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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. EVAN RONALD SHARP, Defendant and Appellant.	2d Crim. No. B293989 (Super. Ct. No. 2015023387) (Ventura County)

Appellant Evan Ronald Sharp's computer hard drive contained 80 pornographic images of children and infants. A jury convicted him of possessing child pornography (CP).[1] He

[1] It is a felony to "knowingly possess[ ] or control[] any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves

contends it was "inadvertent possession," which precluded a finding of "knowing" possession.

Substantial evidence supports the finding that appellant knowingly possessed CP. He transferred CP from another device and placed it in a hidden folder titled "Lolis," a term for sexually abused girls. His possession of CP in two uncharged incidents is circumstantial evidence that his possession of CP in this case is not "inadvertent." Appellant admittedly imported animated pornography ("the anime") depicting sexual abuse of child characters onto his computer at the same time as the CP. The trial court did not abuse its discretion by allowing the jury to view the anime. Appellant's placement of the anime and CP in a hidden folder, sorted by subject matter, supports the element of knowledge and his interest in child sexual abuse. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2014, Microsoft reported an upload of CP to a national center for exploited children. Government investigators linked the CP to appellant's internet address. Appellant was 24 years old when Ventura County deputies executed a search warrant at his home in January 2015.

Appellant's father Warren Sharp was home when deputies arrived. Unprompted, Mr. Sharp asked if they were there about computers and "[l]ookin' at child pornography or something?" Asked what he meant, Mr. Sharp replied that "four or five years ago" some "child pornography . . . cookies" appeared on the

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the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct . . . ." (Pen. Code, §311.11, subd. (a).)

computer: "I saw it and I said listen, I said I don't want this. . . . I looked around and some of the stuff came back as child pornography. . . . And I jumped [appellant's] case about it. And we figured it was him. And he didn't, he didn't deny it."

An officer showed Mr. Sharp the CP image reported by Microsoft. Mr. Sharp became angry and said, "goddamn it, this is exactly what I told him I didn't want." He added, "you just give [*sic*] me a golden opportunity to jump all over his fuckin' case about this. . . . [D]idn't I tell you years ago when he was in high school, and he fuckin' did it anyways."

Appellant admitted that his father found CP of "little girls" appellant downloaded on the computer. He explained that he was a teenager or pre-teen and it "was kind of an age thing. . . . I wanted to look at my age group."

At trial, Mr. Sharp said he erred by telling officers that he caught appellant with CP "in high school" or "four or five years ago." He insisted appellant was nine when he was scolded for possessing CP. Mr. Sharp testified that the images depicted "[u]nderaged children, people having sex with them;" the victims appeared to be five or six years old. When confronted by his parents, appellant confessed the CP was his.

Appellant told officers that Microsoft blocked his cloud account after it found pictures of "child nudity." He clicked on a link containing CP while browsing the 4Chan website, describing the image as "just a family photo" of "nudists." It shows an obese naked man holding his penis in one hand and a naked child in his other hand, with her exposed vagina near his penis (the 4Chan image). Officers showed appellant a copy of the 4Chan image; he confirmed it was the one he saw. Appellant doubted that his

father saw the 4Chan image "unless it was one of those that was previously downloaded." [2]

Appellant said the 4Chan image is the only CP he viewed in the last year but insisted, "I didn't download it, I didn't save it, I didn't do anything with that photo but exit out of the . . . browser." However, the prosecution expert testified that merely clicking on a link would not move the 4Chan image to a cloud account. Appellant had to take multiple steps to download the image from 4Chan and transfer it to his cloud account into a photo viewing program that is not capable of internet browsing. At a minimum, he would have to click on the 4Chan image and drag it to his cloud account. The image was on a "Jumplist" that opens files quickly. No one but appellant uses his computer.

When officers asked if there is incriminating material on his computer, appellant replied "[m]aybe," noting that he copied a 50 to 100 gigabyte thumb or hard drive from a friend. Appellant denied knowing if CP was within the material but told officers, "I hid the file. I dumped it in a whole mess of older—other files and then hid the folder."

A forensic examination corroborated that appellant dumped a large amount of material into older files then hid it. Appellant explained that he hid the folder "in case someone accidentally was looking around and stumbling. I don't want anybody to know what I like per se." He assured officers that "a good like 95 . . . percent" of the material shows adults.

Officers seized appellant's computer to examine it in a lab. They found over 15,000 images in a hidden folder on a hard drive. Most is sexual anime depicting child characters; it also includes

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[2] Appellant's possession of the 4Chan image and images of "little girls" years earlier were uncharged offenses.

nude photos of appellant's women friends and a sexual fantasy called "Evan's Story." One of the women testified that she sent appellant intimate photos and wrote the story for him in 2010. Non-pornographic images of the same woman were kept in unhidden places on appellant's computer.

One of appellant's hidden subfolders is called "Lolis," short for "Lolitas," a term commonly used to describe young sexual abuse victims. The Lolis subfolder contains 80 images of men raping, sodomizing and orally copulating victims younger than 10; some are infants under the age of one. There are bestiality images. The police expert determined that image 1-16 in appellant's Lolis subfolder was opened and viewed in the Microsoft photo viewer program; it shows a young child being raped by a man.

The anime and CP were transferred onto appellant's hard drive from another device on February 17, 2014. His computer shows only the folder creation date "because . . . the operating system no longer tracks the access dates, no matter how many times files may have been opened . . . ." Images may be opened repeatedly, yet February 17, 2014 is the only date that shows, "no matter how many times it's accessed" after creation. The police expert thus could not tell how many times the images were opened after they were acquired.

Appellant's expert agreed that the "last access" is always February 17, 2014, the date the hidden folder containing the CP and anime was created. He also agreed that almost none of the adult pornography on appellant's computer was hidden, including icons for adult websites on the desktop. Collectively, the pornography on appellant's computer, both real people and anime, is child focused.

Appellant was charged with possessing CP. (Pen. Code, §311.11, subd. (a).) The jury found him guilty. The court suspended imposition of sentence and placed appellant on felony probation for five years. He was ordered to serve 360 days in county jail.

Motion in Limine

Appellant moved to exclude the anime –the animated images of child subjects in sexual situations—found on his computer. He argued that it is legal to possess "anime pornography" and prejudicial because it was likely to provoke an emotional response in the jury. The prosecutor argued that virtually all the 15,000 anime images on appellant's computer depicted children and were stored in the same hidden folder as actual CP, which proves appellant's sexual interest in children and his intent. The court ruled that the probative value of the anime "far outweighs any prejudice to the defense" because it shows appellant's interest in CP.

DISCUSSION

1. Sufficiency of the Evidence

Our role in reviewing the sufficiency of the evidence is limited to determining if reasonable, credible evidence of solid value supports the conviction. We review the record in the light most favorable to the judgment and do not reweigh the evidence or reassess witness credibility. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890; *People v. Petrovic* (2014) 224 Cal.App.4th 1510, 1517 (*Petrovic*).) Circumstantial evidence is as compelling as direct evidence. (*People v. Bloom* (1989) 48 Cal.3d 1194, 1208.)

The jury was instructed that "the People must prove that the defendant knowingly possessed or controlled matter depicting a person under 18 years of age engaged in or simulating sexual

conduct." There is no dispute that appellant's hard drive contained images of children under age 18, including infants, being sexually abused.

The dispute is whether appellant "knowingly" possessed or controlled CP. The jury was instructed that "'Knowingly' is defined as being aware of the character of the matter." The instruction continues, "The defendant is not guilty of possession of child pornography if he did not have the mental state required to commit the crime because he reasonably did not know a fact or reasonably and mistakenly believed a fact. [¶] If you find that the defendant believed that he did not possess child pornography on his computer and if you find that belief was reasonable, he did not have the mental state required for possession of child pornography. [¶] If you have a reasonable doubt about whether the defendant had the mental state required for possession of child pornography, you must find him not guilty of that crime."

The jury disbelieved appellant's defense of being unaware he had CP. The record supports the jury's finding that he knowingly possessed CP in a hidden "Lolis" folder.

Direct evidence shows that on February 17, 2014, appellant copied 80 CP images and 15,000 anime images depicting sexual abuse of child characters. He titled the CP subfolder "Lolis," which pedophiles use to describe child sexual abuse victims. He admittedly imported the material from an external drive. Afterward, one of the CP images was viewed on appellant's photo viewer program. Appellant told officers that he is the only person who uses his computer. (*Petrovic*, *supra*, 224 Cal.App.4th at p. 1513 [defendant denied possessing CP but was the only person using a computer on which CP was accessed].)

A defendant knowingly possesses or controls CP "by actively downloading and saving it to his computer, by printing it or by e-mailing it." (*Tecklenburg v. Appellate Division* (2009) 169 Cal.App.4th 1402, 1419, fn. 16 (*Tecklenburg*).) Consumers who receive CP perpetuate the images' existence, directly victimize children by invading their privacy and provide an economic motive for creating the material. (*In re Grant* (2014) 58 Cal.4th 469, 477-478.)

The record supports a conclusion that appellant imported CP from another device onto his computer and knew it was there because he viewed at least one image. (*People v. Mahoney* (2013) 220 Cal.App.4th 781, 794 [jury could reasonably conclude defendant knew he possessed CP because expert testimony showed he viewed it on his computer].) Appellant did not credibly claim unawareness of the content.

Strong circumstantial evidence supports the jury's finding that appellant knowingly possessed the 80 CP images.

First, appellant has a history of possessing CP. Mr. Sharp spontaneously asked if officers came to search computers for "child pornography" and volunteered that appellant downloaded CP "in high school" or "four or five years ago." Mr. Sharp found images depicting five- or six-year-old children having sex with adults; appellant confessed and was reprimanded. Appellant conceded that Mr. Sharp found and deleted appellant's download of CP showing "little girls." In 2014, Microsoft reported a CP image in appellant's cloud account. Appellant told officers the image came from 4Chan and described it from memory. He denied saving it but an expert testified that appellant had to take affirmative measures to put it in his cloud account.

The uncharged offenses allowed the jury to conclude that appellant is predisposed to possess CP depicting very young children and infer that his possession of the CP images charged in this case was knowing, not inadvertent. One image was viewed in appellant's photo viewing program, yet appellant did not immediately delete it or the other 79 CP images. (Compare *In re Grant*, *supra*, 58 Cal.4th at p. 479 [no offense occurs if a person innocently receives unsolicited material, discovers it is CP and immediately destroys it or reports it to law enforcement].)

Second, appellant showed consciousness of guilt. He falsely told officers that "95 percent" of the 15,000 images he imported from another device shows adults. In reality almost none of it shows adults. (*Petrovic*, *supra*, 224 Cal.App.4th at p. 1517 [false statement to an officer shows consciousness of guilt].)

Further, appellant admittedly "hid the folder" containing CP to prevent its detection, though he is the only person who uses his computer. In *Petrovic*, the defendant used sophisticated means to hide computer files containing CP. He was caught by his parole officer, who discovered 19 CP videos in a temporary internet folder (TIF) automatically saved by Petrovic's computer. (*Petrovic*, *supra*, 224 Cal.App.4th at pp. 1512-1513.) He argued that there was no evidence he knowingly possessed the TIFs found on his computer. (*Id.* at p. 1514.)

This court held in *Petrovic* that Penal Code section 311.11 achieves a remedial purpose by covering the use of computers to display CP images. (*Petrovic*, *supra*, 224 Cal.App.4th at p. 1514.) Petrovic violated the statute by intentionally using his computer to find, access and display CP, even if he was unaware of the TIFs. (*Id.* at pp. 1516-1517, citing *Tecklenburg*, *supra*, 169 Cal.App.4th at pp. 1418-1419.) Petrovic's use of sophisticated

techniques to conceal CP was probative of his intent and disproved an inadvertent or unintentional acquisition or possession of CP. (*Petrovic* at pp. 1517-1518.) Here, appellant's trove of CP was secreted among old files; forensic analysis was needed to unearth it. This tends to prove appellant's intent and disprove inadvertent acquisition or possession of CP.

Appellant relies on *U.S. v. Kuchinski* (9th Cir. 2006) 469 F.3d 853 and other federal cases. However, this court held that Penal Code section 311.11 is broader than the federal statute at issue in *Kuchinski*. (*Petrovic*, *supra*, 224 Cal.App.4th at pp. 1514-1515.) The federal cases are factually distinguishable: they discuss defendants who browsed the internet and unknowingly accumulated TIFs. By contrast, appellant deliberately transferred 15,000 images from another device and placed them in hidden folders, naming one "Lolis," a descriptive term for the CP it contained. Appellant controlled the 20-minute transfer of the material from one device to his hard drive; the material was sorted, with CP in a different subfolder from the anime.

2. Admission of Evidence

Appellant claims prejudice from the court's admission of the following material contained in the hidden folders on his computer hard drive: (1) most of the CP; (2) anime depicting sexual abuse of child characters; and (3) sexual images of appellant's women friends. He also challenges testimony from the prosecution expert regarding 4Chan. The court has broad discretion to admit photographic and pornographic evidence; its exercise of discretion will not be disturbed on appeal unless the probative value of the material is substantially outweighed by the likelihood it will have a prejudicial effect. (Evid. Code, § 352;

People v. Scheid (1997) 16 Cal.4th 1, 18; *People v. Merriman* (2014) 60 Cal.4th 1, 78-80.)

The CP on appellant's computer hard drive formed the basis of the criminal charge against him and was admissible. Defense counsel objected that the court should exclude 79 of the 80 CP images because appellant opened and looked only at image 1-16. His argument fails because the law does not require the defendant to be able to access, view, manipulate or modify CP images on the computer. (*People v. Mahoney*, *supra*, 220 Cal.App.4th at p. 795.) Although appellant looked at image 1-16 in the Microsoft photo viewer program, the experts agreed that the operating system does not track how many times appellant accessed the CP folder after it was created on February 17, 2014. Image 1-16 was in the same hidden "Lolis" folder in which 79 other CP images were collected.

The other evidence to which appellant objected was admitted to show knowledge, intent and absence of mistake. (Evid. Code, § 1101, subd. (b).) His extensive collection of anime depicting male characters sexually abusing female child characters was transferred to his hard drive at the same time as live CP. The anime/CP placed in separately-labeled hidden folders showed his intent to possess CP and interest in child sexual abuse. (*People v. Memro* (1995) 11 Cal.4th 786, 864-865 [allowing sexually explicit photos and magazines of prepubescent and young males to show defendant "had a sexual attraction to young boys and intended to act on that attraction"]; *People v. Avila* (2014) 59 Cal.4th 496, 519 [following *Memro*].)

The jury was instructed that hand-drawn or computer-generated pornographic drawings were found on appellant's computer and received in evidence but "'[i]t is not a crime to

possess drawings or cartoons depicting child characters engaged in or simulating sexual conduct." The jury was also instructed that "certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other." We must presume that the jury followed the instructions (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1374) and did not convict appellant for possessing the anime.

Appellant's collection of sexual images of women friends were in his hidden folder, where CP was similarly located. Appellant's care in hiding intimate photos of friends—but *not* hiding non-pornographic images of the same women or adult pornography showing strangers—supports the inference that appellant knew what he was doing when he used sophisticated methods to hide CP. He differentiated between material that had to be hidden (CP and nude photos of friends) and non-intimate images or celebrity pornography that was not hidden.

Appellant was not unduly prejudiced by the prosecutor's use of an expert to rebut appellant's claim that he did not download or save the 4Chan image. The expert demonstrated the falsity of appellant's claim by showing that the 4Chan image could not be saved automatically to appellant's cloud account by simply putting the cursor over it or clicking on it. The expert testified that 4Chan is a source of CP.

The evidence against appellant was overwhelming, so that the claimed evidentiary errors were harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) He admitted to downloading CP images of "little girls," meaning five- or six-year old girls having sex with adults. He explained that he was interested in looking "at my age group," but five- or six-year-olds were not his age group, regardless of whether he was 19 (as Mr. Sharp told

officers), a teenager (as appellant told officers), or 9 (as Mr. Sharp claimed at trial). Appellant admitted to viewing the 4Chan image; his denials of saving it to his cloud account were not credible. His interest in child sexual abuse can be inferred from hidden folders of 15,000 pornographic images showing animated child abuse. Labeling 80 images of hardcore CP as "Lolis" indicated knowledge that the folder contained CP and nothing else. It is certain that he viewed one of the 80 images, and he had access to all the others, though the computer does not keep a record of each access.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Teresa Estrada-Mullaney, Judge*
Superior Court County of Ventura

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

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* Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.