

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 988 – 2011
:
vs. : CRIMINAL DIVISION
:
TY M. LEVY, :
Defendant : Non-Jury Trial

OPINION AND VERDICT

Defendant has been charged with two counts of Sexual Abuse of Children, five counts of Unlawful Contact with Minor, one count of Obscene and Other Sexual Materials, two counts of Corruption of Minors, one count of Indecent Exposure and one count of Open Lewdness, in connection with certain communications he had with a fifteen-year-old girl over the computer. A non-jury trial was held June 18, 2012, at which time the Commonwealth withdrew Counts 4 (Unlawful Contact with Minor), 10 (Corruption of Minors), 11 (Indecent Exposure) and 12 (Open Lewdness). The evidence was presented by stipulation: that Defendant and the girl communicated via SKYPE whereby each could see the other during the conversation by way of a webcam, and that he encouraged the girl to expose herself and masturbate in front of the webcam (and that he did the same); also that each sent the other a “link” to a pornographic website. It was also stipulated that the SKYPE sessions were not recorded and that Defendant did not have any images of the girl on his computer when it was examined by police.

Defendant conceded the evidence is sufficient to convict him of Count 3 (Unlawful Contact with Minor) and Count 9 (Corruption of Minors); the court will therefore not address those counts in this opinion. Defendant argues, however, that he should not be convicted of Counts 1 and 2 (Sexual Abuse of Children) or 6 and 7 (Unlawful Contact with Minor) as the required element of “computer depiction” is lacking under these circumstances. He also argues he is not guilty of Counts 5 (Unlawful Contact with Minor) or 8 (Obscene and Other Sexual Materials) because he sent only a link to materials and not the materials themselves. The court will address each of these arguments in turn.

Counts 1 and 2 are based on Section 6312 of the Crimes Code, which reads, in relevant part, as follows:

Section 6312. Sexual abuse of children

(b) Photographing, videotaping, depicting on computer or filming sexual acts. – Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.

...

(d) Child pornography.—(1) Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

18 Pa.C.S. Sections 6312(b) and (d). Counts 6 and 7, Unlawful Contact with Minor, prohibit contact with a minor for the purpose of, as is relevant here, engaging in the conduct prohibited by Section 6312. 18 Pa.C.S Section 6318(a)(5).

Considering the plain meaning of the statute, the court finds Defendant guilty of the offenses alleged. He “caused ... a child under the age of 18 years to engage in a prohibited sexual act” intending that “such act may be ... depicted on computer” and he “intentionally view[ed]” a “computer depiction ... depicting a child under the age of 18 years engaging in a prohibited sexual act”. “Depict” means “to represent by a picture”. Webster’s New Collegiate Dictionary, G. & C. Merriam Company, 1974. The court thus believes that “depicted on computer” means a picture placed on a computer and “computer depiction” means a picture on a computer. The images transmitted through SKYPE were pictures.

Defendant argues that since the images were transmitted through streaming video and were not stored or otherwise saved they are not a computer depiction within the meaning of the statute. This argument is without merit. Defendant contends that in order to qualify under the statute the images must involve the use of a medium in which images of the prohibited acts are stored and disseminated, based on the statute’s purpose to “eradicate the production and supply of child pornography.” Commonwealth v. Diodoro, 970 A.2d 1100, 1107 (Pa. 2009). The statute also serves, however, to “end the abuse and exploitation of children”, Id., and including

images such as those involved in this case serves that purpose. In any event, the plain meaning of the words cannot be overlooked. Defendant's argument would have the court interpret the statute as referring to only certain processes or portions of the computer rather than simply "the computer" as a whole, and such would plainly be in contravention to the requirement that the court give the words of a statute their plain and ordinary meaning. *See Commonwealth v. Neckeraurer*, 255 A.2d 1281 (Pa. Super. 1992). Therefore, the court finds that the images transmitted in this case through SKYPE constitute computer depiction within the meaning of the statute.

With respect to Counts 5 (Unlawful Contact with Minor) and 8 (Obscene and Other Sexual Materials), the relevant sections of the Crimes Code make it unlawful for a person to "knowingly disseminate ... explicit sexual materials to a minor." 18 Pa.C.S. Sections 5903(c)(1) and 6318(a)(5). While not contesting the "explicit sexual" nature of the website to which the link sent by Defendant led, Defendant argues that he cannot be found guilty because he sent only a link and not the materials themselves, that the requirement that the person receiving the link take action to view the materials (click the mouse while the cursor is on the link) removes his conduct from the purview of the statute. This argument is analogous to arguing that if someone sends a pornographic magazine in a plain brown envelope, he cannot be found guilty because the person receiving the envelope must open it to remove the magazine, but the person sending the magazine with only an address label and no envelope commits a crime. This distinction makes no sense as clearly the person receiving the magazine, envelope or not, receives the materials. The court believes that sending a "link" to a pornographic website is the equivalent of sending the content of the website, and such conduct constitutes dissemination of explicit sexual materials under the statute.

VERDICT

AND NOW, this 22nd day of June 2012, for the foregoing reasons, the court hereby adjudicates Defendant as follows:

COUNT 1 – SEXUAL ABUSE OF CHILDREN – GUILTY
COUNT 2 – SEXUAL ABUSE OF CHILDREN – GUILTY
COUNT 3 – UNLAWFUL CONTACT WITH MINOR – GUILTY
COUNT 5 – UNLAWFUL CONTACT WITH MINOR – GUILTY
COUNT 6 - UNLAWFUL CONTACT WITH MINOR – GUILTY
COUNT 7 - UNLAWFUL CONTACT WITH MINOR – GUILTY
COUNT 8 – OBSCENE AND OTHER SEXUAL MATERIALS – GUILTY
COUNT 9 –CORRUPTION OF MINORS – GUILTY

If either party wishes to have a Pre-Sentence Investigation performed that request should be submitted to the Court immediately. Sentencing is deferred pending completion of a Sexual Offender Assessment to be performed by Townsend Velkoff. Sentencing is scheduled for **August 8, 2012, at 9:00 a.m.** in Courtroom number 2 of the Lycoming County Courthouse.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Kyle Rude, Esq.
Townsend Velkoff,
APO
Sheriff
Warden
Gary Weber, Esq.
Hon. Dudley Anderson