

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 16 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC FEVOLD,

Defendant - Appellant.

No. 08-30453

D.C. No. 9:08-CR-00015-DWM-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Argued and Submitted November 3, 2009
Portland, Oregon

Before: KOZINSKI, Chief Judge, FISHER and PAEZ, Circuit Judges.

Eric Fevold appeals the district court's denial of his motion to suppress evidence seized from his residence, arguing that the search warrant was not supported by probable cause. He principally argues that the affidavit presented to the magistrate judge was deficient because it failed to attach the relevant images and provided only a conclusory statement that they were child pornography, *see*

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

United States v. Battershell, 457 F.3d 1048, 1051 (9th Cir. 2006) (noting that a conclusory statement is insufficient when it is necessarily based on a subjective determination); *cf. United States v. Hill*, 459 F.3d 966, 972-73 (9th Cir. 2006) (analyzing factual descriptions of images to determine whether they were sufficient to support probable cause); and that the website to which Fevold bought a membership was not the same website the agents were able to access two months later.

We need not decide whether the affidavit was sufficient to support probable cause because, even if the alleged defects were fatal, we conclude that the agents acted in good-faith reliance on the search warrant. *See United States v. Leon*, 468 U.S. 897, 922 (1984). The omissions Fevold identifies in the affidavit do not demonstrate recklessness, and none of the other circumstances that would make reliance on a warrant unreasonable are present here. *See United States v. Crews*, 502 F.3d 1130, 1136 (9th Cir. 2007).

AFFIRMED.