APPENDIX A:

*United States v. Boudreau*, 154 F.4th 1132 (9th Cir. 2025)

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>*Plaintiff - Appellee*,<br><br>v.<br><br>CHRISTOPHER TODD BOUDREAU,<br><br>*Defendant - Appellant*. | No. 23-4092<br><br>D.C. No. 9:22-cr-00046-DWM-1<br><br>OPINION |

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Argued and Submitted April 2, 2025
Portland, Oregon

Filed September 16, 2025

Before: Jay S. Bybee, Kenneth K. Lee, and Danielle J. Forrest, Circuit Judges.

Opinion by Judge Forrest

## SUMMARY*

### Criminal Law

The panel affirmed Christopher Todd Boudreau's conviction and sentence for attempted coercion and enticement of a minor to engage in illegal sexual activity under 18 U.S.C. § 2422(b) and possession of child pornography under 18 U.S.C. § 2252A(a)(5)(B).

The panel held that the district court did not err in denying Boudreau's motion to suppress child pornography seized from his residence. Given the totality of circumstances, the warrant—issued to search for evidence of a crime under Montana Code § 45-5-625, which criminalizes both enticement of a minor and possession of child pornography—was supported by probable cause to believe not only that evidence of enticement would be found at Boudreau's residence, but also evidence of child pornography. Boudreau's argument under *Franks v. Delaware*, 438 U.S. 154 (1978), that suppression is required because of a detective's knowing or reckless omission from his affidavit, fails because the omission was immaterial.

Boudreau argued that the district court erred by not severing the two charges. Because the elements of enticement of a minor and possession of child pornography overlap, these offenses are of the same or similar character under Fed. R. Crim. P. 8(a), and the district court did not err in declining to sever the charges.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that the district court did not err under either Fed. R. Evid. 404(b) or 403 in denying Boudreau's motion in limine to exclude evidence of his separate uncharged interactions with a 17-year-old girl.

Boudreau argued that the sentence imposed on his possession-of-child-pornography offense is substantively unreasonable—specifically, that U.S.S.G. § 2G2.2 is "seriously flawed" because it inflates the offense level, resulting in unjust sentencing disparities that are inconsistent with 18 U.S.C. § 3553. Finding no error, the panel concluded that the district court did not abuse its discretion in concluding that the sentence did not result in unwarranted sentencing disparity under 18 U.S.C. § 3553(a)(6).

## COUNSEL

Tim Tatarka (argued), Zeno B. Baucus, and Brian C. Lowney, Assistant United States Attorneys; Jesse A. Laslovich, United States Attorney; Office of the United States Attorney, United States Department of Justice, Billings, Montana; for Plaintiff-Appellee.

David A. Mattingley (argued), diStefano & Mattingley PLLP, Kalispell, Montana, for Defendant-Appellant.

## OPINION

FORREST, Circuit Judge:

Defendant Christopher Todd Boudreau was arrested after attempting to meet up for sex with someone he thought was a 12-year-old girl. His residence was later searched and law enforcement found voluminous videos and images of minors engaged in sex acts. Boudreau was convicted of attempted coercion and enticement of a minor to engage in illegal sexual activity under 18 U.S.C. § 2422(b) and possession of child pornography under 18 U.S.C. § 2252A(a)(5)(B). On appeal, he challenges the district court's denial of three pretrial motions: (1) his motion to suppress the child pornography seized from his residence; (2) his motion to sever the two charges in his indictment as improperly joined; and (3) his motion in limine to exclude evidence about a relationship that he pursued with a 17-year-old girl during the same month as his charged conduct. Boudreau also appeals the substantive reasonableness of his sentence. We affirm.

## BACKGROUND

Detective Travis Wafstet works in the Missoula County Sheriff's Office and is also a member of the FBI's Child Exploitation and Human Trafficking Task Force. He created several accounts for a fictional 12-year-old girl named "Mia" on various social-media and online-dating platforms. In July 2022, Boudreau contacted "Mia" on Facebook. "Mia" provided her cell phone number, and for a week Boudreau texted with her extensively. Boudreau acknowledged that he was communicating with someone he believed was a 12-year-old girl, and at various points expressed a sexual interest in her. Eight days after making initial contact with

"Mia," Boudreau traveled from his home in Anaconda, Montana, to Missoula, intending to meet and have sex with "Mia," which he indicated would be her "first time." He was arrested at the designated meeting location after law enforcement observed him following directions sent in text messages from "Mia's" number.

After Boudreau's arrest, Detective Wafstet sought a search warrant for Boudreau's residence to search for evidence of a violation of Montana Code § 45-5-625, which criminalizes both enticement of a minor and possession of child pornography. The warrant application listed as evidence to be seized all "electronic device[s] capable of receiving and transmitting data or storing electronic data" and any "[v]isual depictions" of minors "in a state of undress [or] engaging in sexual activity."

Detective Wafstet swore to the following facts regarding his undercover investigation to establish probable cause to search. Boudreau encountered "Mia" on a social media platform and direct messaged her online before transitioning to SMS text message. Boudreau used "grooming techniques" to bond with "Mia," likely with the intention of later engaging in sexual activities with her. And Boudreau repeatedly sought to meet with "Mia," offered to be her "personal photographer," and made sexual comments about her.

Detective Wafstet also described the circumstances of Boudreau's arrest. Boudreau arranged to meet with "Mia" on the date of his arrest, indicated his sexual desires, offered to rent a room, and provided a meet-up location. Officers waited for Boudreau at the designated location, directed where he should park, and observed him arrive. Officers then arrested Boudreau and interviewed him. Detective Wafstet

recounted that Boudreau admitted that he watched pornography and had a computer at his residence but that he "would not state what search terms he used when he watched pornography."

Finally, the warrant affidavit outlined Detective Wafstet's training and experience. At the relevant time, he was a member of the joint Montana-FBI Child Exploitation and Human Trafficking Task Force, had been in law enforcement for nine years, had received specialized training in child-abuse and sexual-offense investigations, and had completed several undercover operations involving sexual enticement of children. From this training and experience, Detective Wafstet explained that computers "are the primary way in which individuals interested in child enticement interact with each other and with intended child victims," that computers facilitate the storage and sharing of child pornography, and that the internet facilitates easy access to child pornography. He also stated that "there are certain characteristics common to individuals who have a sexualized interest in children and are communicating with children online," including "collect[ing] sexually explicit or suggestive materials in a variety of media," and "maintain[ing] their child pornography collections . . . in a digital or electronic format." His affidavit concluded with his opinion that, because of how Boudreau communicated with "Mia," Boudreau "likely has a sexualized interest in children and depictions of children" and "that evidence of child pornography and additional child enticement" was likely to be found at Boudreau's residence.

A Montana state judge issued a search warrant for Boudreau's residence, authorizing law enforcement to search for evidence of both enticement of a minor and possession of child pornography. Officers executed the

warrant and seized a hard drive from Boudreau's bedroom. Officers then secured a second warrant to search the data on the hard drive, and they found voluminous videos and images of children engaged in sexual activities. Following these searches, Boudreau was indicted on the two charges on which he was convicted.

Before trial, Boudreau moved to suppress the child pornography seized from his residence, arguing that officers lacked probable cause and that Detective Wafstet made deliberate misrepresentations or omissions. He also moved to sever the two charges in his indictment, arguing that the elements of the counts differ. The district court denied both motions.

The Government also provided notice before trial that it intended to introduce evidence that during the same summer that Boudreau communicated with "Mia," he pursued a relationship with a 17-year-old girl named Hope and a protective order was entered against him. Boudreau moved in limine to exclude this evidence, and his motion was denied. At trial, Hope testified that she met Boudreau in the summer of 2022, began "hanging out with him" and exchanging texts, was "intimate" with him "once or twice," and that he asked her for nude pictures (which she did not send). She testified that she told Boudreau her age. She also testified that Boudreau repeatedly called her his "girlfriend," and the jury was shown texts where he repeatedly called her "beautiful."

After the jury found Boudreau guilty on both charges, the district court calculated Boudreau's Sentencing Guidelines range as 151 to 188 months imprisonment, which the parties agreed was correct. After considering the sentencing factors under 18 U.S.C. § 3553(a), the district

court sentenced Boudreau to a 154-month term on each offense, to run concurrently. Boudreau timely appealed.

## DISCUSSION

### I. Motion to Suppress

The Fourth Amendment guarantees that "no Warrants shall issue, but upon 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. "To supplement the bare text" of the Fourth Amendment, the Supreme Court "created the exclusionary rule, a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation." *Davis v. United States*, 564 U.S. 229, 231−32 (2011). The exclusionary rule "encompasses both the primary evidence obtained as a direct result of an illegal search or seizure and . . . evidence later discovered and found to be derivative of an illegality, the so-called 'fruit of the poisonous tree.'" *Utah v. Strieff*, 579 U.S. 232, 237 (2016) (citation modified) (citation omitted). We review the district court's denial of a motion to suppress evidence under the Fourth Amendment de novo and any underlying factual findings for clear error. *United States v. Zapien*, 861 F.3d 971, 974 (9th Cir. 2017).

Boudreau makes two arguments for suppressing the child pornography found at his residence. First, he contends that the warrant was not supported by probable cause to believe that child pornography would be found. Second, he contends that the affidavit supporting the warrant application contained knowingly false or reckless statements, demanding suppression under *Franks v. Delaware*, 438 U.S. 154 (1978).

### A. Probable Cause

A warrant may "be no broader than the probable cause on which it is based." *United States v. Weber*, 923 F.2d 1338, 1342 (9th Cir. 1990). A warrant is supported by probable cause if, based on the totality of the circumstances, the application establishes "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *see also United States v. Gourde*, 440 F.3d 1065, 1069–74 (9th Cir. 2006) (en banc) (stressing the application of the "fair probability" standard in child pornography cases). The issuing judge is "entitled to rely on the training and experience of police officers" when evaluating whether a warrant affidavit establishes probable cause. *United States v. Parks*, 285 F.3d 1133, 1142 (9th Cir. 2002) (quoting *United States v. Gil*, 58 F.3d 1414, 1418 (9th Cir. 1995)); *see also Weber*, 923 F.2d at 1345 ("It is well established that [an] expert opinion may be presented in a search warrant affidavit."). And appellate courts are to give "great deference" to the issuing-judge's probable-cause determination, interpretating affidavits in a "common[ ]sense" rather than "hypertechnical" manner. *Gates*, 462 U.S. at 236.

To start, to the extent that the Government suggests the child pornography found at Boudreau's residence should not be suppressed because the search warrant affidavit established probable cause to believe that officers would find evidence of enticement of a minor on Boudreau's computer, this argument fails. For this argument to plausibly work, the Government must have argued that the child pornography inevitably would have been discovered because it was in plain view on Boudreau's hard drive during the officers' lawful search for evidence of enticement. But the Government did not cite or discuss either the inevitable-

discovery exception or the plain-view doctrine. *Cf., e.g.*, *Nix v. Williams*, 467 U.S. 431, 440–48 (1984) (adopting the inevitable-discovery doctrine); *Arizona v. Hicks*, 480 U.S. 321, 325–29 (1987) (explaining the requirements of the plain-view doctrine). Therefore, we do not address whether either principle applies here. *See* Fed. R. App. P. 28(a)(8), (b); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994). Instead, in this case the Government must show that the warrant application contained sufficient indicia of probable cause to believe that Boudreau possessed child pornography at his residence.

Two cases guide our analysis of whether the search warrant established probable cause to search for evidence of possession of child pornography. First, in *United States v. Gourde*, a warrant was issued specifically for the purpose of searching a suspect's home for evidence of child pornography. 440 F.3d at 1067. The supporting affidavit outlined the arrest of a nonparty owner of a pornography website, the owner's admission that the website contained images of child pornography, information from a credit-card processor suggesting that the defendant subscribed to the website, and investigators' opinions about how collectors and distributors of child pornography operate and about how long computer files remain on a computer even after they are deleted. *Id.* at 1067–68. We held that these facts established sufficient indicia of probable cause. *Id.* at 1069. We emphasized that "the only inference the magistrate judge needed to make to find probable cause was that there was a 'fair probability' Gourde had, in fact, received or downloaded images." *Id.* at 1071. And we held that such inference "neither strains logic nor defies common sense . . . based on the totality of these circumstances." *Id.*

By contrast, in *Dougherty v. City of Covina*, the warrant affidavit described allegations about a teacher's inappropriate conduct with students occurring at school and the officer's "100 hours of training involving juvenile and sex crimes," which led him to opine that "subjects involved in this type of criminal behavior have in their possession child pornography." 654 F.3d 892, 896 (9th Cir. 2011). We held that this was insufficient to establish probable cause to search for child pornography because, "[a]lthough there does not need to be direct evidence of solicitation of child pornography to create probable cause" that such content will be found, there must be "a 'substantial basis' for the finding." *Id.* at 898 (citations omitted). We rejected a categorical approach: that "evidence of child molestation, alone, creates probable cause for a search warrant for child pornography." *See id.* at 899 (noting that "while the 'totality of circumstances' could, in some instances, allow us to find probable cause to search for child pornography," the affidavit was too conclusory).

The search warrant affidavit in *Dougherty* contained only a hunch that child pornography would be found supported by an officer's conclusory opinion. *See id.* at 898–99. There was "no evidence of receipt of child pornography," *id.* at 898, nor a sufficient basis to conclude that the teacher "was interested in viewing images of naked children or of children performing sex acts," *id.* at 898–99. There was "no evidence of conversations with students about sex acts, discussions with children about pictures or video, or other possible indications of interest in child pornography." *Id.* at 899. Indeed, the affidavit did not establish "that [the teacher] owned a computer . . . or had internet service or another means of receiving child pornography at his home." *Id.*

This case falls between *Gourde* and *Dougherty*. Unlike *Gourde*, the search warrant was not issued specifically to search for evidence of child pornography. Rather, similar to *Dougherty*, the supporting affidavit focused on facts related to Boudreau's commission of a related but distinct crime—attempted enticement of a minor. Under our precedent, this alone does not establish probable cause to search his residence for evidence of *any* crime related to a sexual interest in children. *See Dougherty*, 654 F.3d at 899. But relevant facts and circumstances from a related offense may contribute to the totality of the circumstances supporting probable cause to search for evidence of child pornography. Such is the case here.

Detective Wafstet's affidavit presented more facts supporting probable cause to believe that evidence of child pornography would be found at the suspect's residence than did the affidavit in *Dougherty*. First, Detective Wafstet explained that Boudreau used digital technology to further his sexual interest in children. Unlike in *Doughtery*, where the affidavit described only a "three-year-old allegation of attempted molestation by one student and current allegations of inappropriate touching of and looking at students" at school, *Doughterty*, 654 F.3d at 898, Detective Wafstet described that: (1) Boudreau initiated contact with "Mia" through a social media platform (accessible on computers and smartphones), (2) Boudreau sent photos and text messages to "Mia" from applications accessible "from mobile devices or laptop and desktop computers," and (3) the messages that Boudreau sent to "Mia" expressed a repeated sexual desire and interest in minors. Crucially, Detective Wafstet also recounted that Boudreau admitted that he watched pornography and "would not state what search terms he used" when doing so.

Second, Detective Wafstet's affidavit also detailed his extensive specialized training and experience—including FBI training on undercover investigative techniques for "identifying sexual offenders"—and the opinions that he formed given his training and experience. Specifically, he discussed his knowledge of how "computers and digital technology are the primary way in which individuals interested in child enticement interact with each other and intended child victims." He also explained that common characteristics shared by individuals "who have a sexualized interest in children and are communicating with children online" are to "collect sexually explicit or suggestive materials in a variety of media" and to "maintain their child pornography collections that are in a digital or electronic format in a safe, secure, and private environment." Based on his knowledge of the undercover investigation using "Mia" and his training and experience, Detective Wafstet opined that the person who communicated with "Mia" "likely has a sexualized interest in children and depictions of children, and that evidence of child pornography and additional child enticement is likely to be found."

The affidavit laid a proper foundation for Detective Wafstet's opinions by detailing the common characteristics of individuals who have a sexualized interest in children and who communicate with children online, and why Detective Wafstet believed that Boudreau would be interested in "viewing images of naked children or of children performing sex acts." *Contra Dougherty*, 654 F.3d at 898–99; *Weber*, 923 F.2d at 1345 ("[I]f the government presents expert opinion about the behavior of a particular class of persons, for the opinion to have any relevance, the affidavit must lay a foundation which shows that the person subject to the search is a member of the class."). And where an officer's

opinion derived from his training and experience is supported by a proper foundation, the district court may properly rely on it in weighing whether to issue a warrant. *See Gil*, 58 F.3d at 1418 ("[W]hen interpreting seemingly innocent conduct, the court issuing the warrant is entitled to rely on the training and experience of police officers.").

Given the totality of circumstances presented here, we conclude that the warrant, issued to search for evidence of a crime under Montana Code § 45-5-625, was supported by probable cause to believe not only that evidence of enticement would be found at Boudreau's residence, but also evidence of child pornography.

### B. Deliberate or Reckless Omissions

Boudreau also argues that his motion to suppress should have been granted because Detective Wafstet knowingly or recklessly omitted from his affidavit that Boudreau used only his cellphone to communicate with "Mia" and that the cellphone had already been recovered by officers before the search warrant was sought. Bourdeau contends that this omission misled the issuing judge into believing that the search could locate an electronic device that was used to communicate with "Mia."

In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court held that "a criminal defendant has the right to challenge the veracity of statements made in support of an application for a search warrant." *United States v. Perkins*, 850 F.3d 1109, 1116 (2017). This inquiry is twofold. First, the defendant must prove that "the affiant officer intentionally or recklessly made false or misleading statements or omissions in support of the warrant." *Id.* (citation omitted). Second, the defendant must prove "that the false or misleading statement or omission was material,

*i.e.*, 'necessary to finding probable cause.'" *Id.* (citation omitted). If both prongs are proven by a preponderance of the evidence, then "the search warrant must be voided and the fruits of the search excluded." *Id.* (quoting *Franks*, 438 U.S. at 156).

Here, Boudreau's *Franks* argument fails because even if Detective Wafstet knew and failed to disclose that Boudreau used only his cellphone to communicate with "Mia,"[1] this omission was immaterial. As we have explained, there was probable cause to believe that Boudreau possessed child pornography. If Detective Wafstet lied or omitted material facts regarding Boudreau's method of communication with "Mia," it would have had no effect on the fair probability that Boudreau possessed child pornography. *See Perkins*, 850 F.3d at 1119 ("The key inquiry is 'whether probable cause remains once the evidence presented to the magistrate judge is supplemented with the challenged omissions.'" (citation omitted)). Either way, officers still had probable cause to search his home and seize any electronic devices capable of storing child pornography.

For these reasons, we affirm the district court's denial of Boudreau's motion to suppress.

## II. Motion to Sever

Next, Bourdeau argues that the district court erred by not severing the two charges in his indictment. An indictment may charge multiple offenses if they "are of the same or similar character." Fed. R. Crim. P. 8(a). We consider multiple factors when evaluating whether this standard is met: (a) "the elements of the statutory offenses," (b) "the temporal proximity of the acts," (c) "the likelihood and

[1]Boudreau fails to cite any record evidence to support this assertion.

extent of evidentiary overlap," (d) "the physical location of the acts," (e) "the modus operandi of the crimes," and (f) "the identity of the victims." *United States v. Jawara*, 474 F.3d 565, 578 (9th Cir. 2007). The weight of each factor depends on the facts of the case. *Id.* We conduct this misjoinder inquiry de novo, *United States v. Prigge*, 830 F.3d 1094, 1098 (9th Cir. 2016),[2] reviewing solely the allegations in the indictment, *Jawara*, 474 F.3d at 572. And even if misjoinder occurred, we reverse only upon a showing of actual prejudice under Federal Rule of Criminal Procedure 52. *Prigge*, 830 F.3d at 1098; *see also United States v. Lane*, 474 U.S. 438, 449 (1986).

Boudreau's indictment is brief. Count I alleges that he "knowingly and unlawfully used . . . the internet and a cellular telephone" to attempt to entice a minor. And Count II alleges that he "knowingly possessed an image of child pornography." The indictment does not detail the undercover operation involving "Mia" or the search of Boudreau's home that led to the discovery of child pornography.

Of the applicable factors, the first factor carries the most weight in this case. Enticement of a minor and possession of child pornography both involve as an element that the defendant sought to engage in inappropriate sexual activities with minors, in person or voyeuristically. *Compare United States v. McCarron*, 30 F.4th 1157, 1162 (9th Cir. 2022)

[2]The Government incorrectly suggests that abuse-of-discretion review is appropriate. This argument conflates the standard of review for two separate Rules. Rule 8 governs misjoinder while Rule 14 governs prejudicial joinder. "We review misjoinder under Rule 8(a) de novo and refusal to sever under Rule 14 for abuse of discretion." *Prigge*, 830 F.3d at 1098. Boudreau made an argument based on misjoinder below, and the district court ruled on that issue. And on appeal, Boudreau raises only Rule 8.

(holding that the elements of 18 U.S.C. § 2422(b) are that the defendant "knowingly (1) attempted to (2) persuade, induce, entice, or coerce (3) a person under 18 years of age (4) to engage in sexual activity that would constitute a criminal offense"), *with* 18 U.S.C. § 2252A(a)(5)(B) (prohibiting knowing possession of "child pornography"), *and* 18 U.S.C. § 2256(1), (8) (defining "child pornography" as a "visual depiction" of "a minor engaging in sexually explicit conduct" and defining "minor" as "any person under the age of eighteen years"). Our sister circuits that have addressed this issue have uniformly held that enticement of a minor is of the same or similar character to possession of child pornography. *See United States v. Rivera*, 546 F.3d 245, 253–54 (2d Cir. 2008) (concluding that five counts, including enticement and possession of child pornography, were properly joined because they were of a similar character); *United States v. Reynolds*, 720 F.3d 665, 669–70 (8th Cir. 2013) ("The charges of enticement of a minor to engage in illicit sexual activities, receiving child pornography, and production of child pornography 'are of the same or similar character.'"); *see also United States v. Hersh*, 297 F.3d 1233, 1242 (11th Cir. 2002) (holding that possession of child pornography and molestation of a minor were of a similar character).

The remaining factors are largely inapposite. Temporal and geographic proximity of the charged acts loosely support joinder, but they are not particularly strong considerations given the nature of the offenses at issue. Possession of child pornography is an ongoing offense, so the timing of its discovery is less relevant to its character. Similarly, on the facts presented, Bourdreau's possession was a virtual offense, so its physical location is not especially compelling. The indictment also does not provide sufficient detail to

understand the identity of the alleged victims, the likelihood of evidentiary overlap, or the modus operandi of the alleged offenses.

Because the elements of enticement of a minor and possession of child pornography overlap, we join our sister circuits and conclude that these offenses are of the same or similar character and that the district court did not err in denying Boudreau's motion to sever his indictment.

## III. Motion in Limine

Boudreau next argues that the district court erred in denying his motion in limine to exclude evidence of his separate uncharged interactions with a 17-year-old girl named Hope under Federal Rules of Evidence 403 and 404. We review whether evidence falls within a particular rule de novo, but we review the admission of evidence for an abuse of discretion. *United States v. Carpenter*, 923 F.3d 1172, 1180–81 (9th Cir. 2019).

### A. Rule 404(b)—Prior Bad Act

Boudreau first argues that admission of Hope's testimony violated Rule 404(b)(2) because it concerned a prior bad act. "Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but such evidence "may be admissible for another purpose" such as to prove intent or lack of mistake. Fed. R. Evid. 404(b)(1), (2). We have held that evidence is admissible under Rule 404(b)(2) to prove something other than propensity if: "(1) the evidence tends to prove a material point; (2) the other act is not too remote in time; (3) the evidence is sufficient to support a finding that [the] defendant committed the other act; and (4) (in certain

cases) the act is similar to the offense charged." *United States v. Lague*, 971 F.3d 1032, 1038 (9th Cir. 2020).

The Government does not dispute that Hope's testimony concerned another crime, wrong, or act falling within the confines Rule 404(b)(1). And we agree. Therefore, Hope's testimony was admissible only to be used for a non-propensity purpose. The district court concluded that "all four *Lague* factors [were] met." For starters, it reasoned that evidence Boudreau had been "intimate" with a 17-year-old and had solicited nude images from her tended to prove a material point—that Boudreau was sexually interested in minors and therefore intended to entice "Mia" to engage in sexual activity rather than develop a platonic relationship with her. The district court also found that Boudreau's interactions with Hope were not temporally remote because they occurred the same month as the charged conduct involving "Mia." Additionally, although the jury did not see the texts where Boudreau asked Hope for nude photographs, her testimony was sufficient to establish this fact and to establish Boudreau's efforts to develop a relationship with her. And finally, the district court observed that Boudreau's conduct towards Hope was similar to the charged enticement.

The district court applied the correct legal standard in conducting its analysis, and nothing suggests that its understanding of the facts was clearly erroneous. Even if we agreed with Boudreau's contention that Hope and "Mia's" respective ages rendered Boudreau's interactions with them qualitatively different, that difference does not undermine the district court's conclusion that Hope's testimony was probative of Boudreau's sexual intent. *Id.* at 1040 ("In deciding where 'other act' evidence is relevant to prove intent, we defer to the 'district judge's own experience,

general knowledge, and understanding of human conduct and motivation." (citation omitted)).

### B. Rule 403—Unfair Prejudice

Boudreau also argues that the district court erred in not excluding Hope's testimony under Rule 403 because "its probative value is substantially outweighed by . . . unfair prejudice." Fed. R. Evid. 403. Evidence is unfairly prejudicial if it has "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *United States v. Allen*, 341 F.3d 870, 886 (9th Cir. 2003).

The district court concluded that Boudreau's concerns about unfair prejudice related to Hope's protective order against Boudreau lacked merit because the Government agreed not to "prove any underlying criminal conduct related to the order of protection." It also concluded that any risk of unfair prejudice was "lessened" because the evidence about Boudreau's interactions with Hope was only admissible to prove Boudreau's intent, a fact about which it was highly probative. While the Government may have been able to prove its case without Hope's testimony, as Boudreau contends, that does not render the evidence unfairly prejudicial. Rather, it suggests that any error was harmless. *See Lague*, 971 F.3d at 1041. At trial, the jury heard properly admitted evidence of Boudreau's predatory behavior toward someone he believed was 12-year-old girl. In this context, it is unlikely that Hope's testimony caused the jury to convict Boudreau on an improper basis.

## IV. Sentencing

Finally, Boudreau challenges the sentence imposed on his possession-of-child-pornography offense as

substantively unreasonable. Specifically, he argues that § 2G2.2 of the Sentencing Guidelines is "seriously flawed" because it inflates the offense level, resulting in unjust sentencing disparities that are inconsistent with 18 U.S.C. § 3553. Because Boudreau does not assert that the district court committed procedural error at sentencing, we consider only "the substantive reasonableness of the sentence imposed," in light of "the totality of the circumstances." *Gall v. United States*, 552 U.S. 38, 51 (2007). "The touchstone of 'reasonableness' is whether the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)." *United States v. Ressam*, 679 F.3d 1069, 1089 (9th Cir. 2012) (en banc) (citation omitted). We review the substantive reasonableness of a sentence for abuse of discretion. *Id.* at 1086. We may reverse only if we have "a definite and firm conviction that the district court committed a clear error of judgment." *Id.* (citation omitted).

Section 2G2.2 sets a base offense level of 18 for possession-of-child-pornography convictions. U.S.S.G. § 2G2.2(a)(1). It then provides enhancements depending on the underlying conduct. *See id.* § 2G2.2(b). For example, Boudreau was given a two-level enhancement because the unlawful material that he possessed involved minors under the age of 12, a four-level enhancement because the material portrayed sadistic or masochistic conduct or sexual abuse or exploitation of an infant or toddler, another two-level enhancement because the offense involved use of a computer, and a five-level enhancement because the offense involved more than 600 images.

Boudreau asserts that although his 154-month sentence was at the low end of the Guidelines range, it was nonetheless "excessive based on the nature of [the] § 2G2.2

enhancements." He points out that the Second Circuit has stated that "unless applied with great care, [§ 2G2.2] can lead to [substantively] unreasonable sentences." *United States v. Dorvee*, 616 F.3d 174, 184 (2d Cir. 2010). The Second Circuit has noted that the Sentencing Commission did not use its typical "empirical approach in formulating the Guidelines for child pornography," *id.*, and "many of the § 2G2.2 enhancements apply in nearly all cases," *id.* at 186. For example, a first-time offender can receive a sentence near the statutory maximum "based solely on sentencing enhancements that are all but inherent to the crime of conviction." *Id.* But the Second Circuit did not hold that a proper application of the § 2G2.2 enhancements automatically renders a sentence substantively unreasonable. *See id.* at 184 (holding that the district court imposed a substantively unreasonable sentence in part because it assumed that a statutory maximum sentence was consistent with the § 3553(a) factors). And whether the calculations established in § 2G2.2 are unfair or a good policy choice are matters for the Sentencing Commission and Congress.[3] Our job in the context of the challenge that Boudreau has raised is to address whether the sentence the district court imposed "is sufficient, but not greater than necessary to accomplish § 3553(a)(2)'s sentencing goals." *See Ressam*, 679 F.3d at 1089 (citation modified).

Boudreau's only mention of the § 3553(a) factors is a cursory argument that the district court ignored the potential for unwarranted sentencing disparities. It is correct that district courts must consider "the need to avoid unwarranted

[3]We observe that many of the enhancements at issue were promulgated by the Commission at the direction of Congress. *See Dorvee*, 616 F.3d at 184–85.

sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And Boudreau argued below and on appeal that 120-months was the average sentence length for similarly situated offenders. The district court acknowledged the data that Boudreau referenced and treated it as part of "the whole panoply of what is available for the Court to consider in trying to determine what is a sufficient, but not greater than necessary sentence."

We find no error in the district court's decision. Boudreau's sentencing-disparity argument falters because he did not show that the other individuals he referenced as comparators were found guilty of similar conduct or had similar criminal history. Specifically, the comparators' Guidelines calculations were apparently driven by § 2G1.3, which governed Boudreau's enticement offense. The record demonstrates that average sentences under § 2G1.3 are volatile and are greatly influenced by the specifics of each case. And there is nothing suggesting that the comparators were also convicted of possession of child pornography and subject to a multi-count adjustment under § 3D1.4, as was Boudreau. If Boudreau had been convicted only of enticement, his Guidelines range would have been 108 to 135 months, based on an offense level of 30 and a criminal history category II. *See* U.S.S.G. Ch. 5, Pt. A (sentencing table). The multi-count adjustment directed under § 3D1.4 placed Boudreau's Guidelines range at 151 to 188 months, with an offense level of 33 and a criminal history category II. On this record, the district court did not abuse its discretion in concluding that the sentence it imposed did not result in unwarranted sentencing disparity.

**AFFIRMED.**

APPENDIX B:

Order Re: Petition for Panel Rehearing and Rehearing En Banc

FILED

JAN 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff - Appellee,<br><br>v.<br><br>CHRISTOPHER TODD BOUDREAU,<br><br>Defendant - Appellant. | No. 23-4092<br><br>D.C. No.<br>9:22-cr-00046-DWM-1<br>District of Montana,<br>Missoula<br><br>ORDER |

Before: BYBEE, LEE, and FORREST, Circuit Judges.

The panel judges have unanimously voted to deny the petition for panel rehearing. Judges Lee and Forrest voted to deny the petition for rehearing en banc, and Judge Bybee recommended denying the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc is **DENIED.**

APPENDIX C:

*United States v. Boudreau*, CR 22-46-M-DWM,
Order Re: Denial of Motion to Suppress

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>CHRISTOPHER TODD BOUDREAU,<br><br>Defendant. | CR 22–46–M–DWM<br><br>ORDER |

Boudreau moves to suppress evidence found during law enforcement's search of his residence under Federal Rules of Criminal Procedure 12(b)(3)(C) and 41. (Doc. 66.) The government opposes. (Doc. 84.) A motions hearing was held on June 15, 2023. (*See* Doc. 94.) Because probable cause existed to warrant a search of Boudreau's residence, the motion is denied.

On October 6, 2022, Defendant Christopher Todd Boudreau was indicted on one count of attempted coercion and enticement, *see* 18 U.S.C. § 2422(b), and one count of possession of child pornography, *see id.* § 2252(a)(5)(B). (Doc. 1.) Between July 20, 2022 and July 28, 2022, Boudreau corresponded via Facebook Messenger and SMS with what he believed to be a 12-year-old girl named "Mia." (*See* Doc. 78.) Mia is not a real person but rather an alias used by Detective Travis Wafstet of the Missoula County Sheriff's Office. On the final day of their

communication, Boudreau was apprehended by Missoula County law enforcement when he arrived at a location where he thought he would be meeting with "Mia." (*See* Doc. 83.) After waiving his *Miranda* rights, Boudreau openly discussed his communications with "Mia," admitting to talking with "Mia," and to his belief as to her age. (*Id.*) After the interview, he was promptly arrested and under suspicion of committing sexual abuse of children, Mont. Code Ann. § 45–5–625. (*Id.*)

The same day, Wafstet applied for a search warrant to search Boudreau's residence. The facts establishing probable cause for the warrant were provided in a detailed affidavit from Detective Wafstet that laid out the history of the interactions between Boudreau and "Mia" and why there was probable cause that further evidence that Boudreau committed the crime of sexual abuse of children, Mont. Code Ann. § 45–5–625, was in his residence. (*See* Doc. 67-1 at 1–11). Relevant excerpts are provided below.

The juvenile profile named "Mia" first received a "friend request" and a direct message from Boudreau via a website. (*Id.* at 2.) Boudreau and "Mia" quickly exchanged cell phone numbers and began messaging via SMS. Within the first few messages sent, Boudreau indicated he is older than her and "Mia" made clear that she was 12 years old. (*Id.*) Boudreau responded that "Mia's" age was not an issue for him "as long as you're cool and we take our time. Doesn't bother me. I'm a very good natured and loyal person." (*Id.*)

On July 28, 2022, the same day that Boudreau was apprehended, Judge Leslie Halligan of Montana's Fourth Judicial District issued a search warrant for Boudreau's home. (Doc. 67-1 at 16–19.) In ordering the warrant, Judge Halligan "found that sufficient probable cause exists to believe that the aforementioned crime(s) have been committed" and ordered Detective Wafstet to search Boudreau's Anaconda apartment. (*Id.* at 17.) According to the government, the execution of the search warrant at Boudreau's residence led to the discovery of "thousands of images and videos of child pornography," (Doc. 84 at 2.)

Boudreau argues that the warrant was improper and that probable cause did not exist sufficient to search his home because "all the evidence in this case which led to the Indictment demonstrates that Mr. Boudreau sent 'Mia' SMS text messages from his personal cell phone" and not his home computer.[1] (Doc. 67 at

[1] At the June 15 hearing, Boudreau made an impromptu motion under *Franks v. Delaware*, 438 U.S. 154 (1978). "*Franks* sets forth the standard by which a defendant may overcome the 'presumption of validity with respect to the affidavit supporting the search warrant.'" *United States v. Fisher*, 56 F.4th 673, 679 n.7 (9th Cir. 2022) (quoting *Franks*, 438 U.S at 171). "To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that: (1) the affiant officer intentionally or recklessly made false or misleading statements or omissions in support of the warrant, and (2) the false or misleading statement or omission was material, i.e., necessary to finding probable cause." *United States v. Norris*, 942 F.3d 902, 909–10 (9th Cir. 2019) (internal quotation marks omitted). Boudreau has made no showing apart from baseless allegations that the affiant officer, Detective Wafstet, made any false or misleading statement in support of the warrant, let alone statements that were made with intent to mislead. Even if he had, the statements Boudreau alleges were misleading—that Detective Wafstet omitted evidence about Boudreau's computer use gleaned from the law

6–7.) He further argues that the "warrant's probable cause was improperly based on an illegal trolling expedition." (*Id.* at 11.) The government disagrees arguing that sufficient probable cause existed for a warrant to issue because (1) Boudreau communicated with "Mia" via *both* social media and text message, which he did via the internet from his home, and (2) because he was being investigated for a crime that is more broad than merely the communication evidenced by the messaging, namely sexual abuse of a minor. The government is correct.

The Fourth Amendment provides, "no warrants shall issue, but upon 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 determining whether a search warrant was based on probable cause, a reviewing court is "limited to the information and circumstances contained within the four corners of the underlying affidavit." *United States v. Stanert*, 762 F.2d 775, 778 (9th Cir. 1985). "A warrant must be supported by probable cause—meaning a fair probability that contraband or evidence of a crime will be found in a particular place based on the totality of circumstances." *United States v. King*, 985 F.3d 702, 707 (9th Cir. 2021) (internal quotation marks omitted). The probable cause determination of a judge issuing a warrant "should be paid great deference

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enforcement interview—were not "necessary to finding probable cause" because there was sufficient evidence from the messages themselves, an accurate description of which were included in the affidavit. *See Norris*, 942 F.3d at 910.

by reviewing courts." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 236 (1983)). Review "is limited to ensuring that the [issuing judge] had a 'substantial basis' for concluding that probable cause existed." *Id.* at 708 (quoting *Gates*, 462 U.S. at 238). "[T]he nexus between the items to be seized and the place to be searched can rest on normal inferences as to where a criminal would be likely to hide evidence of his crimes." *United States v. Kvashuk*, 29 F.4th 1077, 1085 (9th Cir. 2022) (internal quotation marks omitted). Cybercrime, such as child pornography offenses' "reliance on computers and personal electronic devices—is relevant to probable cause for searching the suspect's residence." *Id.* at 1085–86.

Here, Detective Wafstet declared by affidavit that he believed Boudreau "used a computer and electronic devices" at his home "to communicate with a purported child [and] likely has a sexualized interest in children and depictions of children, and that evidence of child pornography and additional child enticement is likely to be found at the residence described herein." (Doc. 67-1 at 9.) Judge Halligan properly relied on further inferences provided in Detective Wafstet's affidavit including that: (i) Boudreau had expressed his sexual desire and interest in minors on many occasions; (ii) he had used a smartphone and the internet to communicate with a minor in regards to those sexual interests; (iii) he made at least some of these communications at his residence, including photos sent to "Mia" presumably taken at his home; and (iv) Boudreau's acknowledgement that

he had a computer in his home and Detective Wafstet's assertion that based on his knowledge, training, and experience, computers are often used to act upon such sexual interest. (*See id.* at 1–9.)

Although Boudreau is correct that most of the communication between himself and "Mia" were done via SMS from his smartphone, he initially began the communications using social media. (*Id.* at 2.) Detective Wafstet declared in his affidavit that mobile applications and websites can be "accessed from mobile devices or laptop and desktop computers," (*Id.* at 4), and that these apps often have "cross platform capability for use on mobile devices and any other internet enabled device including computers," (*Id.* at 8). Thus, Detective Wafstet had a reasonable belief that the communications could have originated from either a computer or a smartphone.

As the government points out, if Detective Wafstet's affidavit did not evidence any connection to his communication via internet-enabled technology, Boudreau's argument may be stronger. *See Dougherty v. City of City of Covina*, 654 F.3d 892, 898-9 (9th Cir. 2011) (finding that warrant to search residence for child pornography lacked probable cause when warrant outlined investigation of defendant that touched a minor student and affidavit did not, for example, contain "evidence of conversations with students about sex acts" or otherwise implicate electronic media). However, that is not the case here as electronic media were

implicated throughout both the communication leading up to the meet up with "Mia" and during Boudreau's interview with law enforcement on July 28, 2022.

Although Boudreau makes novel arguments about the specific wording of the warrant and how it should be read narrowly under the rule of lenity, (*see* Doc. 67 at 11 (citing *United States v. D.M.*, 869 F.3d 1133, 1144 (9th Cir. 2017)), those arguments are not substantively supported by any relevant fourth amendment authority. Thus, because "great deference" must be paid to a judge's probable cause determination, the government is correct that Judge Halligan reasonably relied on Detective Wafstet's assertions viewed as a totality of circumstances to find that an appropriate nexus existed between the affidavit and Boudreau's residence. *See King*, 985 F.3d at 707.

Accordingly, IT IS ORDERED that Boudreau's motion (Doc. 66) in DENIED.

DATED this 15th day of June, 2023.

Donald W. Molloy, District Judge
United States District Court

# APPENDIX D:

Residential Search Warrant and Affidavit

Missoula County Sheriff's Department
200 W Broadway St
Missoula, MT 59802
Tel: (406) 258-4810

**MONTANA FOURTH JUDICIAL DISTRICT COURT**

| IN RE THE SEARCH OF: | Case No.: SW-_____-_____ |
|---|---|
| 318 East Commercial Ave, Apartment #1 in Anaconda, Montana, which is located in Deer Lodge County; a two story brick and wood structure | APPLICATION FOR SEARCH WARRANT |

I, Travis Wafstet, a duly sworn law enforcement officer of the Missoula County Sheriff's Department, hereby state under penalty of perjury:

THAT I have reason to believe that the following crime has been committed in Missoula County, Montana:

**Sexual Abuse of Children (§ 45-5-625, MCA);**

THAT the evidence, contraband, or persons connected with the aforementioned crime(s) include:

**Electronic devices to include laptop computers, cellular telephones, personal tablets, USB storage devices, video or photographic cameras, or any other electronic device capable of receiving and transmitting data or storing electronic data which includes photographic data, video data, SMS message data, Multimedia message data, and/or email data.**

**Visual depictions and print media including books, transcripts, manuscripts, photographs, magazines, receipts, invoices, and other documents depicting children in a state of undress, engaging in sexual activity, or those instances where the described mediums may indicate a sexual interest or desire for children (i.e. invoices for the purchase of subscriptions, access to websites, or records of transactions to purchase the above described materials).**

**Any evidence of past sexual enticement, sexual assault, or sexual intercourse or other criminal acts involving children in any form.**

**Any evidence of intended future sexual enticement, sexual assault, or sexual intercourse or other criminal acts involving other children as yet unidentified by this investigation.**

**The contents of any locked storage including combination home safes, lockboxes, locked closets, and areas of the residence that may not be accessible to non-residents. If these items are not able to be opened and searched on site, Detective Wafstet seeks to collect these locked storage devices, if practical, for later access in a controlled environment at the Missoula County Sheriff's Office.**

THAT I have reason to believe that the evidence, contraband, or persons connected with the aforementioned crime(s) may be found:

**Within the residence described as Apartment #1 at 318 Commercial Ave, Anaconda, Montana in Deer Lodge County.**

THAT the facts which establish probable cause to believe that the aforementioned crime(s) have been committed are attached hereto:

**Detective Wafstet is assigned as a Task Force Officer for the Montana Federal Bureau of Investigation Child Exploitation and Human Trafficking Task Force (MT FBI CEHTTF). In this assignment, Detective Wafstet connects to the internet in an undercover capacity in various jurisdictions throughout the state of Montana and elsewhere. Detective Wafstet utilizes several common social media, internet, and mobile platforms or applications (apps) to identify persons with a sexual interest in children. The interactions are recorded between Detective Wafstet and other users of these apps and platforms to preserve the information as evidence. Detective Wafstet commonly utilizes undercover identities purporting to be children living in various locations around the state of Montana. Detective Wafstet has received training from the FBI and other certified law enforcement trainers and organizations in the proper techniques, tactics, and legal protocols for undercover investigations online for the purpose of identifying sexual offenders and protecting children. Detective Wafstet also has experience in these and other investigations involving child abuse, child sexual assault, and enticement of children.**

**On 07/20/2022, Detective Wafstet was connected to the internet in Missoula County, MT. Based on his training and experience, Detective Wafstet was utilizing an established FBI sanctioned undercover profile purporting to be a juvenile female under the age of 14. This juvenile profile received a "friend request" and a direct message from a user identified by the name "Christopher Boudreau". Detective Wafstet utilizes this social media platform because it is commonly frequented by adults and children for various activities of sexual and non-sexual nature. Detective Wafstet was able to positively identify the user of the target profile as 41 year old Christopher Boudreau from Anaconda, MT. Boudreau began messaging the juvenile female stating that he found her profile on a different application, which is also commonly utilized by adults and children. Christopher sent a message stating: "I'm a bit older than you but I'm told I look like I'm in my twenties frequently." The juvenile female provided her phone number and Christopher quickly began to SMS text message the female. In the first three SMS messages sent by the juvenile female, she indicated that she was younger than 14 years of age. Christopher stated, "as long as you're cool and we take our time. Doesn't bother me. I'm a very good natured loyal person."**

**During the conversation between Christopher and the juvenile female, he frequently asked questions about her likes and interests. With many of the responses provided by the juvenile female, Christopher stated that he also liked the same things and he had the same interests. As the conversation developed, many of the things that the juvenile said were her favorite things also happened to be Christopher's favorite things. Based on Detective Wafstet's training and experience, this behavior is typical of the grooming techniques that adults use to form bonds with children to break down the barriers while building trust and common interests. Detective Wafstet knows that many adults with a sexual interest in children begin their activities with a targeted child by engaging in simple grooming behaviors such as shared interests. These grooming behaviors are later exploited with the child in order to encourage the child to engage in other behaviors that a child might not otherwise willingly participate in with untrusted adults. Based on his training and investigative experience, Detective Wafstet knows offenders use grooming behavior to**

encourage children to send and receive sexual images or videos, allow touching of a sexual nature, and even engage in sexual intercourse. In Detective Wafstet's experience, children in the Missoula community have even been encouraged to meet with strangers and acquaintances from the internet after an offender has engaged in grooming behavior of this nature. Some of these interactions have resulted in sexual contact and sexual intercourse. Within three hours of the first text messages sent to the juvenile female, Christopher indicated that he had a desire to "hang out" with the juvenile female in Missoula.

Christopher continued to text message with the juvenile female from 07/20/2022 to 07/28/2022. Christopher repeatedly asked the juvenile female to meet with him. The juvenile female asked Christopher repeatedly what he wanted to do if they were to "hang out". Christopher offered to take the female to dinner, take her to the movies, go on a hike, and be her "personal photographer" for her social media accounts. Christopher called the female "beautiful" many times during the conversation. Christopher offered his assurances that the juvenile female "had nothing to fear" about meeting him. Christopher asked the juvenile female if her guardian would know if she left the residence as long as she came back home before her guardian arrived home. Christopher told the female, "I would have you safe at home by the time your [guardian] got off [work]". The juvenile female asked Christopher if he ever dated someone her age. He first said, "not in awhile". He then followed this up by saying, "not since I was younger." Christopher has a criminal history that includes assault, partner family member assault, violations of protective orders, assault on a peace officer, and disorderly conduct. An open-source search for Christopher's name revealed a police blotter from the Montana Standard in 2019 indicating Christopher Boudreau, 38 years of age, was arrested on suspicion of misdemeanor sexual assault in Butte. Detective Wafstet believes, based on the age and location, this is the same Christopher described herein. It is unknown at this time why this arrest is not evidenced in the criminal history report. The article reports that the arrested Christopher Boudreau forced his estranged wife to kiss him while he was picking up his children in Butte. Detective Wafstet did not locate any other persons of this age living in Montana with the name Christopher Boudreau.

While he continued to converse with her, Christopher told the juvenile female that he wanted to "cuddle and cherish" her. He stated "I want to do anything you want to do. As long as you know you'd have to be quiet cuz I don't want to go to prison. LOL". He then followed this up by saying, "But yes I would love to cuddle you. And watch movies. Or do anything you want to do with me." Christopher then discussed falling in love and getting intimate with the juvenile. The juvenile continuously identified her age and discussed her child-like interests to reaffirm that Christopher was speaking to a juvenile and not an adult. Christopher indicated he "had no problem pulling up" at the juvenile's home to pick her up but he discussed his worry about nosy neighbors or cameras the juvenile's guardian may have at their home. Christopher encouraged the juvenile to walk and meet him somewhere away from her home. When the juvenile female asked what other people might think about the two together, Christopher said they could be in a dark theater, and they could "play it off like we're related if we have to".

Christopher stated, "as long as nobody's being exploited abused hurt or mistreated... Who cares who likes who?" Christopher then began easing into more sexually suggestive conversations with the juvenile. Christopher pleaded with the juvenile by saying, "please don't be afraid to meet me. Please don't be afraid to give us a chance." Christopher stated he never wanted a chance with anybody like he wanted a chance with the juvenile female. Christopher stated he believed he was "more mature than any guy your age... And I wouldn't use you". Christopher told the juvenile female he would wait 4-6 years to be intimate with her "if we had to". He then clarified by saying "intimate" meant "sex" to him. Christopher told the juvenile female he wanted to be intimate with her when she was ready. He told her he would "help it hurt as little as possible" while discussing sexual intercourse. Christopher then told the juvenile female he thought they should really

**discuss this further in person because "digital records could get [him] in trouble". He then immediately followed this up by saying, "but to give you the short version lots of foreplay and lots of me giving oral. Especially the second one. Foreplay includes kissing hugging touching caressing etc. In case you were wondering." Christopher indicated he would provide condoms and be careful not to get the juvenile pregnant.**

**There were several opportunities for Christopher to disengage from the conversation. At one point the juvenile female stated she was going to stop talking to Christopher because a friend was coming over. Christopher stated, "you got a friend coming over and you don't want to be turned on for her instead of me later do you?" Christopher indicated he was aware of law enforcement operations targeting persons with sexual attraction to children. He also indicated that he did not want to go to prison at least twice in the conversation at one point stating, "I'm not cut out for prison". Christopher followed on with several more sexually suggestive conversations despite his apparent awareness of the illegality of his actions and the possibility of prison.**

**Christopher sent several photos of himself to the juvenile female throughout the days of conversation. The photos that Christopher sent matched the identity of Christopher Boudreau. Further, the phone number that Christopher was using to text message the female is listed in a law enforcement database as being associated with Christopher Boudreau. Christopher communicated with the juvenile female on several mobile and internet-based applications and websites. These applications and websites can be accessed from mobile devices or laptop and desktop computers. Christopher indicated he was both at his home in Anaconda and at various points around Missoula and Butte while he was communicating with the juvenile female over the course of several days.**

**On 07/27/2022, Christopher arranged to meet with the juvenile female in Missoula later the following morning. Christopher repeatedly indicated his intent to engage in "intimacy" with the juvenile female. Christopher stated that "intimacy" meant "sex" in his own words. He described several sexual acts he intended to perform with the juvenile female including oral sex and sexual assault. Christopher indicated he would take measures to make sexual intercourse easier on the juvenile female and he would ensure "protections" in the form of condoms to prevent pregnancy. On the evening of 7/27/2022, Christopher told the juvenile female, "I could rent us a room and we'd probably be a lot more comfortable temperature wise." Christopher stated, "I want your first time to be very special."**

**On 07/28/2022, Christopher arrived at the directed location to meet with the juvenile female. Christopher was taken into custody by MCSO deputies without incident. Christopher was driving a white 2015 Toyota Camry bearing Montana license AALY1299. This vehicle is registered to Christopher at his residential address of 318 Commercial Ave #1 in Anaconda. Christopher told the juvenile female his location several times during his travels from his residence in Anaconda to her location in Missoula. Inside of the vehicle, a mobile device could be seen in plain view. Detective Wafstet called the phone number for Christopher using the juvenile's phone. The device in the vehicle rang while Detective Wafstet was calling. Detective Sunderland observed that the phone screen displayed the name of the juvenile female while the phone was ringing. This device was left secured in the vehicle and the vehicle was towed to the MCSO evidence warehouse where it remains secured pending a search warrant.**

**Detective Wafstet and Detective Larson interviewed Christopher at the Missoula County Sheriff's Office. Christopher was provided with a standard Miranda warning. Christopher indicated he understood his rights under Miranda and he agreed to speak to detectives. Christopher told Detective Wafstet that he met a girl on a dating app. Christopher acknowledged that the female told him she was under the age of 14. Christopher said he was concerned for the safety of the juvenile female, but he stated he did not make any attempt to contact Child Protective Services, law enforcement, or any**

**other person to alert them to his concerns about her safety. Christopher stated he recently lost parental rights of his children, a 14 year old son, a 12 year old daughter, and a 5 year old daughter in Butte. Christopher stated he was investigated by CPS and law enforcement for allegations made by his 12 year old daughter. Christopher said his 12 year old daughter was forensically interviewed about allegations that Christopher touched her privates while "tickling" her. Christopher said he was cleared in the law enforcement investigation but CPS terminated his rights because he was using marijuana and he refused to comply with a treatment plan. Detective Wafstet has not been able to confirm this information.**

**Christopher stated he paid the female compliments and he acknowledged that he made statements to her about "cuddling" very early in the conversation. Christopher said the female "pushed" him to talk about sexual things because she got mad at him on text messages when sex was brought up. He said that he desired to wait to discuss these things with her until later. The text messages state that Christopher was apprehensive about texting due to the "digital record" that could get him in trouble. Christopher repeatedly stated he would talk about sex more in person during the text conversations with the juvenile female. Detective Wafstet asked Christopher if he was ever provided an opportunity to disengage from the conversation. Christopher said he was but he could not provide an answer as to why he never disengaged. Christopher said he wanted to spend time with a child his daughter's age because he was missing his daughter now that his parental rights were terminated. Christopher said he intended to tell the female she shouldn't be "putting herself out there" and that was his reason for traveling from Anaconda to Missoula to meet with her. Christopher said he did not have an opportunity to get a hotel room or make any money driving food deliveries because the female was ready to meet him as soon as he got to town.**

**Christopher said he brought a tent and a metal detector. Christopher said he did not have any sexual devices, lubricants, or condoms in the vehicle. Christopher said he had sexual restraints attached to his bed at home and he also had some sexual devices at home. Christopher said he watches pornography and he has a computer at his residence. Christopher would not state what search terms he used when he watched pornography and he stated he watched "no more than normal".**

THAT I have received the following training:

**Travis Wafstet is a duly sworn Deputy Sheriff with the Missoula County Sheriff's Office, currently assigned to the Detective Division. Detective Wafstet is also assigned as a member of the Montana Federal Bureau of Investigation Child Exploitation and Human Trafficking Task Force (MT FBI CEHTTF)**

**Detective Wafstet has been a sworn law enforcement officer for nine years. Detective Wafstet has investigated various crimes including drug crimes, property crimes, and crimes against persons.**

**Detective Wafstet has successfully completed the Basic Montana Law Enforcement Academy and holds a Montana Peace Officer Basic Certification, a Peace Officer Intermediate Certification, a Peace Officer Advanced Certification, and a Peace Officer Instructor Certification, all governed by the Montana's Public Safety Officer Standards and Training (MT POST) Council. Detective Wafstet has successfully completed additional training throughout his career to total more than 600 hours of certified law enforcement training as well as non-certified hours. Detective Wafstet has received specialized training in drug crimes, interviewing techniques, child abuse, homicide investigations, evidence/crime scene processing, and sexual offense investigations. Detective Wafstet has also received training in social media, cellular devices, and location tracking of suspects, victims, and evidence. Detective Wafstet holds a Bachelor of Science in Criminology and Criminal Justice with over 700 certified hours of university level**

**coursework.**

**Detective Wafstet has received training from the FBI and other certified law enforcement trainers and organizations in the proper techniques, tactics, and legal protocols for undercover investigations online for the purpose of identifying sexual offenders and protecting children. Detective Wafstet also has experience in these and other investigations involving child abuse, child sexual assault, and enticement of children.**

THAT I know from training and experience that:

**Detective Wafstet has received training in sexual assault investigations, undercover chat operations, and social media investigations. Detective Wafstet knows, based on training and experience, that people often entice children using promises of gifts, money, and experiences that are meant to excite a child and encourage a child to engage in sexual activity. Detective Wafstet has completed several successful undercover operations for sexual enticement of children in Missoula County, MT. In Detective Wafstet's experience, many offenders have purchased or possessed gifts intended to be provided to the child when meeting including clothing, candy, and food. Many offenders also have brought sexual devices including condoms, lubricants, and sexual stimulants to the arranged meeting with the expectation that these items will be used for the agreed upon sexual encounter with the child(ren).**

**Detective Wafstet has both training and experience in the investigation of computer-related crimes. Based on Detective Wafstet's training, experience, and knowledge, he knows the following:**

**A) Computers and digital technology are the primary way in which individuals interested in child enticement interact with each other and with intended child victims. Computers basically serve three functions in connection with child enticement. These functions include allowing digital access to child enticement and child sexual abuse materials or victims for the purpose of seeking out child enticement or child sexual abuse materials and victims or co-conspirators around the world, allowing for storing/collecting/cataloging child enticement or child sexual abuse materials in various digital capacities and quantities, and allowing for disseminating/sharing/distributing cataloged/collected child sexual abuse and child enticement materials. Persons interested in child enticement often encourage children to send photographs and videos of a sexual nature. These photographs and videos often depict children in various states of undress including exposing the breasts, vagina, buttocks, and penis. Once received, these digital files are often stored and sometimes shared with other like-minded offenders using the internet.**

**B) Digital cameras and smartphones with cameras save photographs or videos as a digital file that can be directly transferred to a computer by connecting the camera or smartphone to the computer, using a cable or via wireless connections such as "Wi-Fi" or "Bluetooth." Photos and videos taken on a digital camera or smartphone may be stored on a removable memory card in the camera or smartphone. These memory cards are often large enough to store thousands of high-resolution photographs or videos.**

**C) A device known as a modem allows any computer to connect to another computer through the use of telephone, cable, or wireless connection. Mobile devices such as smartphones and tablet computers may also connect to other computers via wireless connections. Electronic contact can be made to literally millions of computers around the world. Child pornography can therefore be easily, inexpensively, and anonymously (through electronic communications) produced, distributed, and received by anyone with access to a computer or smartphone.**

**D) The computer's ability to store images in digital form makes the computer itself an ideal repository for child pornography. Electronic storage media of various types - to include computer hard drives, external hard drives, CDs, DVDs, and "thumb," "jump," or "flash" drives, which are very small devices that are plugged into a port on the computer - can store thousands of images or videos at very high resolution. It is extremely easy for an individual to take a photo or a video with a digital camera or camera-bearing smartphone, upload that photo or video to a computer, and then copy it (or any other files on the computer) to any one of those media storage devices. Some**

**media storage devices can easily be concealed and carried on an individual's person. Smartphones and/or mobile phones are also often carried on an individual's person.**

**E) The Internet affords individuals several different venues for obtaining, viewing, and trading child pornography in a relatively secure and anonymous fashion.**

**F) Individuals also use online resources to retrieve and store child pornography. Some online services allow a user to set up an account with a remote computing service that may provide email services and/or electronic storage of computer files in any variety of formats. A user can set up an online storage account (sometimes referred to as "cloud" storage) from any computer or smartphone with access to the Internet. Even in cases where online storage is used, however, evidence of child pornography can be found on the user's computer, smartphone, or external media in most cases.**

**G) A growing phenomenon related to smartphones and other mobile computing devices is the use of mobile applications, also referred to as "apps." Apps consist of software downloaded onto mobile devices that enable users to perform a variety of tasks - such as engaging in online chat, sharing digital files, reading a book, or playing a game - on a mobile device. Individuals commonly use such apps to receive, store, distribute, and advertise child pornography, to interact directly with other like-minded offenders or with potential minor victims, and to access cloud-storage services where child pornography may be stored. Some of these apps have cross-platform compatibility for use on mobile devices and any other internet enabled device including computers. Computers can also be utilized as virtual emulators to allow a false mobile device to be created on a laptop or desktop in order to access mobile applications. Emulators are popular in child enticement and child exploitation because an emulated device does not physically exist and emulated mobile devices can be completely deleted from a computer without any forensic evidence of the data contained within the emulated device since no physical memory is maintained for the emulated device.**

**H) As is the case with most digital technology, communications by way of computer can be saved or stored on the computer used for these purposes. Storing this information can be intentional (i.e., by saving an email as a file on the computer or saving the location of one's favorite websites in, for example, "bookmarked" files) or unintentional. Digital information, such as the traces of the path of an electronic communication, may also be automatically stored in many places (e.g., temporary files or ISP client software, among others). In addition to electronic communications, a computer user's Internet activities generally leave traces or "footprints" in the web cache and history files of the browser used. Such information is often maintained indefinitely until overwritten by other data.**

**Based upon Detective Wafstet's knowledge, experience, and training in child enticement investigations, and the training and experience of other law enforcement officers with whom Detective Wafstet has had discussions and received training from, I know that there are certain characteristics common to individuals who have a sexualized interest in children and are communicating with children online:**

**A) They may receive sexual gratification, stimulation, and satisfaction from contact with children; or from fantasies they may have viewing children engaged in sexual activity or in sexually suggestive poses, such as in person, in photographs, or other visual media; or from literature describing such activity.**

**B) They may collect sexually explicit or suggestive materials in a variety of media, including photographs, magazines, motion pictures, videotapes, books, slides, and/or drawings or other visual media. Such individuals often use these materials for their own sexual arousal and gratification. Further, they may use these materials to lower the inhibitions of children they are attempting to seduce, to arouse the selected child partner, or to demonstrate the desired sexual acts. These individuals may keep records, to include**

**names, contact information, and/or dates of these interactions, of the children they have attempted to seduce, arouse, or with whom they have engaged in the desired sexual acts.**

**C) They often maintain any "hard copies" of child pornographic material that is, their pictures, films, video tapes, magazines, negatives, photographs, correspondence, mailing lists, books, tape recordings, etc., in the privacy and security of their home or some other secure location. These individuals typically retain these "hard copies" of child pornographic material for many years, as they are highly valued.**

**D) Likewise, they often maintain their child pornography collections that are in a digital or electronic format in a safe, secure, and private environment, such as a computer and surrounding area. These collections are often maintained for several years and are kept close by, often at the individual's residence or some otherwise easily accessible location, to enable the owner to view the collection, which is valued highly. Due to the illicit nature of the digital data, users often secure these devices in locked containers including locked combination safes and hidden areas of the home.**

**E) They also may correspond with and/or meet others to share information and materials; rarely destroy correspondence from other child pornography distributors/collectors; conceal such correspondence as they do their sexually explicit material; and often maintain lists of names, addresses, and telephone numbers of individuals with whom they have been in contact and who share the same interests in child pornography.**

**Even if such individuals use a portable device (such as a mobile phone) to access the Internet and child pornography or engage in child enticement, it is more likely than not that evidence of this access will be found in his home including on digital devices other than the portable device (for reasons including the frequency of "backing up" or "synching" mobile phones to computers or other digital devices).**

**In addition to offenders who collect and store child pornography, law enforcement has encountered offenders who obtain child pornography from the internet, view the contents, and subsequently delete the contraband, often after engaging in self-gratification. In light of technological advancements, increasing Internet speeds and worldwide availability of child sexual exploitative material, this phenomenon offers the offender a sense of decreasing risk of being identified and/or apprehended with quantities of contraband. This type of consumer is commonly referred to as a 'seek and delete' offender, knowing that the same or different contraband satisfying their interests remain easily discoverable and accessible online for future viewing and self-gratification. I know that, regardless of whether a person discards or collects child pornography he/she accesses for purposes of viewing and sexual gratification, evidence of such activity is likely to be found on computers and related digital devices, including storage media, used by the person. This evidence may include the files themselves, logs of account access events, contact lists of others engaged in trafficking of child pornography, backup files, and other electronic artifacts that may be forensically recoverable.**

**Given the above-stated facts and based on the knowledge, training and experience of Detective Wafstet, along with his discussions and training with other law enforcement officers who investigate child exploitation crimes, Detective Wafstet believes that the person who used a computer and electronic devices at the residence described herein to communicate with a purported child likely has a sexualized interest in children and depictions of children, and that evidence of child pornography and additional child enticement is likely to be found at the residence described herein.**

WHEREFORE, I respectfully request that the District Court issue a *Search Warrant* as described herein.

DATED this 28 day of July, 2022

Electronically signed by Travis Wafstet 07/28/2022 10:42

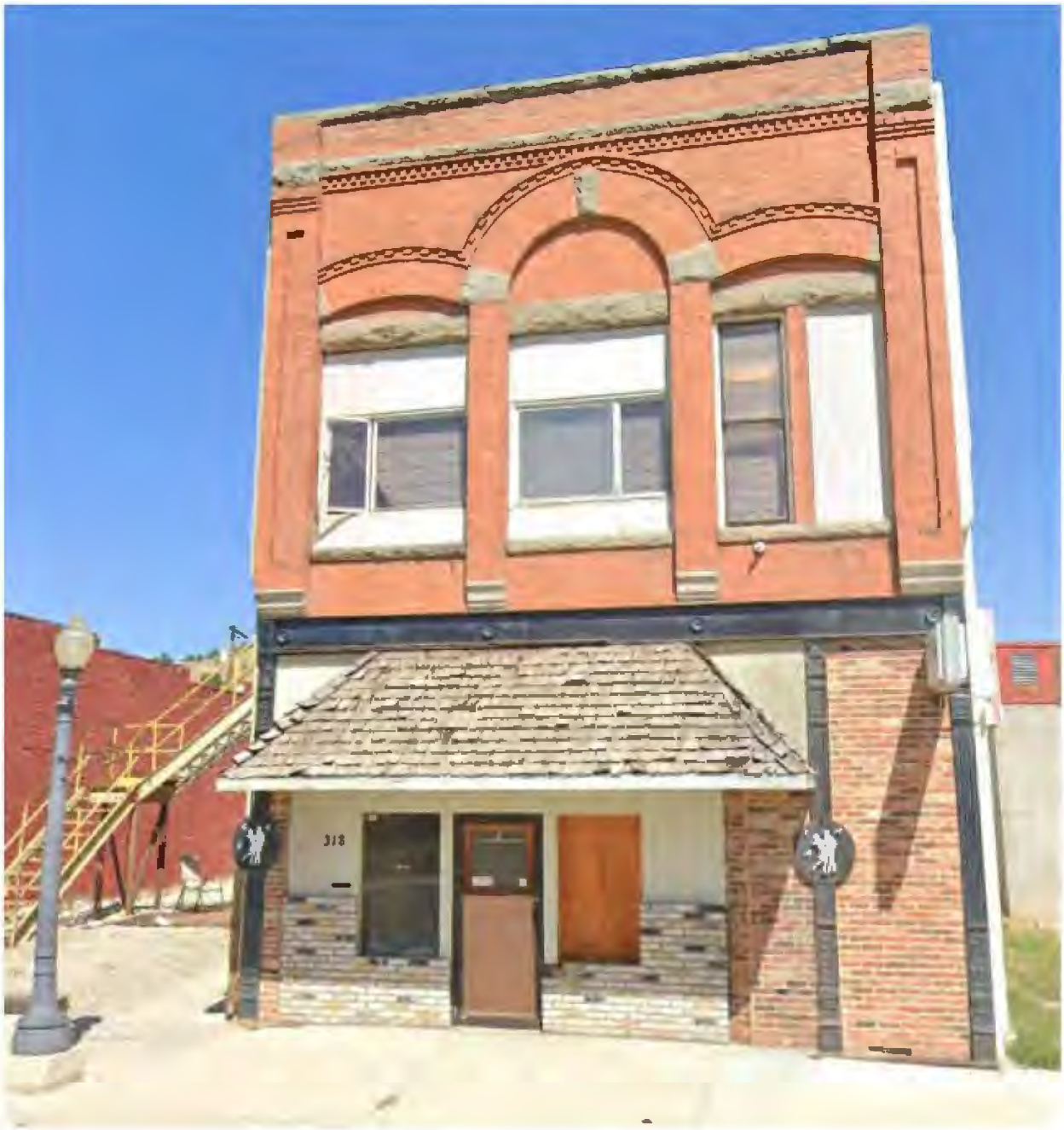
Travis Wafstet
Missoula County Sheriff's Department

SUBSCRIBED AND SWORN to before me this 28 day of July, 2022

Digitally signed by HON. LESLIE HALLIGAN
Date: 2022.07.28 10:56:44 MDT
Reason: Application for Search Warrant Approval
Location: MONTANA FOURTH JUDICIAL DISTRICT COURT -- Missoula , MT

Hon. Leslie Halligan

**EXHIBIT #1**



Hon. Leslie Halligan
Fourth Judicial District Dept. 1
200 W. Broadway
Missoula , MT 59802
Tel: 406-258-4771
Fax: 406-258-3456

**MONTANA FOURTH JUDICIAL DISTRICT COURT**

| | |
|---|---|
| IN RE THE SEARCH OF:<br>318 East Commercial Ave, Apartment #1 in Anaconda, Montana, which is located in Deer Lodge County; a two story brick and wood structure | Case No.: SW-_____-_____<br>SEARCH WARRANT |

**THE STATE OF MONTANA TO TRAVIS WAFSTET AND MISSOULA COUNTY SHERIFF'S DEPARTMENT:**

An *Application for Search Warrant* having been made before me, under penalty of perjury, stating that the Missoula County Sheriff's Department has reason to believe that the following crime has been committed in Missoula County, Montana:

**Sexual Abuse of Children (§ 45-5-625, MCA);**

AND further providing that the evidence, contraband, or persons connected with the aforementioned crime(s) include:

**Electronic devices to include laptop computers, cellular telephones, personal tablets, USB storage devices, video or photographic cameras, or any other electronic device capable of receiving and transmitting data or storing electronic data which includes photographic data, video data, SMS message data, Multimedia message data, and/or email data.**

**Visual depictions and print media including books, transcripts, manuscripts, photographs, magazines, receipts, invoices, and other documents depicting children in a state of undress, engaging in sexual activity, or those instances where the described mediums may indicate a sexual interest or desire for children (i.e. invoices for the purchase of subscriptions, access to websites, or records of transactions to purchase the above described materials).**

**Any evidence of past sexual enticement, sexual assault, or sexual intercourse or other criminal acts involving children in any form.**

**Any evidence of intended future sexual enticement, sexual assault, or sexual intercourse or other criminal acts involving other children as yet unidentified by this investigation.**

**The contents of any locked storage including combination home safes, lockboxes, locked closets, and areas of the residence that may not be accessible to non-residents. If these items are not able to be opened and searched on site, Detective Wafstet seeks to collect**

**these locked storage devices, if practical, for later access in a controlled environment at the Missoula County Sheriff's Office.**

AND further providing that evidence, contraband, or persons connected with the aforementioned crimes may be found:

**Within the residence described as Apartment #1 at 318 Commercial Ave, Anaconda, Montana in Deer Lodge County.**

IT IS HEREBY FOUND that sufficient probable cause exists to believe that the aforementioned crime(s) have been committed in Missoula County, Montana, and that the identified evidence, contraband, or persons connected with the crime(s) may be found at the location specified herein.

THEREFORE you are hereby commanded to serve this Search Warrant and to search the above described location for the property specified; and if the property is found there, to seize it, give a receipt for it, prepare a written inventory verified by you of the property seized, and bring the property before me, all in the manner required by law.

IT IS FURTHER ORDERED that all necessary and reasonable force may be used to serve this Search Warrant or to effect an entry into any building, property, or object to serve this Search Warrant, but any restraint or detention of the person served must be in the least restrictive manner that is consistent with the safety of the person serving the warrant and anyone assisting that person.

IT IS FURTHER ORDERED that the Missoula County Sheriff's Department, may reasonably detain and search any person on the premises being searched at the time of the search, but must do so in the least restrictive manner that is consistent with the safety of the person serving the warrant and anyone assisting that person. The search of persons on the premises is: (1) for protection of the person serving the warrant and anyone assisting that person; or (2) to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant.

DATED this 28 day of July, 2022

Digitally signed by HON. LESLIE HALLIGAN
Date: 2022.07.28 10:57:28 MDT
Reason: Search Warrant Approval
Location: MONTANA FOURTH JUDICIAL DISTRICT COURT -- Missoula , MT

Hon. Leslie Halligan

**EXHIBIT #1**