisbeck applied for a second search warrant from a state judge to allow him to search the cellular phones seized from Defendant's residence and from his person. [ECF No. 32-1].

The daughter was interviewed by the Mississippi Valley Child Protection Center (CPC) on May 12, 2021. She explained that the bathroom where she discovered the camera was "her" bathroom and Defendant uses a different bathroom regularly, at least while she is staying with him. The daughter told the interviewer that Defendant asked her several times during the course of the day if she planned to take a shower. She said these questions bothered her, but she ultimately decided to shower before bed. Defendant went into the bathroom immediately before she did. The

[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

daughter stated this did not strike her as odd. As she was getting dressed after her shower, she noticed a light or glare but thought it may be some sort of temperature device if the bathroom was too hot. Upon closer inspection, she realized it was a camera. After removing it, the daughter was very uncomfortable and contacted her mother to retrieve her from Defendant's residence. The CPC interviewer showed the daughter the recovered video and she noted it was not the same video as the day she discovered the camera because her outfit was different.

The MPD later informed the FBI that Defendant was suspected to have uploaded possible child pornography to MeWe, a social media and networking service. MeWe functions much like other social media websites where users can post text and images, react to the posts of others, create special groups, post ephemeral content, and chat with other users directly or in a group. MPD was notified of Defendant's suspicious activity by the National Center for Missing and Exploited Children (NCMEC) Cybertipline via the Iowa Division of Criminal Investigation (DCI) Internet Crimes Against Children (ICAC) unit. MPD was provided with two reports from the NCMEC which officers made available to the FBI.

The first Cybertipline report was made to NCMEC by MeWe on November 19, 2019. In the report, MeWe advised that 24 suspected images of child pornography were uploaded on December 17, 2018 by user KillJoy1983, and account that was registered to the email address jacobbermel1983@gmail.com. The MeWe login for this event was resolved to Verizon Wireless and Muscatine Power and Water. The NCMEC reviewed the images, classifying them as "Child Pornography (unconfirmed)." These images were uploaded on MeWe and were publicly available to other users. The second report from Cybertipline was made to NCMEC by MeWe on May 27, 2020. Two images suspected of constituting child pornography were uploaded by the same user, with the login again resolved to Verizon Wireless and Muscatine Power and Water.

The FBI reviewed the images which showed fully frontal nude teenage girls who appeared to be under the age of 18.

A warrant for the MeWe account KillJoy83 was obtained by the MPD on July 6, 2020. Among the content data for that account included the two photos that were the subject of the second Cybertipline report. The user account was registered to a "563" Verizon Wireless phone number. Verizon Wireless provided the subscriber data for the phone number which was registered to Jacob Bermel with the same Muscatine, Iowa address as Defendant. A search warrant was obtained on June 7, 2021 for the laptop seized by the MPD on May 7, 2021. [ECF No. 32-2].

Defendant was indicted by a federal grand jury on three counts of child pornography for production, receipt and distribution, and possession. [ECF No. 2]. On April 7, 2022, the Court held an evidentiary hearing on this Motion to Suppress. [ECF Nos. 29; 44].

II. ANALYSIS

In his Motion to Suppress, Defendant advances two[2] bases to exclude the evidence against him. First, he alleges the seizure of the camera and search of the SD card by law enforcement violated the Fourth Amendment. Second, he claims the search of his laptop by the FBI was delayed to the point it unreasonably interfered with his possessory rights.

A. Seizure of Camera

"The Fourth Amendment protects persons against unreasonable searches and seizures by the government." *United States v. Stephen*, 984 F.3d 625, 629 (8th Cir. 2021) (quoting *Arnzen v. Palmer*, 713 F.3d 369, 372 (8th Cir. 2013) (emphasis omitted)). A seizure of personal property without a warrant "is per se unreasonable unless it falls within a well-defined exception to the warrant requirement." *United States v. Mays*, 993 F.3d 607, 614 (8th Cir. 2021) (quoting *Robbins*

[2] The Motion also alleged a violation under *Franks v. Delaware*, 438 U.S. 154 (1978) but he abandoned this claim at the evidentiary hearing.

v. City of Des Moines, 984 F.3d 673, 680 (8th Cir. 2021)). However, if officers have probable cause that property contains contraband, they may seize it prior to obtaining a warrant when "the exigencies of the circumstances demand" such an action. *Id*. (quoting *United States v. Place*, 462 U.S. 696, 701 (1983)).

Defendant asserts that it was an unreasonable seizure and search when Officer Elliott took possession of the camera from the daughter and viewed its contents prior to obtaining a warrant. A similar Fourth Amendment argument regarding a hidden camera was advanced by the defendant in *Stephen* but was rejected by the district court. In that case, United States District Court Judge C.J. Williams of the Northern District of Iowa denied a motion to suppress by the defendant, rejecting the argument that police violated his Fourth Amendment rights when—after receiving information from a citizen regarding a hidden camera in a bathroom—asked him to bring the device to the police station. Judge Williams held that police had not "seized" the camera, disguised to look like a USB, because a seizure for Fourth Amendment purposes requires "meaningful interference with an individual's possessory interests." *Stephen*, 2018 WL 4839065, at *8 (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)) There was no meaningful interference with the defendant's possessory interest because the private citizen had already taken the property. *Id*.

Furthermore, Judge Williams found that the exigent circumstances exception also applied. The citizen who took the USB from the defendant's bathroom viewed the videos and told police the videos depicted nude underage males. Based on this information, police had probable cause to believe it contained contraband and if it were returned to the property owner, the evidence would likely be lost or destroyed. *Id*. at *9. On appeal, the United States Court of Appeals for the Eighth Circuit did not reach the *Jacobsen* property-interference issue but affirmed Judge Williams on the exigent circumstances exception, finding "without immediate seizure, the police risked losing digital evidence." *Stephen*, 984 F.3d at 630–31.

The same reasoning applies here. When Officer Elliott responded to the mother's report and spoke with her and the daughter, he was informed that the camera was hidden in the bathroom. Its location, angle, and the fact that it was a recording device surreptitiously located in a bathroom often used by a minor provided the MPD with probable cause that the memory card contained evidence of contraband. A probable cause determination is a "practical, nontechnical conception" that calls for "facts and circumstances sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense." *Gerstein v. Pugh*, 420 U.S. 103, 111–12 (1975). It requires "only the kind of fair probability on which reasonable and prudent people, not legal technicians act." *Kaley v. United States*, 571 U.S. 320, 338 (2014).

The Eighth Circuit has found exigent circumstances were present in other cases where police seized a digital device prior to a warrant to prevent deletion or destruction of the evidence. *See Mays*, 993 F.3d at 614; *United States v. Smith*, 715 F.3d 1110, 1117 (8th Cir. 2013) (affirming denial of motion to suppress based on a warrantless seizure of a laptop bag because of need to "prevent destruction of evidence"); *United States v. Clutter*, 674 F.3d 980, 985 (8th Cir. 2012) (upholding seizure of a computer because police "had probable cause to believe the computers contained evidence of child pornography"). Here, Officer Elliott received custody of the camera from the daughter. If, after taking possession of the camera, he had returned it to Defendant it was highly likely that any incriminating evidence on it would have been destroyed. It was also reasonable for Officer Elliott to believe he had consent, as the Court will discuss next, to take possession of the camera as the daughter was a co-tenant of Defendant's residence and had at least apparent authority to voluntary give the camera to law enforcement.

B. Search of SD Card

Defendant next argues that his Fourth Amendment rights were violated when Officer Elliott and the other MPD officers reviewed the contents of the SD card without a warrant. He

insists that neither the MPD officers nor the FBI agents who examined the videos had legal authority to do so and asks the Court to exclude the evidence as a result.

It has long been held that "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). One of these exceptions is voluntary consent. *See United States v. Esquivias*, 416 F.3d 696, 700 (8th Cir. 2005) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)); *see also United States v. Amratiel*, 622 F.3d 914, 915 (8th Cir. 2010) ("[t]he Fourth Amendment does not prohibit the warrantless search of premises when police obtain valid consent."). Consent to a search "need not be given by the defendant, but rather may be given by 'a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.'" *Amratiel*, 622 F.3d at 915 (quoting *United States v. Matlock*, 415 U.S. 164, 171 (1974)). Actual authority is not required but, consistent with the Fourth Amendment's "touchstone" of reasonableness, a consent to search is valid so long as "'an officer reasonably relies on a third party's demonstration of apparent authority' over the premises." *Id.* An individual has apparent authority to consent to a search if "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises.'" *Id.* (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990)). Common authority for consent requires "mutual use, and joint access or control." *Id.* A property interest is not required if the third party "possesse[s] . . . [a] sufficient relationship to the premises." *See Matlock*, 415 U.S. at 171. The Eighth Circuit does not "require police to go behind appearances to verify third party authority . . . [but instead] has been more liberal about allowing police to form their impressions from context." *United States v. Almeida-Perez*, 549 F.3d 1162, 1171 (8th Cir. 2008) (citations omitted).

The mother and daughter told Officer Elliott that the daughter split time between Defendant's residence and her mother's. Furthermore, the camera was removed from a bathroom that the daughter said was primarily, if not exclusively, used by her when she stayed with Defendant. She said Defendant used a different bathroom when she was visiting him. The camera was not locked, fastened, or otherwise fixed to the bathroom. It was not even completely concealed from view as the daughter noticed its light while exiting the shower. It is clear that the daughter had, at a minimum, joint access and control over the bathroom. Defendant has offered no evidence that the daughter did not have joint access over the common areas as a part-time joint occupant who was able to stay with Defendant when she chose.

Defendant argues that it was not reasonable for Officer Elliott to believe that the daughter had authority to give consent because her father was present at the time she took the camera and he did not provide consent. However, Defendant was not present at the time consent was given to search the SD card. Regardless of whether the daughter had actual authority to consent to a search of property taken from a residence, she had apparent authority. It was not unreasonable for Officer Elliott or other law enforcement officers to rely on the consent given by the daughter to search a memory card found in a home where she commonly resided and shared space with Defendant. *Rodriguez*, 497 U.S. at 185–86 ("Of the many factual determinations that must regularly be made by agents of the government,' the Fourth Amendment does not require the agents always be correct, 'but that they always be reasonable.'").

It is the Government's burden to prove consent. *See Almeida-Perez*, 549 F.3d at 1169. They have done so here. There is no indication that the consent to search was anything but voluntary. This was not a situation where law enforcement showed up at the home and imposed any "duress or coercion, express or implied" on the daughter. *United States v. Cisneros-Gutierrez*, 598 F.3d 997, 1003 (8th Cir. 2010) (citation omitted). Officer Elliott was summoned to meet with

the daughter by the mother's report to police. Officer Elliott testified that, while speaking with the mother on the phone, he heard the daughter in the background expressly agree to meet with him. The daughter, although a minor, was of a mature age capable of making independent decisions. Given the nature of the police report, and the surrendering of the camera to Officer Elliott, the consent to a search was apparent. *See United States v. Williams*, 346 F.3d 796, 799 (8th Cir. 2003) (finding consent may be "reasonably implied from behavior"). There is absolutely no indication that the daughter's consent was not voluntarily and freely given.

C. Duration of Seizure of Laptop

Defendant next challenges the search of the laptop by the FBI. He asserts that the delay between the seizure of the laptop on May 7, 2021, and the application for the federal search warrant on June 7, 2021, was unreasonably long. "[A] seizure reasonable at its inception because [it is] based upon probable cause may become unreasonable as a result of its duration." *Segura v. United States*, 468 U.S. 796, 812 (1984). The analysis for whether a search of property is unreasonably delayed, thereby transforming a previously reasonable seizure into an unreasonable one, is based on the totality of the circumstances. *See United States v. Farnell*, 701 F.3d 256, 261 (8th Cir. 2012) (holding whether the duration of a seizure is reasonable "is measured in objective terms by examining the totality of the circumstances").

Fifteen days has been found to be a "considerable period" for length of a seizure. *Mays*, 993 F.3d 617. However, the duration of a seizure is context-specific where sometimes "a delay as short as 90 minutes may be unreasonable,' while in other contexts, 'a delay of over three months may be reasonable.'" *Mays*, 993 F.3d at 617 (quoting *United States v. Laist*, 702 F.3d 608, 613 (11th Cir. 2012)).

The cases upon which Defendant relies are distinguishable. Those cases all pertained to the warrantless seizure of property based on probable cause or consent. *See Place*, 462 U.S. at 710

(seizure of luggage at an airport without a warrant); *United States v. Burgard*, 675 F.3d 1029, 1032 (7th Cir. 2012) (warrantless seizure of cell phone); *United States v. Van Leeuwen*, 397 U.S. 249, 253 (1970) (postal packages); *United States v. Mitchell*, 565 F.3d 1347, 1350 (11th Cir. 2009) (computer hard drive); *Laist*, 702 F.3d at 611 (computer); *United States v. Sullivan*, 797 F.3d 623, 633 (9th Cir. 2015) (laptop computer). While the camera was seized based on the consent of the daughter, a state search warrant was obtained and the laptop was retained on the authority of that warrant. Because the property had been seized pursuant to the state search warrant, Defendant had no property interest in the return of the evidence before the end of the investigation. Defendant's challenge to the seizure of the laptop based on its duration is without merit.

III. CONCLUSION

For the reasons described above, Defendant's Motion to Suppress is DENIED. [ECF No. 29].

IT IS SO ORDERED.

Dated this 18th day of April, 2022.

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Jacob Paul Bermel

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:21-CR-00110-001

USM Number: 74629-509

Diane Z. Helphrey
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One and Three of the Indictment filed on November 9, 2021.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2251(a), 2251(e)	Production of Child Pornography	03/04/2021	One
18 U.S.C. § 2252(a)(4)(B), 2252(b)(2)	Possession of Child Pornography	05/06/2021	Three

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) Two ☑ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 26, 2022
Date of Imposition of Judgment

Signature of Judge

Stephanie M. Rose, Chief U.S. District Judge
Name of Judge Title of Judge

September 26, 2022
Date

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

300 months, consisting of 300 months as to Count One and 240 months as to Count Three of the Indictment filed on November 9, 2021, to be served concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed as close to Muscatine, Iowa as possible if commensurate with his security and classification needs.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Ten years as to each of Counts One and Three of the Indictment filed on November 9, 2021, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

SPECIAL CONDITIONS OF SUPERVISION

You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

You must participate and follow the rules of a sex offense-specific treatment program, as directed by the U.S. Probation Officer. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Sex offense-specific treatment shall be conducted by therapists approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office.

You must submit to periodic polygraph testing, as directed by the U.S. Probation Office, to ensure that you are in compliance with the requirements of your supervision or treatment program. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Polygraph testing will be conducted by polygraph examiners approved by the U.S. Probation Office, who will release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. As used in this paragraph, "the results" that will not be used in a revocation hearing are the polygraph examiner's ultimate opinions or findings regarding whether deception or a significant response has been detected during the examination. Any statements made by you during the polygraph examination during pre- examination or post-examination interview(s) may be used in any manner, including to generate separate leads or investigations, at a revocation hearing. Failure to answer questions during the polygraph examination may be grounds for revocation, unless you choose not to answer any questions perceived or deemed incriminating, which may then be referred to the Court for resolution.

You must not contact the victim(s) (L.B. or her mother), nor the victim's family without prior permission from the U.S. Probation Officer.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You may not possess any type of camera (to include cameras within cellular telephones) or video recording device without the prior approval of the U.S. Probation Officer.

You must not access the internet or possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Officer. If computer or internet use for employment is approved by the U.S. Probation Officer, you must permit third party disclosure to any employer or potential employer concerning any computer/internet related restrictions that are imposed upon you.

If approved by the U.S. Probation Officer to use or possess computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media, you must submit your devices to unannounced examinations/searches, and possible removal for a more thorough inspection. You must allow the installation of monitoring hardware and software on such equipment, abide by and cooperate in supplemental conditions of monitoring, and pay the costs associated with this service, as directed by the U.S. Probation Officer. You must notify third parties who use these devices that the devices are subject to monitoring and/or unannounced examinations.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, 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" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

ADDITIONAL SUPERVISED RELEASE TERMS

You must pay restitution in the amount of $12,000. You will cooperate with the U.S. Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the U.S. Probation Office. You may be required to participate in an IRS Offset Program and/or Treasury Offset Program which may include the garnishment of wages or seizure of all or part of any income tax refund and/or any government payment to be applied toward the restitution balance.

Until restitution is paid, you must provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Until restitution is paid, you must not apply for, solicit, or incur any further debt, included but not limited to loans, lines of credit, or credit card charges, either as a principal or cosigner, as an individual, or through any corporate entity, without first obtaining written permission from the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$12,000.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
See sealed victim list		$12,000.00	
TOTALS	$0.00	$12,000.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jacob Paul Bermel
CASE NUMBER: 3:21-CR-00110-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 12,200.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to:
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All crimnal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

a Red Owl Eyes HD mini camera, black in color, with 32GB SD card, adjustable clip and 360 mounting bracket; ASUS laptop computer, model K52F, (SN: A8N0AS244463337); and a Samsung Galaxy S21 cell phone (IMEI: 3550196640621638), as further outlined in the Preliminary Order of Forfeiture filed on September 22, 2022.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 22-3092

United States of America

Plaintiff - Appellee

v.

Jacob Paul Bermel

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: September 21, 2023
Filed: December 12, 2023

Before LOKEN, GRUENDER, and BENTON, Circuit Judges.

GRUENDER, Circuit Judge.

Jacob Bermel conditionally pleaded guilty to two child pornography offenses after the district court[1] denied his motion to suppress evidence found on a camera that he hid in his daughter's bathroom. Bermel appeals that denial, and we affirm.

[1]The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

I.

Bermel and his ex-wife lived apart but shared custody of their fourteen-year-old daughter. The daughter did not keep a set visitation schedule. She was free to come and go from Bermel's house as she pleased, and she was sometimes left alone at his house. When the daughter stayed at Bermel's house, she used a particular bathroom. One day, while using the bathroom, she discovered a camera. Concerned, the daughter called her mother, reported what she had found, and asked to be picked up.

After picking up the daughter, the mother called the police and spoke with Officer Jacob Elliott of the Muscatine Police Department about what had happened. During the call, Officer Elliott learned that the daughter had found a camera affixed to a cabinet in her bathroom. The mother did not appear to believe that the camera had a memory card. During the call, Officer Elliott heard the daughter agree to speak with officers about what had happened.

Officer Elliot and another officer went to the mother's home and met with the mother and daughter. At Officer Elliot's request, the mother handed the camera to Officer Elliot and explained that they placed duct tape over the camera lens for fear that the camera might still be recording. The daughter told the officers that she found the camera on a small swivel in the bathroom that she used when she stayed at Bermel's house.

After the mother and daughter described what had happened, Officer Elliot, with the camera in hand, stated: "What's going to happen is, I'm going to take this, okay? We're going to analyze and see if there's anything on it." Neither the mother nor the daughter objected. The officers left and reviewed videos found on a memory card within the camera. The videos showed Bermel setting up the camera, as well as the daughter getting in and out of the shower.

Following further investigation, law enforcement identified Bermel as the source of depictions of child pornography uploaded to the internet. Bermel was indicted on several child-pornography offenses. *See* 18 U.S.C. § 2252. Later, Bermel filed a motion to suppress the evidence found on the camera. He argued that the warrantless seizure and subsequent warrantless search of the camera and the memory card within it violated his Fourth Amendment rights. The district court denied the motion and concluded that the seizure was justified by exigent circumstances and that the search was lawful because the daughter consented to it. Following the denial of his motion, Bermel conditionally pleaded guilty to producing and possessing child pornography, reserving the right to appeal the denial. The district court accepted Bermel's conditional guilty plea and sentenced him to 300 months' imprisonment. Bermel appeals.

II.

On appeal, Bermel maintains that the warrantless search of the camera and its memory card violated the Fourth Amendment.[2] He makes three arguments in this regard. First, he claims that minor children, as a matter of law, cannot consent to a search of their parents' property. Second, he argues that, even if minors may possess actual or apparent authority to consent to such searches under certain circumstances, the daughter lacked such authority here. Third, he contends that the district court clearly erred in finding that the daughter consented to the search of the camera and the memory card contained within it. In our consideration of these arguments, we review the district court's factual findings for clear error and its ultimate conclusion about whether the Fourth Amendment was violated *de novo*. *United States v. Sandoval*, 74 F.4th 918, 922 (8th Cir. 2023).

[2]Though Bermel argued in the district court that the seizure of the camera was unlawful, he does not appeal the district court's conclusion that the seizure was justified by exigent circumstances.

Warrantless searches of a person's effects are generally prohibited under the Fourth Amendment unless an exception to the warrant requirement applies. *Horton v. California*, 496 U.S. 128, 133 (1990). One exception allows police officers to search an object without a warrant if a third party who has common authority over the object consents to the search. *See United States v. Williams*, 36 F.4th 792, 795 (8th Cir. 2022). Indicia of a third party's common authority over property are mutual use or joint access or control. *See United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974). Whether or not a third party actually possessed common authority, a warrantless search is justified "when an officer reasonably relies on a third party's demonstration of apparent authority." *United States v. Amratiel*, 622 F.3d 914, 915 (8th Cir. 2010). Apparent authority exists if "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the [property]." *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990) (internal quotation marks omitted).

A.

Bermel begins with an all-or-nothing argument. He urges us to hold that it is "unreasonable for law enforcement to rely upon a minor child's consent to search a parent's items, in any circumstance." In support, he cites two state supreme court decisions, a federal district court order, and one concurrence and one dissent of judges from other circuits. Yet not one of Bermel's five proffered authorities stands for the *per se* rule that he advances. Four of them explicitly disclaim a *per se* rule. *See People v. Jacobs*, 729 P.2d 757, 764 (Cal. 1987) ("We do not suggest that consent by a minor will be ineffective in all cases . . . ."); *Abdella v. O'Toole*, 343 F. Supp. 2d 129, 135 (D. Conn. 2004) ("This court accepts and adopts the general rule that minority does not *per se* preclude a factual finding of actual or apparent authority."); *United States v. Sanchez*, 608 F.3d 685, 697 (10th Cir. 2010) (Lucero, J., concurring) ("I would not impose a per se ban on third-party consent from a minor."); *United States v. Belt*, 609 F. App'x 745, 759 (4th Cir. 2015) (Wynn, J., dissenting) (discussing the circumstances under which a minor could validly consent to a search of the family home). To the extent the fifth, *Commonwealth v. Garcia*,

adopted such a rule, the case is apparently no longer good law. *Compare Garcia*, 387 A.2d 46, 55 (Pa. 1978) (plurality opinion) (concluding that a sixteen-year-old girl could not validly consent to a search of a home) *with Commonwealth v. Hughes*, 836 A.2d 893, 901 (Pa. 2003) (concluding that a group of three twelve- to fourteen-year-old girls standing on the porch of the defendant's house had apparent authority to consent to a search of a home). The dearth of authority supporting a *per se* rule makes sense, as the Supreme Court has observed that even "a child of eight might well be considered to have the power to consent to the police crossing the threshold into that part of the house where any caller . . . might well be admitted." *Georgia v. Randolph*, 547 U.S. 103, 112 (2006) (dictum). Given that Bermel's argument lacks support in law, we reject it.

B.

Bermel argues alternatively that the daughter lacked apparent authority to consent to the search. As noted, apparent authority turns on Officer Elliot's reasonable reliance on indicia of common authority, like mutual use or joint access or control.[3] *See United States v. Almeida-Perez*, 549 F.3d 1162, 1170 (8th Cir. 2008). In other words, the question is whether "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the [property]." *Rodriguez*, 497 U.S. at 188. The existence of mutual use or joint access or control is a question of fact, though whether police reasonably relied on those indicia of common authority is a legal question. *See Almeida-Perez*, 549 F.3d at 1170.

The daughter had apparent authority over the camera and its memory card. Officer Elliot knew that the daughter lived part-time at Bermel's house, that she was empowered to come and go as she pleased, and that she was sometimes left alone at the house. Officer Elliot knew that the daughter removed the camera from "her"

[3]Barring our adoption of his proposed *per se* rule, Bermel assumes in this alternative argument that the ordinarily applicable apparent-authority test applies. We make the same assumption.

bathroom and deduced from this fact that this must be the bathroom that she primarily used when she stayed at the home and the one where she kept her belongings. The camera that she found in her bathroom was not locked or otherwise fixed in place. Nor was it, as the district court found, "even completely concealed from view[,] as the daughter noticed its light while exiting the shower." The district court did not clearly err in determining that these facts established joint access to and control of the bathroom, the camera, and the memory card it contained. And we further conclude that these facts sufficed to lead a person of reasonable caution in the officers' situation to believe that the daughter had authority over the camera and its memory card and that she could validly consent to a search of it.

C.

Having established the daughter's apparent authority to consent to the search of the camera and memory card, we address Bermel's last argument that the evidence does not establish that she actually consented to the search. He takes issue with the fact that the daughter did not verbally respond when Officer Elliott said that he was going to "take" and "analyze" the camera to "see if there's anything on it." He argues alternatively that, even if the daughter consented to a search of the camera, she did not consent to a search of the camera's memory card because she did not know that the camera contained a memory card.

First, the district court did not clearly err in finding that the daughter consented to the search. *See United States v. Rogers*, 661 F.3d 991, 995 (8th Cir. 2011) ("The determination of whether a reasonable officer would believe that the defendant consented is a question of fact, subject to review for clear error."). "[C]onsent can be inferred from words, gestures, or other conduct," and it need not be explicit. *Id.* at 994 (internal quotation marks omitted). Here, Officer Elliott, who had been summoned by the daughter and mother, stated his intention to "analyze" the camera to "see if there's anything on it," and the daughter did not object. The circumstances were sufficient for Officer Elliott to infer consent. *See id.*

Second, and for a similar reason, the district court did not clearly err in its finding that the daughter's consent to search encompassed both the camera and its internal memory card. The permissible scope of a consent search is limited by the scope of the consent given. *See Walter v. United States*, 447 U.S. 649, 656 (1980). And we measure the scope of the consent given "by a standard of objective reasonableness." *United States v. Siwek*, 453 F.3d 1079, 1085 (8th Cir. 2006). Consent to a search of an object generally includes that object's component parts. *See United States v. Beckmann*, 786 F.3d 672, 678-79 (8th Cir. 2015). Here, the daughter raised no objection to Officer Elliott's stated intention to "see if there's anything on" the camera. Because one cannot "see if there's anything on" a digital camera without searching the camera's memory device, the scope of the daughter's consent "would reasonably be understood to extend to" the camera's memory card, whether or not the daughter affirmatively knew of the memory card's existence. *Florida v. Jimeno*, 500 U.S. 248, 252 (1991); *see Beckmann*, 786 F.3d at 678-79; *Siwek*, 453 F.3d at 1084-85.

III.

For the foregoing reasons, we affirm the denial of the motion to suppress.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3092

United States of America

Plaintiff - Appellee

v.

Jacob Paul Bermel

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:21-cr-00110-SMR-1)

JUDGMENT

Before LOKEN, GRUENDER and BENTON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 12, 2023

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3092

United States of America

Appellee

v.

Jacob Paul Bermel

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:21-cr-00110-SMR-1)

ORDER

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

February 06, 2024

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

/s/ Michael E. Gans