

1 CANADA
2 PROVINCE OF NOVA SCOTIA

CASE NO. 2028419,
2028420, 2028421

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7 **IN THE PROVINCIAL COURT**
8 Cite as: R. v. Seguin, 2014 NSPC 121
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12 **HER MAJESTY THE QUEEN**

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15 versus

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18 **GREGORY LEO SEGUIN**
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26 **DECISION ON CONVICTION**

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29 **HEARD BEFORE:** The Honourable Judge Frank P. Hoskins

30
31 **PLACE HEARD:** Provincial Court
32 Dartmouth, Nova Scotia
33

34 **DATE OF DECISION:** September 12, 2014
35

36 **COUNSEL:** Peter Dostal Crown Attorney
37 Robert Stewart, QC Defence Attorney
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DECISION

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1 **HOSKINS, J.P.C. (Orally):**

2 This is the decision in the matter of *R. v. Gregory Leo Seguin*, who is
3 charged with unlawfully accessing child pornography and possession of child
4 pornography. I had reserved my decision until today so that I would have time to
5 carefully consider and reflect upon the evidence. Accordingly, I have considered
6 the oral and written submissions of counsel and considered all of the evidence that
7 was proffered in this case, including Mr. Seguin's cautioned statement, Exhibit 1,
8 dated March 24th, 2009, that he provided to the police on that date.

9 As I previously mentioned in my earlier decision in relation to the directed
10 verdict motion, although this matter has been before the court for an inordinate
11 amount of time, each adjournment was granted for appropriate reasons, and I am
12 indebted to counsel for their able submissions, which were clear, concise and
13 thoughtful.

14 In my view, while it is always preferable to expedite matters in an efficient
15 and effective manner, unfortunately, in the Provincial Court, where court dockets
16 are extremely busy and resources are stretched, it is often difficult to expedite
17 matters, and for that reason, I wish to acknowledge the assistance of counsel in
18 cooperating with each other and with the court in trying to expedite this proceeding
19 without prejudicing their respective interests. Your cooperation is much

2 **DECISION**

1 appreciated, as was your diligence and commitment to the professional traditions
2 of the bar in submitting the numerous briefs on time that you did and responding to
3 the court's questions as you did. Thank you both very much.

4 I will briefly summarize the surrounding circumstances which have emerged
5 from the evidence presented, touch upon the law, and then provide my analysis of
6 whether or not the Crown has proved beyond a reasonable doubt the alleged
7 offences.

8 However, before I do that, it is appropriate to briefly comment upon the
9 context in which this case arose by touching upon the background of the case.

10 Mr. Seguin has stated, in his statement of March 24th, 2009, to the police,
11 Exhibit 1, that the computer was given to him by his father and it was the only
12 computer in his home, which he shared with his partner, his girlfriend. He
13 obtained the internet for the computer approximately six months earlier.

14 Mr. Seguin described the general nature of the material he had accessed on
15 the computer and what he deleted. He recalled specifically that on or about March
16 2nd, 2009, he accessed the computer and looked at pornography all night. The
17 computer was seized by the police on March 24th, 2009. The time and date stamps
18 recorded on several hundreds of files indicated “creation dates” of March 2nd, 4th
19 and 7th, as demonstrated in Exhibit 5.

DECISION

1 Following a search of the computer, the authorities retrieved hundreds of
2 pictures depicting child pornography, which are contained on Exhibit 4 and shown
3 in Exhibit 5. I am satisfied beyond a reasonable doubt that there were hundreds of
4 pictures of child pornography contained in these exhibits. In fact, there were only
5 a few still images (pictures) where I was left in a state of doubt as to the age of the
6 female depicted in the picture. There are hundreds of pictures, photographs, video
7 or other visual representations of young female children, well under 18 years of
8 age, depicted as engaged in explicit sexual activity, and/or the dominant
9 characteristic of which is the depiction, for a sexual purpose of a sexual organ or
10 anal region of the person under the age of 18 years.

11 Again, to be clear, I am satisfied that the pictures, photographs, video or
12 other visual representations retrieved by the authorities and presented as evidence
13 in this case meets the definition of child pornography, pursuant to section
14 163.1(1)(a) of the *Criminal Code*.

15 I should add that there was a lot of repetition in those photographs and, as I
16 said, there were only a few pictures that I was left in a state of reasonable doubt as
17 to the age, whether the person was under the age of 18, but by far, the majority,
18 hundreds, in my opinion, from what I viewed, met the definition of child
19 pornography.

4 **DECISION**

1 In essence, the position of the Crown is that, on the totality of the evidence,
2 including Mr. Seguin's cautioned statement provided to the police on March 24th,
3 2009, he committed the offences of possession of child pornography and accessing
4 child pornography. The Crown contends that each and every essential element of
5 both offences have been proven beyond a reasonable doubt. In other words, on
6 the whole of the evidence, which includes Mr. Seguin's cautioned statement, the
7 forensic results of the analysis of the computer and the surrounding circumstances,
8 there is only one reasonable and rational conclusion to be drawn from the
9 evidence, which is that Mr. Seguin was in possession of child pornography and
10 accessed child pornography between March 1st, 2009, and March 25th, 2009.

11 The defence, on the other hand, argues that the Crown has failed to prove
12 beyond a reasonable doubt that Mr. Seguin possessed the requisite elements of
13 knowledge and control for the possession of child pornography and/or for the
14 offence of accessing child pornography. Furthermore, the defence contends that
15 there is also reasonable doubt raised in the possibility of an alternate suspect, also
16 known as a “third party suspect”: I believe it is been referred to as both.

17 The burden is upon the Crown to prove these allegations beyond a
18 reasonable doubt. This legal or persuasive burden never shifts to the accused. It
19 remains with the Crown throughout the trial. The issue in the present case is

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1 whether, on the whole of the evidence, the Crown has proven beyond a reasonable
2 doubt that Mr. Seguin committed the offences of possession of child pornography
3 and accessing child pornography.

4 In *Starr*, 2000 S.C.C. 40, the Supreme Court of Canada held that this burden
5 of proof lies “much closer to absolute certainty than to a balance of probabilities”.
6 In *Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court of Canada held that it is not
7 sufficient to conclude that an accused person is probably or likely guilty for a
8 conviction to be registered. A reasonable doubt is not an imaginary or frivolous
9 doubt. It must not be based on sympathy or prejudice. Rather, it is based on
10 reason and common sense. It is logically derived from the evidence or absence of
11 evidence.

12 The Crown's case here is based on circumstantial evidence, coupled with
13 Mr. Seguin's cautioned statement that he made to the police on March 24th, 2009,
14 which I ruled was admissible earlier in these proceedings.

15 With respect to circumstantial evidence, I am mindful that it must be
16 assessed in the context of the entire evidence. A finding of guilt can only be made
17 where it has been demonstrated beyond a reasonable doubt that the only reasonable
18 or rational inference drawn from the proven facts is the guilt of the accused. The
19 circumstantial evidence must be consistent with guilt and inconsistent with

6 **DECISION**

1 innocence. It is not necessary to show that any “equally consistent” reasonable
2 inference can be drawn. If other reasonable inferences can be drawn from the
3 proven facts which are not consistent with guilt, then a reasonable doubt exists. Of
4 course, inferences which are not reasonable or rational cannot raise a reasonable
5 doubt. In other words, the Crown must establish the only reasonable and rational
6 inference drawn from the proven facts is the guilt of the accused.

7 Mr. Seguin does not have to prove anything. If there is a possibility the
8 evidence is consistent with a conclusion other than guilt, a reasonable doubt may
9 exist. There is no affirmative obligation on an accused to prove anything by way
10 of reasonable conclusion or reasonable inference. As Martin, J.A. stated in *R. v.*
11 *Campbell* (1977), 38 C.C.C. (2d) 6 (Ont. C.A.) at para. 22 “reasonable
12 probabilities in the accused's favour may give rise to a reasonable doubt”.

13 In *Farah*, [2005] O.J. No. 4936, the court found that it is not for the accused
14 to satisfy the trial judge that an accident was a reasonable inference. However, at
15 the same time, the trier of fact cannot speculate about mere possibilities. Certainty
16 is not required. The Crown must therefore establish that no reasonable inference
17 consistent with innocence can be drawn or made from the proven facts. However,
18 individual pieces of evidence or facts need not be established beyond a reasonable
19 doubt. The circumstantial facts need not be established beyond a reasonable do ubt.

DECISION

1 It is only the ultimate issue of guilt to which the criminal burden applies, although
2 weaknesses in the establishment of any piece of evidence or fact may make it
3 impossible to conclude beyond a reasonable doubt that the only reasonable or
4 rational inference is the guilt of the accused. Drawing or making reasonable
5 inferences must be distinguished from speculating or making conjectures. An
6 inference is a deduction of fact that may logically or reasonably be drawn from
7 another fact or group of facts which have been established.

8 Cacchione, J. described this in *R. v. Hobbs*, 2008 N.S.S.C. 226 at paragraph
9 66:

10 Because this case is a circumstantial case, the defence
11 also urges the Court not to engage in conjecture or
12 speculation when drawing inferences. The process of
13 drawing inferences is well known. It was aptly described
14 by Doherty, J.A. in *R. v. Morrissey* (1995), 97 C.C.C. (3d)
15 193 (Ont. C.A.) at p. 209 as follows:

16 A trier of fact may draw factual inferences from
17 the evidence. The inferences must, however, be
18 ones which can be reasonably and logically drawn
19 from a fact or a group of facts established by the
20 evidence. An inference which does not flow
21 logically and reasonably from established facts
22 cannot be made and is condemned as conjecture
23 and speculation . . .

24 In order to infer a fact from established facts, all that is required is that the
25 inference be reasonable and logical.

8 **DECISION**

1 Finally, it is impermissible to draw or make an inference of guilt from the
2 simple fact that the accused is not believed.

3 I am also mindful that the Supreme Court of Canada explained that
4 “recklessness” involves knowledge of a danger or risk and persistence in a course
5 of conduct which creates a risk that the prohibited result will occur. The
6 culpability in recklessness is justified by consciousness of the risk and by
7 proceeding in the face of it. As the court explained in *R. v. Sansregret*, [1985] 1
8 S.C.R. 570, at page 584:

9 . . . while recklessness involves knowledge of a danger or
10 risk and persistence in a course of conduct which creates
11 a risk that the prohibited result will occur, the culpability
12 and recklessness is justified by consciousness of the risk
13 and by proceeding in the face of it, while in wilful
14 blindness it is justified by the accused's fault in
15 deliberately failing to inquire when he knows there is a
16 reason for inquiry.

17 Mr. Seguin's cautioned statement was admitted after a *voir dire*, for the
18 reasons given. While Mr. Seguin's cautioned statement contains both exculpatory
19 and inculpatory parts, it is another piece or item of evidence that I must consider. I
20 am mindful that, as the trier of fact, I may accept it or reject it in whole or in part.
21 It is to be considered in the context of and together with the rest of the evidence,
22 not in isolation, nor apart from the remaining evidence in the case.

DECISION

1 Before I specifically discuss the evidence, I will briefly touch on the law, as it has
2 been thoroughly discussed in the written and oral submissions.

3 The possession of child pornography contrary to section 163.1(4): The
4 meaning of "possession" in relation to the electronic form of child pornography
5 was thoroughly discussed in *Morelli*, 2010 S.C.C. 8, in which Fish, J.A. at
6 paragraphs 14 to 16 observed:

7 14 In my view, merely viewing in a Web browser an
8 image stored in a remote location on the Internet does not
9 establish the level of control necessary to find possession.
10 Possession of illegal images requires possession of the
11 underlying data files in some way. Simply viewing
12 images on line constitutes the separate crime of accessing
13 child pornography, created by Parliament in section
14 163.1(4.1) of the *Criminal Code*.

15 15 For the purposes of the *Criminal Code*, 'possession' is
16 defined in section 4(3) to include personal possession,
17 constructive possession and joint possession. Of these
18 three forms of culpable possession, only the first two are
19 relevant here. It is undisputed that knowledge and
20 control are essential elements common to both.

21 16 On an allegation of personal possession, the
22 requirement of knowledge comprises two elements: the
23 accused must be aware that he or she has physical
24 custody of the thing in question, and must be aware as
25 well of what the thing is. Both elements must co-exist
26 with an act of control (outside of public duty): *Beaver v.*
27 *The Queen*, [1957] S.C.R. 531, at pp. 541-42.

10 **DECISION**

1 In the present case, the Crown alleges that Mr. Seguin had personal
2 possession of child pornography between March 1st, 2009, and March 25th, 2009,
3 as particularized in the *Information*. Therefore, the Crown must prove: the
4 physical contact with or manual control over the material in question; knowledge
5 of the material's nature or character; and a measure of control over the material,
6 whether exercised or not.

7 In *Morelli, supra*, the Supreme Court of Canada clarified what the subject
8 matter of possession is, whether it is the image or the file. At paragraph 19, the
9 court stated:

10 Essentially, there are thus two potential 'objects' of
11 possession of an image in a computer: the image file and
12 its decoded visual representation on-screen. The
13 question is whether one can ever be said to be in culpable
14 possession of the visual depiction alone or whether one
15 can only culpably possess the underlying file. Canadian
16 cases appear implicitly to accept only the latter
17 proposition: That possession of an image in a computer
18 means possession of the underlying data file, not its mere
19 visual depiction.

20 What this means is that it is not essential for the Crown to prove that the
21 images were viewed, as possession of an image in a computer means possession of
22 the underlying data file, not its mere visual depiction.

1 The Crown must prove that the accused, Mr. Seguin, had personal contact or
2 control over the files. In *Braudy*, [2009] O.J. No. 347, Stinson, J. commented upon
3 this element of possession at paragraph 47:

4 To the extent that courts have considered this element,
5 however, they have found that the prosecution is merely
6 required to show contact or control in a narrow, physical
7 sense. It is merely required, in other words, to show that
8 the material was on a computer with which the accused
9 had contact, or to which the accused had access.

10 In the present case, Mr. Seguin's admission that he owns a computer; that he
11 formatted it and installed a new operating system; that the account name was under
12 the name "Greg"; and that he regularly used it, is evidence which establishes this
13 element beyond a reasonable doubt, as this is indisputable evidence.

14 Evidence relating to knowledge of the material's nature or character: As
15 stated in *Morelli, supra*, at paragraph 16:

16 The requirement of knowledge comprises two elements:
17 the accused must be aware that he or she has physical
18 custody of the thing in question and must be aware of
19 what the thing is. Both elements must co-exist with an
20 act of control (outside of public duty).

21 It is important to stress that the accused must have a specific awareness of
22 the presence of the child pornography files on the computer, and must further be
23 aware that it contains images with a “criminal character”. It is not necessary,

12 **DECISION**

1 however, that the accused had viewed the images or be aware of what makes it
2 illegal. It is, rather, an awareness of the nature of the content (*R. v. Garbett*, [2008]
3 O.J. No. 917, is the authority for that proposition).

4 Knowledge can be proven conclusively by evidence that the accused viewed
5 the images. Alternatively, it can be proven by inference based on the surrounding
6 evidence (*Braudy, supra*, at paragraph 51).

7 As previously mentioned, this case is a circumstantial one, so I must
8 consider proof by inference, which involves consideration of the evidence in its
9 entirety, including: Mr. Seguin's cautioned statement; the surrounding evidence
10 obtained from the investigators; and the evidence of the forensic examiner.

11 In *R. v. Tresierra*, [2006] B.C.J. No. 1593, Smith, J.'s observations at
12 paragraphs 7 and 8 are apposite:

13 The data on the computer hard drive does not easily lend
14 itself to a determination of whether the accused has
15 accessed prohibited material contained on the hard drive.
16 Nevertheless, inferences in this regard can be drawn from
17 the ownership of, access to and usage of the computer
18 itself.

19 Knowledge may also be proved by both direct and
20 circumstantial evidence. There is no direct evidence of
21 knowledge in this case. There is, however,
22 circumstantial evidence that provides proof of facts or
23 circumstances from which inferences may be drawn to
24 establish other facts, such as knowledge.

1 There are several cases that have considered factors relevant to determine
2 knowledge or inadvertence of files on a computer, including: *R. v. Braudy, supra*,
3 *R. v. Garbett, supra*, and *R. v. Tresierra, supra*. Some of those factors include the
4 following:

- 5 • the ownership of the computer (*Braudy, supra*, at paragraph 52 and
6 *Tresierra, supra*, at paragraphs 7 and 8);
- 7 • the forensic report identifying the name of the main account
8 (*Tresierra, supra*, at page 46 and 47);
- 9 • history of the accused's frequent use of the commuter (*Braudy, supra*,
10 at paragraph 52 and *Garbett, supra*, at paragraph 42);
- 11 • the frequency between accessing and moving of files, the elaborate
12 filing system of files (*R. v. Missions*, [2005] N.S.J. No. 177);
- 13 • presence of the files on the computer for an extended period of time
14 (*Chalk*, [2001] O.J. No. 4627, at paragraph 26);
- 15 • concealing the files in a cryptic or obscure folder names or locations
16 (*Braudy, supra*, at paragraph 74);
- 17 • use of secure wiping software, the use of settings that delete records
18 of the user's activities (*Braudy, supra*, at paragraph 75);

14 **DECISION**

- 1 • evidence of the accused's interest in the materials (*Braudy, supra*, at
2 paragraph 77); and
- 3 • the accused's level of computer skills (*Braudy, supra*, at paragraph 62
4 to 67).

5 Factors which are generally in favour of inadvertent possession include the
6 following:

- 7 • the existence of a previous owner of the computer (*Braudy, supra*, at
8 paragraph 53);
- 9 • multiple persons with access to the computer in light of their
10 familiarity with computers (*Braudy, supra*, at paragraph 53);
- 11 • evidence of misleading file names or causing inadvertent downloading
12 (*Braudy, supra*, at paragraph 53);
- 13 • evidence of automated downloading or “caching” while web-
14 browsing (*Braudy, supra*, at paragraph 53); and
- 15 • evidence of pop-up sights, spyware, viruses (*Braudy, supra*, at
16 paragraph 53).

17 In *Braudy, supra*, the court also made the following comments at paragraphs
18 53 to 55:

1 53 In weighing these factors, I recognize the unique
2 features of electronic data that make it possible for
3 material to wind up on a computer without the user's
4 knowledge. Files may be left behind by a previous
5 owner or another user. They may be downloaded on the
6 basis of misleading information as to their contents.
7 Alternatively, they may be downloaded inadvertently by
8 web-browsing software, pop-up sights or spyware.

9 54 At the same time, the court should not place too much
10 emphasis on these possibilities for at least two reasons.
11 First, knowledge does not require that material be
12 received through advertence. It merely requires an
13 awareness on the part of the user that the material is
14 present. For example, in *R. v. Chalk*, [2001] O.J. No.
15 4627, where the trial judge did not find that the accused
16 had downloaded the child pornography onto the hard
17 drive, he was still found guilty of possessing it.

18 Second, as noted in *R. v. Jenner* (2005), 195 C.C.C. (3d)
19 364 at para. 21 (Man. C.A.), triers of fact ought not
20 attach weight to exculpatory theories in the absence of
21 evidence to support these theories. Thus, where there is
22 little evidence to support the inadvertent-downloading
23 theory, the normal presumption that one intends the
24 consequences of one's actions will apply: see *R. v.*
25 *Missions*, [2005] N.S.J. No. 177 at para. 21 (C.A.).

26 Having considered the evidence in its totality, I am satisfied that the Crown
27 has proven beyond a reasonable doubt the essential element of “knowledge” on
28 part of Mr. Seguin, that he was aware of the content of the material in question:
29 that it was, indeed, child pornography.

30 The evidentiary basis for this finding includes the following evidence:

16 **DECISION**

- 1 • Mr. Seguin owned and used the seized computer during the relevant
2 time period in 2009;
- 3 • Mr. Seguin only had one computer in his house which he shared with
4 his partner, his girlfriend, as he explained in his cautioned statement,
5 Exhibit 1, transcribed at pages 11 to 16;
- 6 • the computer was located in the living room as observed by Special
7 Constable Rawding;
- 8 • the main account of the computer was named "Greg";
- 9 • the Greg account was logged into 142 times between February 17th,
10 2005, and March 24th, 2009;
- 11 • Mr. Seguin acknowledged in his cautioned statement that he had
12 briefly looked at child pornography before he deleted it, as stated at
13 page 20 of his cautioned statement, Exhibit 1; and
- 14 • furthermore, he admitted to having seen videos of children having sex
15 with adults; the ages of the children were anywhere between 6 to 18.
16 While he said he did not review the same video twice, he had seen
17 plenty of them because he had downloaded them inadvertently, not by
18 choice. He also admitted that he saw videos entitled "'Six-Year-Old

1 Vicky,' or whatever, 'Giving a Blow Job' and stuff like that," at page
2 25 of his cautioned statement, Exhibit 1.

3 • He explained why he would download such a title at pages 26 to 31 of
4 his cautioned statement, and I am going to be reading from the
5 transcript of Exhibit 1, the cautioned statement. Counsel, I am at the
6 answer, line 1, page 26:

7 I know, I know it's stupid. I would click on it
8 because sometimes it wouldn't be -- you know,
9 like, I would just download whatever. It was just
10 automatic.

11 But you know what child pornography is. You
12 gave me the definition. The definition you gave
13 me, right?

14 Oh, yeah.

15 So if it come up 'Six-Year-Old...'

16 Answer:

17 I didn't believe that it would come up and it would
18 actually show -- show me a video of that because
19 it's -- it's so easy. You just go on a site and, yeah,
20 like, and it's there, like, and it's (inaudible). If it
21 was there, I didn't believe it would actually show
22 anything because sometimes it wouldn't show
23 nothing. I -- I would -- I never thought there
24 would be a cop at my door.

25 Yeah.

1 I never in the world thought that.

2 Question:

3 So how many videos did you look at that basically
4 you could think back at this time and it was such
5 as a 'Five-Year-Old Vicky Gives Daddy' and then
6 it's...

7 I've -- I've looked at a lot of them.

8 Yeah.

9 Like, I don't know, probably 20 or so in whatever
10 you guys -- or from the time that you were
11 monitoring me.

12 Yeah. So how many times did you actually go
13 back and look at that video? We're going to be
14 able to tell. We're going to be able to tell
15 everything.

16 Answer:

17 I -- I never went back to the same video. I usually
18 just whatever, like, and it would download a bunch
19 of them and that's it. I don't know. I would just
20 look at them and that's it.

21 So what did you do with them at that time?

22 Just delete them.

23 So you'd delete them?

24 Yeah.

25 Would you go on the next day and download a
26 bunch more?

DECISION

1 No, not usually.

2 Okay.

3 I -- I have -- I went on the internet there one night.
4 I think I had a few drinks there and I don't even
5 remember half of what I was doing. I -- that -- that
6 was the night you guys were on there.

7 Okay. Do you remember when that was?

8 It was probably March the 2nd.

9 And why do you say March the 2nd?

10 Or around there, because that was the date that was
11 on there and she was -- I -- I'm trying to remember
12 now. I was going to her parents' but I think it was
13 the next day or something and I had a few drinks
14 that night and I was a bunch -- I was depressed at
15 looking at porn all night, just sitting there by
16 myself. But like I said, if something happened
17 with that computer -- because that computer's had
18 a lot of problems before. There's been hijackers on
19 there and stuff. And I know by going to these
20 sites, that's making me more vulnerable.

21 Question:

22 But you just said that -- that you physically made
23 that decision to flick on 'Vicky, Six-Year-Old,
24 Gives Dad a Blow Job.' I mean, that would
25 indicate that -- that there was a six-year-old giving
26 the father a blow job.

27 Answer:

20 **DECISION**

1 Sometimes yeah, but sometimes not though. Like
2 I was -- I was just looking at whatever was on
3 there.

4 Yeah, but what -- did you want to see the six-year-
5 old giving her father a blow job?

6 Answer:

7 I just wanted to see what was in the file because
8 half the time you don't know what's on the file.
9 You're -- you download and it's not the...

10 But you did.

11 And I have downloaded lots of them that said, 'Six-
12 Year-Old Vicky' and there is -- Britney Spears
13 comes up with a really good video. So you don't
14 know what you're going to get is all I'm trying to
15 say.

16 Question:

17 So you make this decision to physically look at it.
18 What would you do with it? What would you do
19 with the video after you looked at it?

20 Get rid of it.

21 What do you mean by get rid of it?

22 Just delete it.

23 Okay.

24 I wouldn't keep anything. I don't even want to
25 look at the -- any of this anymore. I want to try
26 and turn my life around.

27 Do you think you got a problem?

DECISION

1 I -- I know I have a problem.

2 Do you think you've got a problem with that you
3 want to look at child pornography?

4 I've...

5 Listen, you're not going to be the first guy that
6 basically sat there and told me that they had a
7 problem and they wanted to look at child
8 pornography, right?

9 Answer:

10 I don't want to, no. I really don't want to look at it.
11 Have I had a problem in the past? Yes. But, no, I
12 don't want to look at child pornography. I don't
13 want to look at any porn anymore, no.

14 Answer:

15 This is getting me in trouble and it's...

16 Question:

17 But you -- do you think -- do you think that you've
18 had a problem in the past and that you wanted to
19 look at child pornography?

20 Answer:

21 Yeah, I -- I've had a problem in the past, I think,
22 and it's just from it being on the internet and stuff
23 that I've had a problem with it, just seeing it on
24 line. I've had buddies send me stuff before, like,
25 just whenever as -- whatever, as a joke. And that's
26 kind of -- kind of what disturbs me about it. You

1 know, it's just so -- so much out there. Like, it's
2 whatever. Everywhere you go, it's easy. Like, it's
3 easy to see. There's nothing stopping it. But I --
4 the only -- the only thing that can stop it is you.
5 Just stay away from it. Stay away from that
6 garbage.

7 Question:

8 Do you find it hard to stay away from it?

9 Answer:

10 No, I don't, no. I was -- like I said, when I was
11 looking at it, I was just having a few drinks. My
12 girlfriend was gone, and my intention wasn't to
13 look at it. To be honest with you, it wasn't. It just
14 comes up and, like, I've looked at it or whatever
15 for a minute and get rid of it. But a lot of the time
16 I wasn't looking for it. I was just looking for
17 whatever was on there and I -- and I clicked on
18 'Vicky Six-Year-Old Blow Job' and it wouldn't be
19 'Vicky Six-Year-Old Blow Job', it would be
20 something else. Or you'd click on something that -
21 - that didn't say anything and it would be the -- the
22 child porn. The more--more times than not that's
23 the case. It doesn't say that. Because people
24 would -- would say that and you would click on it,
25 and nine times out of ten, there's no child porn on
26 the ones that they say it was child porn.

27 Hmm.

28 Answer:

DECISION

1 That's why I'd click on them, because they're
2 different videos. Yeah. I know it sounds funny
3 but I'm being honest with you on that one.

4 Question:

5 Did you put -- did you put any of it in your folder
6 to save it?

7 Answer:

8 I've -- I've saved it before, yeah, for probably
9 maybe a day or two or something and then deleted
10 it. But most times, I wouldn't bother saving it.

11 Would you watch it a second time?

12 I'd just get rid of it. Not -- no, I don't even know
13 why I would save it because, whatever. Half the
14 times I would save it and I wouldn't even know I'm
15 saving it to anything, and I've got -- got (inaudible)
16 on this computer. It doesn't. It's so screwed up.
17 You go somewhere and it takes a while sometimes.

18 So that is up to page 31.

19 • Further, Mr. Seguin also stated that he downloaded child pornography
20 from sites, particularly on one night, where he stated that "I was
21 taking images from sites. I don't even know where the sites were".

22 That is at page 36 of his cautioned statement, Exhibit 1;

- 1 • Mr. Seguin also stated that on the evening that his girlfriend was gone
2 out, he explained that he was not masturbating to the child porn, but
3 had been to underage girls. At page 39 he stated:

4 That was -- well, it might have been underage
5 girls. I don't know. They might not have been but
6 they looked pretty young. But it -- but I never
7 actually masturbated to -- but never actually
8 masturbated to the porn like that. That never
9 turned me on. Like, the young -- younger girls
10 kind of turn me on. Like, the younger girls kind of
11 turn me on a little bit. Nude younger girls, but not
12 the porn. The porn was -- I find, was disgusting.
13 Little girls dancing around and whatever with next
14 to nothing on, I don't know, it kind of turned me
15 on. I don't know why. I just -- I don't even think
16 of it. I don't even want those images in my head. I
17 know it's wrong and it's sick. But to harm a child
18 makes me just as sick as anybody else. And that
19 stuff shouldn't be on there to infect people's mind.

- 20 • At page 40 of his cautioned statement, Exhibit 1, Mr. Seguin was
21 asked whether he remembered a video named, "FBE 1224 BAC
22 Hussey Fan King Pass Vicky Offering Little Plan, Planet Nevo, St.
23 Petersburg, Ray Gold, Baby J Live Pedophilia Mima". His answer:

24 Yeah, there's tons of them out there, tons of them.
25 They're all the same. That one was just read out is
26 the same as about a thousand of them out there.

- 1 • Following that response, Mr. Seguin was asked at pages 40 to 41 of
2 his cautioned statement, Exhibit 1:

3 This video is several naked, young, prepubescent
4 females shown in several sexual positions. There
5 are multiple young female victims throughout the
6 clip. One victim is exposing her -- just shown
7 exposing her anal and vaginal area. The camera is
8 focused on the anal and vaginal area only. The
9 face of the victim is not exposed. As the video
10 continues, one prepubescent female is shown
11 performing oral sex on an adult male penis. The
12 female appeared to be between the ages of six and
13 ten years old. Video clips are shown of the naked
14 prepubescent female straddling a naked adult male.
15 The adult male is shown with erect penis. The
16 adult male is shown holding a prepubescent female
17 as he tries to penetrate her with his erect penis.
18 The female has no breast or hip development and it
19 appears the female is between the ages of five and
20 ten years of age. Do you recall that one?

21 Mr. Seguin's response was:

22 Yeah. I recall seeing videos like that. I don't
23 know if it was the same. Probably the same video
24 then.

25 He added:

26 It sounds more disturbing when you say it like that.
27 It sounds more disturbing.

28 And at page 42, Mr. Seguin added:

1 My God. But I wasn't looking at that stuff for
2 pleasure. I'm serious. I've got a file like that, I
3 would get rid of it. I wouldn't save that. Whatever
4 ones I did save before, like I said, I wouldn't keep
5 them. But I'm guilty of looking at younger girls.
6 But the pornography never really turned me on. I'd
7 open it and get rid of it, something like that. It's --
8 if anything like that was bad, like, a real bad one,
9 no. No, I'd just try to be honest with you, though.
10 I'm serious. I've never masturbated to that, to the,
11 like, real young child porn with sexual positions
12 and all that. That never turned me on. I was
13 looking for girls dancing in their panties or
14 whatever, and stuff like that, which is still 100 per
15 cent wrong. That doesn't make it better.

16 The officer then asked:

17 Would you consider that it was child porn?

18 Mr. Seguin answered:

19 No. That's not actually child porn, I don't think.
20 Porn is actually when they're in sexual acts. Like,
21 I don't know. Maybe it is. I don't know what you
22 would categorize it as.

23 The next question was:

24 Would that be enough to arouse you, young girls
25 dancing around?

26 And he answered:

27 Yes, and but I don't -- I knew every time I did it, I
28 knew I shouldn't have been.

1 The officer asked:

2 So what do you -- suggest that the -- that you have
3 a problem if you're looking at?

4 Mr. Seguin commented:

5 Oh, yeah, you shouldn't be look -- I shouldn't be
6 doing that. And every time I do it, I feel bad. And
7 I feel -- I know that I'm doing something wrong,
8 and every time I just - it's something that can't be
9 prevented. I'll go a long time, I won't. I never
10 have to do it again. I just...

11 He then was interrupted by the officer asking him:

12 But you got -- you got interest in young girls.

13 Mr. Seguin answered:

14 Well, not an interest in being with them, just
15 whatever. It might have aroused me looking at the
16 pictures or whatever, but it was fantasy, I guess,
17 whatever. Just the forbidden fruit they call it, I
18 guess. I don't know. But I I know it's wrong.
19 It's stupid. Like -- like, I would never think about
20 being with somebody that -- that age.

- 21 • Mr. Seguin admitted to having accessed, downloaded and stored child
22 pornography in the past as noted in his cautioned statement, Exhibit 1,
23 transcribed at pages 25 to 27, 30 to 31, 34 to 37, 36 to 37, and 41 to
24 44.

- 1 • Further, he admitted to accessing child pornography off a web site as
2 noted at page 36 of the cautioned statement, Exhibit 1.
- 3 • He admitted to having saved child pornography for two or three days
4 at page 31 and page 34 of his cautioned statement, Exhibit 1. He
5 admitted to opening files with child pornography names with
6 frequency in his cautioned statement at page 31, Exhibit 1. And Mr.
7 Seguin admitted accessing child pornography on or about March 2nd,
8 2009, according to his cautioned statement at pages 27 to 28, Exhibit
9 1.
- 10 • This is corroborated by the original investigator's evidence, the
11 testimony of Detective Constable MacDougall, and the creation dates
12 as disclosed in Exhibit 5.
- 13 • Mr. Seguin admitted to having a problem in the past at pages 29 to 30
14 of the cautioned statement, Exhibit 1, and being aroused by younger
15 girls and masturbating to images of them as stated at pages 35, 39 and
16 43 to 44 of the cautioned statement, Exhibit 1.
- 17 • The evidence that I have considered includes the large number of
18 files, 2,590 images, recovered from the computer that were created at
19 different times (Exhibit 5, tab 7); and the creation dates on 1,920 of

1 the files labelled as "deleted files" and one other file, and the dates
2 include March 2nd, 4th, 7th and 23rd, 2009, with numerous time
3 stamps over several hours on each date (Exhibit 5).

- 4 • These creation dates can represent the time when the files were
5 downloaded off the internet, as explained by Special Constable
6 Rawding.
- 7 • While Special Constable Rawding testified that his recollection was
8 that the earliest creation date was March 4th, it seems that Exhibit 5
9 suggests creation dates of March 2nd, 2009, during the time when Mr.
10 Seguin stated that he was on the computer. Mr. Seguin's evidence
11 seems consistent with that information contained in Exhibit 5.
- 12 • Special Constable Rawding confirmed that the computer's clock was
13 accurate, so the time stamps were correct.
- 14 • Mr. Seguin admitted to seeing files with child pornographic names,
15 (pages 25 to 29 of his cautioned statement, Exhibit 1).
- 16 • The evidence of the cache file suggests the user accessed a web site
17 that contained child pornography.

- 1 • Mr. Seguin's working knowledge of a computer, that he received a
2 computer from his father and had to fix it before it worked (page 13
3 and page 16 of the cautioned statement, Exhibit 1).
- 4 • Mr. Seguin reinstalled the operating system of the computer (page 16
5 of his cautioned statement, Exhibit 1).
- 6 • Mr. Seguin was familiar with the file sharing programs.
- 7 • He had experience using file sharing programs; a file sharing program
8 was running when the investigators first examined the computer.
- 9 • Frostwire peer-to-peer software was present on the computer at the
10 time of seizure.
- 11 • Mr. Seguin admitted using Frostwire for a period of six months prior
12 to the search (page 12 of his cautioned statement, Exhibit 1).
- 13 • He admitted using several file-sharing programs, (page 20 of his
14 cautioned statement, Exhibit 1).
- 15 • He knew how to search for files (pages 17 to 18 of his cautioned
16 statement, Exhibit 1).
- 17 • He used file-sharing to download adult pornography (page 21 of his
18 cautioned statement, Exhibit 1); and

DECISION

- 1 • Mr. Seguin stated that he used a file-sharing program called "4Shared"
2 (page 14 of his cautioned statement, Exhibit 1).

3 Having considered the totality of the evidence that I just reviewed,
4 particularly Mr. Seguin's evidence, his cautioned statement, I am satisfied that the
5 Crown has proven beyond a reasonable doubt that Mr. Seguin knew or was aware
6 that he was in possession of child pornography when he downloaded the images,
7 viewed them, and deleted them. I do not accept that Mr. Seguin inadvertently
8 downloaded child pornography and then immediately deleted the images, as this
9 defies credulity, given the quantity of the deleted files found, coupled with Mr.
10 Seguin's inculpatory statements wherein he stated that he occasionally viewed
11 child pornography and, on occasion, saved it for a day or two before deleting them.

12 I do not believe that Mr. Seguin inadvertently downloaded the child
13 pornography, nor am I left in a state of reasonable doubt by Mr. Seguin's cautioned
14 statement. Indeed, in my view, his cautioned statement, when considered in its
15 entirety and in the context of all the evidence, the only rational and reasonable
16 conclusion is that he intentionally viewed child pornography, knowing that it was
17 wrong, as he repeatedly stated in his statement.

18 In other words, on the whole of the evidence, I am convinced beyond a
19 reasonable doubt that he possessed the requisite knowledge, as he was aware of the

1 nature of the content, but decided to view it anyway. Moreover, upon a close
2 examination of Mr. Seguin's cautioned statement, at a minimum, he was reckless in
3 the sense that he knew from experience that there was a likelihood that some of the
4 files that he was downloading may contain child pornography, but he continued
5 despite that risk, knowing that there was a chance that he was going to download
6 child pornography.

7 This risk was inherently obvious by the names of some of the files he
8 downloaded. The following exchange between the police officer and Mr. Seguin
9 during his cautioned statement, Exhibit 1, exemplifies this point. At page 28, the
10 officer asked:

11 But you just said that you physically made that decision
12 to flick on 'Vicky Six-Year-Old Gives Dad a Blow Job.'
13 I mean, that would indicate that there was a six-year-old
14 giving her father a blow job.

15 Mr. Seguin answered:

16 Yeah, but sometimes no though. Like, I was just looking
17 at whatever was on there.

18 The officer then asked:

19 Yeah, but did you want to see the six-year-old giving her
20 father a blow job?

21 Mr. Seguin responded:

DECISION

1 I just wanted to see what was in the file because half the
2 time you don't know what's on the file. You'll download
3 and it not the -- -- and I have downloaded lots of them
4 that says, 'Six-Year-Old Vicky' and there was Britney
5 Spears comes up in a really good video. So you don't
6 know what you're going to get is all I'm trying to say.

7 The officer then asked:

8 So you make this decision to physically look at it. What
9 would you do with that video after you looked at it?

10 Mr. Seguin answered:

11 Get rid of it. Just delete it. I wouldn't keep anything. I
12 don't even want the -- any of this anymore. I want to turn
13 my life around.

14 The word "anymore" suggests that he looked at it.

15 Mr. Seguin, later on in his cautioned statement, admitted that on March 2nd,
16 2009, while he was having a few drinks while his girlfriend or partner was out, he
17 had looked at child pornography for a minute before he got rid of it. While he
18 stated that he was not looking for it, he did look at it when he downloaded it. He
19 stated at page 30 and page 31:

20 I'd click on 'Vicky Six-year-Old Blow Job,' it wouldn't be
21 'Vicky Six-Year-Old Blow Job.' It would be something
22 else. Or you click on something that didn't say anything
23 and it would be the child porn. The more times than not,
24 that's the case. It doesn't say that because people would
25 say that and you would click on it, and nine times out of

1 ten, there's no child porn in ones that say it was child
2 porn.

3 I do not accept that Mr. Seguin did not know what type of material the files
4 contained based on the names of the file as I am of the view that he did not care
5 and was prepared to download the files regardless and view them. Surely, a title
6 that says it is "Vicky Six-Year-Old Blow Job" should have been a clear indication
7 not to download it or view it, but he proceeded, though there was a real risk.

8 Now, a measure of control over the material: The final essential element
9 requires proof that Mr. Seguin had a power or authority over the item, whether
10 exercised or not (*Morelli, supra*, at paragraph 137). Control can often be
11 established by evidence of downloading, copying, storing or organizing the files
12 (*Garbett, supra*, at paragraph 48 and *Braudy, supra*, at paragraphs 88 to 90). Other
13 factors, such as the duration which the files were present on the computer and the
14 frequency between the creation and access time and date stamps between files,
15 would lead to an inference of control. The available time and date metadata
16 consisting of the recorded creation, access and deletion dates are an important
17 factor in the evidence to consider.

18 Having considered the whole of the evidence, including Mr. Seguin's
19 admission of accessing, downloading and storing child pornography, and all of the
20 evidence that I have already mentioned, I am satisfied beyond a reasonable doubt

DECISION

1 that Mr. Seguin had a measure of control over the material in question during the
2 time period in question.

3 The creation dates also support the element of control, particularly the
4 March 2nd, 2009, date wherein Mr. Seguin confirmed that he was operating the
5 computer and downloading material. Mr. Seguin's cautioned statement provides
6 probative evidence of his control over the material as he repeatedly discussed it
7 during the statement. The evidence established that files were created on several
8 dates and subsequently deleted.

9 Thus, it is reasonable to infer that between March 1st, 2009, to March 25th,
10 2009, files were created and deleted. Indeed, it is indisputable that Mr. Seguin was
11 operating the computer on or about March 2nd, 2009. That is his evidence, and the
12 evidence of the constable as well. Also, Exhibit 5 contains the creation dates. He
13 created the files on that date. While the deletion dates are unknown, what is
14 known is that a deletion date must follow a creation date. So it is reasonable to
15 infer that the deletion dates follow the creation dates, which is consistent with Mr.
16 Seguin's evidence from his cautioned statement, Exhibit 1.

17 The evidence which supports the only reasonable conclusion that Mr. Seguin
18 had a measure of control over the file includes:

- 1 • Mr. Seguin's ability to operate the computer in a reasonably
2 competent manner; he is reasonably proficient on a computer as
3 demonstrated by his evidence of use and experience which includes
4 experience using file sharing programs;
- 5 • the creation dates of 1,920 of the files labelled "deleted files" and one
6 "other file" are all recorded, and those dates included March 2nd, 4th,
7 7th, 23rd, 2009, with numerous date stamps over several hours on
8 each date. For an example, Exhibit 5 shows creation dates of March
9 2nd, 2009, during which Mr. Seguin was on the computer for hours,
10 confirmed by his cautioned statement, as well;
- 11 • Mr. Seguin's admission of accessing, downloading and storing some
12 child pornography images as discussed earlier in these reasons leads
13 to the inescapable conclusion that Mr. Seguin had a measure of
14 control over the files on the computer.

15 Again, Mr. Seguin's evidence contained in his cautioned statement, coupled
16 with all of the other evidence in this case, leads a reasonable person to the only
17 reasonable and rational conclusion, that he had a measure of control over the files
18 recovered from the computer during the period in question.

1 With respect to the charge of accessing child pornography, the Supreme
2 Court in *Morelli, supra*, explained the difference between accessing and possession
3 of child pornography at paragraphs 25 to 26 in these terms:

4 Parliament in section 163.1(4.1) of the *Criminal Code*
5 has made accessing illegal child pornography a separate
6 crime, different from possession. In virtue of section
7 163.1(4.2), a person accesses child pornography by
8 'knowingly causing the child pornography to be viewed
9 by, or transmitted to, himself or herself.'

10 Parliament's purpose in creating the offence of accessing
11 child pornography, as explained by the then Minister of
12 Justice, was to 'capture those who intentionally viewed
13 child pornography on the Internet but where the legal
14 notion of possession may be problematic.' (Hon. Anne
15 McLellan, *House of Common Debates*, vol. 137, 1st Sess.,
16 37th Parl., May 3, 2001, at p. 3581).

17 Fish, J.A. also noted that the automatic caching of a file to the hard drive
18 does not, without more, constitute possession. He further added, at paragraph 37:

19 In the present case, the charge is not based on the
20 appellant using his cache to possess child pornography.
21 It is hardly surprising as most computer users are
22 unaware of the contents of the cache, how it operates or
23 even its existence. Absent that awareness, they lack the
24 mental or fault element essential to a finding that they
25 culpably possess the images in their cache. Having said
26 that, there may be rare cases where the cache is
27 knowingly used as a location to store copies of image
28 files with the intent to retain possession of them through
29 the cache.

1 In the present case, the creation of the cache is evidence of accessing as it is
2 a file that is created by the software during Mr. Seguin's use of the internet
3 browser. Section 163.1(4.2) defines accessing as "knowingly causing child
4 pornography to be viewed by, or transmitted to, oneself." Accordingly, the Crown
5 needs to prove that Mr. Seguin viewed images or transmitted the images to
6 himself, knowing that they were child pornography (see *Morelli, supra*, at
7 paragraphs 25 to 27).

8 The knowledge component is the same as the knowledge component
9 required in proving possession. The major difference is that accessing requires
10 either viewing or transfer (i.e. copying) of the image, but does not require that the
11 accused have contact and control over the underlying data file.

12 Having considered all the evidence, including the evidence earlier discussed
13 in respect to Mr. Seguin's knowledge of the material in question, I am satisfied
14 beyond a reasonable doubt that Mr. Seguin viewed the material in question,
15 particularly when one considers the following evidence, which is undisputed:

- 16 • the large number of files found on the computer;
- 17 • Mr. Seguin's admission of his interest in child pornographic materials;
- 18 and his admission to viewing and masturbating to such materials;

DECISION

- 1 • his admission of obtaining some of this child pornography on web sites;
2 and
- 3 • the expert evidence that a single image of child pornography was found
4 in a web browser cache and that this file would have been created by the
5 browser when viewing a page on the internet.

6 Now, I accept and find that the specific cache file found on the computer
7 was never deleted from the computer. It was present on the computer at the time
8 of the search. The Crown does not allege that Mr. Seguin had possession of that
9 file. I understand that. However, the presence of that file is evidence that Mr.
10 Seguin accessed the image on the date it was created, March 23rd, 2009.

11 As explained by the expert, whose evidence I accept, I find that the file
12 would only have ended up there if the user had accessed a web page with that
13 image in it. I agree with the Crown that, in isolation, it would be reasonable to
14 suggest that this would be on the computer by accident. However, in the context of
15 the large quantity of other images present on the computer, coupled with Mr.
16 Seguin's cautioned statement, it is reasonable to infer that it was not inadvertently
17 placed there.

18 I say that mindful that it is only one piece of evidence that I must consider
19 along with all the other evidence. However, when one considers all of the

1 evidence cumulatively, that evidence, coupled with Mr. Seguin's admission that he
2 had previously accessed child pornography through web sites, one can reasonably
3 infer that Mr. Seguin accessed that material.

4 The most probative evidence on the issue of whether Mr. Seguin accessed
5 child pornography comes from him, in his cautioned statement, particularly on
6 March 2nd, 2009, on or about that date, where he admitted to accessing child
7 pornography. As previously discussed, Mr. Seguin admitted accessing child
8 pornography on or about March 2nd, which is corroborated by the evidence of
9 Detective Constable MacDougall and the creation dates as shown in Exhibit 5.

10 Having considered the totality of the evidence, including Mr. Seguin's
11 cautioned statement, I find that Mr. Seguin actively downloaded and stored child
12 pornography during the time in question, which he viewed, and on one occasion
13 masturbated, and then deleted the files out of guilt. As he said himself, he knew
14 what he was doing was wrong and he realizes that he had problems in the past
15 which involve having a sexual interest in young girls. While he stated that the
16 materials are disgusting, he still downloaded some of the materials from the web
17 sites and through file sharing programs, which has been corroborated in part by the
18 forensic evidence. Furthermore, Mr. Seguin's cautioned statement includes
19 multiple references, as discussed earlier in these reasons, to an awareness of how

DECISION

1 wrong a sexual interest in children is. This is consistent with a person
2 downloading child pornography for personal use and then deleting it once the guilt
3 of what he had done arises.

4 I do not believe that Mr. Seguin inadvertently accessed child pornography,
5 nor am I left in a state of reasonable doubt by his cautioned statement, but rather I
6 am satisfied on the whole of the evidence that there is only one rational and
7 reasonable conclusion to be drawn from the evidence which is that Mr. Seguin
8 accessed child pornography between March 1st, 2009, and March 25th, 2009.

9 Now, the defence raised the suggestion of an alternate suspect, also referred
10 to as a third party suspect; in that, it was suggested that the evidence raises the
11 possibility that Mr. Seguin's partner, his girlfriend, may have possessed and/or
12 accessed the computer rather than Mr. Seguin. The evidentiary basis for this
13 suggestion as contended by the defence is that the computer did not require a
14 password to access the internet or the files on the computer and Mr. Seguin shared
15 the computer with his partner, as she used it as well; that evidence was in Mr.
16 Seguin's statement.

17 In reaching my conclusion that Mr. Seguin committed the two alleged
18 offences, I did turn my mind or my attention to the suggestion of the alternate
19 suspect as argued in the defence brief. In doing so, I considered Mr. Seguin's

1 cautioned statement wherein he only mentioned that his partner, his girlfriend, had
2 shared and used his computer quite often. There was no other incriminating
3 evidence to link or connect her to the offences. This possibility has to be
4 considered in the context of the whole of the evidence in this case, including the
5 cautioned statement of Mr. Seguin, where he has admitted to having used the
6 computer during the time period in question and accessed child pornography, for
7 example, on or about March 2nd, 2009.

8 Having considered that possibility, as another piece of circumstantial
9 evidence, when you consider all of the evidence in its entirety, in considering the
10 whole of the evidence, I am still satisfied on the totality of the evidence that there
11 is only one rational or reasonable conclusion to be drawn from the evidence, and
12 that is Mr. Seguin committed both offences during the time period in question. In
13 my view, the suggestion of alternative suspect would have been more probative in
14 the absence of an incriminating statement where Mr. Seguin has, in essence,
15 admitted having exclusive opportunity to commit the offences in question.

16 In conclusion, having carefully considered Mr. Seguin's cautioned statement
17 of March 24th, 2009, Exhibit 1, which included references to accessing
18 pornography of young persons, coupled with the number of pictures present on the
19 computer, the only reasonable and rational inference to be drawn from the totality

1 of the evidence is that Mr. Seguin intentionally accessed those files and then
2 deleted them. The files would have been acquired through the web sites and peer-
3 to-peer software during the time period particularized on the *Information*, between
4 March 1st, 2009, to March 25th, 2009.

5 The court granted the Crown's request to amend the dates on the *Information*
6 by changing the specified date of March 2nd, 2009, to a range of dates between
7 March 1st, 2009, to March 25th, 2009. This particularization was granted. In
8 reaching the decision to permit the amendment, I expressed my view that, while
9 time must be specified in an *Information* in order to provide an accused person
10 with reasonable information about the charges brought against him or her to ensure
11 the possibility of a full defence in a fair trial, exact time need not be satisfied, as
12 reasoned in *R. v. Jacques*, 2013 SKCA 90, a decision of the Saskatchewan Court of
13 Appeal.

14 Based on the totality of the evidence, which includes Mr. Seguin's cautioned
15 statement to the police, I am satisfied beyond a reasonable doubt that the Crown
16 proved each and every essential element of the two alleged offences, accessing
17 child pornography and possession of child pornography. Therefore, I find Mr.
18 Seguin guilty of possession of child pornography, contrary to section 163.1(4)(a)

44 **DECISION**

1 of the *Criminal Code*, and guilty of accessing child pornography, contrary to
2 section 163.1(4.1)(a) of the *Criminal Code*.

3

4

5

6

HOSKINS, J.P.C.