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Case Number 205,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER WHEELER,	)	
	)	
Defendant – Below,	)	
Appellant,	)	
	)	
v.	)	**No. 205, 2015**
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff – Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE'S ANSWERING BRIEF

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DATE: October 9, 2015

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NATURE AND STAGE OF THE PROCEEDINGS

On December 9, 2013, a New Castle County Grand Jury returned an indictment against Christopher Wheeler ("Wheeler") alleging 25 counts of Dealing in Child Pornography. A-1-2. Wheeler filed a Motion to Suppress evidence on March 4, 2014. A-3. An amended Motion to Suppress was filed May 15, 2014. A-4. After a hearing, the Superior Court denied Wheeler's suppression motion on September 29, 2014. A-6. The matter proceeded to a bench trial on October 7, 2014. A-7. At the conclusion of the trial, Wheeler filed a Motion to Dismiss And/Or For Judgment of Acquittal. A-8. The Superior Court denied Wheeler's Motion and convicted him of all charges on November 10, 2014. A-8. On April 24, 2014, the Superior Court sentenced Wheeler to an aggregate 50-year term of incarceration. *Sentence Order* (attached as Exhibit A). Wheeler appealed his convictions. This is the State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court correctly denied Wheeler's Motion to Suppress. The information presented within the four corners of the affidavit in support of the search warrant demonstrated that the police possessed probable cause to believe that they would find evidence related to the witness tampering/intimidation investigation they were conducting. The police did not recklessly omit information from the search warrant affidavit. Evidence that Wheeler communicated with members of the W family in electronic form provided a sufficient nexus between the evidence sought and the electronic devices seized. The warrants were not unconstitutionally broad. Rather, they were tailored to the evidence the police were seeking.

II. Appellant's argument is denied. There was sufficient evidence for the trial judge to find that Wheeler was guilty of Dealing in Child Pornography. Viewing the evidence in the light most favorable to the State, a rational fact finder could have concluded that Wheeler possessed 25 visual depictions of children engaged in prohibited acts.

STATEMENT OF FACTS

On October 22, 2013, members of the Wilmington Police Department and Child Predator Task Force applied for and obtained a search warrant to search 1517 Mt. Salem Lane (Wheeler's residence) and 2813 W. 17th Street (Wheeler's office located within the Tower Hill School). A-19-44. As a result of the execution of those search warrants, police sought a subsequent search warrant for Wheeler's electronic devices; specifically searching for child pornography. A-61-90. When police searched Wheeler's electronic devices, they discovered that three of the devices had electronic files containing child pornography. A237-38.

Prior to trial, Wheeler and the State entered into the following stipulation:

> 1. Jurisdiction is established, in that the alleged offenses occurred in New Castle County, in the State of Delaware.
>
> 2. That the chain of custody is established, in that the items seized on October 22, 2013 from Mr. Wheeler's Tower Hill residence and office have been properly secured, and are accurately identified on pages 3-4 of Sgt. Kevin Perna's 1/7/14 report.
>
> 3. That Sgt. Perna, consistent with the protocol employed in forensic computer examinations, properly made mirror copies of the seized digital/computer devices mentioned in paragraph #2 above, and that these mirror forensic copies contain the identical information/data that would exist on the actual devices.
>
> 4. That Defendant Wheeler does not require the State to physically introduce the actual seized devices into evidence, nor the mirror forensic copies into evidence, understanding that Sgt. Perna's

> testimony and 1/7/14 report captures his findings governing Sgt. Perna's forensic examination of the seized devices.
>
> 5. That Defendant Wheeler was the sole user/operator of the seized devices/computers identified on pages 3-4 of Sgt. Perna's 1/7/14 report.
>
> 6. That the 25 indicted images/counts recovered from the iMac (located in the piano room) earmarked on pages 14-22 of Sgt. Perna's 1/7/14 report, constitute child pornography per Delaware. Defendant Wheeler waives any required showing of the actual images.[1]

At trial, the State called Sergeant Kevin Perna ("Perna") of the Delaware State Police as a witness. A-235. Perna is the operations commander of the Delaware State Police High Technology Crime Unit and the Delaware Internet Crimes Against Children Unit. A-235. He testified that he conducted the forensic examination of the electronic devices seized from Wheeler. A-237. While conducting his examination for files relating to witness intimidation and tampering, Perna viewed file names which he deemed suspicious. A-237. After consulting with Detective Scott Garland, Perna determined that the file names were titles of videos of child pornography. A-237. As a result, Perna obtained a second warrant to search seized the devices for evidence of child pornography. A-237.

[1] *State v. Wheeler*, 2014 WL 7474234, at *4 (Del. Super. Dec. 22, 2014).

Four of the devices searched had information relevant to the child sexual exploitation[2] investigation. A-237. Perna testified that three devices contained evidence of child sexual exploitation: the iMac in the piano room, the PowerBook found in the master bedroom and the loose hard drive found in the Headmaster's office at the Tower Hill School. A-237. These three devices contained more than 2000 images of male children engaged in sexual acts. A-242. Perna testified that these images had been downloaded from the internet through the use of newsgroups. A-242.

Perna explained that newsgroups are discussion groups where people can exchange, browse, read, upload and download files. A-237-38. A user must go through a proactive multi-step process in order to set up a newsgroup with the desired material on the user's device. A-238. First, the user must access the internet and find the particular newsgroup that reflects the user's interest. A-238. Second, the user must subscribe to the newsgroup of interest, which allows the user to download the database with the information of interest. A-238. In order to read the requested files, the user must also download a news reader to convert the files to readable text. A-238. The database creates folders on the user's computer where the requested material is downloaded. A-238. Perna explained that if, for

[2] Perna testified that he used the term "child sexual exploitation" (CSE) interchangeably with "child pornography." He testified that CSE is the term the industry uses as it better describes the acts in the videos and images. A-237.

example, there was a folder entitled “alt.binaries.teen.male” on a user’s computer, which would indicate that the user had actively subscribed to that particular newsgroup. A-239. After subscribing to the particular newsgroup, the newsgroup would then send the subscriber the requested content to the folder created. A-239. The user can download the requested content and save it to a separate location on the computer or simply leave it in the newsgroup folder where it can be viewed at any time. A-251. The news reader has a “delete” button which allows the user to delete material he has no interest in viewing. A-251.

Perna testified that he found evidence of the use of child sexual exploitation newsgroups on each of the three devices containing images of child sexual exploitation. A-239-41. The user had downloaded the Unison reader, which is a fee-based, premium service program. A-239. On Wheeler’s iMac found in the piano room, Perna discovered evidence of several newsgroups, the Unison newsgroup reader and newsgroup folders on the desktop folder containing images of child sexual exploitation. A-238. He found these files under the user profile of “Christopher Wheeler.” A-238. Perna testified that the twenty-five images of child sexual exploitation chosen for prosecution were found in these files in the folders labeled “alt.fan.air.” and “alt.binaries.pictures.asparagus.” A-240. At trial, Wheeler stipulated that the twenty-five images recovered from the iMac constitute

child pornography under Delaware law. A-239. In all, Perna found more than 2000 images of child sexual exploitation in these folders on this device. A-242.

Perna also found evidence of newsgroups and images of child sexual exploitation contained on the PowerBook found in the master bedroom of the residence under the user profile of "C. Wheeler." A-240. There were four child sexual exploitation newsgroup folders found on this device: "alt.binaries.pictures.asparagus," "alt.fan.prettyboy," "alt.fan.rdm," and "alt. fan.snuffles." A-240. Perna testified that these were newsgroups individuals use to find child pornography. A-240. Contained within these folders on the PowerBook hard drive, Perna discovered additional images of child sexual exploitation. A-240.

The loose hard drive found in the Tower Hill Headmaster's office desk drawer also contained evidence of newsgroups and images of child sexual exploitation. A-240. In the hard drive, under the user profile "Christopher Wheeler," Perna found child pornography newsgroup folders. A-241. These folders contained images of child sexual exploitation. A-241. Perna also found messages with titles such as "young sexy boys." A-241.

Perna also conducted an examination of the laptop found in the second floor office at Wheeler's residence. A-241. When Perna's unit assisted in executing the search warrant, they noticed that NetShred, a program designed to erase a user's

internet history, had been executed prior to the police properly securing the laptop. A-241.[3] Perna attempted to conduct a "hard" shutdown in order to stop the destruction of any potential evidence due to the execution of the NetShred program. A-242. During the course of his forensic exam, Perna determined that the program was executed on October 22, 2013 at 8:04 p.m., immediately prior to the police securing Wheeler's residence for the search warrant. A-242.

As a result of his forensic exam of the laptop, Perna was able to recover 64 websites and chat rooms that Wheeler had visited. A-242; Expert Report at 33-48. Specifically, at 1:04 a.m. on October 22, 2014, Wheeler accessed the website "gayboystube.com." A-242. Perna testified that he would never be able to determine how much or how little potential evidence the execution of NetShred had destroyed. A-242.

[3] The same NetShred software was also found on the iMac located in the piano room. A-238.

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY DENIED WHEELER'S MOTIONS TO SUPPRESS.

Question Presented

Whether the trial judge abused his discretion by denying Wheeler's motion to suppress.

Standard and Scope of Review

This Court reviews a trial court's denial of a motion to suppress for abuse of discretion.[4] A magistrate's determination of probable cause "should be paid great deference by reviewing courts" and should not, therefore, "take the form of a *de novo* review."[5]

Merits of the Argument

When considering a challenge to a search warrant, a reviewing court is required to examine the affidavit to ensure that there was a substantial basis for concluding that probable cause existed.[6] "A determination of probable cause requires an inquiry into the 'totality of the circumstances' alleged in the warrant."[7]

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[4] *Rivera v. State,* 7 A.3d 961, 966 (Del. 2010).

[5] *State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013) (citing *Illinois v. Gates,* 462 U.S. 213, 238-39 (1983)).

[6] *Smith v. State,* 887 A.2d 470, 473 (Del. 2005).

[7] *Starkey v. State*, 2013 WL 4858988, *3 (Del. Sep. 10, 2013) (citing *LeGrande v. State,* 947 A.2d 1103, 1108 (Del. 2008)(other citations omitted)).

Notwithstanding the deference paid to the issuing magistrate, "the reviewing court must determine whether the magistrate's decision reflects a proper analysis of the totality of the circumstances."[8]

The warrants[9] at issue granted the police the authority to search Wheeler's home and workplace for evidence related to their investigation of possible witness intimidation or tampering. Wheeler did not challenge the search warrant for child pornography contained in the electronic devices discovered during the execution of the initial search warrant below, nor does he here. Wheeler claims that the affidavits authored by the police did not contain information which amounted to probable cause. He argues that: (1) the affidavits were factually deficient; (2) the police omitted information from the affidavits in reckless disregard of the truth; (3) the affidavits failed to establish a nexus between the evidence of witness tampering and the electronic devices seized; and (4) the search warrants were constitutionally overbroad. Wheeler's arguments are unavailing.

Probable Cause Was Established in the Affidavit.

Wheeler first contends that "[t]here is no 'Tower Hill Headmaster' exception to the 4th Amendment." He is correct. However, the police in this case possessed

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[8] *Id. (*citing *LeGrande*, 947 A.2d at 1108).

[9] The affidavits of probable cause for both warrants detail the identical set of facts.

probable cause, which they articulated in their warrant applications, obviating the need for any exception to the warrant requirement.

Prior to October 22, 2013, the Wilmington Police Department received reports from multiple sources that Wheeler had engaged in and was continuing to engage in a pattern of sexually abusing minor male children whom he thereafter offered to compensate or "pay off." One such victim was M.W.. On October 14, 2013, M.W. contacted Delaware authorities and reported that Wheeler had fondled his genitals and performed fellatio on him when he was 12 or 13 years old.[10] M.W. is now an adult.

Following the Penn State sexual abuse scandal, around July 2013, M.W. decided to tell his two brothers, T.W. and S.W., that Wheeler had sexually abused him when M.W. was a child.[11] During the conversation, S.W. disclosed that he, too, had been sexually abused by Wheeler when he was a child.[12] Tom shared with his brothers that he had not been sexually abused by Wheeler, but that Wheeler had engaged in inappropriate sexual conversations with him while he (Tom) was a child.[13]

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[10] A-26.

[11] A-27.

[12] A-27.

[13] A-27.

The W brothers subsequently decided to confront Wheeler about the past child sexual abuse and inappropriate sexual conversations.[14] They corresponded with Wheeler via written letters, telephone and email.[15] Specifically, S.W. wrote to Wheeler and asked, "[w]hat does justice look like for the abuses you perpetuated and the harms you caused?"[16] Wheeler, in turn, responded in a type-written letter, acknowledging that he had sexually abused S.W., and accepting responsibility for the abuse.[17] Significantly, Wheeler asked S.W. what were the "appropriate steps towards resolution and restitution."[18]

In addition to M.W., T.W. and S.W., the Wheeler's adopted son, N.K., also surfaced as a victim of Wheeler's sexual abuse.[19] N.K. reported to police in October, 2013 that "his dad would penetrate his anus and that he never previously reported this to the authorities because his father would pay him off."[20]

As a result of the information received by the Wilmington Police Department, a pattern of behavior emerged whereby Wheeler would sexually abuse

[14] A-27.

[15] A-28.

[16] A-27.

[17] A-27.

[18] A-27.

[19] A-28.

[20] A-28.

minor boys and then pay them off or offer to do so**.** If proven, that conduct would constitute violations of the Act of Intimidation statute, 11 *Del. C.* §3532, and the Tampering With a Witness statute, 11 *Del. C.* § 1263(3).

Accordingly, on October 22, 2013, the police applied for, obtained, and executed search warrants at both Wheeler's residence and office. The warrants sought evidence relating to the crimes of Act of Intimidation and/or Tampering With a Witness.[21]

The affidavits articulated with specificity each of the facts set forth above. Most notably, the affidavits stated that, when corresponding with S.W., Wheeler acknowledged his responsibility for sexual abuse when S.W. was 12 or 13 years old,[22] and, he would await further instructions concerning the payment of "restitution" to S.W..[23] Moreover, the affidavits specifically included the fact that N.K. had reported to police in October 2013, that Wheeler "would penetrate his anus and that he never previously reported this to the authorities because his father would pay him off."

[21] A-31. Specifically, the items to be searched and seized under the warrants included: (a) safes, boxes, bags, compartments, storage areas; (b) any computer or digital storage device (desktops, laptops, notebooks, PDAs or tower style systems); (c) any cellular phone; and (d) any digital or optical data storage device connected to, or capable of being connected to, any computer or digital storage device. The warrants also sought to collect, for forensic examination, any and all data stored by whatever means on those computers, digital storage devices, cellular phones and optical data storage devices seized under the warrants.

[22] A-27.

[23] A-27.

The Superior Court correctly found that "[t]he Affidavit contains numerous allegations that could support the crimes of Act of Intimidation of a Witness and Tampering with a Witness."[24] The court added, "[t]he Affidavits state that Mr. Wheeler engaged in, or attempted to engage in, acts to prevent another person (victim or witness) from reporting crimes."[25] The court's finding reflects a common-sense reading of the affidavit.[26] More importantly, the affidavit itself establishes probable cause to believe that a search of Wheeler's electronic devices would uncover evidence related their witness tampering investigation.

The Police Did Not Omit Information From the Warrant In Reckless Disregard For The Truth.

Wheeler contends that the Superior Court erred when it failed to find that police omitted material information from the affidavit in reckless disregard for the truth. In *Franks v. Delaware*, the United States Supreme Court held that a search warrant may be invalidated if a defendant proves that the affiant officer "knowingly and intentionally, or with reckless disregard for the truth," included in his or her affidavit false or misleading statements which were necessary to

[24] *State v. Wheeler*, 2014 WL 4735126, at *7 (Del. Sep. 18, 2014).

[25] *Id.*

[26] *See Jensen v. State*, 482 A.2d 105, 111 (Del. 1984) ("A determination of probable cause by the issuing magistrate will be paid great deference by a reviewing court and will not be invalidated by a hypertechnical, rather than a common sense, interpretation of the warrant affidavit.").

establish probable cause.[27] The Delaware Supreme Court has extended the *Franks* rationale to omissions of material information made by police in affidavits made in support of search warrants.[28]

In the so-called reverse-*Franks* situation, "if the defendant establishes by a preponderance of the evidence that the police knowingly and intentionally, or with reckless disregard for the truth, omitted information material to a finding of probable cause, the reviewing court will add the omitted information to the affidavit and examine the affidavit with the newly added information to determine whether the affidavit still gives rise to probable cause."[29]

Reckless Disregard Defined

In *Sisson v. State*, this Court considered two existing definitions of "reckless disregard of the truth" as applied to omissions.[30] The definition provided by the Third Circuit provides that an omission made in reckless disregard of the truth occurs "'if an officer withholds a fact in his ken that any reasonable person would

[27] 438 U.S. 154, 155-56 (1978).

[28] *See Ridgeway v. State*, 2013 WL 2297078, *3 (Del. May 23, 2013); *Rivera v. State*, 7 A.3d 961, 968 (Del. 2010); *Sisson v. State*, 903 A.2d 288, 300 (Del. 2006); *Smith v. State*, 887 A.2d 470, 472 (Del. 2005); *Blount v. State*, 511 A.2d 1030, 1034 (Del. 1986).

[29] *Sisson v. State*, 903 A.2d 288, 300 (Del. 2006).

[30] 903 A.2d at 300.

have known that this was the kind of thing the judge would wish to know.'"[31] The Second Circuit discussed omissions from a search warrant stating "recklessness may be inferred where the omitted information was clearly critical to the probable cause determination."[32]

In *Rivera v. State*, this Court adopted a two-part approach which incorporates both the Second and Third Circuit analyses.[33] The Delaware analysis addresses both the "reckless disregard for the truth" and "materiality" inquiries.[34] The methodology employed under Delaware law is, however, different and was summarized by the *Rivera* Court as follows:

> the materiality inquiry may proceed first, before addressing whether the police acted with "reckless disregard." If a defendant cannot show by a preponderance of the evidence that the omitted information was material, then it does not matter whether the police made those omissions with "reckless disregard."[35]

Thus, the first step in the inquiry requires the trial court to determine whether a defendant has demonstrated by a preponderance of the evidence that the omissions

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[31] *Id.* at 302 (quoting *Wilson v. Russo*, 212 F.3d 781, 788 (3rd Cir. 2000) (other citations omitted)).

[32] *Id.*at 301(quoting *Rivera v. United States*, 928 F.2d 592, 604 (2nd Cir. 1991) (internal quotes omitted)).

[33] 7 A.3d at 968-69.

[34] *Id.*

[35] *Id.* at 969.

made by the police were, in fact, material. The second part of the inquiry is unnecessary if the trial court determines that the omissions were not material.

The Omissions Were Not Material

Wheeler claims that the police omitted certain information from the affidavits in an effort "designed to steer the Superior Court to believe that [he] had committed the crimes of witness intimidation/tampering."[36] He contends that the entirety of the communications between Wheeler and the W brothers demonstrates that "the State invented the crimes of witness tampering as the means to obtain [a] free admission ticket into [his] computers."[37] Wheeler's baseless claim of "invention" is speculative and without merit.

To determine whether the omitted information is material the Court "must reconstruct the affidavit to include the newly added information, and then decide whether the 'corrected' affidavit would establish probable cause."[38] As demonstrated below, "the exculpatory facts [Wheeler] points to, when viewed as part of the totality of the circumstances, do not suffice to undermine the finding of probable cause."[39]

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[36] *Amended Op. Brf.* at 23.

[37] *Amended Op. Brf.* at 25.

[38] *Rivera*, 7 A.3d at 968 (citing *Sisson,* 903 A.2d at 300)(other citations omitted)).

[39] *Rivera* at 970.

In this case, the four corners of the affidavits demonstrate that police were searching for evidence of witness intimidation and tampering based on disclosures of child sexual abuse committed by Wheeler which he admitted (as to at least one victim) and made an offer of "restitution" in a typewritten letter to one of his victims.[40] The affidavits also reflect that Wheeler's adopted son, N.K. disclosed abuse and told authorities in South Carolina that he "never previously reported this to the authorities because his father would pay him off."[41] In the Superior Court, Wheeler contended that the material evidence omitted from the warrant consisted of: (1) the transcript of M.W.'s interview during which M.W. expresses anger at being victimized by Wheeler; (2) the entire text of the letter sent by Wheeler to S.W. in response to his letter; (3) T.W.'s taped statement; and (4) M.W.'s remarks to investigators that W brothers' parents had questions about Kolya's credibility.[42]

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[40] A-27. The affidavits read as follows:

> M.W. advised that a few days after sending the letter, S.W. received a response. M.W. provided investigators with a copy of the response letter that S.W. had shared with him. The response is a single page typed letter dated July 23, 2013 to "S.W." and closed with the typewritten name "Chris." The response begins as follows: "I will not compound your pain by attempting to deny or in any way deflect responsibility for my actions 35 years ago. I did those things. I am the one responsible." Christopher Wheeler in the letter then solicited the victim by stating "I'll wait to hear from you about further appropriate steps towards resolution and restitution".

[41] A-28.

[42] A-173-78.

Wheeler now, for the first time, claims that the following material evidence was also omitted: "(1) no one ever claimed they were victims of witness tampering; [and] (2) none of the W brothers ever mentioned to Wheeler they were contemplating contacting law enforcement."[43] In any event, while the evidence to which Wheeler points may have provided a fuller context for the Superior Court to consider, its absence from the affidavit does not undermine the finding of probable cause.

M.W.'s statement details the abuse perpetrated by Wheeler and the W brothers' reasons for coming forward. During the statement, M.W. said that he believed that his parents had questions about N.K.'s credibility. He also said that he did not know what the basis for that belief was. M.W.'s statement is simply irrelevant to the probable cause determination at issue (i.e. whether police were more likely than not to discover evidence of witness tampering or intimidation in Wheeler's home or office).

Wheeler's letter to S.W. likewise does not change the probable cause determination. In the letter, Wheeler admitted to the abuse and expressed remorse. Wheeler also offered to take steps toward "resolution and restitution." The fact that Wheeler expressed remorse does not mean that he had no concern for the consequences of his actions. The omitted portion of the letter is not material,

[43] *Amended Op. Brf.* at 23. Wheeler failed to include this "evidence" in his Superior Court claim.

because Wheeler's admission of sexual abuse and his expression of remorse had no bearing upon whether the police would likely discover evidence of witness tampering or intimidation in Wheeler's home or office.

Wheeler claims that T.W.'s statement indicating that Wheeler was apologetic and suicidal demonstrates that there was no "witness tampering afoot."[44] T.W.'s statement to police detailed a meeting he had with Wheeler in July of 2013, during which Wheeler acknowledged that he sexually abused T.'s brothers. Wheeler simply fails to demonstrate how T.W.'s statement impacts the probable cause determination.

In sum, the evidence Wheeler identifies as being omitted and material consists of Wheeler's admissions of sexual abuse to S.W. and T.W., his expression of remorse, and a statement made by M.W. that he believed his parents had questions about N.K's credibility (a belief for which he could provide no basis). That is hardly information which is material to the probable cause determination, much less information which would *change* that determination. The Superior Court correctly determined that Wheeler had failed to establish by a preponderance of the evidence that the omitted evidence was material.

[44] *Amended Op. Brf.* at 25.

The Information Was Not Omitted With Reckless Disregard For the Truth

The omitted information was immaterial.[45] In any event, the material was not omitted with reckless disregard for its truth. Wheeler baselessly asserts that "[l]ogic dictates that the issuing judge must have been misled, or alternatively sensed a 'code red' request from the State when presented with the search warrant applications."[46] Under Delaware law, omissions are made with reckless disregard for the truth "when an officer recklessly omits facts that any reasonable person would know that a judge would want to know in making a probable cause determination."[47] Here, the facts Wheeler says were omitted were tangential and not directly relevant to the probable cause determination. Wheeler's admissions (which were already in the warrant), his expressions of remorse and M.W.'s belief that his parents thought N.K. had credibility issues were not facts that a reasonable person would believe a judge would want to consider. Wheeler offers no support for his "reckless disregard" claim. He simply offers the omitted information. In the end, Wheeler failed to demonstrate, by a preponderance of the evidence, how the

[45] *See Ridgeway*, 2013 WL 2297078 at *4 (stating "[b]ecause the omitted facts were immaterial to a finding of probable cause, it is irrelevant whether or not the police made the omissions with reckless disregard").

[46] *Amended Op. Brf.* at 26.

[47] *Rivera*, 7 A.3d at 968-69 (citations omitted).

omissions were made with reckless disregard for the truth. Wheeler's reverse-*Franks* claim fails.

There Was a Nexus Between the Evidence Sought and the Items Searched

Wheeler next contends that there was no nexus between the witness tampering investigation and his electronic devices. He is mistaken. "The determination of whether the facts in [an] affidavit demonstrate 'probable cause requires a *logical* nexus between the items being sought and the place to be searched.'"[48] The nexus may be inferred from the factual circumstances, including "the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences" regarding where a criminal might hide evidence.[49]

Here, the warrant authorized the search and seizure of cellular telephones, computers and written communications. It was reasonable for the police to believe that Wheeler's electronic devices would contain relevant information and documents that could be retrieved through the forensic process. Emails and other electronic communications can be stored and maintained on the computer hard drive. A forensic examination of a computer can reveal such things as internet

[48] *Starkey v. State*, 2013 WL 4858988, at *3 (Del. Sept. 10, 2013) (quoting *Jones v. State,* 28 A.3d 1046, 1057 (Del. 2011) (other citations omitted)).

[49] *State v. Cannon,* 2007 WL 1849022, at *4 (Del. Super. June 27, 2007) (citing *see State v. Ivins,* 2004 WL 1172351, at *4 (Del. Super.) (quoting *United States v. Feliz,* 182 F.3d 82, 88 (1st Cir.1999))).

history files which can show, for example, when an individual logged into an email account. The warrant also authorized the seizure of cellular telephones. A cellular telephone may contain text messages, have the ability to connect to the internet and/or have the capability for the user to review and respond to emails. Further, a forensic examination of a cellular telephone may reveal data messages, call logs and contact information. Finally, the warrant sought evidence of written communications. Written communications were sent to the victims and the defendant had acknowledged receipt of correspondence from the victims. The warrant sought evidence of this correspondence which could have taken the form of envelopes, letters, address books and handwritten notes. As a result, the Superior Court correctly concluded that:

> [t]he Issuing Judge had a substantial basis for concluding that a fair probability existed that Mr. Wheeler used his home or office computers, notebooks, cellular phones and digital storage devices and that these devices could contain relevant information and documents, and that information could be retrieved through a forensic process, to the asserted crimes.[50]

Wheeler chooses to ignore the fact that his victims had communicated with him in electronic form about his past abuse and that his type-written communication was more likely created on an electronic device (which would have stored some record of the document) as opposed to a typewriter. He does,

[50] *Wheeler*, 2014 WL 4735126 at *8.

however, acknowledge that there were communications with the victims in which he made an offer of "resolution and restitution." The police sought further evidence of witness tampering and intimidation in Wheeler's electronic devices based on Wheeler's prior communication (both content and mode) with the W brothers. There was a clear nexus between the evidence sought and Wheeler's electronic devices.

The Warrants Were Sufficiently Tailored to the Evidence Sought

Wheeler next argues that the warrants were constitutionally overbroad.[51] He claims that "the evidence never identified the suspected computer/digital evidence of 'witness tampering' that they sought to uncover, yet . . . the search warrants allowed them to search anywhere and everywhere without limitations."[52] Not so. Wheeler acknowledges that there were specific items of evidence, which included electronic correspondence between Wheeler and the W brotherss that the police were seeking.[53] It was during a search for those items that Perna discovered files with which he was unfamiliar, and he consulted his colleagues. As the Superior Court explained:

[51] Wheeler does not argue that Perna's search exceeded the scope of the search warrants. *Amended Op. Brf.* at 33.

[52] *Amended Op. Brf.* at 31.

[53] *Amended Op. Brf.* at 31.

> Sergeant Perna selected the "desktop" file folder to open it. When Sergeant Perna opened the desktop file, all subfiles opened as well. The subfiles contained a large number of items entitled "GERBYS II" and "hippodrome boys large." Because Sergeant Perna was not familiar with these videos, Sergeant Perna did not open the files. Instead, Sergeant Perna consulted two colleagues. These colleagues informed Sergeant Perna that these types of files are German and Russian originated videos of prepubescent boys engaging in sex acts. At this point, the State obtained a third search warrant, this one from the Kent County Superior Court, and thereafter opened the items entitled "GERBYS II" and "hippodrome boys large." After viewing the files, the State sought and obtained an indictment against Mr. Wheeler on twenty-five counts of Dealing in Child Pornography in violation of 11 *Del. C.* § 1109(4).[54]

The court determined that Perna's search was "not overly broad" and concluded that:

> [T]the evidence here shows that the "GERBYS II" and "hippodrome boys large" items were located where a person with the type of training and experience possessed by Sergeant Perna might expect to find word documents or .pdf formatted documents. The Court notes that if Sergeant Perna were looking in the first instance for child pornography, as claimed by Mr. Wheeler, then Sergeant Perna could have easily clicked on the "movies" file folder, the "Wheeler–Mass 2005.iMovieProject" or even the "downloads" file folder. Sergeant Perna did not. Instead, Sergeant Perna started with a file, "desktop," that Sergeant Perna testified was the type of file, in his experience, could contain documents within the scope of an authorized search.[55]

[54] *Wheeler*, 2014 WL 4735126, at *9.

[55] *Id.*

This Court has held that "a warrant must describe with particularity the place to be searched and the person or items to be seized."[56] "The purpose of requiring specificity in warrants is to avoid general exploratory searches, leaving little discretion to the officer executing the warrant."[57] Here, the warrants were not vague and they specifically limited the scope of the search to certain types of evidence (data, media, and files) that were related to the communication between Wheeler and the W brothers as it related to the witness tampering investigation.[58] Indeed, the warrants identify cell phones and a desktop computer in Wheeler's office at the Tower Hill School as items that "may contain evidence of communication with the network and the Internet and will have evidence of that communication therein."[59]

The warrants in Wheeler's case "did not unreasonably exceed a logical scope of inquiry."[60] Perna's initial search of Wheeler's electronic devices and the fact that he discontinued his search upon discovering files that were likely to contain child pornography serves to reinforce the idea that the warrants were

[56] *Fink v. State*, 817 A.2d 781, 786 (Del. 2003) (citing U.S. Const. Amend. IV; Del. Const. art. 1, § 6).

[57] *Id.* at 786 (quoting Randy J. Holland, *The Delaware State Constitution: A Reference Guide*, 37 (G. Allen Tarr, ed., 2002) (additional quotation marks omitted)).

[58] *See Starkey v. State*, 2013 WL 4858988, at *4 (Del. Sept. 10, 2013).

[59] A29, A-41-42.

[60] *Fink*, 817 A.2d at 787.

tailored in both scope and execution to the witness tampering investigation. The Superior Court correctly determined that the warrants were not overly broad.

The *amicus curiae* similarly argues that the warrants in this case were constitutionally overbroad, claiming that the warrants did not set temporal or categorical data limitations.[61] The ACLU contends that the two Delaware cases which address this issue, *Fink v. State*[62] and *Bradley v. State*,[63] are "not applicable here."[64] Their argument is unavailing.

In *Fink*, this Court upheld a search warrant which sought to discover evidence of misappropriation of clients' funds and authorized a search of Fink's client files on his computer.[65] During the search, police discovered and opened a file named "Pre-Teen.jpg" which contained child pornography.[66] The police immediately stopped searching and obtained another warrant to search for child

[61] *Amicus Brf.* at 12-13.

[62] 817 A.2d 781.

[63] 51 A.3d 423 (Del. 2012).

[64] *Amicus Brf.* at 14, n.5.

[65] *Fink*, 817 A.2d at 786. The warrant authorized a search for "client files including but not limited to [particular client files and other documents] either in written or electronic format." *Id.* at 785.

[66] *Id.*

pornography.[67] This Court rejected Fink's argument that the language authorizing the search for "client files including, but not limited to . . ." was overbroad, stating:

> There is no question about what the searcher should have been seeking or that there were reasonable limitations inherent in the scope of the search. Items indicative of probable criminal conduct discovered during the scope of the search were properly seized under the specific terms of the warrant.[68]

In *Bradley*, this Court upheld a search warrant which authorized a search for patient files in an outbuilding on his property.[69] Bradley claimed that the warrant failed to explicitly state that he kept files in electronic format.[70] This Court rejected that argument stating "it is common sense to infer that in the year 2009 a medical practice would keep at least some patient records in electronic format."[71]

Here, the warrants were specifically tailored to authorize a search for evidence related to the witness tampering/intimidation investigation. The evidence police detailed in the warrants included written communication from Wheeler to S.W. making an offer of resolution and restitution. The fact that the warrants authorized a search for evidence in both written and electronic form reflects the

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[67] *Id.*

[68] *Id.* The Court likewise rejected Fink's argument that police were limited to a search of only those client files that Fink was being investigated for committing malfeasance against.

[69] *Bradley,* 51 A.3d at 432-33.

[70] *Id.* at 432.

[71] *Id*. at 432-33.

reality that an overwhelming majority of typewritten communication is created electronically. In this case, "[t]here is no question about what the searcher should have been seeking or that there were reasonable limitations inherent in the scope of the search."[72] When Perna opened a directory that contained many types of files, he observed a file name which he thought was suspicious. He discontinued his search and did not open the suspicious file. After consulting with colleagues, he obtained another warrant to search for child pornography. Perna's actions were appropriate and demonstrate that the original warrants were limited in their scope and execution.[73]

[72] *Fink*, 817 A.2d at 786.

[73] *See Bradley*, at 436 (stating "[a]s soon as [the detective] encountered evidence of crimes outside the scope of the existing warrant, he did precisely what he should have done: he closed the file, ceased the search, and applied for a new search warrant for sexual exploitation and child pornography.").

II. THE SUPERIOR COURT CORRECTLY DENIED WHEELER'S MOTION FOR JUDGMENT OF ACQUITTAL.

Question Presented

Whether the evidence presented at trial, viewed in the light most favorable to the State, supports any rational fact finder's guilty verdict.

Standard and Scope of Review

This Court reviews "the denial of a Motion for Judgment of Acquittal *de novo* to determine whether any rational finder of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."[74]

Merits of the Argument

Wheeler claims that, despite his subscription to newsgroups which were dedicated to the exchange of child pornography, "there was no forensic proof that Wheeler ever intentionally downloaded the images onto his hard drive" and that "the State's evidence never established that Wheeler exercised 'dominion and control' over the images in his newsgroup cache, much less knew they were there."[75] Wheeler's contention is without merit.

[74] *Hoennicke v. State*, 13 A.3d 744, 748 (Del. 2010) (citing *Gibson v. State*, 981 A.2d 554, 557 (Del. 2009)).

[75] *Amended Op. Brf.* at 41-42.

Arguments similar to those made by Wheeler here have been rejected in other jurisdictions.[76] The case which is most factually similar to the instant case is *Commonwealth v. Diodoro*.[77] In *Diodoro*, the defendant was charged with possession of child pornography after the police executed a search warrant on his computer and discovered images of child pornography.[78] Diodoro admitting to viewing child pornography on his computer but denied ever having saved or

[76] *United States v. Kain*, 589 F.3d 945, 950 (8th Cir. 2009) (stating "[a] computer user who intentionally accesses child pornography images on a web site gains actual control over the images, just as a person who intentionally browses child pornography in a print magazine 'knowingly possesses' those images, even if he later puts the magazine down without purchasing it."); *United States v. Romm*, 455 F.3d 990, 1001 (9th Cir. 2006) (defendant knowingly possessed child pornography because he exercised control over cached images while they were contemporaneously saved to his cache and displayed on his computer screen); *People v. Flick*, 790 N.W. 295 (Mich. 2010) (defendants who purposefully operated computers to locate websites containing child sexually abusive material and purchased access to websites with depictions of such material voluntarily possessed the images); *Ward v. State*, 994 So.2d 293 (Ala. Crim. App. 2007) (defendant exercised dominion and control over child pornography images which he sought on the internet and were automatically saved to his computer's internet cache); *People v. Scolaro*, 910 N.E.2d 126, 133 (Ill. App. Ct. 2009) (stating "[e]ven if there had been no indication in the record that the defendant had copied, printed, e-mailed, or sent images to others, defendant had the ability to do so when he viewed the downloaded [child pornography]."); *People v. Josephitis*, 914 N.E.2d 607, 617 (Ill. App. Ct. 2009) (rejecting defendant's argument that viewing pornography does not violate the law and stating "Defendant and others who pay for access and view these images support an industry which exploits the most vulnerable people in the world, an industry which the statute attempts to destroy. Any other finding would completely frustrate the purpose of the child pornography statute."); *Arizona v. Jensen*, 173 P.3d 1046 (Ariz. Ct. App. 2008) (despite defendant's professed lack of knowledge of the internet cache files, he knowingly received images as evidenced by his active search for images by using key phrases and searching for hours on his computer with nearly 25,000 hits for illicit websites, and the presence of 3 images in the cache files); *State v. Mercer*, 782 N.W.2d 125 (Wis. Ct. App. 2010) (defendant knowingly possessed child pornography on his work computer when monitoring software discovered he had accessed child pornography on the internet despite none of the images being downloaded or cached automatically to the computer).

[77] 932 A.2d 172 (Pa. 2007).

[78] *Id.* at 173.

downloaded the images he viewed.[79] He argued that his actions did not constitute "possession" because there was no evidence presented that he knew the images of child pornography would be automatically saved in the internet cache file.[80] Rejecting Diodoro's argument, the Pennsylvania Supreme Court explained:

> Herein, Appellant intentionally sought out and viewed child pornography. His actions of operating the computer mouse, locating the Web sites, opening the sites, displaying the images on his computer screen, and then closing the sites were affirmative steps and corroborated his interest and intent to exercise influence over, and, thereby, control over the child pornography. Moreover, further evidence of Appellant's control over the images was born out by the testimony of Officer Salerno, who stated that the fact that multiple images were stored in the cache files indicates that someone, after accessing the particular Web sites, had to click the "next" button on the screen to view successive images. . . . Finally, while Appellant was viewing the pornography, he had the ability to download the images, print them, copy them, or email them to others, which we find is further evidence of control.[81]

Here, the evidence presented at trial established that Wheeler actively sought and received child pornography from the internet and stored it in his computers. Rather than addressing how the child pornography got onto his computer, Wheeler argues that the State failed to show that he exercised dominion and control over the images of child pornography. He is wrong. The evidence demonstrated that Wheeler subscribed to newsgroups which were websites dedicated to the free

[79] *Id.* at 174.

[80] *Id.*

[81] *Id.* at 174-75.

exchange of child pornography. By doing so, he anticipated that he would receive child pornography electronically through the newsgroups. Indeed, Wheeler purchased an application which enabled him to view the child pornography he received from the newsgroups to which he had subscribed. The evidence shows that Wheeler was actively seeking out sources of child pornography that he intended to have sent to his computer(s). He intended to possess it and view it as demonstrated by the special application he purchased.

At trial, Wheeler stipulated to the fact that he was the sole user and operator of the seized electronic devices, and the images for which he was indicted all constituted visual depictions of a child engaging in a prohibited sexual act. The child pornography remained on his computers until the search warrants were executed. And, Wheeler's use of the NetShredder program immediately prior to the execution of the search warrants demonstrated his knowledge that there was child pornography on his electronic devices, because he tried to remove or destroy the evidence. Denying Wheeler's Motion for Judgment of Acquittal, the trial judge found that:

> The evidence demonstrates that Mr. Wheeler sought out and downloaded child pornography. The images of child pornography are not contained in unallocated places on the computers. Instead, the images are contained in readily accessible desktop folders under "Christopher Wheeler" or "C. Wheeler" profiles. The sheer number of images—2000 plus—supports the reasonable inference that Mr.

> Wheeler intentionally, as opposed to inadvertently, possessed child pornography. [82]

"Following a . . . trial, the standard of appellate review is deferential to the extent that 'trier of fact [is] responsible for determining witness credibility, resolving conflicts in testimony and for drawing any inferences from the proven facts.'"[83] Here, the trial judge correctly drew the inference that Wheeler intentionally possessed the child pornography found on his computer(s). Wheeler sought out child pornography, he requested it by subscribing to newsgroups, he received it from those newsgroups and he stored it in electronic files on his computer(s). The Superior Court correctly denied Wheeler's Motion for Judgment of Acquittal.

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[82] *State v. Wheeler*, 2014 WL 7474234, at *13 (Del. Super. Dec. 22, 2014). The court continued:

> The evidence shows that newsgroups used to find child pornography—like alt.binaries.teen.male, alt.fan.air or alt.binaries.pictures.asparagus—do not inadvertently end up on a computer and, instead, must be intentionally subscribed to by a user. Mr. Wheeler's devices also contained software—*e.g.*, Unison, a type of news reader,—that converts the binary pictures compiled from the newsgroups so that the user can view them. In order for a device to contain Unison, the user must intentionally install the software on the device. True, once subscribed to a newsgroup, the newsgroup continues to send data whether specifically requested or not, but Mr. Wheeler could have deleted the information he did not want on his computers or simply unsubscribed from the newsgroups. Mr. Wheeler did not unsubscribe. This demonstrates that Mr. Wheeler acted intentionally, and not inadvertently, with respect to possessing images of child pornography. It is clear to this fact finder that Mr. Wheeler intentionally sought out child pornography and then converted, or had the ability to covert, the data so that the child pornography could be viewed.

Id.

[83] *Church v. State*, 2010 WL 5342963, at *1 (Del. Dec. 22, 2010) (quoting *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992)).

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed.

/s/ Andrew J. Vella
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Deputy Attorney General
Department of Justice
Carvel State Office Building
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Wilmington, DE 19801
(302) 577-8500

DATE: October 9, 2015

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

VS.

CHRISTOPHER D WHEELER

Alias: CHRISTOPHER D WHEELER

DOB: [redacted]1960
SBI: 00756045

CASE NUMBER:
1310019248

CRIMINAL ACTION NUMBER:
IN13-11-0481
CHILD PORN(F)
IN13-11-0482
CHILD PORN(F)
IN13-11-0483
CHILD PORN(F)
IN13-11-0484
CHILD PORN(F)
IN13-11-0485
CHILD PORN(F)
IN13-11-0486
CHILD PORN(F)
IN13-11-0487
CHILD PORN(F)
IN13-11-0488
CHILD PORN(F)
IN13-11-0489
CHILD PORN(F)
IN13-11-0490
CHILD PORN(F)
IN13-11-0491
CHILD PORN(F)
IN13-11-0492
CHILD PORN(F)
IN13-11-0493
CHILD PORN(F)
IN13-11-0494
CHILD PORN(F)
IN13-11-0495
CHILD PORN(F)
IN13-11-0496
CHILD PORN(F)
IN13-11-0497
CHILD PORN(F)
IN13-11-0498
CHILD PORN(F)
IN13-11-0499
CHILD PORN(F)
IN13-11-0500
CHILD PORN(F)
IN13-11-0501

Ex. A

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

CHILD PORN(F)
IN13-11-0502
CHILD PORN(F)
IN13-11-0503
CHILD PORN(F)
IN13-11-0504
CHILD PORN(F)
IN13-11-0505
CHILD PORN(F)

COMMITMENT
TIER 2
ALL SENTENCES OF CONFINEMENT SHALL RUN CONSECUTIVE

SENTENCE ORDER

NOW THIS 24TH DAY OF APRIL, 2015, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IN13-11-0481- : TIS
CHILD PORN

Effective November 1, 2013 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

- Suspended after 2 year(s) at supervision level 5

- For 3 year(s) supervision level 4 DOC DISCRETION

- Suspended after 6 month(s) at supervision level 4 DOC DISCRETION

- For 2 year(s) supervision level 3

- Hold at supervision level 5

- Until space is available at supervision level 4 DOC DISCRETION

AS TO IN13-11-0482- : TIS
CHILD PORN

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

- Suspended after 2 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number IN13-11-0481 .

AS TO IN13-11-0483- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

- Suspended after 2 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number IN13-11-0482 .

AS TO IN13-11-0484- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0485- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0486- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0487- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0488- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0489- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0490- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0491- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0492- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0493- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0494- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0495- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0496- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

AS TO IN13-11-0497- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0498- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0499- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0500- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0501- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0502- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0503- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0504- : TIS
CHILD PORN

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN13-11-0505- : TIS
CHILD PORN

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

CASE NUMBER:
1310019248

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with any children under the age of 16.

Defendant shall complete Sexual Disorders counseling treatment program.

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

The provisions of 11 Del C. Sections 4120, 4121, and 4336 Sex Offender Registration and Community Notification - apply to this case.

See Notes

NOTES

The defendant is prohibited from possessing any type of electronic device that has access to the Internet.

On the record, the Court noted the following aggravating factors were present: prior criminal conduct; need for correctional treatment; undue depreciation of offense; lack of remorse; betrayal of public trust; and offense against a child. The Court also noted the following mitigating factor was present: no prior convictions.

JUDGE ERIC M DAVIS

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
CHRISTOPHER D WHEELER
DOB: [redacted]1960
SBI: 00756045

CASE NUMBER:
1310019248

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	120.00
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	25.00
DELJIS FEE ORDERED	25.00
SECURITY FEE ORDERED	250.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	375.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	
TOTAL	895.00

CERTIFICATION OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on this 9th day of October, 2015, he caused the attached *State's Answering Brief* to be delivered via Lexis/Nexis File and Serve to the following persons:

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and

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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