

Office of the Kane County State's Attorney



JAMIE L. MOSSER

State's Attorney

Kane County Judicial Center
37W777 Route 38 Suite 300
St. Charles, Illinois 60175

General Offices:
(630) 232-3500

September 29, 2021

Kara Witcowski

VIA EMAIL: kwitkowski34@gmail.com

RE: Child Pornography investigation
Elgin Case number 19-25513

Dear Ms. Witcowski,

As you are aware, I have reviewed the above matter for possible charges. The Elgin Police Department provided me with police reports that were generated as a result of this investigation and a DVD containing the results of a forensic examination of an external hard drive given to the Elgin Police Department by you on 3/28/19.

The statute of limitation for the offense of possession of child pornography (720 ILCS 5/11-20.1(a)(6)) is 3 years as set forth in the general limitations provision of law found in 720 ILCS 5/3-5(b). Given the specific facts of this case, it is our Office's opinion that an extended period of limitations is not applicable. Based upon the interviews conducted by the police and the forensic examination of the hard drive, there is no credible evidence to establish that the suspect in this case possessed the external hard drive within the applicable statute of limitations period. In fact, there is evidence to suggest that other individuals had access to the external hard drive from 2015 forward. As a result, the State is barred from commencing a prosecution against the suspect in this case and our Office will not be authorizing charges of possession of child pornography.

Secondly, putting the statute of limitations issue aside, there is insufficient evidence to establish probable cause that the suspect in this investigation knowingly possessed child pornography. The suspect does admit to possessing the external hard drive in 2010. Currently there are 51,899 files/folders on the external hard drive. It is unknown from what source these files/folders were obtained. In other words police do not have the computer(s) that were used to transfer all of the files/folders to the external hard drive. Because the detectives do not have possession of the computer(s) or the original source of the files/folders, they have not

been able to forensically link the suspect (or anyone else) to placing the data on the external hard drive. Investigators also learned that the hard drive was loaned out to another individual for a period of time.

After a forensic review of the external hard drive, it was found to contain 740 images and 9 videos. These 740 images and 9 videos were submitted to the National Center for Missing and Exploited Children (NCMEC). NCMEC determined that 47 of these images were of identified children. However, NCMEC did not indicate that these images were of child pornography, only that the images were of identified children. Three of the detectives reviewed these 47 images and concluded that 5 photographs may contain child pornography.

Detectives interviewed the suspect and he denied knowledge of the suspected child pornography on the external hard drive. He also indicated that he had not seen the hard drive in approximately 4 years. This denial should not be taken at face value, but detectives noted that there is a video of a personal nature on the hard drive, of the suspect, that appears to have been filmed without the suspect's knowledge, lending credence to the evidence that others had access to the external hard drive at some point. Additionally, the suspect provided police with his phone, his active social media accounts and email addresses and their respective passwords. This cooperation should be and is taken into account when assessing the information provided by the suspect to the police.

Our Office has a legal and ethical obligation to comply with the Illinois Supreme Court Rules of Professional Conduct. In pertinent part, Rule 3.8 provides, "The duty of a prosecutor is to seek justice, not merely to convict. The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."

Given the volume of files on the external hard drive, the inability to determine who placed all of the files, including the 5 suspected images of child pornography, on the external hard drive, the lack of evidence as to when the suspect last possessed the external hard drive, and the complete lack of evidence demonstrating that the suspect knew there were suspected images of child pornography on it, leads us to conclude that compliance with Rule 3.8 in this matter requires that no charges be authorized by the Kane County State's Attorney's Office as a result of this investigation.

Sincerely,

A handwritten signature in black ink that reads "Jamie L. Mosser". The signature is written in a cursive, slightly slanted style.

Jamie Mosser
Kane County State's Attorney