

Robert J. O'Neill, Jr., Esq.
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19901

Andre M. Beauregard, Esq.
Brown, Shiels, Beauregard & Chasanov
401 Rehoboth Avenue
P.O. Drawer B
Rehoboth Beach, DE 19971

Re: **State v. John White**
ID No. 0102019515

Upon Defendant's Motion to
Compel Pursuant to Superior
Court Criminal Rule 16 - DENIED

Submitted: December 11, 2001

Decided: December 28, 2001

Counsel:

Defendant John White is charged with three counts of Unlawful Sexual Intercourse in the First Degree, 11 *Del. C.* § 775(4), three counts of Unlawful Sexual Penetration in the Third Degree, 11 *Del. C.* § 770, Sexual Exploitation of a Child, 11 *Del. C.* § 1108, Using a Computer to Unlawfully Depict a Child Engaging in a Prohibited Sexual Act, 11 *Del. C.* § 1109, and Possession of Child Pornography, 11 *Del. C.* § 1111. Defendant has moved to compel the production of a computer hard drive, certain computer disks and a digital camera which the State has seized to his investigator so he may transport them from Delaware to a forensic laboratory in Falls Church, Virginia for

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examination and analysis. The State opposes the motion contending that the items include child pornography, that state and federal law prohibit its dissemination, and that the chain of custody of the evidence would be compromised.

Superior Court Criminal Rule 16(a)(1)(C) provides:

Upon request of the defendant the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.

While this Rule requires that the defendant be allowed the inspection he seeks, it also contemplates either an agreement of the parties, or failing that, the regulation by the Court of how the inspection will be conducted.

Without question child pornography is illegal contraband and it may not be transported across state lines. *See* 48 *U.S.C.* § 2252. Nor could this Court grant Defendant's investigator immunity from federal prosecution as the defense has suggested.

I conclude that under the circumstances of this case the inspection authorized by Criminal Rule 16 must take place in Delaware on the premises of a Delaware State Police facility or such other location within the State as the parties agree. The State shall facilitate the inspection which shall continue from day to day until completed by the

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Defendant's expert. This order is subject to such further order as may be necessary to ensure the discovery contemplated by the Rule.

Accordingly, Defendant's Motion to Compel the delivery of the alleged contraband to his investigator for transport to Virginia is *DENIED*.

IT IS SO ORDERED.

Very truly yours,

/s/ Henry duPont Ridgely

cmh

oc: Prothonotary

xc: Order distribution