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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SILVESTRE ELA,

Defendant and Appellant.

B236622

(Los Angeles County  
Super. Ct. No. BA378817)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Dennis J. Landin, Judge. Affirmed.

A. William Bartz, Jr., for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Jonathan M. Krauss, Deputy Attorneys General, for Plaintiff and Respondent.

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Silvestre Ela appeals from the judgment following his conviction of one count of possession of matter depicting a minor engaging in sexual conduct (Pen. Code § 311.11, subd. (a)).<sup>1</sup> We affirm.

Because this is an unreported opinion and the parties are familiar with the facts, we will dispense with their recitation here. To the extent they are relevant, we discuss the facts in connection with our resolution of the issues raised on appeal.

**A. Probable Cause Existed To Search The Computers In Defendant's Home**

Defendant maintains that the search warrant affidavit failed to establish a fair probability that material depicting a minor engaging in sexual activity would be found on a computer in his home. His argument, however, is not directed to that issue but to whether the officer who prepared the affidavit was qualified to diagnose pedophilia or to conclude that defendant is a collector of child pornography. As to probable cause, however, the information the officer obtained from internet and email service providers established probable cause to believe someone using a computer at defendant's home address had uploaded to the internet sexual material involving a minor. Indeed, defendant's brief on appeal concedes this point.

Nor is there any merit to defendant's claim that the officer's affidavit did not provide probable cause to search defendant's residence for items associated with pedophiles or collectors of child pornography. Presumably defendant is referring to the warrant's authorization to seize as evidence writings "sent with the intent to seduce a minor" and writings "for the purpose of arranging to meet with a minor for the purpose of sexually exploiting the minor[.]" Such items were legitimate objects of seizure because if linked to the person who uploaded the prohibited material they would be evidence that the person "knowingly" possessed or controlled that material as required by Penal Code

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<sup>1</sup> Penal Code section 311.11, subdivision (a) states in relevant part: "Every person who knowingly possesses or controls any matter . . . which involves the use of a person under the age of 18 years . . . personally engaging in or simulating sexual conduct . . . is guilty of a felony . . . ."

section 311.11, subdivision (a). In any case, the valid portion of the warrant to search the computers was severable from any invalid portion. (*People v. Joubert* (1983) 140 Cal.App.3d 946, 953.)

**B. Any Error In Authorizing A Night-Time Search Was Harmless**

Defendant further contends the affidavit did not contain a showing of good cause to conduct a nighttime (6:00 a.m.) search of his home. Because the search was otherwise constitutionally reasonable, any error in authorizing a nighttime search does not require suppression of the evidence seized. (*Rodriguez v. Superior Court* (1988) 199 Cal.App.3d 1453, 1470.)

**DISPOSITION**

The judgment is affirmed.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.