

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 17th *day of* October, 2014.

Donald Richard Hausen, Appellant,
against Record No. 131816
Court of Appeals No. 0124-13-4
Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that for the reasons stated in the Per Curiam Order of the Court of Appeals in this matter dated August 7, 2013, the judgment of the Court of Appeals is affirmed.

Donald Richard Hausen appeals his convictions for two counts of distribution of child pornography. At trial, the evidence proved that Hausen's fiancée was using his computer while he was not home and, while doing so, she noticed folders that she did not recognize. Upon opening the folders, she discovered sexually explicit images of a minor. Hausen took these images with his cellular phone and emailed them to himself using his Hotmail account. Hausen's fiancée subsequently reported him to police and he was charged, inter alia, with two counts of distribution of child pornography in violation of Code § 18.2-374.1:1(c).

Hausen argued that for the evidence to be sufficient to support a conviction under this code section, it must prove that he sent the images to another person. The Commonwealth responded that

the image could be distributed to another person or electronically transferred.

"Any person who . . . distributes [or] electronically transmits" child pornography violates Code § 18.2-374.1:1(C)(i). Here, the jury was instructed that the Commonwealth must prove beyond a reasonable doubt that Hausen distributed or electronically transmitted child pornography. At Hausen's request, the jury was also provided with a definition of "distribute." Hausen now argues that because the judge granted his definition of "distribute" the judge narrowed the Commonwealth's theory of the case to distribution and eliminated electronic transmission as a means by which Hausen could be found guilty. A trial judge's decision to grant an instruction requested by a party does not limit the issues in the case to the ones put forth in that granted instruction especially when there are other broader instructions. Therefore, we reject this argument.

Hausen further argued that because the Commonwealth referred to the charges as "distribution," it eliminated "electronically transmits" from the methods of proof upon which it could rely. We reject this contention. It is clear from the Commonwealth's argument at trial and on appeal that its theory of the case was that Hausen electronically transmitted the photographs. Indeed, it was Hausen who introduced the distribution component of the statute by his instruction to the jury. The Commonwealth's references to the statute as "distribution" were nothing more than an abbreviated way by which to refer to Code § 18.2-374.1:1(C)(i).

The evidence proved that Hausen emailed sexually explicit photographs of a minor from his cellphone to his email account.

Therefore, there is sufficient evidence to prove beyond a reasonable doubt that Hausen was guilty of distribution of child pornography.

Accordingly, the judgment of the Court of Appeals is affirmed. Appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Loudoun County.

A Copy,

Teste:

John L. Hamilton

Clerk