
CANADA / JUDGMENT

R. v. Meissner

2019 BCSC 1778

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2019 BCSC 1778 R. v. Meissner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Meissner,

2019 BCSC 1778

Date: 20190321

Docket: 65483-2

Registry: Chilliwack

Regina

v.

Ian Robert Meissner

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment

Counsel for the Crown:

D.P. Tsui

Counsel for the Accused:

W.M. Finch, Q.C.

D. Harry, A/S

Place and Date of Trial:

Chilliwack, B.C.

February 4-8, 2019

February 12, 13, 15, 21, 2019

Place and Date of Judgment:

Chilliwack, B.C.

March 21, 2019

Introduction

- [1] Ian Robert Meissner stands charged on an indictment with one count of possessing and two counts of accessing child pornography contrary to s. 163.1(4) and (4.1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Count 2 charges Mr. Meissner with accessing child pornography between the time frames of July 13, 2010, and August 8, 2012. Counts 3 and 4 charge Mr. Meissner with possessing and accessing child pornography between the time frames of August 9, 2012, and January 7, 2015. The two different time frames are to accommodate a legislative change in the penalty provisions of the Code. A fifth count, that is, a charge of transmitting or making available child pornography on or about February 1, 2014, contrary to s. 163.1(3) of the Code, was stayed by the Crown at the outset of the trial. Count 1, a second charge of possessing child pornography between July 13, 2010, and August 8, 2012, was stayed by the Crown at the conclusion of the evidence.
- [2] The possession of child pornography count (Count 3) relates to five images said to be child pornography found on three different electronic devices owned by Mr. Meissner. The three devices were referred to as the following in the evidence:
1. a Dell Inspiron tower computer (Police Exhibit 1), which I will refer to as the "office computer";
 2. a Dell 435MT tower computer (Police Exhibit A-3), which I will refer to as the "home computer"; and
 3. a Western Digital My Book Essential external hard drive (Police Exhibit A-5), which I will refer to as the "external hard drive".
- [3] Four images said to be child pornography were found in the unallocated space of the office computer. One further image, "File 119.jpg", was found on both the home computer and the external hard drive. In respect of these five images reproduced in Exhibit 6, the defence advances two positions:
1. The Crown has failed to prove they meet the definition of child pornography, and

2. the Crown has failed to prove that Mr. Meissner knew that the images were on his devices; this second point relates to the totality of the evidence as to Mr. Meissner's avocation as an amateur photographer, his denial that he knew the images were on the devices, and his explanation about his workflow and bulk downloading practices in processing digital images.
- [4] The accessing child pornography counts (Counts 2 and 4) relate to materials or written child pornography obtained from an American website called the Alternative Sex Stories Text Repository ("ASSTR"), or asstr.org. Count 2 on the indictment relates to one bookmark found on the home computer: a link to a child pornography story on asstr.org. On the forensic evidence, two bookmarks for two different stories were created on June 29, 2011, at 11:15:33 hours (-7:00 Pacific Daylight Time). The time is identical for each bookmark, a feature that the computer forensic expert, Ken Lew, could not explain. One of the bookmarks contained a link to a story that is said to constitute child pornography. It was reproduced in Exhibit 2 as Exhibit 2i.
- [5] The defence does not take issue with the content of this written material being child pornography but argues that the Court ought to accept Mr. Meissner's evidence that he was unaware that the bookmarks were on his computer. The defence further argues that the Court ought to accept Mr. Meissner's explanation that the bookmarks may have been accidentally created while using hotkeys such as "Ctrl-F" or "Ctrl-S" and mistakenly typing the hotkey "Ctrl-D", which can create a bookmark in Internet Explorer.
- [6] Insofar as Count 4 is concerned, this accessing charge relates to the eight written stories contained in Exhibit 2 (Exhibits 2a through 2h). As a result of the forensic analysis conducted on the home computer, Mr. Lew located webpage links to eight stories on asstr.org in the Firefox browser cache files. The browsing history for the home computer showed that five of the eight stories were accessed by opening the story link during the morning of January 4, 2015, and three of them were accessed by opening the story link during the afternoon of January 5, 2015.
- [7] The defence concedes that seven of these eight stories meet the definition of written child pornography as contained in s. 163.1(1)(c) of the Code. The defence asserts that the eighth story (Exhibit 2d) does not satisfy the definition of child pornography. I do not propose to examine the story in Exhibit 2d, "Mandy's Story of Awakenings, Part 1", to determine whether it does satisfy the definition of child pornography. Suffice to say the concession that the other seven stories meet the statutory definition of child pornography requires the Court to determine whether the Crown has established beyond a reasonable doubt that Mr. Meissner knowingly accessed this child pornography as set out in Count 4 of the indictment.

Background to the Investigation

- [8] The defence did not take issue with any of the steps leading up to the investigation, the obtaining of a search warrant for Mr. Meissner's home and office, nor the execution of the search warrants. Most of these matters are dealt with in a set of formal admissions pursuant to s. 655 of the Code and marked Exhibit 1 on this trial.
- [9] I will state in brief compass the investigative steps undertaken up to and including the seizure of various electronic devices from Mr. Meissner's home and office, their processing, and the forwarding of some of the devices to the RCMP E-Division Integrated Technological Crime Unit ("ITCU").
- [10] Mr. Meissner was charged with the offences on or about August 26, 2016. The investigation, however, had its genesis on February 4, 2014, when Google reported to the National Centre for Missing and Exploited Children ("NCMEC") that while monitoring their systems, they found a user with the sign-in email address of "fotoguy6886@gmail.com" had uploaded 17 images believed to be child pornography to Picasa, an image hosting and sharing service offered by Google. Google provided two IP address to NCMEC, who geo-located them to Chilliwack, BC.
- [11] On May 22, 2014, the National Child Exploitation Coordination Centre ("NCECC") provided documentation to the RCMP E-Division's BC Integrated Child Exploitation ("ICE") Unit enclosing the information Google had provided to NCMEC.
- [12] As a result of the information received from NCECC, a member of the BC ICE Unit applied for production orders for the subscriber information associated to the two IP addresses provided by Google. The production orders were issued on June 24, 2014, and served on Shaw Communications that same day. The subscriber information for the two IP addresses revealed that they were for Mr. Meissner's home address and the realty office where he was employed in Chilliwack, BC. ICE forwarded the results of the production orders as well as the information obtained from NCECC and Google to the Chilliwack RCMP.
- [13] Sergeant Malanie Boyle of the Serious Crime Unit in the Chilliwack RCMP had conduct of this investigation. She examined the 17 images provided by Google and determined that 16 met the definition of child pornography. After further investigation into Mr. Meissner's employment and residential locations, Sgt. Boyle applied for two search warrants on January 6, 2015. The search warrants were granted, and Sgt. Boyle, along with other members of the Chilliwack RCMP, attended at Mr. Meissner's residence on January 7, 2015, at 8:20 hours to execute the search warrant. Once the home was secured, two members of the search team left the residence and went to Mr. Meissner's office to execute the second search warrant.

- [14] As a result of the execution of the two search warrants, ten devices and storage items were seized from Mr. Meissner's office, including his office computer. Over 20 items were seized from Mr. Meissner's home including the home computer, the external hard drive, other external hard drives, flashcards for digital cameras, other electronic storage devices, and a second computer tower, the Medion computer tower, which was Police Exhibit A-18.
- [15] Corporal Darryl Anderson was the assigned exhibit officer in this investigation. Corporal Anderson has received specific and intensive training in the investigation of child pornography offences with an emphasis on the proper seizure of computers and other electronic devices as well as in the use of digital technologies for investigators.
- [16] As part of his specialized training, Cpl. Anderson has learned how to conduct digital field triage of electronic devices seized in such investigations. Digital field triage ("DFT") involves the use of a forensic tool referred to as DICE, an acronym for Digital Investigation of Computer Exhibits. Seized electronic devices and storage media can be examined with the DICE tool and searched for internet activity, imagery, and other related materials that may be germane to an investigation.
- [17] In the context of child pornography investigations, DICE is employed to search devices for images using internet search terms that are frequently affiliated with child pornography images - for example, PTHC, an acronym for "Preteen Hardcore", "Lolita", "Little Baby J", and so on. Corporal Anderson acknowledged that code names for child pornography files may not be known to or understood by the general public. However, once an individual becomes familiar with the various codenames, monikers, and titles employed in the realm of the child pornography industry, the illicit materials are readily identifiable. To be sure, there are false positives as well, particularly with names like "Lolita" and "Little Baby J". A DFT on seized devices using the DICE tool is done in order to reduce the number of devices that need to be forwarded to ITCU for forensic examination and extraction of data believed to constitute child pornography.
- [18] Between mid-February and the end of March 2015, Cpl Anderson used the DICE tool on all the devices seized from Mr. Meissner's home and office. Corporal Anderson's utilization of DICE in his DFT on the various seized devices resulted in five of the devices being forwarded to ITCU for a more thorough forensic examination. Those items were
- the office computer,
 - the home computer,
 - the external hard drive,
 - a second computer from Mr. Meissner's home, and
 - the Medion computer tower.

Two other external hard drives (Police Exhibit A-4 and Police Exhibit 3) were forwarded to ITCU as Cpl Anderson was unable to examine them. The rest of the seized devices were returned to Mr. Meissner on March 26, 2015.

- [19] As a result of the forensic examination conducted by Ken Lew, a civilian member of ITCU, the five images said to be child pornography were found on the office computer, the home computer, and the external hard drive referred to earlier.
- [20] The forensic examination of the home computer resulted in Mr. Lew locating two bookmarked webpages, one of which linked to an asstr.org story that meets the definition of written child pornography. He also found eight webpage links to child pornography stories in the cache history of this computer's Firefox browser.
- [21] The Medion computer seized from Mr. Meissner's home was examined by Mr. Lew. The QuickCP-Filename script was run on this device on July 2, 2015. The filename script searches for common child pornography filenames. There were 237 hits, but Mr. Lew concluded most were false positives. Mr. Lew wrote in his analyst's notes that "there were 11 link files that had names that could be suggestive of CP", meaning child pornography. However, in his report, Mr. Lew states in an appendix entitled "Items Examined and Determined to be of no Evidentiary Value" that a keyword search was conducted on the Medion tower computer, and "Nothing of relevance was found." The significance of this finding will become apparent later in these reasons.
- [22] Before turning to the evidence adduced in this trial, I am cognizant of the admonition of both counsel to not abandon common sense in examining the evidence in this case. I have approached my consideration of the totality of the evidence in this case with that admonition in mind. Counsel also acknowledged that this is a circumstantial case; accordingly, the principles as most recently reviewed in *R. v. Villaroman*, 2016 SCC 33, inform the analytical approach that must be employed. I will, of course, conduct my analysis with those principles in mind.
- [23] In my view, the true issues in this case are whether the Crown has established beyond a reasonable doubt that Mr. Meissner knowingly possessed child pornography (being the five image files) and knowingly accessed written child pornography (being the eight stories obtained from the web links found in the Firefox browser cache files on Mr. Meissner's home computer and the bookmark to a child pornography story on asstr.org found on the Internet Explorer browser on Mr. Meissner's home computer).
- [24] Before examining the evidence that impacts the mens rea issue, I will address the preliminary issue of the character of the five images.

Are the Five Image Files Found on Mr. Meissner's Devices Child Pornography?

- [25] Section 163.1(1) of the Code defines what constitutes child pornography. It provides:

In this section, child pornography means

- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
- (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or
- (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;
- (b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;
- (c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or
- (d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.

[26] Insofar as the five images are concerned, only s. 163.1(1)(a)(ii) of the Code-the dominant characteristic branch-is engaged. Counsel for Mr. Meissner asserts that four of the five images that were located on Mr. Meissner's devices are "age ambiguous" and that a fifth image lacks context to assist in determining the necessary sexual element of s. 163.1(1)(a)(ii) of the Code.

[27] In *R. v. Sharpe*, 2001 SCC 2, Chief Justice McLachlin, writing for the Court, examined the meaning of the terms employed in the definition provisions of 163.1(1) of the Code. The meaning of "dominant characteristic" and "for a sexual purpose" as contained in s. 163.1(a)(ii) were outlined as follows:

50 The objective approach should also be applied to the term "dominant characteristic" in s. 163.1(1)(a)(ii), which targets possession of visual material whose "dominant characteristic" is "the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years". The question is whether a reasonable viewer, looking at the depiction objectively and in context, would see its "dominant characteristic" as the depiction of the child's sexual organ or anal region. The same applies to the phrase "for a sexual purpose", which I would interpret in the sense of reasonably perceived as intended to cause sexual stimulation to some viewers.

51 Family photos of naked children, viewed objectively, generally do not have as their "dominant characteristic" the depiction of a sexual organ or anal region "for a sexual purpose". Placing a photo in an album of sexual photos and adding a sexual caption could change its meaning such that its dominant characteristic or purpose becomes unmistakably sexual in the view of a reasonable objective observer: see *R. v. Hurtubise*, [1997] B.C.J. No. 40 (QL) (S.C.), at paras. 16-17. Absent evidence indicating a dominant prurient purpose, a photo of a child in the bath will not

be caught. To secure a conviction the Crown must prove beyond a reasonable doubt that the "dominant characteristic" of the picture is a depiction of the sexual organ or anal region "for a sexual purpose". If there is a reasonable doubt, the accused must be acquitted.

- [28] The five images at issue here are reproduced in Exhibit 6. While it is true that no medical evidence was adduced as to the potential ages of the subjects in image files 71098, 71102, and 71105, found in the unallocated space of the office computer and image file 119.jpg, found on the external hard drive and also on the home computer with a different file name (312944213.jpg), that is not the end of the matter.
- [29] In his evidence, Cpl. Anderson, who has some experience in child pornography investigations, outlined what the images depict and provided some evidence as to the age of the subjects being under 18 years. I have examined the images, and I am satisfied beyond a reasonable doubt that they constitute child pornography as defined by s. 163.1(1)(a)(ii) of the Code. I am fortified in this approach by the Court of Appeal's decision in *R. v. R.D.*, 2010 BCCA 313 at paras. 17 to 22. The subjects in the photos are all girls lacking any sort of development of their breasts, hips, legs, and arms. Moreover, none of the subjects have pubic hair in their genital region. I have no doubt the images depict girls under the age of 18. The sexual purpose of the four photographs is fundamentally apparent—a reasonable viewer looking at this depiction objectively and in context would perceive these images to cause sexual stimulation to some viewers.
- [30] The defence argues that the fifth image (File 71106.jpg), a picture of a woman and a baby girl, "could merely be an artistic photo of a mother and child." Counsel asserts that it lacks the necessary sexual element to be captured as child pornography under s. 163.1(1)(a)(ii). I must, with respect, disagree. The assertion that the image "could merely be an artistic photo of a mother and child" overlooks what is actually depicted in the image. This photograph depicts a baby girl's naked torso with her legs spread apart and an adult female's face next to the child's vaginal opening. The baby is lying on her back. The adult female's face is positioned in such a manner that her gaze appears to be directed towards the child's vaginal opening. The way the image is framed, neither subject is depicted wearing clothing. The baby appears to be lying on a blanket or a sheet. The adult female is holding the child's right leg with her left hand in such a manner that the child's leg is partially splayed to the side. The baby's left leg is not visible as the adult female's head obscures it. In other words, the adult female's head is between the child's leg and her mouth is next to the child's vaginal opening. A reasonable viewer looking at this image objectively and in context would see its "dominant characteristic" has the depiction of the child's sexual organ. The same reasonable viewer looking at the image objectively and in context would reasonably perceive that the image was intended to cause sexual stimulation for some viewers.
- [31] I am satisfied that the Crown has established beyond a reasonable doubt that the five images located on Mr. Meissner's three devices are child pornography as defined in s. 163.1(1)(a)(ii) of the Code. The remaining issues to determine centre around whether the Crown has established beyond a reasonable doubt that Mr. Meissner knowingly possessed five images

of child pornography and knowingly accessed the items of written child pornography covered in Counts 2 and 4 of the indictment. In essence, has the Crown established beyond a reasonable doubt that Mr. Meissner had the requisite mens rea for the offences charged?

- [32] Before addressing the evidence on these issues, I will briefly review the legal principles that inform the determination of the remaining issues.

Circumstantial Evidence

- [33] As it is clear that this is a circumstantial case, the jurisprudence from the Supreme Court of Canada on circumstantial evidence as articulated in *Villaroman* governs the analysis.
- [34] In *Villaroman*, the accused was having difficulty with his laptop computer so he left it with a repair shop. The technician repairing the laptop located child pornography on it. The technician called the police. A search of the laptop by the police confirmed the presence of child pornography. The accused was convicted at trial. On appeal, the Alberta Court of Appeal entered an acquittal based on its finding that the trial judge erred in his application of the law on circumstantial evidence.
- [35] The Crown's appeal to the Supreme Court of Canada was allowed, but the matter was remitted to the Alberta Court of Appeal for hearing and disposition on the Charter issues raised by the search of the laptop and the failure to exclude the evidence pursuant to the framework established in the s. 24(2) Charter jurisprudence.
- [36] In addressing the issue of the applicability of the old rule in *Hodge's Case* (1838), 2 Lewin 227, 168 E.R. 1136, Mr. Justice Cromwell, writing for the Court, held that reasonable inferences logically based upon the evidence or lack of evidence that are inconsistent with guilt inevitably mean that the Crown's evidence does not meet the standard of proof beyond a reasonable doubt: see *Villaroman* at para. 35.
- [37] Moreover, a theory alternative to guilt is not speculative by the mere fact that it arises from the lack of evidence. A gap in the evidence may result in inferences other than guilt. However, those inferences must be reasonable given the evidence and the absence of evidence assessed logically and in light of human experience and common sense: *Villaroman* at para. 36.
- [38] Justice Cromwell went on to hold:
- [37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories"

or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

[38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[39] I have found two particularly useful statements of this principle.

[40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed.

[Emphasis added.]

[41] While this language is not appropriate for a jury instruction, I find the idea expressed in this passage -- that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative -- a helpful way of describing the line between plausible theories and speculation.

[42] The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.

[43] Where the line is to be drawn between speculation and reasonable inferences in a particular case cannot be described with greater clarity than it is in these passages.

[39] The direction from *Villaroman* informs my assessment of the evidence in this case.

The Mens Rea for Possessing and Accessing Child Pornography

[40] *Villaroman* is also the leading decision on how the trier of fact determines whether or not an accused has the requisite knowledge that there is child pornography on their computer or electronic storage devices:

[57] In order to establish possession of child pornography, the Crown had to prove beyond reasonable doubt that the respondent was aware that he had physical custody of the pornography and that he was aware of what it was: see, e.g., *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at paras. 16 and 136. There can be no serious question about the fact that the respondent had physical possession of the material in the sense discussed by the majority of the Court in *Morelli*: it had been downloaded on to his computer and he had physical

possession of the computer. The real question is whether it was reasonable for the judge to find that the respondent knew that he had physical possession of the pornography that was in fact in his computer's memory.

- [58] I have found it helpful to consider this issue in two steps. At the first, the question is whether a user of the respondent's computer knowingly downloaded pornography. The judge found that a user of this computer had done so and, in my view, that conclusion was reasonable: para. 67.
- [61] The second step is to ask whether it was reasonable to conclude that the respondent was knowingly in possession of the child pornography that had been saved on his computer.
- [41] Knowledge or intention can be proven in a variety of ways such as by a declaration of an accused to having such knowledge and intent, or proof by an associated witness. In its absence, knowledge and intent must be inferred from the circumstances. In this case, the Crown's case is a circumstantial one and thus attracts consideration of the concepts of recklessness and wilful blindness.

Recklessness and Wilful Blindness

- [42] Culpable knowledge and intent may be inferred from the evidence on the basis of a finding of recklessness or wilful blindness.
- [43] In *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299 at 1309 to 1310, Dickson J. (as he then was) for the Court wrote:

The distinction between the true criminal offence and the public welfare offence is one of prime importance. Where the offence is criminal, the Crown must establish a mental element, namely, that the accused who committed the prohibited act did so intentionally or recklessly, with knowledge of the facts constituting the offence, or with wilful blindness toward them. Mere negligence is excluded from the concept of the mental element required for conviction. Within the context of a criminal prosecution a person who fails to make such enquiries as a reasonable and prudent person would make, or who fails to know facts he should have known, is innocent in the eyes of the law.

- [44] In *R. v. Briscoe*, 2010 SCC 13, at para. 21, Madam Justice Charron noted that:
- [21] Wilful blindness does not define the mens rea required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the mens rea.
- [45] In the seminal decision of *Sansregret v. The Queen*, [1985] 1 S.C.R. 570, the Supreme Court of Canada addressed the distinction between recklessness and wilful blindness. There, the Court held that for recklessness to form part of the mens rea, it must have an element of the subjective. It is found in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists despite the risk. It is the conduct of one who sees the risk and who takes the chance:

16. The concept of recklessness as a basis for criminal liability has been the subject of much discussion. Negligence, the failure to take reasonable care, is a creature of the civil law and is not generally a concept having a place in determining criminal liability. Nevertheless, it is frequently confused with recklessness in the criminal sense and care should be taken to separate the two concepts. Negligence is tested by the objective standard of the reasonable man. A departure from his accustomed sober behaviour by an act or omission which reveals less than reasonable care will involve liability at civil law but forms no basis for the imposition of criminal penalties. In accordance with well-established principles for the determination of criminal liability, recklessness, to form a part of the criminal mens rea, must have an element of the subjective. It is found in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance. It is in this sense that the term 'recklessness' is used in the criminal law and it is clearly distinct from the concept of civil negligence.
- [46] Wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because they do not wish to know the truth. They would prefer to remain ignorant. It is the deliberate failure to make inquiries when one knows there is reason for inquiry. As Mr. Justice McIntyre wrote in *Sansregret*:
22. Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry. Cases such as *R. v. Wretham* (1971), 16 C.R.N.S. 124 (Ont. C.A.); *R. v. Blondin* (1970), 2 C.C.C. (2d) 118 (B.C.C.A.), appeal dismissed in this Court at (1971), 4 C.C.C. (2d) 566 (see: [1971] S.C.R. v, unreported); *R. v. Currie* (1975), 24 C.C.C. (2d) 292 (Ont. C.A.); *R. v. McFall* (1975), 26 C.C.C. (2d) 181 (B.C.C.A.); *R. v. Aiello* (1978), 38 C.C.C. (2d) 485 (Ont. C.A.); *Roper v. Taylor's Central Garages (Exeter), Ltd.*, [1951] 2 T.L.R. 284, among others illustrate these principles. The textwriters have also dealt with the subject, particularly Glanville Williams (*Criminal Law: The General Part*, 2nd ed., 1961, at pp. 157-160).

Glanville Williams, however, warns that the rule of deliberate blindness has its dangers and is of narrow application. He says, at p. 159:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge.

This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge.

[Emphasis added.]

The Assessment of Credibility and Character Evidence

- [47] Mr. Meissner testified in his own defence and also called three character witnesses. Accordingly, I am mindful of the Supreme Court of Canada's decision in *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
- [48] When an accused testifies or calls evidence and credibility is at issue, the trier of fact must be instructed as to the principles set out in *W.(D.)*. Those principles apply equally to the reasoning process of judges in judge alone trials: see *R. v. D.S.C.*, 2004 NSCA 135. Summarized eloquently by Cromwell J.A. (as he then was) at para. 19: "the ultimate issue in any criminal case is not who the jury (or judge) believes but whether, in light of all of the evidence, a reasonable doubt about guilt persists."
- [49] A significant issue in this trial is the credibility and reliability of Mr. Meissner's assertions that he was unaware that the five images I have found to be child pornography were on his computers and external hard drive. Insofar as the eight accessed stories that are written child pornography and the one bookmarked story of written child pornography, it was Mr. Meissner's evidence that he was not aware of the content of the stories and was unaware that there was a bookmarked story on his Internet Explorer browser that linked to written child pornography on the website asstr.org.
- [50] Accordingly, I have instructed myself in accordance with the principles in *W.(D.)*. In the context of this trial, that means if I accept the evidence of Mr. Meissner, if I have a reasonable doubt based on his evidence, or if I cannot decide whether to accept or reject his evidence, then I must acquit him of the charges. Even if I reject the evidence of Mr. Meissner, I must still examine all of the evidence to determine whether I am satisfied beyond a reasonable doubt that he is guilty of possessing and accessing child pornography as charged in the indictment.
- [51] In *R. v. Awasis*, 2012 BCPC 573, the Honourable Judge Bagnall addressed the issue of fact-finding and reasonable doubt in the context of defence evidence:
- [9] The task of finding the facts, of determining what really happened, involves the weighing of evidence, but is not an exercising in preferring one witness's evidence over that of another. This is because the doctrine of reasonable doubt applies to the issue of credibility as it does to every other issue in a criminal trial.

- [10] Triers of fact, whether judges or members of a jury, are not able to look into a witness's mind to see whether the witness is speaking the truth, yet we must try to discern, if we can, where the truth lies. Some aspects of a witness's testimony that I find helpful in this determination are these, and these are in no particular order:
1. The external consistency of the evidence given. I ask whether the testimony of the witness is consistent with independent evidence that I accept.
 2. The existence of prior inconsistent statements or previous occasions when the witness was untruthful. A criminal record for certain offences may be applicable to this issue.
 3. The internal consistency of the testimony. I ask whether the witness's evidence changes while the witness is testifying.
 4. I consider any motive that the witness might have to lie or mislead the court.
 5. I consider the ability of the witness to originally observe, to record in memory, and to recall the event.
 6. I consider the attitude and demeanour of the witness. I look at whether the witness is evasive, belligerent, or inappropriate in response, particularly during cross-examination.
 7. This might be the most important of the factors. I consider the sense of the evidence. When I apply my common sense to the evidence, is the result impossible, improbable, or unlikely, and what other results are there?
- [11] Some or all of these factors, sometimes just one of these factors, leads to the moral certainty that a witness's testimony is not reliable. It is only when that certainty is present that an accused's testimony should be rejected.

See also *R. v. Pierce*, 2017 BCSC 2469, at para. 188.

- [52] Mr. Meissner testified that he had no interest in child pornography, sexual activity with children, or pedophilia. The amount of child pornography imagery found in the forensic examination of his electronic devices was miniscule-five images-compared to what the courts frequently see in child pornography cases-hundreds, thousands, and hundreds of thousands of child pornography images. Moreover, the forensic examination of his devices as noted in the evidence of both Crown experts, Ken Lew and Sergeant Hack, found no evidence of collections, resort to peer-to-peer file sharing systems, accessing the dark web, resort to chatrooms, or steps to cover his tracks such as hiding the attributes of files or encrypted partitions on the hard drives, all the usual hallmarks of individuals who collect and share child pornography. Significantly, the forensic examination of the devices failed to locate the 17 images that precipitated Google's notification to NCMEC and the launch of the investigation of Mr. Meissner.
- [53] The defence argues that Mr. Meissner's evidence should be assessed with two fundamental precepts informing the examination:

- (i) his personality and character; and
- (ii) his interests in photography and computers including his technical knowledge in use of computers and cameras.

Evidence of Good Character

[54] Insofar as his personality and character are concerned, in addition to his own evidence, Mr. Meissner called three witnesses who provided evidence about his good character and reputation for honesty and integrity in his community. There are two limbs to the rule with respect to the admissibility of evidence as to an accused's good character. Such evidence is admissible and relevant:

- (i) to support the accused's credibility as a witness in the proceedings; and
- (ii) to render unlikely the accused's participation in the offences charged: see *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.); *R. v. Kootenay* (1994), 87 C.C.C. (3d) 109 (Alta C.A.); and *R. v. Elmosri* (1985), 23 C.C.C. (3d) 503 (Ont. C.A.).

[55] The Crown did not cross-examine these three defence witnesses, so their evidence is unchallenged.

[56] The Crown argued, however, that their evidence is of little assistance to determining the issue of guilt or innocence in this case as even people of good character and standing in the community can do bad things behind closed doors. Moreover, few friends will know of a friend's or colleague's sexual proclivities or attraction to illicit images such as child pornography.

[57] The Supreme Court of Canada in *R. v. Profit*, [1993] 3 S.C.R. 637, agreed with the dissenting opinion of Mr. Justice Griffiths in *R. v. Profit*, [1992] O.J. No. 2238, paras. 48 to 50 (Ont. C.A.), that as a matter of common sense, a trial judge may take into account that in sexual assault cases involving children, sexual misconduct occurs in private and in most cases will not be reflected in the accused's reputation for morality in the community. Mr. Justice Sopinka held in *Profit* that "As a matter of weight, the trial judge is entitled to find that the propensity value of character evidence as to morality is diminished in such cases."

[58] Although Mr. Meissner is not charged with the sexual assault of a child, child pornography offences fall within this genre of offending. The creation, collection, and consumption of materials that are child pornography is generally shrouded in secrecy and committed within the privacy of one's home. Having said that, the value of good character evidence remains intact insofar as the credibility limb of the rule is concerned.

The Evidence

- [59] The Crown called two computer forensic experts in this trial to provide evidence about the examination of the three devices that were found to contain the five images of child pornography, the 2011 bookmark for a webpage that linked to written child pornography, and the eight webpage links in the Firefox browser cache files of Mr. Meissner's home computer.
- [60] Ken Lew is a civilian member of ITCU and conducted the first examination and analysis of the seized devices forwarded to ITCU by Cpl. Anderson.
- [61] Sergeant Keith Hack is the team leader of ITCU and has been so since the fall of 2017. Sergeant Hack started as a regular analyst with ITCU in June 2014.
- [62] Both Mr. Lew and Sgt. Hack were qualified as experts in the area of computer forensics including the identification, extraction, preservation, analysis, and interpretation of digital evidence recovered from electronic storage media.
- [63] Between June 25 and October 7, 2015, Mr. Lew examined eight devices belonging to Mr. Meissner that had been seized pursuant to the search warrants on January 7, 2015.
- [64] Only three items were found to have anything of evidentiary value germane to the investigation and the charges Mr. Meissner now faces: (i) the office computer, (ii) the home computer, and (iii) the external hard drive. Mr. Lew documented his findings in a technical examination report dated October 9, 2015, and appended his analyst notes that document the steps he undertook in his examination of the devices. The report and notes were marked Exhibit 5 on this trial.
- [65] Sergeant Hack was asked to perform a supplemental analysis and answer six questions supplied by defence counsel. The questions related mainly to the written child pornography materials and the accessing of various webpages that point to the stories contained in Exhibit 2. Sergeant Hack answered two questions related to photographic materials found on the computer. Although the questions addressed to Sgt. Hack related to both the office and home computer, Sgt. Hack only did a supplemental examination and analysis in respect to the home computer. Sergeant Hack's Supplemental Technical Examination Report dated September 11, 2017, and his analyst notes of his forensic examination of the home computer on September 9 through 11, 2017, were marked as Exhibit 8 on this trial.
- [66] I propose to address the evidence in respect of the child pornography materials found on the devices by the counts on the indictment.

Count 3: Possession of Child Pornography

- [67] This count relates to the five images that I have found meet the definition of child pornography. Four images were found by Mr. Lew in the unallocated space of the office computer. One image was found on both the home computer and the external hard drive.

- [68] Mr. Lew explained that unallocated space contains the remnants of a file after it has been deleted from the computer such that the file itself is not actually fully deleted, it is only deleted from the master file table. A deleted file enters the unallocated space of the computer when new data overwrites parts of the deleted file. The deleted file is not completely overwritten and so the remnants are considered unallocated space.
- [69] In *R. v. Rhodes*, 2017 ONSC 4213, Justice Rasaiah succinctly explains the concept of unallocated space at paragraph 50:
- [50] Det. Cst. Pinkerton determined that 10 of the 11 images of child pornography and 150 videos of child pornography on the laptop were all located on unallocated clusters. An unallocated cluster is an area of the hard drive which is currently not being used by live files. This would include blank portions of the hard drive that have never been written to, or deleted data that has been flagged available for overwriting. The data of a deleted file is not erased from the hard drive. It remains on the hard drive until it is overwritten with new data. Files carved out of the unallocated clusters have no file name or date/time attribute associations. As such, the only evidentiary value of the data found in this location is that it can be said that at some point in time, these files existed as live files on the hard drive in which they were located. Although now on unallocated space, it is clear that the underlying data files did in fact reside on the laptop at some point in time. It is equally true that the ordinary user would not know that deleted files remained in unallocated space. Det. Cst. Pinkerton agreed that the ordinary user would believe that a deleted file was no longer in existence.
- [70] Deleted image files in unallocated space are not recoverable from unallocated space without using forensic tools such as EnCase or C4All. As these image files were in unallocated space, the metadata had been lost and so Mr. Lew had no information about the file size, file creation time, or last access time.
- [71] Mr. Lew searched the office computer's active file system for child pornography keywords and for the files that were reported to be uploaded to the Picasa website as outlined in the NCECC report. His search for the uploaded images had negative results.
- [72] The operating system for the office computer was last installed on May 20, 2014, which is after the date reported for the Picasa uploads that Google found. However, in cross-examination, Mr. Lew explained that while there were ways to do a complete install and update to completely override all old files, it was his view that the update used in Mr. Meissner's case was updating just the system files, but keeping all of the data files. To eliminate compromising material would require a complete reinstall.
- [73] Insofar as Mr. Meissner's home computer was concerned, Mr. Lew noted that it contained three hard drives. One hard drive was acting as the main boot disk or system drive and the two remaining hard drives form a two-disk RAID, providing a larger storage area for data. The operating system for this computer was last installed on October 20, 2014, again, after the date of the reported Picasa uploads that triggered this investigation. In his examination of the home computer, Mr. Lew did not find any images that met the definition of child

pornography on it. He did find a questionable image with a name consistent with child pornography files and other age-difficult images on the system drive, but these items are not captured by Count 3. Certainly, the names of the questionable files and the imagery of young girls in suggestive or provocative poses that Mr. Lew found on this computer raise questions. However, when one recalls that Mr. Meissner is an amateur photographer who had a vast collection of imagery on his devices including nudes of adults and other fine art imagery, the best one can say about the nature of the described images is that they are suspicious. None of the images reported by Google to have been uploaded to Picasa were located on this computer.

- [74] In his examination of the external hard drive, which had a three terabyte storage capacity, Mr. Lew conducted a keyword search and found nine questionable images, one of which had also been located on the home computer. The common image had a file path name of "`((Lolitaguy) Hussyfan New Pthc Oht 1(24).jpg`." On the home computer, the file created date is 2014-09-23, 08:21:09 hours (UTC-7:00), UTC being an acronym for Universal Time Coordinate, the equivalent to Greenwich Mean Time. On the external hard drive, it has a file created date and last accessed date of 2013-02-08, 14:51:57 hours (-8:00 Pacific Standard Time), with a last written date of 2011-08-29, 15:04:00 hours (-7:00 Pacific Daylight Time). Suspicious as the name is, it is not one of the images that forms part of Count 3. A second image file named, "`lola n panties.jpg`" found on this device was also suspicious given its name, but it was not adduced in evidence and is not captured by Count 3.
- [75] Mr. Lew found one image on the external hard drive that is included in Exhibit 6. The file name is 119.jpg. It has a file created date and last access date of 2013-02-08, 14:51:57 hours (-8:00 Pacific Standard Time) and a last written date of 2011-08-29, 15:12:48 hours (-7:00 Pacific Daylight Time). It was located in a file path entitled, "`C:\Downloads\Office Computer\Pictures\Yahoo`". However, no other information about files surrounding this image was extracted in the analysis or provided in evidence.
- [76] This image was also found on the home computer. However, no file path was provided and so, again, no context can be gleaned from the files that surround it. One important factor that does add further context to this is that Mr. Lew found 55,199 JPEG image files on the external hard drive and 77,041 images just in the unallocated space of the office computer. It is out of this that the four images of child pornography were extracted.
- [77] Sergeant Hack's examination of the home computer revealed that the system or operating drive contained in excess of 46,000 JPEG files and the two-disk RAID system contained in excess of 70,000 JPEG images. Many were duplicates in 256 byte and 1024 byte resolution sizes.

- [78] Sergeant Hack found approximately two dozen images on the system partition of the home computer that he described as sexual in nature but not child pornography. On the RAID partition of the home computer, he found approximately three dozen images that he described as sexual in nature but not child pornography. The majority of photos on both partitions of the home computer were described as personal images related to family, travel, and scenery.
- [79] Sergeant Hack found artifacts on the home computer that suggested Picasa had been previously accessed, but the date range for the temporary internet files was between October 21, 2014, and January 6, 2015. Of the 133 entries he found for Picasa on the home computer, none were for "nefarious purposes".
- [80] One other device examined by Mr. Lew was the second computer tower seized from Mr. Meissner's home on January 7, 2015. The Medion MT7 tower was examined in EnCase using the QuickCP-Filename script. There were 237 hits, but most were false positives. Mr. Lew found 11 link files with names suggestive of child pornography. Link files are files that point to another file, but in this case, Mr. Lew determined that what was being pointed to could not be found. While he assumed the link files were pointing to image files, none were found. In the end, he found nothing of evidentiary value to the investigation on the Medion computer tower. Although the existence of such file names on this tower is suspicious, it amounts to nothing else, particularly in light of the fact that nothing was found and, particularly, no positive evidence of child pornography. Moreover, the number of false positives from the use of the QuickCP-Filename script both on this device and the even greater number of false positives on the office computer, approximately 855, further dilutes the evidentiary force of this information. In my view, relying upon the suspicious link file names from the Medion computer tower to support an inference that Mr. Meissner must have known the five images found in his devices were there and were child pornography would amount to resorting to speculation.
- [81] Although the decision in Rhodes at para. 28 provides an example of a case where the names of surrounding files that are strongly suggestive of child pornography can be used to infer knowledge of the materials' nature and character to the user, the decision needs to be confined to its facts. In this case, none of the five images on Mr. Meissner's devices had names suggestive of child pornography. Moreover, there is no surrounding context as to where the images were found. The only place that had some context was the external hard drive, but no other child pornography was found there. Coupled with the high number of false positives in this case and the lack of information behind the suggestive names, I am not prepared to speculate that these items assist in inferring knowledge to Mr. Meissner of the nature and character of the five images of child pornography found on his devices.
- [82] One final area of the experts' evidence that must be addressed before I deal with Mr. Meissner's evidence with respect to the five images is the issue of viruses, malware, and Trojans. Mr. Lew testified he found some Trojans in the volume shadow copy of the home computer. No Trojans, viruses, or malware were found on the office computer. Mr. Lew

explained that Trojans are files that appear beneficial to a computer system but, in actual fact, carry a payload that is not good for the computer system. Trojans are a form of malware that can provide a backdoor access to a computer, or it can contact a website to download further malware. Mr. Lew examined and researched the Trojans on Mr. Meissner's home computer, but because they were so generic, it was impossible to say exactly what they would do. In Mr. Lew's experience, he had never seen a Trojan cause the automatic download of child pornography images, but he did acknowledge the possibility that Trojans could download images. He also acknowledged that Trojans could put downloads or files on the computer to subsequently blackmail an individual, including references to improper use of a browser to view sexual imagery. Although Mr. Lew had not encountered this himself, he was aware of this type of scam being reported to the police.

[83] I turn now to a brief review of Mr. Meissner's evidence as it relates to the images of child pornography found on his devices.

[84] Mr. Meissner is an avid amateur photographer. His initial training and employment after high school related to years of work as a studio manager of photography studios such as Sooter's and Artona after graduating from Langara College's two-year photo technician course in 1976. He worked in this field until 1992. In 1992, Mr. Meissner obtained his real estate licence. He was a prominent realtor in Chilliwack with Royal LePage for 25 years. When these charges were laid and became public knowledge, he felt he had to resign from his position.

[85] In addition to his employment as a realtor, Mr. Meissner was, for many years prior to these charges being laid, actively engaged and contributing his time and effort as a volunteer in his community through

- his involvement with the Chilliwack and District Real Estate Board for seven years as a director and for one year as its president,
- his involvement in the Chilliwack Rotary Club for over ten years including one year as president
- his involvement with the Chilliwack Players Guild as their principal photographer for 17 shows,
- his involvement with the Chilliwack Community Arts Council, as well as his involvement with the City of Chilliwack Public Arts Committee, and
- his charitable donations to the Royal LePage Women's Shelter Foundation, the MS Foundation, the Sick Kids Foundation, and BC Cancer Agencies that have amounted to tens of thousands of dollars.

[86] When Mr. Meissner started working as a realtor, digital photography was in its nascent stages. Mr. Meissner first encountered digital cameras through his employment and realized the enormous potential it represented for him to return to his creative passion of photographing landscapes, people, and events. It would be fair to say, based on Mr. Meissner's evidence, that he became obsessed with digital photography and the rich creative

process it provides for photographers in all facets of the image creation and development process.

- [87] Mr. Meissner has numerous digital cameras, storage devices, computers, flash drives, and external hard drives, all largely to serve his photographic passion and obsession. His photographic passion includes the artistic enhancement of images through processes such as Photoshop as well as the creation of personalized videos of family trips and travels with friends and the creation and self-publication of his own coffee-table-style books of photography.
- [88] When Mr. Meissner returned to photography as an avocation in the late 1990s and through the mid-2000s, as part of his research, he would download bulk files of imagery to look at to assist in further developing his own photographic skills. He was soon overwhelmed with some of the downloads of thousands of images. He eventually stopped this. He did not review every image he had downloaded. He worked to weed through and delete the images. Mr. Meissner explained that he used bulk downloading four or five times, but it was problematic as it acted like a big Hoover, vacuuming up thousands of images including fine art nude photography, which he was working on in his photography classes. He tried to find a few good photographs from these downloads and eliminate the rest but was not able to review all the images as there simply were too many. He worked to clean it off his computers and transfer it to external hard drives for processing. Some of the bulk downloads came in the form of compressed zip files.
- [89] Mr. Meissner also explained that several years ago he used to get emails and click on the links and end up being taken to a pornography website. He found this alarming and scary, and it caused him to become more careful about checking on unknown links of dubious provenance.
- [90] Mr. Meissner also described the fairly complicated workflow process he learned for cataloguing and saving all the images he took. He saved and backed up the original images so that he had the original and two copies backed up. He would then select the images he wanted to work on from the raw files. At the end of every year, he would delete images from his computer hard drive as the images were also saved on external hard drives. Mr. Meissner did the deletion process on both his home and office computer. Mr. Meissner explained that over time, as he continued to assemble images and place them in folders, the process could get out of control and become difficult unless the files and folders were properly named.
- [91] Mr. Meissner also explained the steps he took when editing photos and videos and his general practice while working on his computer with Photoshop. I shall review this evidence when I address the written child pornography as it is more germane to the issues that arise in respect of those counts.

[92] Mr. Meissner was clear in his evidence when shown the five images in Exhibit 6. He denied seeing them on his computer or his external hard drives and stated unequivocally that he was unaware they were on his devices and that he did not know how they got there. He became emotional when providing this evidence. He maintained his denial of knowledge in cross-examination. He denied any interest in child pornography or a sexual interest in children.

[93] Mr. Meissner has no criminal record. His three character witnesses all attested to his reputation for honesty and integrity in the community. This is evidence that I can consider and do consider in respect of the credibility limb of the rule on good character evidence. Mr. Meissner testified in a forthright, candid, and open manner. His evidence on the issue of the child pornography images was consistent and uncontradicted.

[94] When this evidence is considered in the context of the evidence from the two forensic experts, including

- the lack of metadata with respect to the four images on the office computer,
- the vast size of JPEG files found on the three devices examined,
- the miniscule amount of child pornography found on the three devices,
- the lack of any of the usual indicia of collectors of child pornography being found on Mr. Meissner's devices,
- the absence of names typically found in child pornography cases attached to any of the five images found in this case,
- a lack of any surrounding context to assist in determining the nature and character of the images found,
- Mr. Meissner's obsession with photography and initial resort to bulk downloads and receipt of zip files with thousands of images, and
- the existence of generic Trojans found on Mr. Meissner's home computer,

I am left with a reasonable doubt as to whether Mr. Meissner knowingly downloaded the five images to his devices. I also have a reasonable doubt as to whether Mr. Meissner was knowingly in possession of the five images of child pornography found on his devices. The Crown has not discharged its burden of proving the requisite mens rea for the possession of child pornography, and so I am dismissing Count 3.

Accessing Child Pornography

[95] I turn now to the two counts that relate to accessing child pornography which is prohibited by s. 163.1(4.1) of the Code.

- [96] Accessing child pornography is a different offence than possession of child pornography, and it has different elements. Parliament's purpose in creating the separate offence of accessing child pornography was to capture those individuals who intentionally view or read child pornography on the internet as sometimes the legal notion of possession can be problematic: see *R. v. Morelli*, 2010 SCC 8, at para. 26.
- [97] Three months after the decision in *Morelli*, our Court of Appeal dealt with a conviction appeal in respect of possession and accessing child pornography in the case of *R.D.* There, the convictions were overturned and acquittals entered. Writing for the court, Madam Justice Bennett held at para. 31 of *R.D.* that the elements of accessing child pornography are knowingly causing child pornography to be viewed by, or transmitted to, oneself. Accordingly, in the case at bar, the issue is whether the Crown has proved beyond a reasonable doubt that Mr. Meissner knowingly viewed the written child pornography that is the subject matter of Counts 2 and 4 on the indictment. The nine stories captured by Counts 2 and 4 relate to the webpage links on asstr.org and are reproduced in Exhibit 2 (2a - 2i).
- [98] In his examination of the office computer, Mr. Lew found no stories from asstr.org on it. He did find a reference to asstr.org in backup files in respect of Mr. Meissner's iPhone. The data included one cookie named, "leslita", which indicated that the asstr.org website had been accessed by Mr. Meissner's iPhone on August 20, 2013, at 03:12:05 p.m. (UTC-7). While "leslita" is a child pornography codename, no further evidence was adduced in respect of the iPhone or this story link.
- [99] The only device that provided evidence in respect of accessing written child pornography was Mr. Meissner's home computer. In respect of these stories, they are broken down into two time frames: (i) the eight stories accessed on January 4 and 5, 2015, and (ii) one story accessed through a bookmarked webpage saved on June 29, 2011, that linked to a child pornography story.

Count 2: Exhibit 2i

- [100] As I understand the Crown's case, Count 2 charges that Mr. Meissner accessed child pornography between July 13, 2010, and August 8, 2012. The material on this count relates to one bookmark in the Internet Explorer browser found on Mr. Meissner's home computer. The bookmark linked to a webpage on asstr.org that contained a story that meets the definition of child pornography as provided by the Code.
- [101] In his report, Mr. Lew outlines that the home computer's RAID drive had two web addresses pointing to child pornography stories on asstr.org. Both were located in the folder, "\\Users\\Ian\\Favorites". Two URLs are provided at page 17 of the Mr. Lew's report, but only the "Kiddies Golden Showers," story was adduced in evidence as Exhibit 2i. As previously noted, there is no issue about the content of this story. It is child pornography within the meaning of s. 163.1(1)(c) of the Code.

- [102] The issue here is whether the Crown has proved beyond a reasonable doubt that Mr. Meissner knowingly accessed this child pornography story when a bookmark was created on his Internet Explorer browser in his Favorites folder on June 29, 2011, at 11:15:33 hours (-7:00 Pacific Daylight Time).
- [103] In his forensic examination of the home computer, Mr. Lew located two bookmarks in Mr. Meissner's Internet Explorer browser in a Favorites folder that linked to asstr.org. When a webpage is bookmarked on Internet Explorer, it creates the URL link in the Favorites folder. Mr. Lew suggested that a URL could only be bookmarked by the user clicking an icon in the Internet Explorer interface to add a bookmark. He did not think a URL could usually be added to the Favorite folder without such user interaction. He conceded in cross-examination that there were other ways one could enter a URL to Favorites on a web browser. Mr. Lew was not familiar with using the hotkey command of "Ctrl-D" to bookmark a webpage but conceded it could be a command to add a bookmark to Favorites. In direct examination, Mr. Lew stated that two distinct user actions would be required to bookmark the two distinct URLs found in Internet Explorer Favorites. However, Mr. Lew could not explain how the two different webpages were bookmarked at precisely the same time, stating it seemed impossible as far as he knew.
- [104] Curiously, when Sgt. Hack conducted the supplemental forensic examination of the home computer, he went through it and looked for the internet history on the computer with respect to the asstr.org website. His examination revealed that the other browser installed on the home computer, Mozilla Firefox, had been used. In cross-examination, he explained that in answering Question 1 posed to him as outlined in his report, he would have done searches for all times that asstr.org had been visited beyond the January 4 and 5, 2015, dates he found. He did not believe there was anything on any other web browsers. Sergeant Hack's analysis did not appear to capture the two asstr.org bookmarks made on June 29, 2011, at the exact same time in the Internet Explorer browser Favorites folder.
- [105] Mr. Meissner testified about his use of his home computer and acknowledged that he visited asstr.org on a number of occasions after he stumbled upon it when searching for how to self-publish a book in 2010 or so. He ran across a sex story that related to science fiction that he found entertaining. Exhibit 12, a story from asstr.org that addresses the sexual predilections of robots including C3PO and R2D2 from Star Wars, was entered as an exhibit to demonstrate the genre of asstr.org stories that Mr. Meissner preferred to consume when visiting that website.
- [106] Mr. Meissner explained that he had three browsers on his home computer, Internet Explorer, Google Chrome, and Mozilla Firefox. In 2011, he had many favorites on his Internet Explorer browser but, over time, he found Internet Explorer to be too slow. Sometime in 2013 and 2014, he started to move more to using Firefox as his web browser. More recently, he has preferred to use Google Chrome.

- [107] Mr. Meissner explained that he frequently used hotkeys or shortcuts in the Microsoft Windows system and that the hotkey, "Ctrl-D" was a way to create a Favorite bookmark on the Internet Explorer. He also frequently resorted to other hotkeys such as "Ctrl-S" to save, "Ctrl-F" to find something on a screen, "Ctrl-C" to copy, and "Ctrl-V" to paste. He acknowledged that from time to time he had made mistakes with respect to the hotkeys he had used. I took this to mean he used the wrong key of "Ctrl-D" instead of "Ctrl-S" or "Ctrl-F".
- [108] Insofar as bookmarking a story on asstr.org was concerned, Mr. Meissner, in preparation for trial, tried bookmarking a non-child pornography story and found that he had to go to the actual story page to do so. He acknowledged going to the asstr.org website in 2011 but denied intentionally bookmarking the two URL webpages that Mr. Lew described in his report. Mr. Meissner testified that he did not know the two bookmarks were in his Internet Explorer Favorites and said he had never read or seen the "Kiddies Golden Showers" story reproduced in Exhibit 2i and found at one of the two bookmarked URLs on his home computer Internet Explorer browser.
- [109] When I consider the totality of the evidence adduced in respect of Count 2, and given the unusual features in the evidence surrounding the creation of the bookmark in relation to this story in Exhibit 2i as well as Mr. Meissner's evidence about surfing asstr.org for science fiction genre sex stories coupled with his vehement denial of bookmarking the URL for that story, I find that I have a reasonable doubt as to whether Mr. Meissner knowingly accessed this child pornography story and bookmarked it.
- [110] Another reasonable inference available on the totality of the evidence is that, while Mr. Meissner may well have clicked on the story link as he searched asstr.org for his preferred genre, he may simply have inadvertently bookmarked it in a mistaken keystroke between "Ctrl-D" and "Ctrl-F" for find-the keys for D and F being adjacent to each other on a computer keyboard. The Crown has not discharged its burden of establishing beyond a reasonable doubt that Mr. Meissner accessed, that is, knowingly caused the child pornography story in Exhibit 2i to be viewed when a bookmark for it was entered into his Internet Explorer Favourites at exactly the same time a bookmark was created for another webpage story on asstr.org. Accordingly, I am dismissing Count 2.

Count Number 4: Exhibits 2a through 2h

- [111] I turn to the final count on the indictment, Count 4.
- [112] As I understand the Crown's case, Count 4 charges Mr. Meissner with accessing child pornography between August 9, 2012, and January 7, 2015. The child pornography materials captured by this count relate to the eight stories in Exhibit 2 (excluding Exhibit 2i) whose URLs were found in the Firefox cache folder on the system drive of the home computer. The cache files show the browsing history of Firefox on the home computer.

- [113] Mr. Lew's forensic examination of the home computer revealed that the user had accessed or opened eight different story links in asstr.org between 11:18:15 hours PST on January 4, 2015, and 14:35:37 hours PST on January 5, 2015. The defence acknowledges that seven of the stories meet the definition of child pornography as described in s. 163.1(1)(c) of the Code.
- [114] Mr. Meissner acknowledged in his evidence that he visited the asstr.org website on both those dates looking for science fiction genre sex stories between working on different video projects and checking his Facebook and email accounts. He acknowledged having opened the web stories found by Mr. Lew and Sgt. Hack in their forensic analyses of the home computer but denies that he knew the stories were child pornography stories.
- [115] Mr. Meissner testified that when he visits the asstr.org website to look for science fiction sex stories, he clicks on the links of the recently posted stories page to see if the story meets his preferred genre, the titles not necessarily being indicative of the story content. His usual practice is to scan the first few lines of the story on the open webpage and, if the story does not contain any of the common science fiction terms he looks for, he would move on by using the backspace key to return to previous page without reading the story any further. Mr. Meissner denies knowingly accessing the child pornography stories on asstr.org on January 4 and 5, 2015, notwithstanding the presence of the browsing history for the webpages in the Firefox cache files of his home computer.
- [116] Mr. Lew testified that in his examination of the home computer, he conducted a keyword search looking for all the usual child pornography file names and also the term, "asstr". He found ten URL references to child pornography stories on asstr.org. Of these, eight URLs were stored in Firefox cache files or the "places.SQLite" file.
- [117] Mr. Lew explained that the places.SQLite file shows the browsing history as well as bookmarks contained in the Firefox browser. So, if an individual has browsed the ASSTR website, this history is captured in the places.SQLite file. The browsing history discloses the full URL as well as the time the webpage or URL was opened.
- [118] Mr. Lew navigated to each of the URLs he found in the Firefox browsing cache history file and viewed the content of the webpages including the title of the story as depicted on the webpage. His report, Exhibit 5, outlines the full URL for each of the eight stories in Exhibit 2, the title of each story, and the date and time that each story was opened on the home computer.
- [119] Mr. Lew also determined that the user of the home computer searched for the asstr.org website by using the Google search webpage on the computer by typing in "asstr.org" on January 4, 2015, at 11:17:55 hours PST and on January 5, 2015, at 14:17:24 hours PST. Mr. Lew charted his findings of the titles of the stories opened on the asstr.org webpages as well as the dates and times they were opened in his technical examination report:

Title

The Tutor*

Mandy and Lizzy

The "Make Out" Sessions

Mandy's Story of Awakenings, Part 1

Mandy's Story of Awakenings, Part 2

Holiday Fun Part 1*

Mother and Daughter Tales*

Little Slave Girl*

Megan Becomes an Altar Girl

Date and Time Accessed (PST)

2015-01-04 11:32:02

2015-01-04 11:38:20

2015-01-04 11:38:47

2015-01-04 11:42:24

2015-01-04 11:43:32

2015-01-05 14:18:03

2015-01-05 14:27:16

2015-01-05 14:33:43

2015-01-05 14:35:38

[120] I note that of the nine stories listed in this chart, only five stories were included as exhibits in these proceedings. The remaining four stories listed, which I have marked with an asterisk in the chart above, are not before the Court as exhibits in these proceedings and do not form part of the materials captured by Count 4. Missing from Mr. Lew's chart, but included in his findings at pages 16 and 17 of his report are the following story titles and date and access times: Exhibit 2b, "Tanya's Punishment," 2015-01-04, 11:18:15 hours Pacific Standard Time ("PST"); Exhibit 2c, "Showing Shelley," 2015-01-05, 14:32:22 hours PST; Exhibit 2g, "Helen's First Penetration," 2015-01-05, 14:25:10 hours PST. Mr. Lew did not print out any hard copies of these stories as they appear on the various asstr.org webpages.

- [121] Corporal Anderson copied the contents of the eight stories into separate Microsoft Word documents and created the hard copies of the eight stories found in Exhibits 2a through 2h. However, he reformatted their appearance and standardized the font and font size with spacing so that the stories are easier to read. The content is not altered but how the stories appear when displayed on a computer screen has not been reproduced in the hard copies of the stories contained in Exhibit 2a to 2h.
- [122] Corporal Anderson explained that when the stories were viewed through the URL on the computer, sometimes the title of the story appeared at the top of the page, sometimes it was off to the side. It depended on the story page.
- [123] Sergeant Hack's supplemental technical examination of the home computer in September 2017 gathered some further context information about the January 4 and 5, 2015, visits to stories on asstr.org, but only for the times closely surrounding the access. Sergeant Hack acknowledged he did not specifically look at all the browsing history beyond the asstr.org URLs on January 4 and 5, 2015. He did note two entries for the website, YouTube-one on January 4 and one on January 5, 2015-which told him that the website had been visited on those dates. The times for the visits to the YouTube websites were included as they occurred either before or after the asstr.org visits. Sergeant Hack explained that he obtained the two entries for the YouTube visits as outlined in his report (Exhibit 8, page 19) by looking in the Firefox database at a table that contained typed URLs, meaning instances where the user typed the actual URL into the bar at the top of an open webpage. Sergeant Hack was looking to see if the user had typed in any of the asstr.org URLs or anything related to the ASSTR website, but the only results were related to YouTube.
- [124] What is clear from the evidence of the two computer forensic analysts, Mr. Lew and Sgt. Hack, is that they limited their searches of the browsing history of the home computer to the visits to asstr.org. The surrounding context of visits to other websites on those dates, save for the two YouTube website visits, was not recorded by them.
- [125] I do not fault the Crown witnesses for that approach; they were searching for evidence related to child pornography. However, by limiting the information to just asstr.org website visits, the full context of the actual use of the home computer and browsing the internet on January 4 and 5, 2015, is not available to consider. This is important, because the best the two experts can say about the eight URLs related to the child pornography stories in Exhibit 2 is that the webpage was accessed or opened at the times indicated in their reports. They are unable to say how long the webpages were open, mere seconds or longer. Their evidence does not address whether the full story was read or simply the first few lines of it were scanned. There is no information as to when the computer was turned on or when or what the first webpage was that was opened on either January 4 or 5, 2015.
- [126] The history of the home computer internet activity for January 4, 2015, as provided in Sergeant Hack's report is the following:

- 11:11:41 hours PST, the YouTube webpage was opened/accessed;
- 11:17:54 hours PST, the user searched ASSTR on Google;
- 11:17:54 hours PST, Google redirected the user from the earlier secure https link to an open http link;
- 11:18:04 hours PST, the asstr.org link is first accessed;
- 11:18:06 hours PST, the asstr.org/main.html page is opened;
- 11:18:14 hours PST, the story link for Exhibit 2b is opened;
- Between 11:22:32 and 11:38:13 hours PST, 25 different asstr.org links are opened, at least three if not four of the links appear by their file paths to be indices, not stories (newfiles.html). None of these 25 links are the stories that comprise Exhibit 2, but some of the URLs appear to have what might be child pornography affiliated terms in them.
- 11:38:20 hours PST, the story link for Exhibit 2f is opened;
- 11:38:41 hours PST, a title index is opened;
- 11:38:47 hours PST, the story link for Exhibit 2a is opened;
- Between 11:40:11 and 11:42:00 hours PST, two links that appear to have child pornography affiliated code terms in their URLs are opened. The information at these two links are not included in Exhibit 2.
- 11:42:23 hours PST, the story link for Exhibit 2d is opened; and
- 11:43:28 hours PST, the story link for Exhibit 2e is opened.

[127] The history of the computer internet activity for January 5, 2015, as provided in Sgt. Hack's report is as follows:

- 13:54:33 hours PST, the YouTube webpage was opened/accessed;
- 14:17:24 hours PST, the user searched ASSTR on Google;
- Between 14:17:24 and 14:17:28 hours PST, Google redirected the user from the secure https link to an open http link;
- 14:17:28 hours PST, the asstr.org link is first accessed;
- 14:17:31 hours PST, the asstr.org/main.html page is opened;
- Between 14:17:48 and 14:18:02 hours PST, two different URL links are opened. One appears to have child pornography code words in the file path. The information or stories of these two links are not included in Exhibit 2.
- 14:25:10 hours PST, the story link for Exhibit 2g is opened;

- Between 14:27:16 and 14:31:51 hours PST, two different URL links are opened. Neither appear to have the common child pornography code words in the file paths. The information or stories at these two links are not included in Exhibit 2;
- 14:32:22 hours PST, the story link for Exhibit 2c is opened;
- Between 14:33:29 and 14:35:27 hours PST, six different URL links are opened. Two appear to be links to possible indices (newfiles.html) and one link appears to have common child pornography code words in the URL; and
- 14:35:37 hours PST, the story link for Exhibit 2h is opened.

[128] The partial pattern established in this chronology is a user accessing a variety of stories on asstr.org, sometimes in rapid succession, sometimes not so quickly. However, the longer time periods, for example, the almost four-and-a-half minutes elapsed between opening the story link for Exhibit 2b on the computer at 11:18:14 hours PST on January 4, 2015, and the next ASSTR link access at 11:22:32 hours PST does not necessarily mean the user was at the story link for Exhibit 2b for that entire time. The user could well have scanned the first few lines of the story, toggled (my words) back and forth between an open Facebook page, an open email window, or work page window, and then moved on. The forensic experts were unable to determine how long the story pages remained open and were in no position to say whether the user, in opening the link, read the full story.

[129] The Crown urges that I can infer that, given the time elapsed between each ASSTR link established in the forensic chronology, Mr. Meissner read the contents of the stories in Exhibit 2 and, as such, knowingly accessed child pornography.

[130] The Crown urges that I consider the context of the child pornography code terms included in the URLs to assist in making this inference. While I might be able to do so if the code terms were common knowledge and obvious or the stories or the titles were obvious, the fact of the matter is neither are obvious. Moreover, the titles to the eight stories in Exhibit 2 do not appear to contain overt references to child pornography. It is not entirely clear to me that a user would necessarily be looking at the URL address at the top of the webpage as opposed to the screen displaying the content of the story and its title.

[131] At most, the evidence establishes the opening of the various links at asstr.org as delineated above. Collectively, the evidence does not establish that the stories were read from beginning to end or even far enough in to determine that they were written child pornography. More significantly, the evidence of the analysis of the computer use is confined to the timeframe around when asstr.org was accessed on January 4 and 5, 2015.

- [132] Mr. Meissner testified that on January 4, 2015, he was at his computer earlier in the morning because he needed to process the raw video and still footage he had from a recent ski trip to Mount Washington over New Year's with family and friends. He had footage of family and friends skiing and was working on creating personalized videos with music and other add-ins that he would then upload to YouTube to share with these individuals.
- [133] Mr. Meissner gave fairly detailed evidence about his workflow process generally, and more specifically, the video editing process he was engaged in on January 4 and 5, 2015. Indeed, the end product of his editing was played in this trial-three videos of the ski trip to Mount Washington, two of which were uploaded to YouTube on January 4, 2015, and one on January 5, 2015. The screenshots of the YouTube videos and the upload dates were produced at Exhibits 14 through 17.
- [134] Mr. Meissner was clear in his evidence that when he is at his home office work station editing and processing raw video and still shots, he has a specific workflow pattern he follows and has followed for years. His workflow pattern includes:
- powering up the computer,
 - opening his Facebook page in one window,
 - opening his Gmail account in a second window,
 - opening a third and sometime fourth internet window to research issues, read content, or access YouTube,
 - opening his various applications such as Lightbox, Photoshop, and Premier Pro to edit his video footage and photographs, and
 - starting to upload his pictures and videos from his camera flashcards to his computer.
- [135] In order to do his editing work, Mr. Meissner works with two computer monitors. On the left monitor screen, he has the image or video he intends to work on. The right monitor screen is divided into a series of windows. Two-thirds of the monitor relates to photography applications such as Photoshop or Premier Pro. The remaining one-third of the monitor on the right-hand side of the screen consists of two, three, or even four open windows with his Facebook page open at the top, his Gmail account open in the middle, and then another window or two open in other websites. If four web browser windows are open, the third and fourth window pages would be on top of each other. Exhibit 18 is a screenshot of Mr. Meissner's workspace made on February 12, 2019, depicting how his work station would have looked when at his home computer on January 4 and 5, 2015. Included is the asstr.org/main/html webpage, showing how the indices portion of asstr.org would have appeared on his computer at the relevant time.

- [136] I should add that Exhibit 13 comprises three screenshots of the asstr.org website. The first page is what users see when encountering asstr.org. The second page, as the URL indicates, is asstr.org/main.html which contains a box with links for most recent stories. The third page in Exhibit 13 shows the asstr.org/newfiles.html webpage which lists the files added to asstr.org on the access date and recently uploaded stories.
- [137] On Sunday, January 4, 2015, Mr. Meissner started to work at his computer between 9:30 and 10:00 a.m. by opening a window for his Facebook account and another window for his Gmail account and set up his workstation in much the same manner as depicted in Exhibit 18. Mr. Meissner was clear in his evidence that Exhibit 18 represents how he set up his workstation on January 4 and 5, 2015, and how he has done so over the past eight to ten years.
- [138] Mr. Meissner worked on two videos on January 4, 2015, which he later uploaded to his YouTube account. Mr. Meissner agreed that he opened the YouTube webpage at 11:11:41 hours PST, as outlined in Sgt. Hack's evidence and report. He then navigated to his own account on YouTube and, at some point, uploaded the two videos depicted in the screenshots in Exhibit 14 and 15. Mr. Meissner testified that he left the YouTube window open for a couple of hours that day. In addition to working on the two videos from Mount Washington and uploading them to YouTube, Mr. Meissner also worked on a third Mount Washington video as well as a long-term video project from a kayaking trip with friends. He worked on that video and the third video on both January 4 and January 5, 2015. The third video from Mount Washington that was uploaded to YouTube on the afternoon of January 5, 2015, is depicted in Exhibit 16.
- [139] On Monday, January 5, 2015, Mr. Meissner went to his office in the morning, returned home for lunch, and then went to his home computer to finish his work on his third Mount Washington video, and he uploaded it to YouTube that afternoon. Mr. Meissner then returned to working on his longer-term large video project related to the kayaking trip.
- [140] As I noted, Mr. Meissner testified that Exhibit 18 represents how his workstation looked on January 4 and 5, 2015. He always has his Facebook webpage and email webpage open as the first two windows on the right-hand side of the right monitor in order to see when notifications come in on his Facebook page or if emails arrive in his email account. On January 4 and 5, Mr. Meissner had asstr.org as the third window open in his right monitor. As I understood Mr. Meissner's evidence, he went to asstr.org on January 4 and 5, 2015 and used it as a break from time to time or while he waited for steps in his video editing process or for the videos to upload to YouTube.
- [141] Mr. Meissner explained that he went to ASSTR through its first page as depicted in Exhibit 13, then went to the second page - essentially the index page (asstr.org/main.html page) - and clicked on a story in the most recent story list. He explained he was looking for the science fiction genre of sex stories and when he scanned the first story page he opened and did not find science fiction terms, he pressed the backspace key on his keyboard to return to

the most recent page and checked the next link. Mr. Meissner denied reading the content of the stories in issue in this trial. He scanned the first few lines quickly for science fiction terms or content and when he did not find it, he backspaced back to the previous page to check for another story.

- [142] Mr. Meissner admitted to going to asstr.org on both January 4 and 5, 2015, and opening the links that are contained in Sgt. Hack's report. However, he did not stay continuously on asstr.org on either date. Rather, he "toggled" (my word) or flipped back and forth between his editing work, his Facebook account, his email account, his YouTube account, and asstr.org.
- [143] Mr. Meissner testified he did not know the stories contained child pornography or had the potential for such content. He only scanned the first couple of lines to see if the stories were in the science fiction sex story genre. Mr. Meissner explained that notwithstanding the passage of four years from the time of his January 4 and 5, 2015, visits to asstr.org, he had a clear recollection of what he was doing on those two days as the police attended at his residence and office two days later and seized a number of storage devices and computers from him. Mr. Meissner was firm and consistent in his denial of knowingly accessing child pornography.
- [144] In cross-examination, Mr. Meissner largely confirmed his evidence from direct examination. He said that if Exhibit 12, the science fiction sex story, was reproduced in the asstr.org box as shown in Exhibit 18, he might see one or two inches of text of the story, but was not certain. I note that the text in Exhibit 12 is very small. Mr. Meissner explained in cross-examination that of the three or four times he had been to asstr.org, he only used the search function to find science fiction stories once. All other times, he essentially surfed through the recent stories index to see if he could find science fiction genre sex stories. Mr. Meissner conceded that, while using the search function of ASSTR may have been a more useful way of finding what he was looking for, he did not do that on January 4 and 5, 2015. Mr. Meissner conceded that he never did find any science fiction sex stories on either January 4 or 5, 2015, and that he did, as Sgt. Hack's report indicates, go through many story links, sometimes stories that were in several parts, without success.
- [145] I am skeptical about aspects of Mr. Meissner's evidence of his dalliance on asstr.org on January 4 and 5, 2015, searching for science fiction sex stories and his explanation of cycling through so many stories on those dates and never finding anything in his preferred genre. However, I cannot completely reject his evidence.
- [146] In some respects, aspects of his evidence are confirmed. For instance, he testified he only visited asstr.org a three or four times. This is confirmed in the computer forensic analysis reports of Mr. Lew and Sgt. Hack. Mr. Lew found digital evidence of three instances of Mr. Meissner's home computer visiting the asstr.org website, the curious double bookmark on June 29, 2011, and the visits on January 4 and 5, 2015. He found cookies from Mr. Meissner's iPhone as backed up on the office computer from August 20, 2013, at 03:12:05 p.m. (UTC-7).

- [147] No other ASSTR links were found for other dates on the devices searched for ASSTR and child pornography common terms notwithstanding that these searches conducted by Mr. Lew and Sgt. Hack were thorough examinations.
- [148] I accept Mr. Meissner's evidence on his workflow process and how he sets up his home computer workstation with the two monitors as depicted in Exhibit 18. I further accept his evidence that the screenshots contained in Exhibit 18 accurately depict how his workstation looked when he was working on his three skiing videos and the kayaking video on January 4 and 5, 2015, surfing asstr.org, and alternately toggling back and forth between his YouTube page, his Facebook page, and his email page, and quite possibly other webpages as the day progressed. Such a process is not inconceivable. Indeed, it is a distinct possibility in light of Mr. Meissner's use of his computer and how he accesses the web.
- [149] The absence of evidence of the Facebook and email webpages being opened on the home computer in Sgt. Hack's report does not contradict Mr. Meissner's evidence as Sgt. Hack was only looking for the ASSTR website and brought the YouTube webpage access links into his analysis because it occurred contemporaneously with the ASSTR webpage activity on both dates. Mr. Lew confined his search to common code child pornography names as contained in the QuickCP-Filename script and "asstr".
- [150] Mr. Meissner has confirmed in his evidence with respect to the subject matter he was working on at his computer on January 4 and 5, 2015, through Exhibit 14 to 17, the screenshot of his three videos uploaded to YouTube on those dates.
- [151] Mr. Meissner's evidence of searching for science fiction sex stories and failing to find them is in part confirmed by the activity delineated in Sgt. Hack's report which demonstrates the many different story links were accessed in fairly quick succession: approximately 33 different asstr.org webpage links in about 25 minutes on January 4, 2015, and approximately 13 different asstr.org webpage links in about 18 minutes on January 5, 2015. Mr. Lew and Sgt. Hack could only say that the date and times for the ASSTR webpages enumerated in their reports indicated when the webpage for the child pornography stories were opened or accessed. They could not say how long the page was viewed or whether the content of the webpage was actually read.
- [152] Given Mr. Meissner's consistent evidence as to how he works at his home computer, his uncontradicted denial of knowingly viewing or reading the content of the various asstr.org stories contained in Exhibit 2, the reasonable possibility that he did just quickly scan the beginnings of the stories, then backspaced back to the previous page, and the likelihood that he was also toggling between his Facebook page window and his email page window, I find that there may well be another reasonable possibility on the circumstantial evidence in this case. That reasonable possibility is that while the webpages for the stories in Exhibit 2 were opened by Mr. Meissner, given his computer usage style as described in his evidence, only the first few lines of the stories were scanned.

- [153] Based on the totality of the evidence adduced in this case, I cannot say that the only reasonable inference I can draw is that Mr. Meissner knowingly viewed the written child pornography stories in this case. I am left with a reasonable doubt that Mr. Meissner accessed, that is, knowingly caused, written child pornography to be viewed on his home computer on January 4 and 5, 2015.
- [154] Accordingly, the Crown has not discharged its burden of establishing beyond a reasonable doubt that Mr. Meissner accessed the child pornography stories contained in Exhibit 2a through 2h. I am dismissing Count 4.
- [155] Mr. Meissner, will you please stand up.
- [156] The Crown has previously stayed Counts 1 and 5 on the indictment. I find you not guilty on Counts 2, 3, and 4 of the indictment, and so those charges are dismissed.
- [157] Is there anything further, Ms. Tsui?
- [158] MS. TSUI: No, My Lady.
- [159] THE COURT: Thank you. Mr. Finch?
- [160] MR. FINCH: No, My Lady.
- [161] THE COURT: Then all that is left to do is for me to say I wish to thank counsel for their professionalism and assistance throughout this trial. The conduct of both counsel in this trial exemplifies the highest and best traditions of the bar. Thank you very much.
- [162] Mr. Meissner, you are free to go.
- "Ker J."

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