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First Court of Appeals (Houston)

Case Name: ***Robert Aaron Rosales v. The State of Texas***

- **OFFENSE**: 5x Possession of Child Pornography
- **COUNTY**: Harris
- **C/A CASE No**. 01-23-00876-CR
- **DATE OF OPINION**: July 31, 2025 **OPINION**: Justice Clint Morgan
- **DISPOSITION**: Conviction Affirmed
- **TRIAL COURT**: 351st D/C
- **LAWYERS**: Jonathan Landers (Defense); Heather Hudson (State)

Ed Note: The trial record in this case "contains no facts of Appellant's offense beyond those in the probable-cause affidavit." According to the affidavit, Dropbox, an online "cloud storage" site, provided a "Cybertip" to the National Center for Missing and Exploited Children ("NCMEC") that a user had uploaded eight files that depicted suspected child pornography. The affidavit said that "[t]he general public and other entities can, upon discovery of child exploitation or suspicion of the same, use either the phone-in tip line or the online portal to share the information with NCMEC," and then NCMEC would forward the tip to an appropriate law enforcement agency. Dropbox's tip included the eight files, which the affiant, Officer Wilson, viewed and confirmed at least two files contained child pornography. Dropbox's Cybertip said the files were in Appellant's account. Dropbox gave two IP addresses that had been used to access the account. Another officer, Officer Corrales, issued an administrative subpoena to Comcast. According to the affidavit, information from Comcast connected both IP addresses to a Comcast subscriber who lived on Avenue J in Houston. According to the affidavit, someone with Appellant's last name lived at the Avenue J address. The affidavit requested a warrant for the electronic customer data in the possession of Dropbox relating to Appellant and the account where the child pornography was being stored.

Ed Note (**Procedural History**): A grand jury indicted Appellant for five charges of possession of child pornography. Appellant moved to suppress the State's evidence based on a claim that it was obtained illegally. After a hearing, the trial court denied that motion. Appellant then entered a plea bargain where he pleaded guilty to two charges in return for the State dismissing three charges and recommending that he be placed on deferred adjudication community supervision for four years. The trial court accepted the plea bargain, entered orders of deferred adjudication community supervision, and certified Appellant's right to appeal his written motion to suppress.

[§§ **31.02 Search & Seizure / Warrantless Searches**]: Dropbox's tip included the eight files, which the affiant, Officer Wilson, viewed and confirmed at least two files contained child pornography. Appellant argues it was the State's burden to prove the lawfulness of Officer Wilson's initial review of the files submitted by Dropbox.

Holding: [Appellant's] argument misapprehends the procedural posture of his challenge. *** Texas courts employ a presumption of proper police conduct. See ***State v. Robinson***, 334 S.W.3d 776 (Tex.Cr.App. 2011)(see §§, Vol. 19, No. 11; 03/21/2011). *** A defendant defeats this presumption by showing that a search was conducted without a warrant. ***Russell v. State***, 717 S.W.2d 7 (Tex.Cr.App. 1986). *** [Appellant] claims the State had the burden to prove Officer Wilson's review of the files NCMEC submitted was lawful. That might be true if, rather than get a warrant, the State had proceeded to trial and offered those files into evidence. Instead, Officer Wilson used the information he obtained from those files to get a warrant. Because [Appellant] sought to suppress evidence that was obtained via warrant, it was [Appellant]'s burden to "prove the invalidity of the warrant." *** [Appellant]'s first point claims the warrant is invalid because the affidavit relied on illegally obtained evidence. He claims that Officer Wilson conducted an unlawful warrantless search of the files when he viewed them before getting a warrant. [Appellant] claims that the illegally obtained information -- the description of the video contents -- must be excised from the warrant affidavit, and without this information the affidavit does not contain probable cause. *** In the affidavit, Officer Wilson stated he had watched two video files that Dropbox included with its Cybertip. [Appellant] introduced the Cybertip into evidence at the suppression hearing. The Cybertip stated that someone at Dropbox had viewed the "entire contents" of both files. Thus, the trial court's finding that "the scope of the search by Officer Wilson (or NECMEC) did not exceed the scope of the private search done by Dropbox" is supported by the record. *** The trial court's finding that a Dropbox employee viewed the entire files is supported by the record. Officer Wilson's review of the files was, under the private-search doctrine, not a search. We overrule [Appellant]'s first point.

Sidebars

(**David A. Schulman**) So, do you still believe that "cloud" storage sites like Dropbox don't look at your files. While I know they utilize algorithms that point them to "objectionable" files (such as child pornography), those same algorithms could be modified to search a lawyers' confidential client files for specific words and/or names. As I have been for years now, I strongly suggest that lawyers refrain from putting confidential files on **any** cloud storage site.

(John G. Jasuta) Who is it that controls the creation of those algorithms David refers to? Who, precisely, is Big Brother?

[32.01 Search & Seizure / Reasonable Expectation of Privacy (On-Line Services -- Search Warrants)]: Appellant claims the trial court erred by finding that Dropbox acted as a private entity rather an agent of government.

Holding: Our resolution of this issue is controlled by our precedent in ***Burwell v. State***, 576 S.W.3d 826 (Tex.App. - Houston [1st] 2019)(see , Vol. 27, No. 19; 05/27/2019). *** [As in ***Burwell***] Appellant did not introduce any evidence that either NCMEC or the Houston Police Department was aware of Dropbox's review of [Appellant]'s files. Nor did [Appellant] introduce any evidence that showed Dropbox's intent -- one way or the other -- in reviewing his files. [Appellant] attempts to distinguish his case from Burwell by pointing to the documents he admitted showing some cooperative arrangements between Dropbox and NCMEC. But these documents show nothing more than that NCMEC would let Dropbox use its tools to analyze suspected child pornography. *** [Appellant] failed to carry his burden to show that Dropbox acted as a government agent when it viewed the files identified in its Cybertip. We overrule his second point.

Sidebars

(John G. Jasuta) By using this cloud storage device you have essentially waived your right to any officer looking into those files because the proprietors can while not acting as agents for the police. Sure does save the police a lot of time and effort, though.

(David A. Schulman) Whether you liked or dislike my comments on cloud storage, check on my Sidebar to ***Burwell***, which calls up my time working for some interesting characters in Las Vegas.

[31.01 Search & Seizure / Search Warrants (Omissions & Misrepresentations)]: Appellant made a claim under ***Franks v. Delaware***, 438 U.S. 154 (1978). On appeal, he claims the trial court erred by not sustaining the claim.

Holding: A ***Franks*** claims requires a defendant to show: 1) the probable-cause affidavit contains false statements, 2) those false statements were made deliberately or with a reckless disregard for the truth, and 3) without those statements the affidavit does not contain probable cause. ***Hyland v. State***, No. 13-16-00596-CR (see , Vol. 27, No. 45; 11/25/2019). If the trial court finds there were false statements, they were made with the requisite state of mind, and the remaining statements do not add up to probable cause, then the warrant is invalid. *** The trial court found that three statements in Officer Wilson's affidavit were false, and were made with a reckless disregard for the truth: 1) That child pornography was uploaded to [Appellant]'s Dropbox account on May 27, 2019, 2) That Officer Wilson asked Dropbox to preserve its records relating to the Cybertip, and 3) That business records from Comcast identified the users associated with the specified IP address in January and May 2019 when, in fact, the records identified the user associated with one of the IP addresses in May only. *** The trial court concluded, however, that the affidavit contained probable cause even without these statements. On appeal, the State

argues the trial court's ruling that probable cause existed was correct. That is the only issue before us, and we agree. *** In oral findings, the trial court found that removing the statements about the January IP address and the date of the upload did not vitiate probable cause. We agree. *** The trial court did not err in denying [Appellant]'s ***Franks*** motion. We overrule [Appellant]'s third point.

> **Concurring / Dissenting Opinions**: Justice Morgan also filed a concurring opinion in which he argued that ❶ the trial court's findings related to the hearing under ***Franks v. Delaware***, 438 U.S. 154 (1978) were legally pointless; ❷ one supposedly false statement in the affidavit is ambiguous, and the other two seem to be innocent drafting errors; and ❸ the errors in this affidavit do not show a reckless disregard for the truth. He also argued that "if it were procedurally possible to declare these findings an abuse of discretion, I would urge the Court to do so."

Sidebars

(**David A. Schulman**) I find Justice Morgan's actions confusing. I all my years practicing Appellate law I have only seen one case even remotely like this, and it involved a judge who drafted a *per curiam* opinion reversing a high profile case and also filed a dissent to the opinion under his own signature. That is much different of course and at least Justice Morgan is open and above board in this actions. First, however, I don't see why he need to do this in a separate opinion. There was no reason he couldn't have included his thoughts in the majority opinion. Second, just as he indicates that the trial court's findings to which he objects "were legally pointless," one could make the same argument here. Since the Court is not finding that the trial court committed an abuse of discretion, this won't have any significant impact now or in the future.