

Indecent photographs

This file contains directions for offences of making, distributing and possessing indecent images of children and possessing extreme pornographic images.

Making Indecent photographs of children

It is an offence to make an indecent photograph of a child.

That involves three elements.

I will deal with the last two first.

- an indecent photograph. It is accepted that the photos were indecent.
- of a child. Again, it is accepted that the photos portrayed children.

So, the only question for you to consider in relation to Count * is whether or not the defendant made at least one of the photographs.

As a matter of law, someone “makes” a photograph if he opens an attachment to an email which contains an indecent photograph, provided that when he does so, he does so intentionally and with the knowledge that it was, or was likely to, contain an indecent image of a child.

Downloading a photograph from the internet to a computer screen also constitutes the making of a photograph provided that when the downloader does so he does so intentionally and with knowledge that it was or was likely to be an indecent photograph of a child.

There is no need for the prosecution to prove that the defendant saved the photograph to his computer, or printed it.

In this case, there is no doubt that someone downloaded, or otherwise caused, the photographs to be on the computer. In other words, someone made the indecent photographs which are the subject matter of this count.

However, the defendant says that he did not do it.

So, the key question for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, is this

Did D** cause the photographs to be on the hard drive of the computer?

If you are sure that the answer is “yes”, the defendant is guilty of Count *. If the answer may be “no”, he is not guilty of Count *.

Distributing indecent photographs of children

It is an offence to distribute an indecent photograph of a child.

Again, that involves three elements.

Again, I will deal with the last two first.

- an indecent photograph. It is accepted that the photos were indecent.
- of a child. Again, it is accepted that they portrayed children.

So, the only question for you to consider in relation to Count * is whether or not the defendant distributed at least one of the photographs.

As a matter of law, someone “distributes” a photograph if he parts with possession of it (even if he retains the original). That includes emailing it to another person, provided that when he does so, he does so intentionally and with the knowledge that the email included, or was likely to include, an indecent photograph of a child.

In this case, there is no doubt that someone distributed the indecent photographs which are the subject matter of this count.

However, the defendant says that he did not do it.

So, the key question for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, is this

Was it D** who emailed the photographs to X**?

If you are sure that the answer is “yes”, the defendant is guilty of Count *. If the answer may be “no”, he is not guilty of Count *.

Possessing indecent photographs of children

It is an offence to possess an indecent photograph of a child.

Again, that involves three elements.

Again, I will deal with the last two first.

- an indecent photograph. It is accepted that the photos were indecent.
- of a child. Again, it is accepted that they were of children.

So, the only question for you to consider in relation to Count * is whether or not the defendant possessed at least one of the photographs.

As a matter of law, someone “possesses” a photograph if he has control and knowledge of it. The owner of a computer has control over the contents of his computer, provided that they are accessible.

In this case, there is no doubt that the photos were contained in the defendant’s computer and that *** of them were accessible.

This means that the only issue in relation to Count * is knowledge. Did D** know that the photos were in his computer?

You can infer someone’s knowledge from the surrounding circumstances.

The defendant says that he did not know that the photographs were in his computer.

So, the key question for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, is this

Did D** know that the photographs were in his computer?

If you are sure that the answer is “yes”, the defendant is guilty of Count *. If the answer may be “no”, he is not guilty of Count *.

Possessing extreme pornographic images

It is an offence to possess an extreme pornographic image.
That involves two elements.

Possessed an image.

As a matter of law, a video is an image.

Also as a matter of law, someone “possesses” an image in a mobile phone if he has control over the phone’s contents and if they are accessible.

In this case, there is no doubt that the images were contained in the defendant’s
**Blackberry mobile and that they were accessible.

An extreme pornographic image which was grossly offensive, disgusting or otherwise of an obscene character and portrayed in an explicit way the act referred to in the particulars on the indictment.

The defendant accepts that the video of the female having ****vaginal intercourse with a horse is extreme pornography and is grossly offensive, disgusting or otherwise of an obscene character.

The defendant accepts that the video of another female ***encouraging a dog to lick her genitals, after which she performed oral sex on the dog, which then had vaginal intercourse with her is also extreme pornography and is grossly offensive, disgusting or otherwise of an obscene character.

It is for the prosecution to make you sure that the defendant was in possession of extreme pornographic images, but, in this case, that is not in dispute.

The defendant though says that he did not know that the videos were in his phone. It is a defence for a person charged with this offence to prove that he had not seen the images *and* did not know or have cause to suspect that they were extreme pornographic images.

Burden and standard of proof

So, you must decide whether the defendant had seen the images and whether he knew or had cause to suspect that they were extreme pornographic images.

The law is that that is a matter for him to prove on all the evidence.

Whenever the law requires a defendant to prove something, he does not have to make you sure of it.

He only has to show that it is probable, which means it is more likely than not, that he had not seen the images and did not know or have cause to suspect that they were extreme pornographic images.

If you decide that probably he had not seen the images and probably did not know or have cause to suspect that they were extreme pornographic images, you must find him 'Not Guilty'.

However, if you do not accept his evidence and decide that probably he had seen the images or did know or have cause to suspect that they were extreme pornographic images, you must find him 'Guilty'.

So, the key question in relation to each count, having regard to all the evidence and the directions which I give you, is this

Has the defendant satisfied you that it is more likely than not that he had not seen the image and did not know or have cause to suspect that it was an extreme pornographic image?

If the answer is "yes", he is not guilty. If the answer is no, he is guilty.