STATE OF CONNECTICUT *v.* DAVID ESAREY
(SC 19004)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, McDonald and Vertefeuille, Js.

Argued February 7—officially released June 18, 2013

Richard E. Condon, Jr., assistant public defender, for the appellant (defendant).

Adam E. Mattei, deputy assistant state's attorney, with whom, on the brief, were *John C. Smriga*, state's attorney, and *Cornelius P. Kelly*, senior assistant state's attorney, for the appellee (state).

Opinion

NORCOTT, J. The defendant, David Esarey, appeals[1] from the judgment of the trial court, rendered after a jury trial, convicting him of, inter alia, one count of promoting a minor in an obscene performance in violation of General Statutes § 53a-196b (a),[2] one count of risk of injury to a child in violation of General Statutes § 53-21 (a) (1),[3] and one count of possession of child pornography in the third degree in violation of General Statutes § 53a-196f (a).[4] On appeal, the defendant raises numerous challenges to the trial court's denial of his motion to suppress evidence obtained from his Google e-mail account (Gmail account) through the execution of a search warrant (Gmail warrant). In doing so, the defendant requests that this court decide, as a question of first impression, whether a judge of the Superior Court has the authority, under article fifth, § 1, of the Connecticut constitution,[5] as implemented by General Statutes § 51-1a (b),[6] to issue an extraterritorial search and seizure warrant for evidence contained within e-mail servers located in another state. Although this question deserves further study by the legislature; see footnote 17 of this opinion; we decline to reach the merits of the defendant's claims in the present appeal because we agree with the state's argument that any impropriety arising from the challenged search was harmless error beyond a reasonable doubt. Accordingly, we affirm the judgment of the trial court.

The record reveals the following relevant facts, which the jury reasonably could have found, and procedural history. The defendant, while serving as a youth minister at a church in Monroe, led a youth group comprised of approximately twenty male and female members from school grades six through twelve. The youth group met on Wednesday evenings in the church's youth building or at the defendant's apartment, which was located on church grounds. Beyond regular meetings, members of the youth group also frequently visited the defendant's apartment to talk, play video games or relax. The victim[7] was a member of the youth group.

Over a span of several years beginning when the victim was in seventh grade, the defendant developed a friendship with the victim through her participation in the youth group, her assistance with planning church services, and later by going running with her. Over that time, he also communicated with the victim in person, by text messaging and by messaging through the Facebook social media website. Initially, these communications related to problems that the victim had been experiencing with her family. Their relationship later took on a sexual tone when the then fifteen year old victim[8] was in tenth grade and she started discussing, with the then thirty-two year old defendant, sexual aspects of his relationship with his fiancée. On April 22, 2008, the victim sent the defendant a message through

Facebook indicating that a boy in her school, who was also a member of the church, wanted her to send to him nude photographs of herself. The defendant initially told the victim not to send the photographs. Shortly thereafter, however, the defendant told the victim, via a responsive Facebook message, to send the photographs to him and to tell the boy to request the photographs from the defendant, at which point he would tell the boy that he could not have them. The victim then sent a photograph of herself dressed only in undergarments to the defendant. Subsequent Facebook messaging conversations between the victim and the defendant became increasingly sexual in nature, and they exchanged various nude photographs of themselves through e-mail. Thereafter, on two occasions in July, 2008, shortly prior to the victim's sixteenth birthday, the victim and the defendant engaged in two instances of sexual contact, one involving her performing fellatio on him in his apartment and the other engaging in reciprocal sexual touching and fellatio in another building on church grounds.

The relationship between the victim and the defendant came to light on July 20, 2008, when K, a young woman who had assisted the defendant with the church youth group, found approximately ten sexually explicit photographs of a girl, whom she believed to be the victim,[9] on the computer in the defendant's apartment while looking for photographs from a youth group hiking trip. K attempted to delete these photographs from the computer to prevent anyone else from seeing them and told M, the pastor of the church, about what she had found. Shortly thereafter, M met separately with the defendant and the victim. While speaking with M, the victim lied to protect the defendant's job and his engagement to another woman. Specifically, the victim told M that she had put the photographs on the defendant's computer as a dare.[10]

In October, 2008, the victim's mother found nude photographs of the victim and the defendant on the family computer. On the advice of M, who had examined the victim's cell phone records to determine whether she had been communicating with the defendant, the victim's mother went to the police and met with Kelly McFarland, a detective employed by the Monroe Police Department. Although the victim initially informed the police that she had put the photographs on the defendant's computer as a dare, she ultimately informed the police about the provenance of the photographs and her sexual acts with the defendant. McFarland, working with another Monroe detective, Michael Chaves, investigated the allegations. Their investigation included searching and seizing by warrant or consent, and forensically analyzing the defendant's laptop and desktop computers, cell phone, camera and Gmail account, the victim's computer, digital camera, and Yahoo e-mail account, and the church's Dell computer.

These searches yielded, among other things: (1) state's exhibits 22 and 23, which were photographs of a penis e-mailed from the defendant's Gmail account to the victim's Yahoo account on May 6, 2008 and June 24, 2008; (2) state's exhibit 1, which was a series of photographs of a nude female in various sexual poses that had been e-mailed from the victim's Yahoo account to the defendant's Gmail account, and then recovered from the victim's computer and the "deleted items folder" of the defendant's Outlook e-mail management program; (3) state's exhibit 39, which contained photographs of a female's genital area recovered from the "recycle bin" on the computer in the church office; and (4) state's exhibit 24, namely, three photographs depicting, respectively, a female's buttocks, vagina and breasts that the defendant had e-mailed to himself within the Gmail account. The victim's Yahoo account also revealed numerous notifications to the victim that the defendant had sent her Facebook messages during this time frame, admitted collectively as state's exhibit 55.

The state thereafter charged the defendant by substitute information with one count of risk of injury to a child in violation of § 53-21 (a) (1), two counts of risk of injury to a child in violation of § 53-21 (a) (2), one count of sexual assault in the second degree in violation of General Statutes § 53a-71 (a), one count of promoting a minor in an obscene performance in violation of § 53a-196b (a), and one count of possession of child pornography in the third degree in violation of § 53a-196f.

Prior to trial, the defendant moved to suppress, inter alia,[11] the evidence obtained from facilities operated by Google in Mountainview, California, namely, e-mails, read and unread IP addresses, session time duration, and real names from his Gmail account, between January 1, 2008 and October 5, 2008. In his motion to suppress, the defendant contended that: (1) the trial court, *Kavanewsky*, *J.*, lacked the authority to issue the Gmail warrant, which had authorized a search for items outside of Connecticut; and (2) there was insufficient probable cause to establish that the e-mail account to be searched would contain the messages cited in the warrant affidavit. Although the trial court, *Devlin*, *J.*, rejected the state's argument that the defendant lacked standing to challenge the Gmail warrant on the ground that he did not have a reasonable expectation of privacy with respect to the content of the e-mails contained in the Gmail account,[12] the court ultimately denied the defendant's motion to suppress, concluding that: (1) the affidavit contained "sufficient facts to establish probable cause to search" the defendant's Gmail account; and (2) in the specific context of records held by out-of-state electronic communication service providers, Judge Kavanewsky was constitutionally and statutorily authorized to act within the state of Connect-

icut to issue a search warrant for Google's servers in California, because § 1524.2 (c) of the California Penal Code[13] implements a "federal statute that authorizes electronic communication service providers to disclose their records without notification to the customer provided the disclosure was made in compliance with a federal or state search warrant," by "unilaterally [giving extraterritorial] effect to out-of-state search warrants directed toward electronic service providers like Google." In so concluding, Judge Devlin observed that, "although a Connecticut judge on his or her own could not command a search outside of Connecticut, California does have the sovereign power to give legal effect to such a command and has done so with respect to this limited class of search warrants."

Thereafter, the case was tried to a jury with the trial court, *Kavanewsky, J.*, presiding. The jury returned a verdict finding the defendant guilty on all charges. The trial court rendered judgment of conviction in accordance with the jury's verdict, and sentenced the defendant to a total effective sentence of twelve years incarceration, suspended after six years, followed by fifteen years of probation.[14] This appeal followed.

On appeal, the defendant challenges only his conviction of promoting a minor in an obscene performance in violation of § 53a-196b (a), possession of child pornography in the third degree in violation of § 53a-196f (a), and risk of injury to a child in violation of § 53-21 (a) (1). He claims that Judge Kavanewsky violated his rights under the fourth amendment to the United States constitution and article first, § 7, of the constitution of Connecticut in issuing the Gmail warrant, which was an extraterritorial search warrant for his Gmail account contained on Google's servers located in California, and that Judge Devlin should have granted his motion to suppress the evidentiary fruits of that illegal search. Specifically, the defendant, relying heavily on *Shadwick* v. *Tampa*, 407 U.S. 345, 92 S. Ct. 2119, 32 L. Ed. 2d 783 (1972), *United States* v. *Master*, 614 F.3d 236 (6th Cir. 2010), and *State* v. *Jacob*, 185 Ohio App. 3d 408, 924 N.E.2d 410 (2009), argues that his constitutional rights were violated because the Gmail warrant was void ab initio since Judge Kavanewsky lacked the authority to issue the extraterritorial warrant under § 51-1a (b), the statute that establishes the territorial jurisdiction of the Superior Court. See footnote 6 of this opinion. The defendant further contends that California law, specifically § 1524.2 (c) of the California Penal Code, cannot unilaterally extend the territorial jurisdiction of a Connecticut judge beyond that prescribed by this state's law. The defendant additionally argues that California law conflicts with Connecticut law on this point, because California law permits Google personnel to execute the warrant, while Connecticut law, namely General Statutes § 54-33a,[15] limits the execution of the warrant to "proper officers," and employees of a private

company are not "proper officers." Finally, the defendant argues that Judge Devlin improperly determined that the Gmail warrant was supported by probable cause.

In response, the state contends, inter alia, that: (1) the relevant provision of the federal Stored Communications Act, which was enacted as part of the Electronic Communications Privacy Act and is codified at 18 U.S.C. § 2703 (b),[16] along with § 1524.2 (c) of the California Penal Code and the warrant procedures for this state set forth in § 54-33a (b), give Connecticut judges the authority, for fourth amendment purposes, to issue extraterritorial search warrants directed at California based internet service providers or "remote computing services"; and (2) the Gmail warrant was supported by probable cause.

The state also asserts, relying on, inter alia, *State* v. *Shifflett*, 199 Conn. 718, 508 A.2d 748 (1986), that we need not reach the merits of the defendant's claims because any impropriety with respect to the validity of the Gmail warrant was harmless error given the totality of the state's evidence at trial. Specifically, the state contends that the fruits of the Gmail warrant, namely, three photographs that depict, respectively, the unclothed buttocks, breasts and vagina of an unidentified female, admitted collectively as state's exhibit 24, were: (1) cumulative of a wealth of other unchallenged evidence; and (2) contained content identical to state's exhibit 1, which consists of images e-mailed by the victim to the defendant that were found during the unchallenged search of the defendant's computer and a corresponding set of identical images that were created on the victim's computer. We agree with the state on this point and decline to reach the merits of the defendant's challenge to the Gmail warrant because any impropriety attendant to the admission of the fruit of that warrant was harmless error and does not require reversal.[17]

It is well settled that constitutional search and seizure violations are not structural improprieties requiring reversal, but rather, are subject to harmless error analysis. See, e.g., *United States* v. *Dhinsa*, 243 F.3d 635, 661–62 (2d Cir.), cert. denied, 534 U.S. 897, 122 S. Ct. 219, 151 L. Ed. 2d 156 (2001); *State* v. *Shifflett*, supra, 199 Conn. 751; *State* v. *Jay*, 124 Conn. App. 294, 307, 4 A.3d 865 (2010), cert. denied, 299 Conn. 927, 12 A.3d 571 (2011). Indeed, we previously have declined to decide fourth amendment issues attendant to the legality of a search or seizure when we can "find that the erroneous admission into evidence of the fruits of the search was harmless beyond a reasonable doubt." *State* v. *Shifflett*, supra, 751, citing *Chapman* v. *California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). "While the violation of certain constitutional rights automatically amounts to harmful error . . . the violation of

others, such as the admission of evidence obtained in violation of the [F]ourth [A]mendment, does not. . . . The harmlessness of an error depends upon its impact on the trier and the result . . . and the test is whether there is a reasonable possibility that the improperly admitted evidence contributed to the conviction." (Citations omitted; internal quotation marks omitted.) *State* v. *Shifflett*, supra, 751–52, quoting *Schneble* v. *Florida*, 405 U.S. 427, 432, 92 S. Ct. 1056, 31 L. Ed. 2d 340 (1972).

In determining whether illegally obtained evidence is likely to have contributed to the defendant's conviction, we review the record to determine, for example, whether properly admitted evidence is "overwhelming" or whether the illegally obtained evidence is "cumulative" of properly admitted evidence. *State* v. *Shifflett*, supra, 199 Conn. 752. Simply stated, we look to see whether "it is clear beyond a reasonable doubt that the outcome would not have been altered" had the illegally obtained evidence not been admitted. (Internal quotation marks omitted.) *United States* v. *Dhinsa*, supra, 243 F.3d 662; accord *State* v. *Jay*, supra, 124 Conn. App. 308 n.6 (determining whether "absent [the illegally obtained] evidence . . . the trier would have reached a different verdict").

Assuming, without deciding, that the evidence obtained pursuant to the Gmail warrant violated the defendant's fourth amendment rights, we nevertheless are convinced beyond a reasonable doubt that any such illegality did not contribute to his convictions for promoting a minor in an obscene performance in violation of § 53a-196b (a), possession of child pornography in the third degree in violation of § 53a-196f (a), and risk of injury under the situation prong of § 53-21 (a) (1). See footnotes 2 through 4 of this opinion. First, the search authorized by that warrant yielded only state's exhibit 24, which consists of three photographs depicting, respectively, a female's buttocks, breasts and vagina that the defendant had e-mailed to himself within his Gmail account. That e-mail, and the images contained therein, do not contain the female's face or any identifying details. Indeed, exhibit 24 is, at best, cumulative of the other overwhelming evidence against the defendant, the admissibility of which is not challenged in this appeal.

Specifically, that mountain of other evidence includes numerous other images found on the defendant's computer without aid of the Gmail warrant, and e-mails from his Gmail account to the victim's Yahoo account containing photographs of his penis. In particular, state's exhibit 1, which included three explicit images of the victim taken two days before her sixteenth birthday in July, 2008, was found on the defendant's computer, and identical images were found on the victim's computer.[18] Further, the victim's testimony was corroborated by state's exhibit 55, which is a lengthy set of

e-mails from the victim's Yahoo account received on April 22, 2008, advising her of Facebook messages sent from the defendant to her, including: (1) a message stating " 'I mean if you are thinking of sending pics . . . I [wouldn't] . . . cause it just hurts your reputation more . . . if you do send pics . . . just send them to me and give me his email . . . and tell him I will send them . . . lol . . . but I really wont . . . so you can say you sent them but they have to go [through] me first . . . or you can just not send them at all' "; (2) a message supplying the address for his Gmail account; and (3) a message stating, " 'so you already took these pics . . . wow . . . where the world did you take them at . . . your room?' " Particularly damning on these charges is state's exhibit 56, which is another lengthy sequence of Facebook messages sent to the victim prior to her sixteenth birthday, between May 2 and May 6, 2008, that, inter alia: (1) asks her for "a nice pic to masterbate too"; (2) advises her about masturbation techniques; and (3) presciently counsels her, after photographs apparently were exchanged on May 6, that "we gotta delete them so we both [don't] get in trouble." Thus, we conclude that any impropriety in the issuance and execution of the Gmail warrant was, beyond a reasonable doubt, harmless error that did not affect the verdict in this case.[19]

The judgment is affirmed.

In this opinion the other justices concurred.

[1] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] General Statutes § 53a-196b provides in relevant part: "(a) A person is guilty of promoting a minor in an obscene performance when he knowingly promotes any material or performance in which a minor is employed, whether or not such minor receives any consideration, and such material or performance is obscene as to minors notwithstanding that such material or performance is intended for an adult audience.

"(b) For purposes of this section, 'knowingly' means having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry as to (1) the character and content of any material or performance which is reasonably susceptible of examination by such person and (2) the age of the minor employed. . . ."

[3] General Statutes § 53-21 provides in relevant part: "(a) Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child . . . shall be guilty of a class C felony . . . ."

[4] General Statutes § 53a-196f provides in relevant part: "(a) A person is guilty of possessing child pornography in the third degree when such person knowingly possesses fewer than twenty visual depictions of child pornography. . . ." Although § 53a-196f was amended subsequent to the events underlying the present case; see Public Acts 2010, No. 10-191, § 4; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[5] Article fifth, § 1, of the Connecticut constitution, as amended by article twenty of the amendments, provides: "The judicial power of the state shall be vested in a supreme court, an appellate court, a superior court, and such lower courts as the general assembly shall, from time to time, ordain and establish. The powers and jurisdiction of these courts shall be defined by law."

[6] General Statutes § 51-1a (b) provides: "The territorial jurisdiction of

the Supreme Court, the Appellate Court, and the Superior Court shall be coextensive with the boundaries of the state."

[7] In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identities may be ascertained. See General Statutes § 54-86e.

[8] The victim turned sixteen years old on July 24, 2008.

[9] K testified that she could not see the girl's face in the photographs, but recognized the background as being the victim's bedroom, where she had been once before, because of the blue walls with painted clouds.

[10] After that meeting, the church instituted extensive new modesty and safety rules governing contact between youth group members and adults.

[11] The defendant also moved to suppress evidence obtained from his computer and cell phone, contending that the trial court, *Bellis*, *J.*, lacked probable cause to issue the authorizing search warrant. The trial court, *Devlin*, *J.*, denied this motion. The defendant has not challenged that ruling in this appeal.

[12] We note that the state renews this claim in the present appeal, positing as a threshold issue that the defendant lacked a subjective expectation of privacy in the Gmail account; see, e.g., *State* v. *Jackson*, 304 Conn. 383, 395, 40 A.3d 290 (2012); because he had disclosed to the Outlook e-mail management program his password to that account. The state, however, withdrew this contention at oral argument before this court, and we need not address it further.

[13] Section 1524.2 of the California Penal Code (Deering 2008) provides in relevant part: "(a) As used in this section, the following terms have the following meanings:

"(1) The terms 'electronic communication services' and 'remote computing services' shall be construed in accordance with the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United State Code Annotated. This section shall not apply to corporations that do not provide those services to the general public.

* * *

"(6) 'Properly served' means that a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code.

* * *

"(c) A California corporation that provides electronic communication services or remote computing services to the general public, *when served with a warrant issued by another* state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, *shall produce those records as if that warrant had been issued by a California court.* . . ." (Emphasis added.)

[14] The trial court also imposed numerous conditions of probation, including sex offender registration, sex offender treatment and no contact with the victim or her family.

[15] General Statutes § 54-33a provides: "(a) As used in sections 54-33a to 54-33g, inclusive, 'property' includes, without limitation, documents, books, papers, films, recordings and any other tangible thing.

"(b) Upon complaint on oath by any state's attorney or assistant state's attorney or by any two credible persons, to any judge of the Superior Court or judge trial referee, that such state's attorney or assistant state's attorney or such persons have probable cause to believe that any property (1) possessed, controlled, designed or intended for use or which is or has been used or which may be used as the means of committing any criminal offense; or (2) which was stolen or embezzled; or (3) which constitutes evidence of an offense, or that a particular person participated in the commission of an offense, is within or upon any place, thing or person, such judge or judge trial referee, except as provided in section 54-33j, may issue a warrant commanding a proper officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody all such property named in the warrant.

"(c) A warrant may issue only on affidavit sworn to by the complainant or complainants before the judge or judge trial referee and establishing the grounds for issuing the warrant, which affidavit shall be part of the arrest file. If the judge or judge trial referee is satisfied that grounds for the

application exist or that there is probable cause to believe that they exist, the judge or judge trial referee shall issue a warrant identifying the property and naming or describing the person, place or thing to be searched. The warrant shall be directed to any police officer of a regularly organized police department or any state police officer, to an inspector in the Division of Criminal Justice or to a conservation officer, special conservation officer or patrolman acting pursuant to section 26-6. The warrant shall state the date and time of its issuance and the grounds or probable cause for its issuance and shall command the officer to search within a reasonable time the person, place or thing named, for the property specified. The inadvertent failure of the issuing judge or judge trial referee to state on the warrant the time of its issuance shall not in and of itself invalidate the warrant."

[16] Section 2703 (b) of title 18 of the United States Code (2006 & Sup. 2011) provides: "CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

"except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing."

[17] We stay our hand with respect to determining whether a judge of the Superior Court has the authority to issue a search warrant for electronic information that is stored on an out-of-state server when the underlying investigation relates to crimes committed in this state. We note, however, that our prior jurisprudence does not suggest a rigid approach to our state courts' jurisdiction under § 51-1a (b), allowing us to act extraterritorially when a crime at issue has an "overwhelming factual nexus" to Connecticut and its "public welfare." See *State* v. *Ross*, 230 Conn. 183, 202, 646 A.2d 1318 (1994) (rejecting jurisdictional defense to capital felony charges when victims were kidnapped in Connecticut, but murdered in Rhode Island, and their bodies returned to Connecticut), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995). Indeed, there is nothing in the language of § 54-33a, our search warrant statute, that expressly restricts a trial judge's authority to order searches to Connecticut's borders. See footnote 15 of this opinion. Thus, consistent with the Stored Communications Act, 18 U.S.C. § 2703 (b), it would appear to us that, under our existing statutes, a Connecticut trial judge may, in connection with the investigation of a crime committed here, order a search of electronically stored communications contained on a remote computing service's server located in another state—particularly when that state has a statute requiring such service providers to honor warrants issued by the courts of other states. See *Hubbard* v. *MySpace, Inc.*, 788 F. Sup. 2d 319, 325–26 (S.D.N.Y. 2011) (concluding in civil action alleging violation of Stored Communications Act and Electronic Communications Privacy Act that social media website located in California properly honored warrant issued by Georgia state judge, noting that "Georgia law appears to recognize the heightened territorial authority that magistrates and judges may have in issuing warrants for purposes of the [Electronic Communications Privacy Act]"); *Loyoza* v. *State*, Docket No. 07-12-00142-

CR, 2013 Tex. App. LEXIS 1973, *4 (February 27, 2013) (in absence of Texas statute restricting his ability to act, Texas judge had authority under 18 U.S.C. § 2703 [b] to issue search warrant for records held by cell phone provider in Kansas); see also *In re Search of Yahoo, Inc.*, United States District Court, Docket No. 07-3194-MB (D. Ariz. May 21, 2007) (explaining that purpose of § 2703 [b] is to promote prosecutorial and judicial efficiency by permitting courts in locus of crime to preside over both investigation and adjudication, and also to relieve burden on federal courts in Northern Districts of California and Virginia, where major internet service providers are headquartered).

Nevertheless, as the defendant notes, a warrant issued by a magistrate who is unqualified under relevant state law is void ab initio, thus invalidating the search under the fourth amendment. See, e.g., *United States* v. *Master*, supra, 614 F.3d 241 (concluding that search of defendant's home violated fourth amendment when it was undisputed that judge lacked statutory authority under Tennessee law to issue authorizing warrant); *State* v. *Wilson*, 618 N.W.2d 513, 519–20 (S.D. 2000) ("[t]here being no constitutional or statutory authority permitting Judge Anderson to sign a search warrant to be executed in Hutchinson county, the warrant was invalid"). Thus, given the increasing significance of electronically stored communications to the investigation and adjudication of criminal cases, we urge our legislature to undertake a review of Connecticut's relevant statutory scheme to ensure its consistency with federal and sister state provisions authorizing service providers to honor, and facilitate the service of, warrants issued by out-of-state judges, such as 18 U.S.C. § 2703 (b), § 1524.2 (c) of the California Penal Code. Cf. Georgia Code Ann. § 16-11-66.1 (c) (2011) ("[s]earch warrants for production of stored wire or electronic communications and transactional records pertaining thereto shall have state-wide application *or application as provided by the laws of the United States* when issued by a judge with jurisdiction over the criminal offense under investigation and to which such records relate" [emphasis added]); *United States* v. *Bach*, 310 F.3d 1063, 1067–68 (8th Cir. 2002) (upholding "reasonableness" of service by warrant when internet service provider staff in California retrieved records in response to faxed out-of-state warrant, despite fact that law enforcement officers were not present for actual retrieval), cert. denied, 538 U.S. 993, 123 S. Ct. 1817, 155 L. Ed. 2d 693 (2003).

[18] Indeed, the bedding and wall color depicted in the photographs contained in exhibit 1 are identical to the background in a series of other explicit photographs of the victim seized from her computer.

[19] The defendant contends in his reply brief that the admission of the evidence obtained pursuant to the Gmail warrant was not harmless error because the victim's credibility was central to the state's case, and she admitted that she had lied to her mother, M, the police and the prosecutor about the defendant's conduct, including stating that she had put the photographs in state's exhibit 1 on the defendant's computer on a dare. The defendant further cites evidence of the victim's reputation in the community for dishonesty. Put simply, and especially given that the defendant does not challenge the sexual assault convictions, we disagree with his somewhat myopic assessment of the evidence in this case, which does not account for the corroboration of the victim's trial testimony and the photographs found on his computer supplied by, inter alia, the lurid Facebook messages documented in exhibits 55 and 56, and his action of e-mailing a photograph of his penis to the victim.