



Administrative Office of the Courts

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New Mexico Supreme Court reinstates child pornography convictions of Los Alamos man

SANTA FE – The state Supreme Court today reinstated a Los Alamos man’s convictions for possession, distribution and manufacturing of child pornography.

In a unanimous opinion, the state’s highest court reversed the Court of Appeals and clarified the legal elements that must be proven for the crime of manufacturing child pornography.

Rael was sentenced in 2017 to nine years in prison for convictions of three counts of manufacturing child pornography and one count each of distribution and possession of child pornography.

The Court of Appeals overturned David Rael’s convictions for a lack of sufficient evidence that he intended to violate the state’s child pornography law. Rael had many files of adult pornography on his home computer and contended that he had inadvertently downloaded videos of sexual acts involving children but deleted those after determining their content.

In an opinion by Justice Michael E. Vigil, the Court concluded “the evidence is overwhelming that Defendant intended his possession, distribution and manufacture and knew that all five of the videos he was convicted of possessing, distributing, or manufacturing depicted child pornography.”

The justices held that the Court of Appeals had wrongly interpreted the criminal intent required under the law for manufacturing of child pornography, which is the most serious child pornography crime in New Mexico’s Sexual Exploitation of Children Act.

The Court concluded that a defendant’s necessary state of mind for manufacturing child pornography “consists of ‘intentionally’ manufacturing pornography that ‘intentionally’ depicts a child under eighteen years of age and that in fact depicts a child that is under eighteen years of age.”

Rael's "assertions of 'accidental conduct' ring hollow in light of the persuasive circumstantial evidence presented at trial," the Court wrote.

Rael admitted he was the only user of his home computer and downloaded files from others with a program that permitted them to upload his files. Law enforcement found evidence of searches related to child pornography on his computer and file names of downloads and uploads "had terms descriptive of child pornography."

In weighing the evidence about manufacturing of child pornography, the Court noted that Rael had viewed one video depicting child pornography with a media player on his computer, stored it on the internal hard drive and downloaded it to an external hard drive. Another child pornography video was downloaded twice from his computer to an external hard drive.

"This evidence, and reasonable inferences from the evidence are sufficient for a factfinder to reasonably conclude that Defendant intentionally copied these videos with the intent to copy child pornography because he knew they depicted child pornography," the Court wrote.

Additionally, the Court explained that Rael knew child pornography was illegal and his daily use of an antiforensic program to scrub his computer activity, "his downloads of videos named for and containing child pornography, and his use of search terms specific to child pornography is a combination fatal to Defendant's argument that he did not know the videos he was convicted of possessing, distributing, and copying depicted child pornography."

The Sexual Exploitation of Children Act defines manufacturing as "the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium" depicting a prohibited sexual act with a child.

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To read the decision in *State v. Rael*, No. S-1-SC-38300, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522388/index.do>