STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 30, 2017)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**No. P2-2015-2425A**
	:	
RUDY L. MUNOZ	:	

DECISION

MONTALBANO, J. The State of Rhode Island (State) has charged Rudy L. Munoz (Defendant) with one count of transfer of child pornography in violation of G.L. 1956 §§ 11-9-1.3(a)(2) and 11-9-1.3(b) and one count of possession of child pornography in violation of §§ 11-9-1.3(a)(4) and 11-9-1.3(b). The Defendant appeals a Superior Court Magistrate's denial of a Super. R. Crim. P. 9.1 Motion to Dismiss and four interrelated motions. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts

The following facts are gleaned from the criminal information package. Detective Kevin Harris (Det. Harris), a detective with the Coventry Police Department and member of the Rhode Island Internet Crimes Against Children (ICAC) Task Force,[1] informed Detective Lieutenant Stephen Riccitelli (Det. Lt. Riccitelli or Detective Lt. Riccitelli)[2], also a member of ICAC, that

[1] The Rhode Island State Police oversees the Rhode Island ICAC Task Force. The ICAC Task Force investigates the sharing of child pornography over peer-to-peer networks. The ICAC Task Force is part of a national network of multi-agency and multi-jurisdictional task forces dedicated to combatting Internet and technology-related crimes against children.

[2] At the time, Det. Lt. Riccitelli had been a member of the North Smithfield Police Department for eighteen years.

on December 24, 2014, Det. Harris connected directly to Internet Protocol (IP)[3] address 68.0.239.40 on a peer-to-peer file sharing network[4] and downloaded a number of suspected child pornography files. After watching one of the videos, Det. Lt. Riccitelli determined that its subject matter, consisting of a prepubescent female giving an adult male oral sex, constituted child pornography under § 11-9-1.3.

Based on his training and experience, Det. Lt. Riccitelli knows that peer-to-peer networks are typically free, easily downloadable over the Internet, and used to share electronic files with other users in the network. In addition, Det. Lt. Riccitelli knows that users often utilize the peer-to-peer network to share and obtain child pornography. The name of the file viewed by Det. Riccitelli is "pthc pedo rare deepthroat 5yo wow no gaging.mpg." In his affidavit contained in the criminal information package, Det. Lt. Riccitelli explained that "pthc" stands for "pre-teen hard core." He further explained that peer-to-peer network users can enter text-based search terms, such as "pthc," to obtain a list of other users' files available for download that match the search term. These files include the users' IP addresses. A user can then select a specific file from the list to download.

Through the American Registry of Internet Numbers, Det. Lt. Riccitelli determined that Cox Communications, Inc. owned IP address 68.0.239.40. On February 5, 2015, in response to an administrative subpoena, Cox Communications, Inc. provided the name and address for the IP address subscriber: Rudy Munoz, 120 Elmdale Avenue, Providence, Rhode Island 02909. Through research and surveillance, Det. Lt. Riccitelli confirmed that two individuals named Rudy Munoz with two different dates of birth resided in the single-family residence located at

[3] An IP address is a unique number, often assigned to a subscriber by an Internet Service Provider, which acts as an identifier for a computer that is connected to the Internet.
[4] By downloading file sharing software, a computer user can access peer-to-peer networks where participants can share files with interconnected computers.

120 Elmdale Avenue and that a car registered under the name Rudy Munoz had been parked in the residence's driveway.

On March 13, 2015, a search warrant issued for the person of Rudy Munoz, the 120 Elmdale Avenue premises, all computer hardware, computer software, computer-related documentation, records, documents, material and passwords or other data security devices related to the acquisition, possession, and transfer of child pornography. In addition, the search warrant provided for an on-site forensic preview and off-site forensic analysis of seized electronic evidence. On March 17, 2015, at 6:30 A.M., members of the ICAC Task Force, including Det. Lt. Riccitelli, executed the search warrant. Upon entering 120 Elmdale Avenue, ICAC Task Force members encountered Rudy L. Munoz (Defendant), his mother, his brother, his girlfriend, and his father, who is also named Rudy Munoz. Detective Lt. Riccitelli explained to the occupants that the ICAC Task Force had a search warrant pursuant to an ongoing child pornography investigation.

At that time, Det. Lt. Riccitelli did not know which Rudy Munoz, the son or the father, was the subscriber assigned to the IP address. Detective Lt. Riccitelli decided that he would interview Defendant first. Before the interview began, Det. Lt. Riccitelli read Defendant his Miranda rights. See Miranda v. Arizona, 384 U.S. 436, 456, 467 (1966). After reading and signing the rights form, Defendant confirmed that he understood his rights and expressed his willingness to talk with the detectives. Detective Macera (Det. Macera) and Det. Lt. Riccitelli interviewed Defendant in the bedroom. The interview was audio recorded, transcribed, and included in the criminal information package. See Witness Statement of Defendant. During the interview, Det. Lt. Riccitelli asked Defendant if he ever used any file sharing software. Defendant responded, "I had one, but I removed it." Id. at 13. He then told the detectives that he

used "Shareaza" and has "BitComet" on his newer computer. Id. at 14. He explained to detectives that file sharing software allows users to get files in "bits and pieces . . . from different people to -- to view." Id. at 15. Detectives then asked the Defendant if he looked at images or videos of child pornography on his computer or cell phone. Id. at 18. Defendant responded, "[c]ell phone, no. Computer, once. But I -- I tried to delete it." Id. He told the detectives it was a video depicting "a young girl and a guy and I delete [sic] it when I saw it." Id. He further stated that "[i]t was just a blow job, and then I d- deleted it." Id. at 19. The detectives then asked the Defendant the age of the girl in the video. Id. He responded, "[a]round twelve or something I think, eleven? Twelve/eleven." Id. Detective Lt. Riccitelli asked Defendant what search terms he entered to find the video on the peer-to-peer network. Id. at 20. He responded that he searched for "[y]oung girl giving blow jobs." Id. When asked if he had videos or pictures, he responded, "[n]ot pictures, I have videos usually." Id. at 30. He was asked how many times he has downloaded pictures or videos of child pornography. Id. at 25. He stated "[a]round twenties [sic]." Id. at 29. He then told the detectives that the average age of the girls in the videos he has viewed is "[t]welve to sixteen" and that he entered "twelve-year-old or fourteen-year-old" as his search terms on file sharing software. Id. at 30, 35. He also described the video that had been obtained by Det. Harris from the IP address assigned to 120 Elmdale Avenue as depicting a pre-pubescent female giving an adult male oral sex. Id. at 19.

After the interview, Det. Lt. Riccitelli concluded that Defendant's father, Rudy Munoz, was the IP address subscriber and that Defendant, Rudy L. Munoz, was the individual in possession of and transferring child pornography. Defendant was taken into custody and transported to the Lincoln Woods State Police barracks. Police seized one HP Pavilion laptop, one Sager laptop, and one HTC cell phone.

The digital forensic report contained in the criminal information package notes that on April 20, 2015, a forensic examination of the HP Pavilion laptop uncovered seventy-five deleted images of child pornography "depict[ing] nude prepubescent females engaged in sexual acts, includ[ing] bondage, and/or the graphic exhibition of their genitals." Digital Forensic Examination Report, at 1. The forensic report also includes descriptions of three of the seventy-five images: (1) depicting "a nude prepubescent female in a bathtub being urinated on by an adult male[;]" (2) depicting "a prepubescent female performing oral sex on an adult male while handcuffed[;]" (3) depicting "a nude prepubescent female being vaginally penetrated by an adult male's penis." Id. at 3. The forensic analyst reported that these images were found in unallocated space on the HP Pavilion laptop and obtained through a data carving process. Id. According to the forensic analyst, files located in a computer's unallocated space contain no metadata and, though they may have once been accessible, they are no longer reachable by the user. Id.

II

Travel

On July 31, 2015, the State filed a criminal information against Defendant charging him with (1) the transfer of child pornography in violation of §§ 11-9-1.3(a)(2) and 11-9-1.3(b) and (2) the possession of child pornography in violation of §§ 11-9-1.3(a)(4) and 11-9-1.3(b). On September 16, 2015, Defendant filed a Super. R. Crim. P. 9.1 motion to dismiss the criminal information along with a supporting memorandum of law. On October 16, 2015, Defendant filed a supplemental memorandum in support of his motion to dismiss.

On November 16, 2015, Defendant filed seven motions: (1) "Motion for an order that the prosecution shall, in their response to Defendant's Motion to Dismiss the information, state their

proposed jury instructions for the two crimes charged under R.I.G.L. 11-9-1.3[;]" (2) "Motion for the prosecution to be ordered to obtain comprehensive immunity for defense counsel and defense experts, failing which the case will be dismissed[;]" (3) "Motion . . . for the Court and the prosecution to explain, precisely, what the defense can lawfully do to defend Mr. Munoz in this case, consistent with his rights to effective assistance of counsel and a fair trial[;]" (4) "Motion to exclude from the trial any and all imagery of child pornography offered by the prosecution[;]" (5) "Motion . . . for the prosecution to produce the source code of the software the police allegedly used to download alleged child porn from the Defendant's computer[;]" (6) "Discovery Motions: for an opportunity to inspect and test the seized computers and imagery, for the prosecution's expert's full report, and for the prosecution expert's C.V.[;]" and (7) "Motion . . . for the prosecution to be required to prove, by expert testimony, at a preliminary evidentiary hearing before trial, that the alleged child pornography imagery is of actual child pornography not of virtual child pornography[.]" In addition, Defendant filed a second supplemental memorandum in support of his motion to dismiss.

On January 4, 2016, Defendant filed his third supplemental memorandum along with "Defendant's motion and memo that the prosecution be ordered to declare immediately its supporting inductive principles for its two inferential claims that there is probable cause that: 1) *actual* child porn was seized, and, 2) that the Defendant *knew* the seized imagery was actual child porn[.]" On June 7, 2016, Defendant filed his fourth supplemental memorandum. On July 13, 2016, Defendant filed his fifth supplemental memorandum along with a "Motion to transmit images in the Superior Court courtroom, during a probable cause hearing, in order to support the Defendant's Motion to Dismiss the case for lack of probable cause[.]"

On July 14, 2016, the State filed its objection to Defendant's motion to dismiss. On July 27, 2016, Defendant filed his sixth supplemental memorandum. On August 22, 2016, Defendant filed his seventh supplemental memorandum. On September 7, 2016, Defendant filed his eighth supplemental memorandum. In addition, he filed a motion for four already filed and served motions to be heard before the probable cause motion is ruled upon, including the following: motion that the State provide immunity for defense counsel and seek immunity for defense counsel under federal law; motion that the Attorney General and Judge explain how defense counsel can zealously do his defense job without immunity; motion to show Judge computer-generated imagery Youtube videos in court; and motion that State provide its proposed jury instructions. On September 19, 2016, Magistrate McBurney, as requested by Defendant, heard the four motions prior to his probable cause determination. The Magistrate ultimately denied these motions. Subsequently, the Magistrate denied Defendant's Super. R. Crim. P. 9.1 motion to dismiss for lack of probable cause. No orders were entered at that time.

On October 6, 2016, Defendant filed a notice of appeal of the Magistrate's denial of his motion to dismiss. On October 14, 2016, Defendant filed a supplemental notice of appeal and index of remaining appealed issues. On October 17, 2016, Defendant filed the same notice of appeal and supplemental notice of appeal and index of remaining appealed issues in Kent County. Three days later, he again filed the same notice of appeal and supplemental notice of appeal and index of remaining appealed issues in Providence County. On January 30, 2017, Defendant filed his ninth supplemental memorandum. On February 14, 2017, the State filed its objection to Defendant's motion to dismiss. On February 27, 2017, Defendant filed a motion and supporting memorandum to show computer-generated-imagery (CGI) video images in the Superior Court to Justices Montalbano and Matos, in support of his appeal against his denied

motion to dismiss, and in support of his other appeals (against his other denied and unaddressed motions). On the same date, Defendant filed a memorandum in response to the State's objection.

On April 13, 2017, Defendant refiled his second, fifth, sixth, and seventh memoranda with this Court. He also refiled his "Motion to transmit images in the Superior Court courtroom, during a probable cause hearing, in order to support the Defendant's Motion to Dismiss the case for lack of probable cause" and his "Motion . . . to show CGI video images in the Superior Court, to Justices Montalbano and Matos, in support of his appeal against his denied Motion to Dismiss, and in support of his other appeals (against his other denied and unaddressed motions)[.]" In addition, Defendant refiled his response memorandum to the State's objection.

On June 1, 2017, the Magistrate entered orders for the Defendant's motions previously heard and denied on September 19, 2016, including (1) denial of motion that Attorney General provide immunity from state prosecution and seek immunity from U.S. Attorney General's Office for defense counsel; (2) denial of motion that Attorney General and Judge explain how defense counsel can zealously do his job without immunity from federal and state prosecution; (3) denial of motion to show the Judge in Court two hyper-realistic computer-generated-imagery Youtube videos as relevant to probable cause motion to dismiss; (4) denial of motion that at the probable cause stage, the Attorney General provide its proposed jury instructions as to elements of crimes charged; and (5) denial of motion to dismiss.

On June 6, 2017, Defendant timely refiled his notice of appeal along with his supporting memorandum after the Magistrate entered the five separate orders. In addition, Defendant filed a motion that the State make a copy of the seized evidence in this case and deliver the copy to Defendant's expert in Oregon. The docket sheet indicates that on June 13, 2017 (date stamped

June 19, 2017), Defendant again filed his notice of appeal of the Magistrate's orders and supplemental memorandum.

III

Standard of Review

A

Review of a Magistrate's Decision

The Superior Court's review of Administrator/Magistrate decisions is governed by § 8-2-11.1(d). Section 8-2-11.1(d) provides:

> "A party aggrieved by an order entered by the administrator/magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the administrator/magistrate, and for enforcement of contempt adjudications of the administrator/magistrate." Sec. 8-2-11.1(d).

Rule 2.9(h) of the Superior Court Rules of Practice presently governs the standard of review. Rule 2.9(h) provides:

> "The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in part, the judgment, order, or decree of the magistrate. The justice, however, need not formally conduct a new hearing and may consider the record developed before the magistrate, making his or her own determination based on that record whether there is competent evidence upon which the magistrate's judgment, order, or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter with instructions." Super. Ct. R.P. 2.9(h).

B

Rule 9.1 Motion to Dismiss

"'When addressing a motion to dismiss a criminal information, a [Superior Court] justice is required to examine the information and any attached exhibits to determine whether the state has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it.'" State v. Martini, 860 A.2d 689, 691 (R.I. 2004) (quoting State v. Fritz, 801 A.2d 679, 682 (R.I. 2002)); see also State v. Reed, 764 A.2d 144, 146 (R.I. 2001); State v. Aponte, 649 A.2d 219, 222 (R.I. 1994). "A motion justice's review with respect to the existence of probable cause (*vel non*) is limited to 'the four corners of the information package.'" State v. Baillargeron, 58 A.3d 194, 197 (R.I. 2013) (quoting State v. Young, 941 A.2d 124, 128 (R.I. 2008)). Furthermore, "the trial justice should grant the state 'the benefit of every reasonable inference' in favor of a finding of probable cause." Young, 941 A.2d at 128 (quoting State v. Jenison, 442 A.2d 866, 875-76 (R.I. 1982)). Therefore, probable cause sufficient to support a criminal information is established when, after taking into account relevant facts and circumstances, a reasonable person would believe that the charged crime occurred and was committed by Defendant. See Martini, 860 A.2d at 691.

IV

Analysis

A

Defendant's Constitutional Challenge to the Rhode Island Child Pornography Statute

The Rhode Island Supreme Court "presumes that legislative enactments are valid and constitutional." Mackie v. State, 936 A.2d 588, 595 (R.I. 2007); 3 Sutherland Statutory Construction § 59:8 (7th ed. 2008) ("When reviewing the constitutionality of a penal statute,

courts presume the statute is valid and that the legislature has not acted unreasonably or arbitrarily in enacting it."). In reviewing a challenge to a statute's constitutionality, the Rhode Island Supreme Court exercises the '"greatest possible caution."' Mackie, 936 A.2d at 595 (quoting Cherenzia v. Lynch, 847 A.2d 818, 822 (R.I. 2004)). A statute will not be deemed unconstitutional unless the party challenging the statute is able to '"prove beyond a reasonable doubt that the act violates a specific provision of the constitution or the United States Constitution[.]"' Id. (quoting Cherenzia, 847 A.2d at 822).

For purposes of this Magistrate appeal, this Court presumes that §§ 11-9-1.3(a)(2) and 11-9-1.3(a)(4) are constitutional. Accordingly, the Court at this time will decide only the Super. R. Crim. P. 9.1 motion to dismiss and the five interrelated orders entered by the Magistrate on June 1, 2017.

B

Additional Motions Not Decided by the Magistrate

With regard to any pending motions previously filed by Defendant in this case not yet addressed or decided by the Magistrate, said motions are not the subject of this appeal at this time and will not be considered by this Court.

1

"MOTION . . . FOR THE PROSECUTION TO BE REQUIRED TO PROVE, BY EXPERT TESTIMONY, AT A PRELIMINARY EVIDENTIARY HEARING BEFORE TRIAL, THAT THE ALLEGED CHILD PORNOGRAPHY IMAGERY IS OF ACTUAL CHILD PORNOGRAPHY NOT OF VIRTUAL CHILD PORNOGRAPHY"

The Defendant contends that the State should be required to show by expert testimony at a pretrial evidentiary hearing that the child pornography evidence in this case contains actual, not virtual, children. He further argues that if the Court is not "convince[d]" that the video or images are of actual children, then such evidence is not "relevant" or "authenticated" and "should be

excluded from the trial." In his motion, Defendant cited to a number of rules as authority for his contention. The Defendant does not specify the source of said rules, but this Court presumes that Defendant is citing to the Rhode Island Rules of Evidence. Defendant notes the following rules as authority governing his contention: Rule 104 titled Preliminary questions, Rule 701 titled Opinion testimony by lay witnesses, Rule 702 titled Testimony by experts, Rule 402 titled Relevant evidence generally admissible; irrelevant evidence inadmissible, and Rule 901 titled Requirement of authentication or identification.

"'When addressing a motion to dismiss a criminal information, a [Superior Court] justice is required to examine the information and any attached exhibits to determine whether the state has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it.'" Martini, 860 A.2d at 691 (quoting Fritz, 801 A.2d at 682). "A motion justice's review with respect to the existence of probable cause (*vel non*) is limited to 'the four corners of the information package.'" Baillargeron, 58 A.3d at 197 (quoting Young, 941 A.2d at 128). Furthermore, "[t]he question of whether the images are virtual or real is one of fact, to be determined by evidence about which argument can be made to the jury." U.S. v. Sheldon, 223 F. App'x. 478, 483 (6th Cir. 2007). In a child pornography trial, "the government is generally allowed to present the images, and then must simply put on proof that they depict real, and not virtual, children." Id. "And as with any other evidence, the government's contention that the images are real may be properly credited or discredited by a jury." Id. Therefore, in this case, the State is not required to "pre-authenticate" the evidence by ensuring that the children are real. See id. Moreover, to allow or consider expert testimony in the context of a Super. R. Crim. P. 9.1 motion to dismiss would require this Court to look outside the four corners of the information package, making any such pre-authentication of the images

premature and unnecessary. See id. Accordingly, this Court will not hear or consider such evidence in the context of this Magistrate appeal.

2

"MOTION TO EXCLUDE FROM THE TRIAL ANY AND ALL IMAGERY OF CHILD PORNOGRAPHY OFFERED BY THE PROSECUTION"

Defendant contends that the State's introduction of child pornography evidence in this case at trial is illegal under § 11-9-1.3 because, in order for the prosecution to show the evidence at trial, the State would have to be in illegal possession of child pornography. He further argues that showing such evidence to the jury would constitute dissemination of child pornography, also in violation of the statute. This argument is intertwined with Defendant's constitutional overbreadth challenge to the statute, not before this Court. See supra § IV(A).

In order for a trial judge to rule on admissibility, certainly a proper foundation would have to be laid by the State so that the justice would have a basis upon which to rule. If the Defendant chooses to make this issue the subject of a motion in limine, it is a matter for the trial justice to be assigned to this case, and it will not be decided in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or in the context of a Magistrate appeal. See Ferguson v. Marshall Contractors, Inc., 745 A.2d 147, 150-51 (R.I. 2000) (explaining the use of a motion in limine to "prevent the proponent of potentially prejudicial matter from displaying it to the jury *** in any manner until the trial court has ruled upon its admissibility in the context of the trial itself") (emphasis added) (citing State v. Fernandes, 526 A.2d 495, 500 (R.I. 1987)).

3

"DISCOVERY MOTIONS: FOR AN OPPORTUNITY TO INSPECT AND TEST THE SEIZED COMPUTERS AND IMAGERY, FOR THE PROSECUTION'S EXPERT'S FULL REPORT, AND FOR THE PROSECUTION EXPERT'S C.V."

Assuming the Defendant has demanded in writing such discovery from the State pursuant to Super. R. Crim. P. 16(a), and the State has refused to produce said discovery, it would be appropriate for the Defendant to initiate a motion to compel pursuant to Super. R. Crim. P. 16(g)(3). Any such properly filed discovery motion shall be heard by the criminal calendar justice sitting in courtroom 9. See Super. Ct. R.P. 2.3; Super. Ct. Admin. Order No. 91-22; Super. R. Crim. P. 16(a). Discovery motions will not be decided in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or in the context of a Magistrate appeal.

4

"MOTION . . . FOR THE PROSECUTION TO PRODUCE THE SOURCE CODE OF THE SOFTWARE THE POLICE ALLEGEDLY USED TO DOWNLOAD ALLEGED CHILD PORN FROM THE DEFENDANT'S COMPUTER"

Assuming the Defendant has demanded in writing such discovery from the State pursuant to Super. R. Crim. P. 16(a), and the State has refused to produce said discovery, it would be appropriate for the Defendant to initiate a motion to compel pursuant to Super. R. Crim. P. 16(g)(3). Any such properly filed discovery motion shall be heard by the criminal calendar justice sitting in courtroom 9. See Super. Ct. R.P. 2.3; Super. Ct. Admin. Order No. 91-22; Super. R. Crim. P. 16(a)). Discovery motions will not be decided in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or in the context of a Magistrate appeal.

5

"DEFENDANT'S DISCOVERY MOTION . . . THAT THE GOVERNMENT MAKE A COPY OF THE SEIZED ALLEGED CHILD PORN IMAGERY IN THIS CASE AND DELIVER SAID COPY TO THE DEFENSE'S COMPUTER GENERATED IMAGERY EXPERT IN OREGON"

Assuming the Defendant has demanded in writing such discovery from the State pursuant to Super. R. Crim. P. 16(a), and the State has refused to produce said discovery, it would be appropriate for the Defendant to initiate a motion to compel pursuant to Super. R. Crim. P. 16(g)(3). Any such properly filed discovery motion shall be heard by the criminal calendar justice sitting in courtroom 9. See Super. Ct. R.P. 2.3; Super. Ct. Admin. Order No. 91-22; Super. R. Crim. P. 16(a). Discovery motions will not be decided in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or in the context of a Magistrate appeal.

C

Interrelated Orders Decided by the Magistrate

On September 19, 2017, the Magistrate heard and denied on the record the following four interrelated motions prior to his denial of Defendant's Super. R. Crim. P. 9.1 motion to dismiss. On June 1, 2017, the Magistrate entered orders on the previously heard and decided motions.

1

"MOTION FOR THE PROSECUTION TO BE ORDERED TO OBTAIN COMPREHENSIVE IMMUNITY FOR DEFENSE COUNSEL AND DEFENSE EXPERTS, FAILING WHICH THE CASE WILL BE DISMISSED"

This Court has reviewed the written submissions of counsel on this motion, heard oral arguments of counsel on August 16, 2017, and has further considered the record developed before the Magistrate. In support of his decision, the Magistrate determined that the Superior Court does not have statutory authority to grant immunity to defense counsel and its expert. Tr. at 2, Sept. 19, 2016. In addition, the Magistrate pointed to the oath that an attorney takes as a

member of the Rhode Island Bar and the Rules of Professional Conduct as guideposts governing defense counsel's representation of Defendant in this case. The Magistrate further noted that if defense counsel adhered to those rules, then such immunity would not be necessary. Id. The Magistrate denied Defendant's motion. Id.

This Court has reviewed the Magistrate's order denying Defendant's motion and has made a de novo determination of said motion. See Super. Ct. R.P. 2.9(h). Before this Court, Defendant contends that he is being prejudiced and denied a fair trial because neither defense counsel nor defense counsel's expert is allowed to analyze the child pornography evidence in this case or more broadly research child pornography without fear of prosecution under § 11-9-1.3. Defendant claims that virtual child pornography—deemed legal by the U.S. Supreme Court in Ashcroft v. Free Speech Coal., 122 S. Ct. 1389, 1405 (2002)—research is a critical part of his defense. He contends that such research would show virtual child pornography's prevalence and indiscernible distinctions from actual child pornography. Defense counsel seeks immunity to educate himself directly, as opposed to relying on what others say about actual versus virtual child pornography. He further contends that the lack of immunity inhibits his ability to determine how and to what extent child pornography is inadvertently downloaded onto an innocent user's computer. Moreover, Defense counsel notes an inequity in that the State and its experts can access and research virtual and actual child pornography without fear of prosecution. He surmises that as a result of this unequal access, Defendant's equal protection and due process rights are violated.

As the Magistrate concluded, this Court has no legal authority to grant or compel the State to seek immunity for defense counsel and his expert. Under federal child pornography laws 18 U.S.C. §§ 2252 and 2252A, no exceptions exist for defense attorneys, expert witnesses,

or judges to possess child pornography. See Boland v. Holder, 682 F.3d 531, 535 (6th Cir. 2012) (holding that the Ohio child pornography law that provides an exception for a "bona fide" interest in child pornography material does not shield defense attorneys or expert witnesses from prosecution under federal laws for possession of child pornography, which prohibits possession for any purpose, including a permissible "bona fide" exception under Ohio law). "The federal child pornography statutes . . . apply equally to the malevolent pedophile and the defense attorney." Id. at 536 (citing Doe v. Boland, 630 F.3d 491, 495 (6th Cir. 2011)). Similarly, no such exceptions exist under Rhode Island statute § 11-9-1.3. Consequently, Defendant's motion with respect to comprehensive immunity is denied. This Court further determines that there was competent evidence upon which the Magistrate's order rests and hereby accepts the order of the Magistrate in whole. See Super. Ct. R.P. 2.9(h).

2

"MOTION . . . FOR THE COURT AND THE PROSECUTION TO EXPLAIN, PRECISELY, WHAT THE DEFENSE CAN LAWFULLY DO TO DEFEND MR. MUNOZ IN THIS CASE, CONSISTENT WITH HIS RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL"

This Court has reviewed the written submissions of counsel on this motion, heard oral arguments of counsel on August 16, 2017, and has further considered the record developed before the Magistrate. In support of his decision, the Magistrate again cited the attorney's oath and the Rules of Professional Conduct to guide defense counsel. Tr. at 2-3, Sept. 19, 2016. The Magistrate noted defense counsel's zealous advocacy in the case up until that point and indicated that he expected the same level of advocacy to continue, but concluded that the Court is not required to explain anything further to counsel, other than what is rendered on the record. Id. at 3. The motion was denied. This Court has reviewed the Magistrate's order denying Defendant's motion and has made a de novo determination of said motion. See Super. Ct. R.P. 2.9(h).

As the Magistrate noted in his oral decision, defense counsel's conduct in this case is governed by the oath taken by attorneys in Rhode Island and the Rhode Island Rules of Professional Conduct. The Rhode Island oath requires that every attorney "in all respects demean yourself as an attorney" and "practice uprightly and according to law." R.I. Sup. Ct., Art. II, R. 8. The Rhode Island Rules of Professional Conduct also require, as the Magistrate highlighted, that an attorney's pursuit of a client's interests be done "within the bounds of the law." See Preamble, Rhode Island Rules of Professional Conduct, at ¶ 9. The oath and Rules of Professional Conduct should guide defense counsel's conduct. This Court should not and will not instruct defense counsel on how to represent his client. Consequently, Defendant's motion with respect to effective assistance of counsel and a fair trial is denied. This Court further determines that there was competent evidence upon which the Magistrate's order rests and hereby accepts the order of the Magistrate in whole. See Super. Ct. R.P. 2.9(h).

3

"MOTION TO TRANSMIT IMAGES IN THE SUPERIOR COURT COURTROOM, DURING A PROBABLE CAUSE HEARING, IN ORDER TO SUPPORT THE DEFENDANT'S MOTION TO DISMISS THE CASE FOR LACK OF PROBABLE CAUSE"

This Court has reviewed the written submissions of counsel on this motion, heard oral arguments of counsel on August 16, 2017, and has further considered the record developed before the Magistrate. The Magistrate noted that the trial justice will be in the position to make an admissibility determination if counsel does request the videos be shown to a jury. Tr. at 3, Sept. 19, 2016. The Magistrate further concluded that he will only consider facts included within the four corners of the criminal information package and within the knowledge of the arresting officer to determine whether probable cause existed that a crime was committed and that this Defendant committed it. Id. at 3-4. The motion was denied.

This Court has reviewed the Magistrate's order denying Defendant's motion and has made a de novo determination of said motion. See Super. Ct. R.P. 2.9(h). This Court concurs with the Magistrate that "[a] motion justice's review with respect to the existence of probable cause (*vel non*) is limited to 'the four corners of the information package.'" Baillargeron, 58 A.3d at 197 (quoting Young, 941 A.2d at 128). Consequently, Defendant's motion with respect to transmitting images in the Superior Court courtroom to support Defendant's motion to dismiss is denied. This Court further determines that there was competent evidence upon which the Magistrate's order rests and hereby accepts the order of the Magistrate in whole. See Super. Ct. R.P. 2.9(h).

For those same reasons, this Court also denies Defendant's separate and additional motion to show CGI videos in the Superior Court to this Court in support of his appeal of the Super. R. Crim. P. 9.1 motion to dismiss and his additional and interrelated motions.

4

"MOTION FOR AN ORDER THAT THE PROSECUTION SHALL, IN THEIR RESPONSE TO DEFENDANT'S MOTION TO DISMISS THE INFORMATION, STATE THEIR PROPOSED JURY INSTRUCTIONS FOR THE TWO CRIMES CHARGED UNDER . . . [§] 11-9-1.3"

This Court has reviewed the written submissions of counsel on this motion, heard oral arguments of counsel on August 16, 2017, and has further considered the record developed before the Magistrate. The Magistrate concluded that the consideration of jury instructions is for the trial justice at the conclusion of or during the course of trial, and at that time, defense counsel can review the State's proposed instructions. Additionally, the Magistrate presumed that at the probable cause stage of the proceedings, the State would have not yet considered jury instructions. The motion was denied. This Court has reviewed the Magistrate's order denying

Defendant's motion and has made a de novo determination of said motion. See Super. Ct. R.P. 2.9(h).

This Court notes that the timing of the submission of proposed jury instructions is in the sole discretion of the trial justice to be assigned to this case. This Court will not require the State to produce proposed jury instructions at the pretrial stage of this case or in the context of an appeal of the Magistrate's decision on a Super. R. Crim. P. 9.1 motion to dismiss. The Rhode Island Rules of Criminal Procedure provide:

> "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the request. At the same time copies of such request shall be furnished to adverse parties." Super. R. Crim. P. 30 (emphasis added).

The Rhode Island Supreme Court has determined that "[t]he purpose of the rule is to ensure that the trial justice is alerted to any deficiencies in the charge while there is still an opportunity for cure." State v. Soler, 140 A.3d 755, 760 (R.I. 2016) (emphasis added) (citing State v. Davis, 131 A.3d 679, 689 (R.I. 2016)). Consequently, Defendant's motion with respect to requiring the State to provide Defendant with its proposed jury instructions is denied. This Court further determines that there was competent evidence upon which the Magistrate's order rests and hereby accepts the order of the Magistrate in whole. See Super. Ct. R.P. 2.9(h).

D

Magistrate's Order Denying Defendant's Super. R. Crim. P. 9.1 Motion to Dismiss

On this appeal, Defendant challenges the Magistrate's probable cause finding on several grounds. He contends that probable cause does not support a finding that (1) the statute of limitations has been met; (2) the search warrant was lawful; (3) the individuals depicted in the evidence are actual, not virtual; (4) the individuals depicted in the evidence meet the age

requirement for children; (5) Defendant's actions constitute transfer; and (6) Defendant's actions constitute possession.

1

Statute of Limitations

As part of his Super. R. Crim. P. 9.1 motion to dismiss, Defendant contends that there is no probable cause that the statute of limitations in this case was satisfied. The statute of limitations is three years for a child pornography offense. See G.L. 1956 § 12-12-17(c). "For many years [courts] were divided on the issue of whether a . . . limitations [period] was a jurisdictional bar to prosecution or an affirmative defense." State v. Lambrechts, 585 A.2d 645, 646 (R.I. 1991); Brown v. State, 32 A.3d 901, 913 (R.I. 2011). The Rhode Island Supreme Court has now held that "limitations [are] a waivable affirmative defense." Lambrechts, 585 A.2d at 647. Thus, the statute of limitations is an affirmative defense that is "waived unless it is raised at or before trial." Id. at 648. Accordingly, this Court will not consider the expiration of the statute of limitations—an affirmative defense—in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or a Magistrate's appeal.

2

Search Warrant

Defendant contends that the search warrant was unlawful because its application was not in compliance with G.L. 1956 § 39-2-20.1(b)(2). As a result, Defendant argues that the seized evidence and Defendant's statements were obtained illegally and should be suppressed. He further contends that the suppression of the evidence and statements would lead to a dismissal by this Court because no other evidence would remain.

Section 39-2-20.1(b)(2) provides that a search warrant should be pursued within seventy-five days of the certification by the Superintendent of the Rhode Island State Police that the subscriber information is necessary for an officially documented criminal investigation.[5] If Defendant wishes to pursue a motion to suppress, he can file a separate motion before the trial justice to be assigned to this case. See State v. Francis, 719 A.2d 858, 859 (R.I. 1998) (citing State v. Maloney, 111 R.I. 133, 141, 300 A.2d 259, 264 (1973)) (holding that "[i]t has long been and still is the rule in this jurisdiction that exclusion of evidence alleged to have been obtained illegally must be sought procedurally by a motion to suppress heard prior to trial"). Accordingly, this Court will not consider matters which form the basis to file a motion to suppress in the context of a Super. R. Crim. P. 9.1 motion to dismiss and/or a Magistrate's appeal. See Super. R. Crim. P. 41(f).

3

Probable Cause

i

Actual Child Pornography

This Court has reviewed the written submissions of counsel on Defendant's Super. R. Crim. P. 9.1 motion, heard oral arguments of counsel on August 16, 2017, and has further considered the record developed before the Magistrate. Defendant contends that because he had no "rational belief the imagery was of an actual child, there is no probable cause" that he

[5] Section 39-2-20.1(b)(2) provides that in the event a search warrant application is not approved, evidence obtained pursuant to a subpoena cannot be heard at trial. In this case, the information package indicates that a search warrant was issued based on a sworn affidavit by Det. Lt. Riccitelli and approved by a neutral and detached judicial officer. See State v. Byrne, 972 A.2d 633, 637 (R.I. 2009) (citing State v. Verrecchia, 880 A.2d 89, 94 (R.I. 2005)). Detective Lt. Riccitelli's search warrant application was both approved and issued by the judge within seventy-five days of the Superintendent's certification.

"knowingly" possessed or transferred child pornography. Def.'s 6th Suppl. Mem., at 5. He further cites Daubert v. Merrell Dow Pharm., Inc., 43 F.3d 1311, 1319 (9th Cir. 1995) to support his argument that the information package fails to contain expert testimony to show that the evidence in this case is actual child pornography as opposed to virtual child pornography. Def.'s 5th Suppl. Mem., at 56. This Court concluded supra that consideration of expert testimony in the context of a Super. R. Crim. P. 9.1 motion to dismiss would require this Court to look outside the four corners of the information package, making any such pre-authentication of the images premature and unnecessary. See supra § IV(B)(1).

In addition, Defendant argues that the information package does not indicate that the images were of actual children, a known child, or that the files contained hash values known by police to typically indicate child pornography. He argues that a probable cause determination includes a "judge['s] gatekeeping duty[,]" which requires the dismissal of a case when allegations that require "expert[ise]" are unsupported by the evidence. Def.'s 5th Suppl. Mem., at 56.

In his decision, after citing the relevant probable cause standard, the Magistrate concluded that Defendant "misconstrue[d]" the standard of proof required in Super. R. Crim. P. 9.1 motions. Tr. at 7, Sept. 19, 2016. In addition, the Magistrate viewed the images of the female child performing oral sex on an adult male and took into consideration the statements made by Defendant to police along with the entire information package. He concluded "that there is probable cause to believe that the crimes charged were committed and that this defendant committed them." Id.

This Court agrees that Defendant misconstrues the probable cause standard in a Super. R. Crim. P. 9.1 motion to dismiss. The probable cause standard is met when, after taking into

account relevant facts and circumstances, a reasonable person would believe that the charged crime occurred and was committed by Defendant. See Martini, 860 A.2d at 691. Here, there is no evidence in the information package that the child pornography evidence in this case is virtual. The facts only indicate that real children are depicted. The name of the file downloaded by Det. Harris is "pthc pedo rare deepthroat 5yo wow no gaging.mpg." Based on his training and experience, Det. Lt. Riccitelli explained in his affidavit contained in the criminal information package that "pthc" stands for pre-teen hard core. This file name in no way suggests that the video shows a virtual child.

In addition, during the interview with detectives, Defendant told the detectives that he searched for "[y]oung girl giving blow jobs" and "twelve-year-old or fourteen-year-old" in the peer-to-peer network. Witness Statement of Defendant at 20, 35. He explained to the detectives that the videos he had viewed show little girls between the ages of twelve to sixteen. Defendant went on to describe the video that Det. Harris downloaded from his computer. He told detectives that he viewed a video of a "young girl and a guy" and that "[i]t was just a blow job, and then I d- deleted it." Id. at 18, 19. Detectives asked how old the girl in the video was to which he replied "[a]round twelve or something I think, eleven?" Id. at 19. The police description of the video is "pre-pubescent female giving an adult male oral sex." Police Narrative, at 1.

The forensic analyst described the seventy-five images uncovered on the HP Pavilion laptop as depicting "nude prepubescent females engaged in sexual acts, to include bondage, and/or the graphic exhibition of their genitals." Digital Forensic Examination Report, at 1. The analyst described three of the images in the report as depicting (1) a nude prepubescent female in a bathtub while an adult male urinates on her; (2) a handcuffed prepubescent female performing oral sex on adult male; (3) a nude prepubescent female vaginally penetrated by an adult male's

penis. Id. at 3. This Court finds that after consideration of the description of the video downloaded by Det. Harris from Defendant's home's IP address, Defendant's admissions to police, and the forensic analyst's findings and descriptions of the files, probable cause exists because a reasonable person would believe that the Defendant knowingly possessed and transferred actual child pornography. See Martini, 860 A.2d at 691.

ii

"DEFENDANT'S MOTION AND MEMO THAT THE PROSECUTION BE ORDERED TO DECLARE IMMEDIATELY ITS SUPPORTING INDUCTIVE PRINCIPLES FOR ITS TWO INFERENTIAL CLAIMS THAT THERE IS PROBABLE CAUSE THAT: 1) *ACTUAL* CHILD PORN WAS SEIZED, AND, 2) THAT THE DEFENDANT *KNEW* THAT THE SEIZED IMAGERY WAS ACTUAL CHILD PORN"

The Defendant contends that the State has not put forth any "direct" evidence. Furthermore, he argues that the State should be "ordered . . . to declare immediately the inductive principles" establishing probable cause that the seized evidence was actual, not virtual, child pornography and that Defendant knew the imagery was actual and not virtual. The Defendant explains that "an inductive principle is a principle about an alleged phenomenon of contingent reality such as: the law of gravity, or birds sing, or trees grow, or all men are mortal, or traffic lifts generally work properly, etc. etc. etc." While the Magistrate did not rule in the context of the within motion, he did so rule when deciding, based on the Super. R. Crim. P. 9.1 motion to dismiss standard, "that there is probable cause to believe that the crimes charged were committed and that this defendant committed them." Tr. at 7, Sept. 19, 2016. This Court determined supra that probable cause supports a belief that Defendant knew the seized evidence depicted actual child pornography. See supra § IV(D)(3)(i). Moreover, this Court notes that a declaration of supporting inductive principles is not required under the Super. R. Crim. P. 9.1 motion to dismiss standard. See Martini, 860 A.2d at 691 (holding that probable cause sufficient to support a

criminal information is established when, after taking into account relevant facts and circumstances, a reasonable person would believe that the charged crime occurred and was committed by Defendant).

iii

Age

Defendant contends that probable cause is not met because the criminal information package does not indicate or prove the ages of the children in the evidence. Detective Lt. Riccitelli viewed the video downloaded from the IP address assigned to Defendant's residence and described it as depicting a prepubescent female giving an adult male oral sex. In addition, the title of the video file included descriptors such as "pthc" or pre-teen hard core and "5yo" or five year old. The Defendant also admitted to searching specifically for "twelve-year-old or fourteen-year-old" and "[y]oung girl giving blow jobs" on the peer-to-peer network. Witness Statement of Defendant at 20, 35. In addition, the Defendant admitted to detectives that the videos he had viewed depicted twelve to sixteen-year-old girls. Id. at 30. The police forensic report provides further corroboration including descriptions of the seventy-five uncovered images as showing prepubescent females. This Court finds that probable cause exists that a reasonable person would believe that Defendant viewed pornographic videos that depicted children. See Martini, 860 A.2d at 691.

After probable cause is met, as this Court finds here, the question of age in a child pornography prosecution is an issue to be decided by the jury. See U.S. v. Katz, 178 F.3d 368, 373 (5th Cir. 1999) (concluding that depending on the case, a fact finder may be able to determine the issue of age in a child pornography case without the assistance of expert

testimony); U.S. v. Batchu, 724 F.3d 1, 7-8 (1st Cir. 2013) (highlighting the use of expert testimony at trial to prove the age of a crime involving a child).

iv

Transfer

The Defendant contends that probable cause has not been met because he did not knowingly transfer child pornography. He argues that because Defendant did not know that the child pornography was of actual children, then he could not "knowingly" deliver or transfer child pornography under the statute. Sec. 11-9-1.3(a)(2) (providing that it is a violation of the statute for any person to "[k]knowingly mail, transport, deliver or transfer by any means, including by computer, any child pornography"). In addition, Defendant contends that the verbs "deliver" and "transfer" require an affirmative action not present in Defendant's admitted use of file sharing software.[6] Defendant further argues that the automatic transfer of files between computers over a peer-to-peer network does not constitute a knowing transfer. This Court concluded supra that probable cause supports the finding that a reasonable person would believe that the child pornography video downloaded by police, along with the seventy-five images uncovered through forensic analysis, constitute actual, not virtual, child pornography. See supra § IV(D)(3)(i); Martini, 860 A.2d at 691.

Regarding the knowing transfer of child pornography, this Court looks to the First Circuit decision in U.S. v. Chiaradio, 684 F.3d 265, 281 (1st Cir. 2012). In Chiaradio, the defendant similarly argued that he did not take any affirmative action to send files which were downloaded

[6] "File sharing programs, also known as peer-to-peer file sharing programs, enable computer users to share and receive electronic files, including images, videos, and audio files, with a network of other users." See U.S. v. Husmann, 765 F.3d 169, 171 (3d Cir. 2014). In order for peer-to-peer network users to share files, the "users' computers communicate directly with each other, rather than through central servers." Id.

by police over a peer-to-peer network. Id. The Chiaradio court concluded that while the word "distribution" was not defined by the statute, Black's Law Dictionary defines "distribution" as "[t]he act or process of apportioning or giving out." Id. (citing Black's Law Dictionary 543 (9th ed. 2009)). The Chiaradio court further determined that even though the defendant did not actively send the files to the police, by intentionally making files available for others to download over the peer-to-peer network his actions constituted distribution. Id. at 282. The Chiaradio court cites a Tenth Circuit Court decision, U.S. v. Shaffer, 472 F.3d 1219 (10th Cir. 2007), for the analogy that a peer-to-peer network is like a self-serve gas station. Id. The Shaffer court reasoned that "[j]ust because the operation is self-serve, or . . . passive, we do not doubt for a moment that the gas station owner is in the business of 'distributing' . . . gasoline[.]" 472 F.3d at 1224. Ultimately, the Chiaradio court held that because the defendant downloaded the file sharing software, chose to make his files available for sharing, and was knowledgeable about computers, his actions could lead a jury to rationally conclude beyond any reasonable doubt that the defendant had the required scienter to distribute child pornography. 684 F.3d at 282.

Here, "[p]robable cause to arrest does not require the same quantum of proof needed to establish guilt beyond a reasonable doubt." State v. Castro, 891 A.2d 848, 853 (R.I. 2006). In this case, Det. Harris downloaded a child pornography video directly from the IP address assigned to Defendant's home. See U.S. v. Richardson, 713 F.3d 232, 236 (5th Cir. 2013) (holding that a defendant's conviction for distribution is upheld when law enforcement "actually downloaded" a child pornography video from defendant); U.S. v. Budziak, 697 F.3d 1105, 1109 (9th Cir. 2012) (upholding a distribution conviction when law enforcement actually downloaded child pornography materials from an IP address assigned to defendant); Chiaradio, 684 F.3d at

282 (affirming a distribution conviction when "[a] rational jury could conclude . . . that the defendant intentionally made his files available for the taking and (a law enforcement officer) simply took him up on his offer"); Shaffer, 472 F.3d at 1224 (concluding that a distribution conviction should be upheld when law enforcement downloaded child pornography from defendant's shared folder over a peer-to-peer network); see also Husmann, 765 F.3d at 176 (holding that distribution of child pornography is satisfied when defendant's child pornography images or videos "were completely transferred to or downloaded by another person" via a peer-to-peer network). Furthermore, Defendant admitted to detectives that he searched for and downloaded child pornography using search terms such as "twelve-year-old or fourteen-year-old" and "[y]oung girl giving blow jobs" through the peer-to-peer network, explained how file sharing works, and described the contents of the video that Det. Harris had downloaded. Witness Statement of Defendant at 19, 20, 35. Moreover, based on his training and experience, Det. Lt. Riccitelli explained in his affidavit contained in the criminal information package that individuals seeking to obtain and share child pornography—such as the Defendant in this case—typically utilize file sharing software. This Court finds that probable cause exists because a reasonable person would believe that the Defendant knowingly transferred child pornography. See Martini, 860 A.2d at 691.

v

Possession

Defendant contends that probable cause does not support a belief that he knew the child pornography was actual, and not virtual. Additionally, he argues that he did not knowingly possess any of the seventy-five deleted images discovered on the HP Pavilion computer. This Court concluded supra that probable cause supports the finding that a reasonable person would

believe that the child pornography video downloaded by Det. Harris from the IP address assigned to Defendant's home and the seventy-five images uncovered through forensic analysis constitute actual, not virtual, child pornography. See supra § IV(D)(3)(i); Martini, 860 A.2d at 691.

Defendant's claim that he did not knowingly possess child pornography because he did not know the images were on his computer is similarly unavailing. In U.S. v. Haymond, the Tenth Circuit held that even though the images discovered by forensic analysis had been deleted and contained no metadata, the defendant still knowingly possessed the files. 672 F.3d 948, 952 (10th Cir. 2012). The Haymond court held that a reasonable jury could conclude beyond a reasonable doubt that the defendant knew the illegal images were on his computer because he intentionally searched for them on a peer-to-peer network and then deliberately downloaded selected files onto his computer. Id. at 956. Similarly, in U.S. v. Hill, the Eighth Circuit held that a reasonable jury could convict a defendant of knowingly possessing child pornography when he admitted to searching for child pornography on file sharing software using specific search terms, intentionally downloaded child pornography, viewed the images, and then deleted the images before searching for more. 750 F.3d 982, 988 (8th Cir. 2014). When officers seized the Hill defendant's computer, four child pornography images were found in his computer's recycle bin. Id. The Hill court found those facts sufficient to convict the defendant of possession of child pornography. Moreover, in U.S. v. Figueroa-Lugo, the First Circuit held that a rational jury could have found based on the file names uncovered that the defendant would have had to input specific search terms into the peer-to-peer network associated with child pornography to retrieve those images. 793 F.3d 179, 187 (1st Cir. 2015). The Figueroa-Lugo court held that the defendant intentionally downloaded the files over the peer-to-peer network.

Id. The Figueroa-Lugo court further reasoned that because the defendant inputted such specific search terms to child pornography, defendant knew that the images he downloaded contained child pornography. Id.

In this case, Defendant admitted to detectives that he inputted specific search terms into the peer-to-peer network to find child pornography around twenty times, explained how file sharing works, downloaded files, viewed the files, and then deleted the files. See Witness Statement of Defendant at 14-15, 20, 29, 35. He told detectives that he searched for "[y]oung girl giving blow jobs" or "twelve-year-old or fourteen-year-old." Id. at 20, 35. These files included a video downloaded by Det. Harris via a peer-to-peer network directly from the IP address assigned to Defendant's home titled "pthc pedo rare deepthroat 5yo wow no gaging.mpg." Through data carving, the forensic analyst uncovered an additional seventy-five still images, no longer accessible by the Defendant, on the HP Pavilion computer. This Court finds that probable cause exists because a reasonable person would believe that Defendant possessed child pornography. See Martini, 860 A.2d at 691.

* * *

For all of these reasons, Defendant's Super. R. Crim. P. 9.1 motion to dismiss is denied. This Court further determines that there was competent evidence upon which the Magistrate's order rests and hereby accepts the order of the Magistrate in whole. See Super. Ct. R.P. 2.9(h).

V

Conclusion

For the reasons set forth in this Decision, at this time this Court is deciding only the Defendant's Super. R. Crim. P. 9.1 motion to dismiss and the five interrelated orders entered by the Magistrate on June 1, 2017. After de novo consideration, this Court denies all five

interrelated motions. This Court hereby determines that competent evidence supports the Magistrate's five orders and accepts the Magistrate's orders in whole. See Super. Ct. R.P. 2.9(h).

Counsel will submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Rudy L. Munoz**
CASE NO:	**P2-2015-2425A**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 30, 2017**
JUSTICE/MAGISTRATE:	**Montalbano, J.**
ATTORNEYS:	
For Plaintiff:	**Meghan E. McDonough, Esq.**
For Defendant:	**Sinclair T. Banks, Esq.**