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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 41888
Plaintiff-Respondent,	)	
	)	Latah Co. Case No.
vs.	)	CR-2013-1801
	)	
BRIAN KENNETH TAYLOR,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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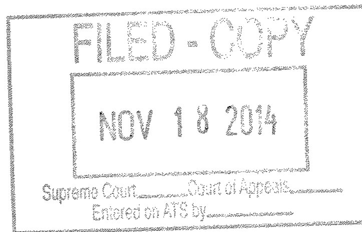

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STATEMENT OF THE CASE

Nature of the Case

Brian Kenneth Taylor appeals from the judgment of conviction entered upon his conditional guilty pleas to four counts of sex abuse, four counts of lewd conduct with a minor, and one count of sexual exploitation of a child. Taylor contends the district court erred in denying his motion to suppress, and abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

Nine-year-old S.R. disclosed to her school psychologist, and later the police, that her neighbor, Brian Taylor, sexually abused her. (PSI, pp.3-4; PSI attachments, pp.8-12.) S.R. reported that on several occasions, Taylor removed her pants and underwear and touched her buttocks and vaginal area with his hands and mouth. (PSI, p.3; PSI attachments, pp.10-12.) S.R. told officers that Taylor recorded some of this abuse on a silver camera with a sliding cover, and that Taylor showed her photos of his abuse of both her and another child, R.R. (PSI, pp.3-4; PSI attachments, pp.10-12.)

Later that day, officers contacted Taylor at his home. (State's Exhibit C, p.14.[1]) Taylor acknowledged that S.R. often came to his residence to play with his son, but denied any inappropriate conduct. (State's Exhibit C, pp.14-18.) Eventually, officers informed Taylor of his Miranda[2] rights and told him that they

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[1] References to page numbers of exhibits refer to the page numbers located on the bottom right-hand corner of those exhibits, regardless of whether those numbers are in sequential order.

[2] Miranda v. Arizona, 384 U.S. 436 (1966)

were going to "freeze the scene" and apply for a search warrant. (State's Exhibit C, p.18.) Taylor declined to speak with the officers further. (Id.)

Officers then sought and obtained a warrant to search Taylor's residence for evidence relating to the production and storage of child pornography, including computers, hard drives, cameras, memory cards, videos, photos, etc.; evidence of correspondence between Taylor and S.R.; evidence of sexual activity; and indicia of ownership of the seized evidence. (PSI, p.4; R., Vol. I, pp.90-91.)

Upon execution of the warrant, officers seized a cell phone that contained a photo of the vaginal area of pre-pubescent female, as well as a computer, a camera, and several compact flash storage cards. (State's Exhibit B, pp.251-252.) Officers also seized a small bindle containing methamphetamine, and various paraphernalia commonly associated with smoking methamphetamine. (State's Exhibit B, p.252.) Officers found, but did not seize, large amounts of adult pornography and sexual aids and toys. (State's Exhibit A, p.26.) Officers did not locate the camera described by S.R. (State's Exhibit B, pp.251-252.) Taylor was not arrested at this time.

In a subsequent interview, S.R. disclosed that Taylor had showed her pornography and had abused her with various sex toys. (PSI, p.5; R., Vol. I, pp.41-43.) Based upon this information, and the fact that officers had not yet recovered the camera described by S.R., officers applied for and obtained a second warrant authorizing them to search for and seize:

- "Evidence of sexual activity including, without limitation, sexual devices, lubricants, condoms, and items that may

contain bodily fluids associated with sexual activity.

- Images of adult pornography contained in magazines, DVD, and VHS format;

- Camera-capable devices;

- Indicia of residency in, or ownership or possession of, the premises and any of the above items."

(R., Vol. I, pp.41-43, 80-81; State's Exhibit C, p.39.)

Approximately twenty days after they executed the first warrant, officers returned to the home to execute the second warrant. (State's Exhibit A, p.33.) Taylor voluntarily returned home from his place of employment and let the officers into the residence. (Id.) Officers seized numerous sex toys, including one previously described by S.R., pornographic videos and magazines, and a manual for a camera consistent with the one described by S.R. (State's Exhibit A, pp.33-36.)

Officers then read Taylor his Miranda rights, and questioned him about the location of the camera depicted in the manual and described by S.R. (State's Exhibit A, p.34; Defendant's Exhibit A, p.2.) Detective Bill Shields told Taylor that officers would be there "all night" and would "tear that room apart from one square inch to the other" to find the camera. (Defendant's Exhibit A, p.2.) Taylor then told the officers the location of the camera, and the officers seized it. (State's Exhibit A, p.34.) Detective Shields examined the camera and noted that its memory card had been removed. (State's Exhibit B, pp.289-290.) Detective Shields also noted that the camera was an older model that utilized a now-obsolete XD style of memory card. (Id.)

Officers questioned Taylor about the location of the missing memory card. (Id.) Though initially reluctant to reveal this information, Taylor eventually did so after the officers told him that by refusing to comply, Taylor ran of the risk of further victimizing S.R., should any explicit photos of her get out into the public. (State's Exhibit A, p.34; State's Exhibit C, pp.40-41; Defendant's Exhibit A, pp.7-23) The officers recovered two XD memory cards where Taylor said they would be, inside a bag of rice in the kitchen. (State's Exhibit A, p.34.) After verifying that the memory cards fit the camera previously seized, officers seized the cards. (State's Exhibit A, p.34; State's Exhibit B, pp.289-290.)

Officers returned to the police station to examine the contents of the XD memory cards. (State's Exhibit B, pp.290-291.) The cards contained more than 200 photos, nearly all of which depicted Taylor sexually abusing S.R., R.R., and M.N., Taylor's five-year-old son. (PSI attachments, pp.297-298; State's Exhibit C, pp.42-44.) Officers then arrested Taylor. (State's Exhibit B, p.291.) Officers later identified a fourth victim, R.R.'s brother Z.R. (PSI, pp.5-6.) In subsequent interviews, R.R., Z.R., and M.N. all disclosed that Taylor had sexually abused them. (PSI, pp.5-6; PSI attachments pp.343-394.)

The state ultimately charged Taylor with seven counts of sex abuse, seven counts of lewd conduct with a minor, seven counts of male rape, two counts of sexual exploitation of a child, and single counts of rape and possession of methamphetamine. (R., Vol. I, pp.163-173.)

Taylor moved to suppress his statements made during the officers' execution of the second search warrant, and all evidence subsequently seized

under the fruit of the poisonous tree doctrine. (R., Vol. II, pp.179-218.) Taylor argued: (1) the officers executing the second search warrant violated Taylor's Miranda rights by attempting to interrogate him after Taylor had previously asserted his right to remain silent several weeks earlier; and (2) even if the Miranda rights given during the execution of the second search warrant were effective, Taylor's statements and the evidence subsequently seized should still be suppressed because the statements were coerced and involuntary. (Id.) After a hearing at which a transcript of the interrogation and affidavits from the officers were admitted as exhibits (10/10/13 Tr., p.4, L.9 – p.33, L.3), the district court denied the motion, concluding that the officers did not violate Taylor's Miranda rights, and that Taylor's statements made during the execution of the second search warrant were voluntary and not coerced (R., Vol. II, pp.271-280).

The state and Taylor then entered into a conditional plea agreement in which Taylor preserved his right to appeal the district court's denial of his motion to suppress, and to withdraw his pleas should he be successful on appeal. (R., Vol. II, pp.281-283.) Pursuant to that agreement, Taylor pled guilty to four counts of sex abuse, four counts of lewd conduct with a minor, and one count of sexual exploitation of a child. (Id.; 11/13/13 Tr., p.7, L.12 – p.25, L.5.) There was no agreement with regard to the parties' sentencing recommendations. (R., Vol. II, pp.281-233; 11/13/13 Tr., p.7, Ls.19-21.)

The district court imposed concurrent unified life sentences, with ten years fixed, for each charge of lewd conduct with a minor; a consecutive five years fixed for sexual exploitation of a child; and 10 years fixed for each charge of sex

abuse, to run concurrently with each other but consecutively to the other charges. (R., Vol. II, pp.336-342; 2/4/14 Tr., p.83, L.22 - p.94, L.16.) This resulted in a cumulative unified life sentence with 25 years fixed. Taylor timely appealed. (R., Vol. II, pp.343-346.)

ISSUES

Taylor states the issues on appeal as:

1. Did the district court err when it denied Mr. Taylor's motion to suppress?

2. Did the district court abuse its discretion by imposing upon Mr. Taylor a total unified sentence of life, with 25 years fixed, in light of the mitigating information?

(Appellant's brief, p.10)

The state rephrases the issues on appeal as:

1. Has Taylor failed to show the district court erred in denying his motion to suppress?

2. Has Taylor failed to show that the district court imposed an excessive sentence?

ARGUMENT

I.
Taylor Has Failed To Show The District Court Erred In Denying His Motion To Suppress

A. Introduction

Taylor contends that the district court erred in denying his motion to suppress statements he made during the execution of the second search warrant, as well as evidence subsequently seized, pursuant to the fruit of the poisonous tree doctrine. (Appellant's brief, pp.11-15.) Specifically, Taylor argues that that the district court erred in concluding that his statements were voluntary and not coerced. (Id.) A review of the record reveals that the officers' interrogation techniques, while persuasive, did not constitute unconstitutional coercion.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006). Thus, where an appellant claims his statements were involuntary, this Court gives "deference to the lower court's findings of fact, if they are not clearly erroneous," but engages in "free review over the question of whether the facts found are constitutionally sufficient to show voluntariness." State v. Wilson, 126 Idaho 926, 928, 894 P.2d 159, 161 (Ct. App. 1995). The "ultimate determination of voluntariness" is a legal

question freely reviewed. Arizona v. Fulminante, 499 U.S. 279, 287 (1991).

C. The District Court Correctly Concluded That Taylor's Statements Were Voluntary

"[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." Colorado v. Connelly, 479 U.S. 157, 167 (1986). Indeed, "coercive government misconduct was the catalyst for th[e] [Supreme] Court's seminal confession case, Brown v. Mississippi," 297 U.S. 278 (1936), and "the cases considered by th[e] Court" post-Brown "have focused upon the crucial element of police overreaching." Connelly, 479 U.S. at 163-164. "While each confession case has turned on its own set of factors justifying the conclusion that police conduct was oppressive, all have contained a substantial element of coercive police conduct." Id. at 164. "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." Id.; see also State v. Valero, 153 Idaho 910, 912, 285 P.3d 1014, 1016 (Ct. App. 2012) ("In order to find a violation of a defendant's due process rights by virtue of an involuntary confession, coercive police conduct is necessary.").

"The proper inquiry is to look to the totality of the circumstances and then ask whether the defendant's will was overborne by the police conduct." State v. Stone, 154 Idaho 949, 953, 303 P.3d 636, 640 (Ct. App. 2013) (citing Arizona v. Fulminante, 499 U.S. 279, 287 (1991); State v. Troy, 124 Idaho 211, 214, 858 P.2d 750, 753 (1993)). Relevant factors to consider in determining whether a

defendant's statements are voluntary include whether Miranda warnings were given, the defendant's age, education, and intelligence, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973) (internal citations omitted); Stone, 154 Idaho at 953, 303 P.3d at 640 (Idaho Court of Appeals utilizing the Bustamonte factors). Importantly, the absence or presence of any one factor is not determinative. Id.

The exclusionary rule calls for suppression of evidence that is gained through unconstitutional governmental activity. Segura v. United States, 468 U.S. 796, 815 (1984); State v. Wigginton, 142 Idaho 180, 184, 125 P.3d 536, 540 (Ct. App. 2005). This prohibition against the use of derivative evidence extends to the indirect as well as the direct fruit of the government's misconduct. Segura, 468 U.S. at 804; Wong Sun v. United States, 371 U.S. 471, 484 (1963). Nevertheless, "[s]uppression is not justified unless 'the challenged evidence is in some sense the product of illegal governmental activity." Segura, 468 U.S. at 815 (quoting United States v. Crews, 445 U.S. 463, 471 (1980)). That is, "evidence will not be excluded as 'fruit' unless the illegality is at least the 'but for'

cause of the discovery of the evidence." Id.[3]

In this case, the district court denied Taylor's motion to suppress, concluding that his statements made during the execution of the second search warrant were voluntary and not coerced. (R., Vol. II, pp.271-280.) Specifically, the court concluded: (1) application of the relevant Bustamonte factors indicated that the interrogation was not unconstitutionally coercive; (2) a review of the totality of the circumstances further demonstrated that Taylor's statements were voluntary; and (3) the officers' "threats" to search the home if Taylor did not cooperate were supported by the search warrant, which authorized the officers to conduct such a search.[4] (Id.) A review of the record and of the applicable law supports the district court's rulings Specifically: the officers' interrogation techniques, while persuasive, did not render Taylor's statements involuntary pursuant to the relevant Bustamonte factors and a totality of the circumstances analysis; and the second search warrant authorized the officers to search for and seize both the camera and the memory cards, and even if it did not, any contrary implication made by the officers to Taylor did not render Taylor's statements

[3] Because it denied Taylor's motion to suppress statements made during the execution of the second search warrant, the district court did not address Taylor's argument that the physical evidence subsequently seized by officers should be suppressed pursuant to the fruit of the poisonous tree doctrine. Should this Court find that the district court erred in denying Taylor's motion to suppress his statements, it should remand the case for a determination of whether and which portions of the seized physical evidence should also be suppressed. Such a determination may require additional findings of fact, such as whether any of the seized evidence may be subject to the inevitable discovery doctrine.

[4] On appeal, Taylor does not challenge the district court's conclusion that he failed to show that the officers violated his Miranda rights. (Appellant's brief, p.8, n. 5, 6.)

involuntary.

1. Application Of The *Bustamonte* Factors And An Analysis Of The Totality Of The Circumstances Supports the District Court's Determination

The district court applied the Bustamonte factors discussed above and properly concluded that they did not support Taylor's assertion that his statements were involuntary. (R., Vol. II, pp.277-278.) As the district court concluded: (1) officers informed Taylor of his Miranda rights before any questioning occurred, and it was apparent from Taylor's previous invocation of his right to remain silent during the execution of the first search warrant that he understood this right and how to exercise it; (2) Taylor is an adult; (3) there was no evidence in the record that Taylor was uneducated or unintelligent, and in fact, as the state pointed out (R., Vol. II, p.263), Taylor's dialogue with officers, as exhibited by the transcript of the interrogation, demonstrated that he was not an individual of low intelligence; (4) there was no evidence in the record that the detention was of any significant length or that the questioning was repetitive or prolonged, or that Taylor was deprived of sleep or food (R., Vol. II, pp.278-279). Indeed, while the exact length of the interrogation cannot be ascertained from the transcript (see Defendant's Exhibit A), it is clear that it was not particularly lengthy or onerously repetitive. On appeal, Taylor does not take issue with the district court's application of the Bustamonte factors, or challenge any of the factual determinations inherent in that application.

A broader review of the totality of the circumstances further supports the district court's determination. While the district court concluded that Taylor was

"in custody" for purposes of Miranda, there is no indication in the record that he was in handcuffs or subject to any show of force. The officers' strategy in interrogating Taylor was several-fold. With regard to his interrogation of Taylor about the location of the camera, Detective Shields told Taylor that cooperating would allow things to "go a lot faster," and that otherwise, Detective Shields would "be back there all night" and "tear that room apart from one square inch to the other" to find the camera. (Defendant's Exhibit A, pp.2-3.) With regard to his interrogation of Taylor about the location of the XD memory card, Detective Green: (1) expressed a concern that if the memory card was not located, the photos could get "beyond [Taylor's] control" and onto the internet, which would further victimize S.R.; (2) provided vague assurances that cooperation would be beneficial for Taylor; (3) verbally sympathized with Taylor and the situation he faced, and attempted to relate to him as "one man to another man"; and (4) validated Taylor's "legitimate addiction" to pornography and encouraged him to take responsibility for his actions and to seek treatment. (Defendant's Exhibit A, pp.5-24.)

These interrogation strategies, while persuasive and effective in this case, were not so overbearing as to render Taylor's statements involuntary. In State v. Stone, the Idaho Court of Appeals reviewed similar police tactics, including "vague assurances of leniency," the "false friend" technique, and minimization, and found that such strategies did not render Stone's confessions involuntary, even where Stone was questioned over an eight-hour period, and even in light of expert testimony indicating that Stone was "suggestible and socially anxious."

Stone, 154 Idaho at 952-960, 303 P.3d at 639-647.

While Detective Shields' statement to Taylor that he would "tear apart" the room if Taylor did not cooperate could contribute to and support a finding of coercion in some circumstances, it does not do so in this case in the absence of other factors strongly indicating coercion. This is particularly true, where, as here, and as discussed below, the search warrant expressly authorized Detective Shields to search Taylor's residence for the camera. (R., Vol. I, pp.80-81.) Detective Shields' comment was clearly not a literal threat to damage Taylor's property, but was more a promise to thoroughly search every "square inch" of the room for the camera, as long as it took. In the similar context of voluntary consent, numerous cases have held that such promises are not determinative of the question of voluntariness. See e.g. United States v. Wilkinson, 926 F.2d 22, 25 (1st Cir. 1991) (affirming district court finding that the officers' threat to "tear the place apart" amounted to "no more than a permissible promise to search the house thoroughly"), overruled on other grounds by Bailey v. United States, 516 U.S. 137 (1995); Holtzen v. United States, 694 F.2d 1129, 1131 (8th Cir. 1982) (consent to search voluntary even where officers claimed to have warrant, and threatened to "tear apart" defendant's house); United States v. Green, 678 F.2d 81, 83–84 (8th Cir. 1982) (consent to search voluntary where officers threatened to "tear the house apart" if occupant did not turn over contraband); U.S. v. Medina, 2011 WL 887752, *9 (E.D. Wis. March 11, 2011) (agent's statement that house would likely be torn up if occupant failed to consent to a search did not deprive occupant of the ability to make a rational decision).

Because the officers engaged in legitimate interrogation strategies which did not unconstitutionally coerce Taylor into making involuntary statements, Taylor cannot show error in the district court's denial of his motion to suppress.

2. The Second Search Warrant Authorized Officers To Search For And Seize The Memory Cards That Taylor Removed From His Camera

A warrant under the Fourth Amendment must "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. Const. Amend. 4. The purpose of the particularity requirement is to "insur[e] against the search of premises where probable cause is lacking" and to "minimize the risk that officers executing search warrants will mistakenly search a place other than the one intended by the magistrate." State v. Harper, 152 Idaho 93, 102, 266 P.3d 1198, 1207 (Ct. App. 2011). "A search pursuant to a warrant will exceed the scope authorized if officers seize property not specifically described in the warrant ... or officers search a location not specifically described or authorized." State v. Teal, 145 Idaho 985, 989, 188 P.3d 927, 931 (Ct. App. 2008).

While the language of a search warrant controls its scope, "[s]earch warrants must be read in a common sense way," Steele v. United States, 267 U.S. 498, 503–04 (1925), and "the question whether the evidence seized falls within the scope of the warrant ultimately turns on the substance of the item seized 'and not the label assigned to it by the defendant.'" United States v. Hill, 19 F.3d 984, 988 (5th Cir.) (quoting United States v. Word, 806 F.2d 658, 661 (6th Cir. 1986)). An officer executing a search warrant must interpret the warrant's terms reasonably, but the officer need not give them the narrowest possible reasonable interpretation. See U.S. v. Aljabari, 626 F.3d 940 (7th Cir. 2010).

Idaho appellate courts have long recognized that "bowing to events, even if one is not happy about them, is not equivalent to being coerced." State v. Garcia, 143 Idaho 774, 152 P.3d 645 (Ct. App. 2006) (recognizing that though Garcia was faced with two unpleasant choices – consenting to a search of his truck or the officers fulfilling their lawful threat to arrest Garcia and his friends – this did not on its own establish police coercion); State v. Abeyta, 131 Idaho 704, 708-709, 963 P.2d 387, 391-392 (Ct. App. 1998) (police threat to obtain and execute search warrant if Abeyta did not consent to search did not necessarily constitute police coercion); see also United States v. Agosto 502 F.2d 612, 614 (9th Cir. 1974) (statement of officer's intention to obtain search warrant if consent was not given did not render consent *per se* involuntary).

In this case, Taylor challenges the district court's conclusion that Detective Shields' "threat" to search the residence was backed by the authority to do so pursuant to the search warrant.[5] Specifically, Taylor contends that while the second search warrant authorized officers to seize "camera-capable devices," it did not authorize them to search for and seize the memory cards. (Appellant's brief, pp.14-15.) Taylor's contention fails for several reasons. First, Detective

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[5] As Taylor acknowledges (Appellant's brief, p.14, n.7), he did not argue below that the second search warrant lacked particularity, was overboard, or that the seizure of the memory card violated his 4th amendment rights. (See R., Vol. II, pp.179-190.) Therefore, on appeal, such questions are only relevant to the extent this Court reviews the district court's conclusion that the warrant authorized the search and seizure of the memory card. Regardless, this question is not determinative to the ultimate issue on appeal, whether Taylor's statements were voluntary. The "ultimate determination of voluntariness" is a legal question freely reviewed by an appellate court, and a proper inquiry involves a totality of the circumstances analysis. See Stone, 154 Idaho 949, 303 P.3d 636.

Shields' "threat" to search the residence related directly to the portion of the interrogation in which officers sought the location of the camera, not the memory card. Second, the XD memory card later sought by the officers was a part of the "camera-capable device" they previously seized. Further, even if the second search warrant did not authorize officers to search for and seize the memory cards, this did not render Taylor's statements involuntary.

A review of the transcript of the interrogation reveals two distinct portions – one relating to the officers' search for the camera, and one relating to the officers' search for the memory card. (See generally Defendant's Exhibit A.) Only in the first portion did Detective Shields "threaten" Taylor with a thorough search of his residence. (Id.) The second search warrant expressly authorized the officers to search for and seize the camera. (R., Vol. I, pp.80-81.) Therefore, Detective Shields had lawful authority to search Taylor's residence for the camera when he made the "threat" to do so.

Next, the search warrant authorized the officers to search for and seize the memory card because it was a part of the camera they had previously seized pursuant to the warrant. When Detective Shields located the camera, he noticed that the memory card had been removed. (State's Exhibit B, pp.289-290.) It was only then that the officers began to search for the missing cards. Upon locating the cards (which were of an obsolete style only compatible with certain older cameras, including the camera previously seized by officers), Detective Shields confirmed that they fit into the camera before seizing them. (State's Exhibit B, p.290.) Even if the memory cards were not expressly referenced in the second

search warrant, *these* particular XD cards were *part* of the camera that *was* so referenced. Additionally, these particular memory cards were themselves "camera-capable devices," because they were utilized by this camera to store photos. The officers could thus reasonably interpret the term of the warrant giving them the authority to search for and seize "camera-capable devices" as permitting them to seize the memory cards.

Finally, even if the district court erred in concluding that the second search warrant authorized the search and seizure of the memory cards, Detective Shields' "threat" to search the residence still did not render Taylor's statements involuntary in light of the absence of coercive tactics, as discussed above. Even "deceptive police practices"[6] do not necessarily create coercion which would render a suspect's subsequent confession involuntary and excludable." State v. Davila, 127 Idaho 888, 892 P.2d 581, 585 (Ct. App. 1995); see also State v. Schumacher, 136 Idaho 509, 515-518, 37 P.3d 6, 12-15 (Ct. App. 2001) (holding that officer's statement to suspect, which falsely implied that police already were in possession of a warrant to search defendant's barn, was not impermissible or coercive, in contrast with a circumstance where police *actually misrepresent* that they possess a warrant in order to obtain consent to enter or search premises). In the present case, Detective Shields did not actually tell Taylor that he had a search warrant to seize the memory cards.

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[6] There is no indication that Detective Shields actually attempted to deceive Taylor about his authority to seize the memory card when he "threatened" to search Taylor's residence for the camera. As discussed above, Detective Shields did not even know that the memory card had been removed from the camera at the time he interrogated Taylor and made this "threat."

The district court considered the totality of the circumstances and properly concluded that Taylor's statements to police were voluntary and not coerced. Taylor has therefore failed to show that the district court erred in denying his motion to suppress.

II.
Taylor Has Failed To Show That The District Court Imposed An Excessive Sentence

A. Introduction

Taylor asserts that the district court abused its discretion by imposing an excessive sentence. (Appellant's brief, pp.15-17.) Taylor has failed to establish that his sentence is excessive considering the objectives of sentencing and the nature of Taylor's crimes.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court abused its discretion. Id.

C. The District Court Acted Well Within Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence is excessive. Farwell, 144 Idaho at 736, 170 P.3d at 401. To establish that the sentence is excessive, Taylor must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of

protecting society, deterrence, rehabilitation, and retribution. Id.

In this case, prior to imposing its sentence, the district court reviewed the presentence investigation report, Taylor's asserted corrections to that report, a psychosexual evaluation, Taylor's sentencing memorandum, and the exhibits submitted by the parties, which included the photos seized by the officers. (2/4/14 Tr., p.66, L.21 – p.67, L.3; p.83, L.22 – p.84, L.9.) The court also expressly referenced the relevant sentencing factors.[7] (2/4/14 Tr., p.87, L.11 – p.89, L.24.) A review of the record supports the district court's sentencing determination.

Taylor's crimes were egregious. At the sentencing hearing, Detective Shields, the Internet Crimes Against Children officer for the Moscow Police Department, who examined and cataloged much of the seized evidence, described the photos depicting the sexual abuse perpetrated by Taylor as the "[w]orst photos I have ever seen in my life." (2/4/14 Tr., p.23, L.10 – p.24, L.23.) These photos depicted various manners of sexual abuse inflicted upon all four known minor victims. See PSI attachments, pp.301-335 (detailed descriptions of

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[7] In considering the fixed life sentence recommended by the state, the district court expressed a belief that such a sentence required a finding that Taylor was "not capable of being rehabilitated and that the only means of protecting society is by the imposition of a fixed life sentence." (Tr., p.86, Ls.4-11.) The court indicated that it did not impose a fixed life sentence in this case only because "the record is not devoid of any possibility of you being someone who can be treated at some point." (Tr., p.86, Ls.8-22.) However, in State v. Windom, 150 Idaho 873, 867, 253 P.3d 310, 313 (2011), the Idaho Supreme Court rejected Windom's argument that the nature of an offense standing alone could not support a fixed life sentence, and reiterated that in appropriate cases, a district court may impose a determinate life sentence based upon the egregiousness of the crime. Though the district court apparently misperceived the scope of its sentencing discretion in this case, the state has not challenged its sentencing determination.

the seized photos.) Taylor took advantage of trust placed in him by friends and neighbors to access those individuals' children for sexual purposes. (See 2/4/14 Tr., p.54, Ls.12-17; p.60, Ls.6-8.)

Taylor has failed to take full responsibility for his crimes or to fully acknowledge their severity. Taylor told the presentence investigator that he got "a little-touch – feely" with S.R. when he drank, and that if S.R. was ever uncomfortable, "she would have quit coming over all the time." (PSI, p.9.) While acknowledging inappropriate conduct, Taylor denied that he had "ever physically or sexually assaulted" someone else, explaining that "[a]ssault indicates violence or threats." (PSI, p.25.) Taylor also asserted that if he had an "adult companion in the picture, whether present or not," he would not have "drifted that way." (PSI, p.9.)

The record further indicates that Taylor has a history of abusing children beyond the four victims in the present case. In 2012, another minor, M.R., disclosed to authorities that Taylor had touched her inappropriately. (PSI, p.4; PSI attachments, pp.150-156.) No criminal charges were pursued at that time due to lack of corroborating evidence. (PSI, p.4; PSI attachments, p.156.) In 2001, Taylor was charged with felony child molestation in Iowa. (PSI, p.10.) According to the contemporaneous police reports, two children Taylor was watching walked in on him using a "pocket pussy" sex toy. (PSI attachments, pp.169-229.) Taylor gave the children the sex toy and told them they could try it themselves. (Id.) The boys did so, and then returned it Taylor, who used it again while the children were leaving the room. (Id.) It was unclear to the presentence

investigator what the final disposition of this charge was, but Taylor reported he was convicted of an amended charge of assault. (PSI, pp.12-13.) Taylor was also previously charged with injury to child after methamphetamine was found in a room his son had access to. (PSI, p.13.) This charge was dismissed after Taylor pled guilty to possession of drug paraphernalia. (Id.)

Taylor's psychosexual evaluation also supports the district court's sentencing determination. The combined Static-99r/Stable-2007 assessment placed Taylor's risk of sexual recidivism in the "High" range – the 84th to the 94th percentile. (Psychosexual evaluation, pp.1, 18.) Taylor's performance on the Millon Clinical Multiaxial Inventory-3 revealed a profile consistent with "an indifference to the welfare of others," and "a tendency to charm and exploit others and to extract special recognition without consideration of reciprocal responsibility." (Psychosexual evaluation, p.12.) His answers on the MSI-II demonstrated that he "rationalizes to minimize the seriousness of his sexual behavior." (Psychosexual evaluation, p.15.) Though Taylor appears to be amenable to treatment (Psychosexual evaluation pp.19-21), the evaluator recognized several risk factors, including Taylor's indifference to the welfare of others, inability to maintain appropriate intimate relationships, a demonstrated pattern of sexual preoccupation, and a sexual arousal to prepubescent children (Psychosexual evaluation pp.21-22).

In the course of the presentence investigation and at the sentencing hearing, family members of the victims described the impact of Taylor's crimes. (PSI, pp.6-8; 2/4/14 Tr., p.53, L.4 – p.61, L.2.) S.R.'s parents described the

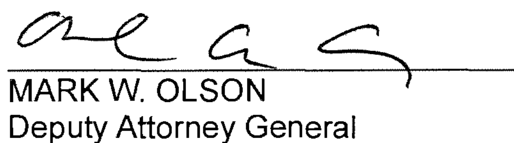
emotional burdens and turmoil Taylor's abuse caused within their family, and the negative impact of the abuse on S.R.'s social interactions with others. (PSI, pp.6-8; 2/4/14 Tr., p.53, L.15 – p.55, L.13.) The mother of Z.R. and R.R. reported that both of her children were in counseling and that Z.R. was diagnosed with PTSD. (PSI, p.8; 2/4/14 Tr., p.59, L.18 – p.61, L.2.) M.N.'s mother reported that M.N. began having behavioral problems following the abuse and was in counseling. (PSI, p.8; 2/4/14 Tr., p.55, L.18 – p.59, L.17.)

The imposed unified life sentence with 25 years fixed was entirely reasonable in light of the nature of Taylor's crimes and other factors evident in the record. Taylor has therefore failed to show that the district court abused its sentencing discretion.

CONCLUSION

The state respectfully requests that this Court affirm Taylor's convictions and the district court's denial of Taylor's motion to suppress.

DATED this 18th day of November, 2014.



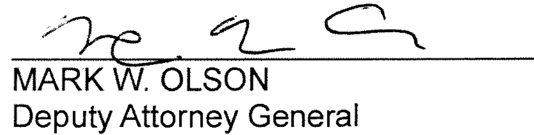
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that I have this 18th day of November, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JASON C. PINTLER
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm