

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-682
Christopher O. Brink,	:	(C.P.C. No. 10CR-11-6536)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 8, 2012

Ron O'Brien, Prosecuting Attorney, *Susan M. Suriano* and
Michael Walton, for appellee.

Harry R. Reinhart and *Lewis E. Williams*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Christopher O. Brink is appealing from his convictions on charges of pandering sexually oriented matter involving a minor, in violation of R.C. 2907.32.2. He assigns two errors for our consideration:

[I.] THE TRIAL COURT'S VERDICT OF GUILTY IS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

[II.] THE TRIAL COURT'S VERDICT OF GUILTY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 2} R.C. 2907.32.2(A) reads:

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

{¶ 3} The evidence presented in the non-jury trial of Brink was as follows: Police officers executed a search warrant on Brink's address on August 27, 2009. They found a laptop computer on a nightstand next to where Brink was sleeping. The laptop was on. It contained child pornography. No one else was in the house when the police arrived to

execute the search warrant. A desktop computer containing child pornography was also at the residence.

{¶ 4} The user name for the desktop computer was "cbbnrk." The computer had, as a saved file, an AT&T bill in the name of Christopher Brink.

{¶ 5} The residence had three bedrooms, but the only bedroom with a bed in it was the bedroom in which Brink was sleeping. Only one closet had clothes in it and those clothes appeared to be clothes owned by Brink. Nothing in the residence indicated that anyone but Brink was living there at the time of the police search.

{¶ 6} Police had conducted surveillance of the residence the day before executing the search warrant and had seen Brink doing routine chores at the residence. No one besides Brink was seen at the residence during the surveillance.

{¶ 7} Violation of R.C. 2907.32.2 can be either a felony of the second degree or a felony of the fourth degree. Violation of R.C. 2907.32.2(A)(5) is a felony of the fourth degree. Violation of R.C. 2907.32.2(A)(1), (2), (3), (4), or (6) is a felony of the second degree. Brink was convicted of both possessing child pornography (an F-4) and creating, recording, photographing, filming, developing, reproducing or publishing child pornography (an F-2).

{¶ 8} The trial court clearly had sufficient evidence to support the charge that Brink possessed the pictures and depictions in the computers one of which was on and running near Brink's head as he slept. Further, the desktop computer had a variation of his name as the user name. It contains at least one personal document attributable only to him. No one else apparently lived at the residence. The trial court's finding that Brink was guilty of violating R.C. 2907.32.2(A)(5) was supported by sufficient evidence and was

consistent with the manifest weight of the evidence. Both assignments of error are overruled with respect to the conviction for violating R.C. 2907.32.2(A)(5).

{¶ 9} The remaining question is whether the state of Ohio proved anything more than that Brink possessed the child pornography. Specifically, did the state of Ohio prove that Brink himself downloaded the pornography? Some of the pornographic images were downloaded on August 19, 2009, eight days before police executed the search warrant. These images were in the desktop computer at the residence with a file name of "C-drive/users/cbbrnk/Documents/Front?/saved."

{¶ 10} The computers in Brink's residence demonstrated that Brink had visited websites such as "teenylovers.com" less than a week before the search warrant was executed. The Windows Media Player affiliated with the desktop computer had recently been used to play files from similar websites, even on the date the search warrant was executed.

{¶ 11} Nothing in the record before us indicates that anyone but Brink downloaded the pornographic images found in his computer. No one else was shown to have had access to the computers, especially at the time the pornographic images were downloaded. The testimony at trial also indicated that once such pornographic images were being downloaded at Brink's residence, they were then being redistributed over the internet through the use of file sharing software. His downloading of the images, coupled with his sharing the images, satisfies the requirements of R.C. 2907.32.2(A)(1) that he created, recorded, reproduced or published the pornographic images. The finding that Brink was guilty of violating R.C. 2907.32.2(A)(1) is supported by sufficient evidence. The verdict is also consistent with the manifest weight of the evidence.

{¶ 12} The two assignments of error, with respect to violation of R.C. 2907.32.2(A)(1), a felony of the second degree, are also overruled.

{¶ 13} Both assignments of error having been overruled in toto, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and DORRIAN, JJ., concur.
