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24-P-710

Appeals Court

COMMONWEALTH vs. CHARLES WALROND.

No. 24-P-710.

Suffolk. June 9, 2026. - October 6, 2026.

Present: Shin, Ditekoff, & Tan, JJ.

Obscenity, Child pornography. Practice, Criminal, Probation.
Cellular Telephone.

Indictments found and returned in the Superior Court Department on April 6, 2022.

A final probation surrender hearing was had before Katie Rayburn, J.

Sarah Maria Unger for the defendant.
Kenneth E. Steinfield, Assistant District Attorney, for the Commonwealth.

DITKOFF, J. The defendant, Charles Walrond, appeals from an order of a Superior Court judge finding him in violation of a condition of probation that he not possess child sexual abuse

material (commonly known as child pornography).¹ We conclude that the judge reasonably determined that the defendant intentionally viewed child sexual abuse materials on his mobile telephone (phone) based on the presence of those materials in the cache of the phone, combined with his searches for teenage pornography and his prior conviction of possession of child sexual abuse materials. As a matter of first impression, we conclude that, at least for purposes of a probation condition prohibiting possession of child sexual abuse materials, intentionally viewing such materials on one's phone constitutes possession of those materials. Accordingly, we affirm.

1. Background. On August 26, 2021, Boston police and the Federal Bureau of Investigation executed a search warrant at the defendant's apartment and discovered several computer folders containing child sexual abuse materials. On September 20, 2022, the defendant pleaded guilty to possession of child sexual abuse material, G. L. c. 272, § 29C, and dissemination of child sexual abuse material, G. L. c. 272, § 29B. He was sentenced to three years of probation, the conditions of which included that the

¹ The modern trend is to replace the term "child pornography" with "child sexual abuse material," because the term "child pornography" trivializes materials that are incomparable with pornography consisting of images of consenting adults. See Moretti v. Thorsdottir, 157 F.4th 352, 365-366 (4th Cir. 2025) (Thacker, J., concurring). We follow the lead of the Superior Court judge and use the term "child sexual abuse material."

defendant "[s]hall not possess any images or videos of child sexual abuse material,"² and that the defendant "[s]hall have no contact with any child under the age of 18." The judge also required the defendant to allow the Department of Probation "to inspect and to search the defendant's phone and laptops" for "images of child sexual abuse material."

On October 3, 2023, a probation officer obtained the phone and contacted a Boston police detective to investigate the phone.³ After obtaining a search warrant, the investigating detective provided the phone to another detective, who used Cellebrite DI Ltd. digital forensic software to create a forensic extraction of the contents of the phone. The phone's browser history showed that the defendant had visited numerous pornography sites. Of particular note, the history included two entries with the title "Vteen videos nude video xxx porn self . . . ," including one dated October 3, 2023, the date that the probation officer obtained the phone.

² As the travel of this case demonstrates, the defendant's probation and rehabilitation would have benefitted greatly from more specific conditions, for example, prohibiting the viewing of images in addition to possessing them. As the case continued, judges modified the conditions and ordered the defendant not to view any pornography at all and not to possess any images, pornographic or not, of persons younger than seventeen.

³ The defendant stipulated to a violation of probation on that day. That violation finding is not before us.

The phone contained approximately 2,900 files containing nudity and approximately 1,400 "upskirt" images.⁴ Among those files were forty images and five video recordings on the phone that appeared to the forensic software to be child sexual abuse materials. The detective identified three images and two video recordings as being confirmed child sexual abuse materials.⁵ The forty images and five video recordings were saved in the defendant's Chrome and Telegram⁶ caches on the phone. "A cache is a 'computer memory with very short access time used for storage of frequently or recently used instructions or data.'" Commonwealth v. Cronin, 495 Mass. 170, 175 n.14 (2025), quoting Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/cache> [<https://perma.cc/7DSC-WTQY>].

The detective explained that the phone's cache "stores the data from where you have visited a site" to "give you a quicker response when using the site." The existence of images in the

⁴ "'Upskirting' is the practice of secretly photographing underneath a woman's dress or skirt." Commonwealth v. Robertson, 467 Mass. 371, 371 n.1 (2014).

⁵ The parties do not dispute that these images are child sexual abuse materials.

⁶ Telegram Messenger "is a messaging app[lication] that offers end-to-end encryption and also contains a diverse ecosystem of groups, channels, and in-app commerce." Securities & Exch. Comm'n v. Telegram Group Inc., 448 F. Supp. 3d 352, 359 (S.D.N.Y. 2020). Accord Commonwealth v. Delgado-Rivera, 487 Mass. 551, 562 n.9 (2021), cert. denied, 142 S. Ct. 908 (2022).

cache is not evidence that the user "clicked on them, enlarged them or otherwise exercised control over them." Files sent to the user through Telegram Messenger would appear in the cache as well, as might images posted in a Telegram Messenger chat room that the user was visiting. The detective was uncertain whether a user would need to see an image for it to be placed in the cache.

The defense expert testified that the Telegram Messenger application automatically downloads to its cache on the user's mobile telephone all images or video recordings posted in a chat room entered by the user, regardless of whether the user clicks on or views the files. If a user viewed a webpage that did not fit on the phone's screen, all images on the page might be stored to the browser's cache on the phone, even if the user did not scroll down to view all of them. Whether this would occur would depend on the programming and settings of the browser or website.

Most browsers allow the user to clear the cache manually; if "unmanipulated" by a user, items in some browsers automatically clear by themselves after thirty days. The expert believed that the Telegram Messenger application did not clear out items automatically, but only when the user cleared the cache. The expert further testified that, if the user clicked

on an image, a thumbnail image would be created.⁷ The extraction report in this case found no thumbnail images at all.

The judge ruled that the defendant had possessed child sexual abuse materials, violating the terms of his probation, based on the fact that child sexual abuse materials were found on his device, "combined with the fact that he had clearly done a search for teenage pornography." The judge did not revoke the defendant's probation; instead, the judge ordered that the defendant's probation would continue to the original end date of September 20, 2025, with a new condition, that "the defendant is not to do any pornography at all."⁸ This appeal followed.

2. Standard of review. "At a probation violation hearing, the Commonwealth bears the burden of proving a violation of a condition of probation by a preponderance of the evidence." Commonwealth v. Jarrett, 491 Mass. 437, 445 (2023). "In considering an appeal from a decision that a violation of

⁷ "[T]humbnail images are reduced, lower-resolution versions of full-sized images stored on third-party computers." Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1155 (9th Cir. 2007).

⁸ In December 2024, the defendant stipulated to a further violation of probation, apparently also related to possession of sexual images. At this point, a different Superior Court judge amended the defendant's conditions of probation to prohibit possession of any images of persons younger than seventeen. The defendant managed to avoid further violations and completed his probationary term. The case, nonetheless, is not moot. See Commonwealth v. Streeter, 50 Mass. App. Ct. 128, 131 (2000).

probation occurred, a reviewing court must determine 'whether the record discloses sufficient reliable evidence to warrant the findings by the judge[, by a preponderance of the evidence,] that [the probationer] had violated the specified conditions of his [or her] probation.'" Id. at 440, quoting Commonwealth v. Morse, 50 Mass. App. Ct. 582, 594 (2000).

3. Adequacy of the showing that the defendant intentionally viewed child sexual abuse materials on the phone. As the first step in determining whether the defendant possessed child sexual abuse materials, the judge here found that the defendant intentionally viewed child sexual abuse materials on the phone. The defendant challenges whether there was enough evidence to reach this conclusion.

Here, the defense expert testified that, under certain circumstances, images could be saved to the phone's cache without being viewed by the user. The judge, of course, was free not to credit the defense expert, see Commonwealth v. Camblin, 478 Mass. 469, 478 (2017), but was presented with no affirmative evidence to the contrary; the detective testified that he did not know whether it was possible for the cache to contain images that had not been viewed. In any event, the judge explained that the mere presence of cached images was not enough to convince her that the defendant intentionally viewed those images. Rather, the judge concluded that "the fact that

he was Googling or searching for on his computer teenage pornography . . . and the fact that he had child pornography in his cache shows the intent and subsequent possession of that." We conclude that this was a permissible inference for the judge to make.

As the testimony established, it is theoretically possible for images to be stored in a mobile telephone's cache without being viewed by the user. As the defense expert described, an image on the bottom of a long webpage or an image posted in a chat room could be stored in the cache without being viewed. In the context of child sexual abuse materials, it seems rather unlikely that a website unrelated to child sexual abuse would contain child sexual abuse materials only at the bottom of a webpage or that someone in a chat room not dedicated to illicit sexual images would unexpectedly post child sexual abuse materials. It is particularly unlikely that the defendant would have unwittingly obtained more than forty unviewed files containing child sexual abuse material, especially as the cache storage is not indefinite.⁹

More important, as the judge stated, the defendant's two browser history entries titled "Vteen videos nude video xxx porn

⁹ In this regard, twenty-four images were in the browser cache. The expert testified that such caches are typically cleared within thirty days.

self . . ." were powerful evidence refuting this innocent explanation. The defendant's purposefully seeking video recordings of nude teenagers strongly rebuts his litigation theory that he unknowingly received child sexual abuse materials while searching for adult pornography.

In this regard, we find Wise v. State, 364 S.W.3d 900 (Tex. Crim. App. 2012), persuasive. There, police "discovered . . . ten images of child pornography in the free space of [the defendant's] computer." Id. at 907. The court found that this, when paired with the defendant's established sexual interest in children and his possession of cached files referring to "young porn" and "teen sex," provided an adequate basis for a jury to reasonably infer possession. Id. at 907-908.

Similarly, in Commonwealth v. Kendrick, 446 Mass. 72, 73 (2006), a defendant was required as a condition of probation not to have contact with minors. Despite this, he participated in an antique car show where children were predictably present. Id. The Supreme Judicial Court upheld a probation violation finding because the defendant "failed to remove himself from close proximity to those children. In fact, his actions could be interpreted as designed to encourage children to interact with him." Id. at 77. Further, "[a]ny doubt that the conduct was forbidden by the probation condition is dispelled by its similarity to his conduct during his prior offenses." Id.

Here, not only did the defendant have child sexual abuse materials present in the cache of the phone, but also the evidence demonstrated that he "had . . . done a search for teenage pornography." He had a demonstrated interest in child sexual abuse materials, as evidenced by his prior conviction. Accordingly, the judge reasonably found by a preponderance of the evidence that the defendant intentionally viewed child sexual abuse materials on the phone.

4. Whether intentional viewing on a mobile telephone constitutes possession. Here, the probation condition (at the time) was not that the defendant refrain from viewing child sexual abuse material, but rather that he not possess such material. The next question, therefore, is whether the defendant willfully possessed child sexual abuse materials by intentionally viewing them on the phone. That question has not been addressed in our case law, but has been discussed at length in Federal case law.¹⁰

In United States v. Ramos, 685 F.3d 120, 132 (2d Cir.), cert. denied, 568 U.S. 995 (2012), the United States Court of Appeals for the Second Circuit held that viewing child sexual

¹⁰ In 2008, Congress amended 18 U.S.C. § 2252A(a)(5)(B) to also prohibit "knowingly access[ing]" child sexual abuse materials with the intent to view them, eliminating the issue. See Pub. L. No. 110-358, Title II, § 203(b)(2), 122 Stat. 4001, 4004. Thus, all helpful Federal cases involve conduct predating that amendment.

abuse materials on a computer granted the user control over those materials, and that such control supported finding possession. "Hence, as the evidence showed below, an individual who views images on the internet accepts them onto his computer, and he can still exercise dominion and control over them, even though they are in cache files." Id. The jury there permissibly found that the defendant possessed the child sexual abuse materials he viewed because he "had some control over the images even without saving them -- he could view them on his screen, he could leave them on his screen for as long as he kept his computer on, he could copy and attach them to an email and send them to someone, he could print them, and he could (with the right software) move the images from a cached file to other files and then view or manipulate them off-line." Id. at 131-132.

In United States v. Romm, 455 F.3d 990, 998 (9th Cir. 2006), cert. denied, 549 U.S. 1150 (2007), the United States Court of Appeals for the Ninth Circuit held that a jury could find that the defendant possessed child sexual abuse materials by "enlarging them on his screen" and viewing them "for five minutes before deleting them." The court reasoned, "In the electronic context, a person can receive and possess child pornography without downloading it, if he or she seeks it out and exercises dominion and control over it." Id. "While the

images were displayed on [the defendant's] screen and simultaneously stored to his laptop's hard drive, he had the ability to copy, print, or email the images to others." Id.

In United States v. Kain, 589 F.3d 945, 950 (8th Cir. 2009), the United States Court of Appeals for the Eighth Circuit held that a "computer user who intentionally accesses child pornography images on a web site gains actual control over the images, just as a person who intentionally browses child pornography in a print magazine 'knowingly possesses' those images, even if he later puts the magazine down without purchasing it." Thus, "the evidence was sufficient for the district court to reasonably find, beyond a reasonable doubt, that [the defendant] knowingly possessed the images of child pornography found on his computer." Id.

Moving beyond Federal case law, in Marsh v. People, 389 P.3d 100, 104 (Colo. 2017), the Supreme Court of Colorado addressed whether a jury could find that the defendant possessed child sexual abuse materials he viewed on his computer. The court held that, "when a computer user seeks out and views child pornography on the internet, he possesses the images he views." Id. at 110.

Like our colleagues in these jurisdictions, we are persuaded that a trier of fact may permissibly find that a person intentionally viewing child sexual abuse materials on

electronic devices possesses those materials. Just as a person possessing a magazine has the ability to control the images in that magazine, a person possessing a mobile telephone has the ability to control the images that person summons to the mobile telephone's screen. Of course, just like with a magazine, a person intentionally possesses only those images that the person knew about and intended to view. See Commonwealth v. Guastucci, 486 Mass. 22, 32 n.5 (2020) ("A computer user who, intentionally or inadvertently, places a file in a cloud storage service may have intentionally acquired that file and stored it on his or her computer, or may have inadvertently saved it to cloud storage through browsing an innocuous website"); Commonwealth v. Fernandez, 48 Mass. App. Ct. 530, 532 (2000) ("The essential elements of . . . possession are knowledge plus ability and intention to control"). Here, the evidence supported the judge's finding that the defendant willfully violated his conditions of probation by intentionally viewing child sexual abuse materials.¹¹

¹¹ It does not follow from our conclusion that a criminal prosecution under G. L. c. 272, § 29C, could necessarily be sustained solely by evidence that a defendant intentionally viewed child sexual abuse materials on a mobile telephone. Although our discussion would certainly inform that question, we have no occasion to determine whether evidence adequate to show possession by a preponderance would be sufficient to show possession beyond a reasonable doubt. Moreover, the judge here merely needed to conclude that the defendant possessed some child sexual abuse materials to find him in violation of the

Order dated December 29,
2023, finding a violation
of probation affirmed.

conditions of his probation. Depending on the particular facts, it may be necessary for a criminal prosecutor to demonstrate that the defendant possessed particular images, a much harder task. See United States v. Dobbs, 629 F.3d 1199, 1204 (10th Cir. 2011).