

CITATION: *Police v Kazouris* [2010] NTMC 049

PARTIES: POLICE  
v  
SKEVOS KAZOURIS

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 20916893

DELIVERED ON: 24 August 2010

DELIVERED AT: Darwin

HEARING DATE(s): 2 & 3 December 2009, 12 March 2010, 5 & 6  
July 2010

JUDGMENT OF: Ms Sue Oliver SM

**CATCHWORDS:**

CRIMINAL LAW – Child Abuse Material - Knowledge – Possession  
Criminal Code – s 125B(1)(a)  
*Summary Offences Act* s 61

**REPRESENTATION:**

*Counsel:*

Complainant: Ms McMaster  
Defendant: Mr P Maley

*Solicitors:*

Complainant: ODPP  
Defendant: Maley's Barristers & Solicitors

Judgment category classification: A  
Judgment ID number: [2010] NTMC 049  
Number of paragraphs: 34

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20916893

[2010] NTMC 049

BETWEEN:

**POLICE**

Informant/Complainant

AND:

**SKEVOS KAZOURIS**

Defendant

REASONS FOR DECISION

(Delivered 24 August 2010)

Ms Sue Oliver SM:

1. The defendant is charged with five offences. The first is a complaint that he had in his custody personal property which can be summarised as digital cameras, a GPS, memory cards and a memory stick and two credit cards which at the time before making the charge were reasonably suspected of having been stolen or otherwise unlawfully obtained contrary to s 61 of the *Summary Offences Act*.
2. The remaining four charges allege the possession of child abuse material contrary to s 125B(1)(a) of the Criminal Code. The material in question is contained on three memory sticks and a Sony Ericsson mobile phone.

**The child abuse material**

3. The images on the mobile phone are the subject of charge 2. They are constituted by a video clip of an unknown teenage girl undressing and masturbating. The girl appears to be a young teen and evidence was given

by one of the investigating police officers that it is a video that has featured previously in child abuse material cases in this jurisdiction.

4. The images on the memory sticks are the subject of charges 3, 4 and 5. These images are of two identified teenage girls (AS and RW), one of whom (RW) gave evidence in the matter. The photos are independent of each other. The photos show the girls naked and semi naked in sexually provocative poses, including in the case of one of them, some close up photos of her genitalia. A green memory stick (TD01515) contains 26 images of the two girls, whilst the remaining two memory sticks (TD005314) and (TD01495) both contain images of AS. AS did not give evidence but it is an agreed fact that AS, who was 16 years old at the time, took photos of herself wholly naked which she sent to her boyfriend, likewise a 16 year old, via mobile phones. The boyfriend's phone was lost whilst it still contained the images of AS.
5. The other teenage girl, RW, who was around 17 years and 9 months at the relevant time, took photos of herself which she likewise sent to her boyfriend. The photos were contained on her phone which at some point in time, which was not clear, was left by her at an apartment in the Luma Luma Apartments complex. She agreed that she had been "partying" there with a number of people which included the defendant. She agreed that "partying" involved a heavy drug culture in which many people came and went over many days at the apartment. Unlike the first girl (AS), who has no association with that culture or group, RW knows the defendant whom she described as "my mate".

### **Possession of the material**

6. Section 125B(1)(a) provides that any person who possesses, distributes, produces, sells or offers or advertises for distribution or sale child abuse material is guilty of a crime. Subsection (3) provides that proof that child abuse material was at the material time in or on a place of which the person

was the occupier or concerned in the management or control, is evidence that the child abuse material was then in the person's possession unless it is shown that the person then neither knew nor had reason to suspect that the child abuse material was in or on that place.

7. Further facts were agreed. On 8 January 2009 as a result of a search of a room at the Golf Links Motel police located various electronic items which they seized on the grounds that they were reasonably suspected of being stolen property. The items included the mobile phone of the boyfriend of AS to whom she sent the photos said to be child abuse material. The boyfriend did not show, store or send those photos to anyone else.
8. The defendant was present and occupying the room at the Golf Links Motel with his brother at the time of the search and the memory sticks were amongst other objects in a box owned by the defendant and in which there were other items belonging to the defendant. The onus is accepted by the parties to fall to the defendant to show that he did not know nor did he have reason to suspect that child abuse material was present there in accordance with the requirements of s125B(3). The burden of proof is on the balance of probabilities.

**Did the defendant know or have reason to suspect that child abuse material was on the Sony Ericsson phone or the memory sticks?**

9. It follows from the history I have given, that for the photos to get from the respective phones to the memory sticks, they would have to have been transferred using a computer via a USB cord from the phones (or from a memory card in the phone if present) and then downloaded to the memory sticks. No computer, either a PC or laptop, was amongst the possessions seized at the Golf Links Motel.

10. I heard evidence from Pagean Milne McCann who was previously in a relationship with the defendant, from RW and from investigating police officers. The defendant gave evidence.
11. Ms Milne McCann was a reluctant witness who gave confused evidence. She gave evidence in chief on the first hearing date that was inconsistent with her statement to police. She was not cross-examined by the defence on that date because she required surgery that afternoon for a broken arm. She failed to appear on the hearing on the next occasion and a warrant was issued for her arrest. Finally she appeared again to give evidence on 6 July 2010. Her memory of any events relevant to the proceedings was even less than it had been on the previous occasion. All in all, it is not possible to place any weight on her evidence, some of which I would have assessed as being supportive of the prosecution case and some of which would have supported the defence case, and I disregard it.
12. RW's evidence was that she had left her phone containing the images in question at the Luma Luma Apartments having taken the sim card out of it and taken another phone that was there. She stayed at the apartment with the defendant and a couple of other friends. The duration of the stay was not clear. She said that the defendant wasn't always there and that "everyone was coming and going, so." Later, though it is not clear when, she went to the apartment to get her phone and "got told that Skevos no longer had it" and that the phone "went to the police". She agreed that those coming and going included a lot of men and that she didn't know whether it was the defendant's room or not. There were lots of mobile phones around and people swapped them and passed them around all the time. She did not recall seeing a laptop at the apartment and has never seen the defendant use a laptop. She did not think he would know how to use a USB device and had never seen him do it. She agreed that everyone was busy "doing drugs" at the location.

13. Detective Senior Constable Kennon gave evidence of the search at the Golf Links Motel and items seized including the devices and phone the subject of charges. These were contained in what was described as a blue trunk or box belonging to the defendant. The defendant does not deny ownership of the box or that the electronic items and devices in question were amongst others in it. Photographs were tendered that show the various contents.
14. Detective Kennon gave evidence that on the device marked TDO1495 there was a file path labelled “Moana” which he believed on to be Greek for “the one” and in this folder is some of the child abuse material. The basis for the belief as to the meaning of “Moana” was information given to him by Ms Milne McCann. Leaving aside the issue that Detective Kennon’s evidence is hearsay and the expertise of either of those witnesses to attest to the meaning of a word in another language, simple reference to a Greek dictionary<sup>1</sup> shows that the word “Moana” is not one belonging to the Greek language either modern or ancient, and that the Greek word for “one” is, as the defendant gave in his evidence, the word “Ena”. There is simply no basis for the inference that was sought to be drawn that the defendant by reason of his Greek heritage may be linked to that file path.
15. Amongst the photos the subject of the charges are volumes of other photos the majority of which clearly have no association with the defendant. They may be summarised as various holiday, scenic and family photos from different cameras and/or phones belonging to many different people. Some have been identified to be from cameras stolen from various people and which are identified amongst the agreed facts. On memory stick labelled TD01495, on which some of the images the subject of the charges appear, are a small number of photos that include images of the defendant, some of his family members and a male person known to him and Ms Milne McCann. There are also photos of pages of an article known as “Fester’s Cookbook”,

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<sup>1</sup> See search engines at <http://kypros.org/cgi-bin/lexicon>;  
[http://www.lexilogos.com/english/greek\\_dictionary.htm](http://www.lexilogos.com/english/greek_dictionary.htm) ;

an article that appears to have been photographed and then copied to the memory stick. A female hand is shown holding the pages. “Fester’s Cookbook” is not of the “MasterChef” variety but one that provides instructions on making amphetamines and I understand is available via the internet. An inference is invited between this photo and the defendant by reason of his association with drug use and Ms Milne McCann, whose evidence was that the hand was hers.

16. The defendant’s evidence was that he did not know of the child abuse images on the memory sticks or the camera. He had not seen them before these proceedings. He denied knowing how to use the relevant technology to download, transfer or copy electronic material. He agreed that he had spent time, a week or two “easy”, at the Luma Luma Apartments and other accommodation around Darwin, but that these rooms and apartments were rented by his brother. He clearly spent considerable time at them, and consistent with the evidence of RW, agreed that they were “party” venues at which many people came and went, including men and “working girls”.
17. He transported his brother and various possessions around these accommodations using a car belonging to Ms Milne McCann. He had clothes and “stuff” also at these places. During this period, others also used Ms Milne McCann’s car. He did not own a computer and was unsure whether one was ever at the Luma Luma Apartments. After the Luma Luma his brother moved to the Mirambeena Resort and he was called to pick him up from there. He picked him up and all the stuff from the rooms and moved it to Ms Milne McCann’s car. At the Golf Links Motel they took all the stuff from the car, in addition to the stuff from the rooms and put it into his box (the one identified by Detective Kennon). After that, he left for a time returning around 3am and was asleep when the police broke down the door for the search. He accepted that amongst images were photos of him but couldn’t remember who took them. He recognised some of the others photos

shown of family and friends. He thought he might have taken the photos of his nieces.

18. The evidence of possession of child abuse material in this matter is factually quite different from that which usually presents in these cases. The place at which the material was found is not an ordinary residence of the defendant. The material is not files on the hard drive of a computer at such a residence. The material is contained on transportable devices, three memory sticks and the memory card of a mobile phone. Absent inserting the memory sticks into a computer and opening the files on it, there is no way of telling what has been saved to them. Absent viewing the memory card through a computer, or accessing the images through the phone itself, the images are not apparent. The camera was amongst many others known or believed to have been stolen. All items were together in a box, belonging to the defendant, along with other different items including other cameras, mobile phones, mobile phone accessories, numerous electronic cables, 16 memory cards, credit cards (not belonging to the defendant), and a tool bag.
19. Unlike cases where it can be shown that the defendant accessed computer files on a particular date by virtue of a record of logging on to a computer that only that defendant had access to, there is nothing contained on either the memory sticks or cards that provide evidence of access by the defendant. The record of the relevant files attached to the statement of Anthony Lawrence of the Computer Crime Unit [Ex P14] shows the creation and access to the files as follows:

*Memory Card MD006655*

Video - Created 21/11/2008 Last accessed 21/11/08

*Memory Stick TD01495*

Images – Created 15/7/08 Last accessed 25/9/08

*Memory Stick TD01505*

Images – Created 15/7/08 Last accessed 25/9/08

*Memory Stick TD005314*

Images created 6/12/08 Last accessed 25/9/08

20. Leaving aside the question in relation to the last device as to how the files might have been last accessed at a date earlier than when they were said to have been created on that device, the evidence suggests that the memory stick images were all last accessed at the same time although through different file paths (on TD01505 the relevant file was moved to Trash).
21. The evidence is clear that a significant number of persons had access to the various places at which the defendant stayed on and off with his brother. Little care seems to have been taken with personal possessions such as phones at these gatherings. There is no evidence of the defendant having access to and use of a computer to cause the creation of the files on the memory sticks either at those places or elsewhere. RW said that she had never seen the defendant use a computer or any USB device and did not think he had that ability. The defendant denies having that ability or having any knowledge of the contents of the four devices in question.
22. The defendant's evidence that he collected the "stuff" from the room and Ms Milne McCann's car and placed it in his box in the room at the Golf Links Motel is plausible given the history of the movements through various hotel establishments and the activities occurring at each place. Given the numbers of persons with access to those places and Ms Milne McCann's car, it is equally probable that some person amongst those with access, including the defendant's brother who seems to have been a constant presence, more so than the defendant, could have accessed and copied the files to the memory sticks. The fact that amongst the images are some that relate to the defendant, either being photos of him or family and friends does not necessarily mean that the defendant was involved in the transmission of those images to the memory sticks. There were others who knew him and they also appear to have had opportunity to make the transfer of those photos, for example, Ms Milne McCann or the defendant's brother.

23. There is nothing in the defendant's evidence that would cause me to reject it. He was not shaken in cross-examination and his account was plausible. His lack of technical knowledge of electronically recorded images was supported by RW. In my view the fact that he had a large amount of electronic devices and attachments in his possession points far more to dishonest acquisition than to technical know how.
24. On the balance of probabilities I am satisfied that the defendant neither knew nor had reason to suspect that the child abuse material was on the memory sticks contained in his box at the Golf Links Motel.
25. I am likewise satisfied that the defendant neither knew nor had reason to suspect that there was a video on the memory card from the Sony Ericsson phone that was child abuse material. There is no evidence that suggests any access to that phone and it was one of many in his physical possession. It is probable in my view that it was one left behind by someone at one of the many "parties" and simply collected along with others on the shift to the Golf Links Motel.

**Are the photos of RW and AS "child abuse material?"**

26. Although it is not necessary to consider the issue given my findings above, and notwithstanding that no submissions were made on this point, I believe that it is appropriate to mention the question as to whether the images of RW and AS taken by themselves amount to "child abuse material" within the meaning of the Criminal Code.
27. "Child abuse material" is defined in s125A(1) to mean  
  
"material that depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult, a person who is a child or who appears to be a child:  
  
(a) engaging in sexual activity;

(b) in a sexual, offensive or demeaning context;

(c) or being subjected to torture, cruelty or abuse”

It does not include material that is classified or exempt under the relevant Commonwealth legislation.

28. Child by means of the definitions in section 1 is someone under the age of 18 years. AS was 16 at the time of taking photographs of herself and RW was 17 years and 9 months. Both were therefore of an age at which under Northern Territory law they could engage in lawful sexual relationships with other also over 16 years. The girls took photos of themselves in sexually provocative poses in various states of undress. The photos of RW include explicit photos of her genitalia. The photos were intended for and sent to their respective boyfriends.
29. I do not think that there is any doubt that the some at least of the material could be described as material that depicts a child in a sexual and/or offensive context as required by paragraph (b) of the definition. However the definition requires further that the depiction be “in a manner that is likely to cause offence to a reasonable adult.” The question is whether a consideration of “in a manner” requires looking to the circumstances in which the depiction was created and distributed or whether that is an irrelevant consideration in determining whether material is likely to cause offence to a reasonable adult. In my view the words “in a manner” must have some work to do in the definition and that a consideration of the context, including the means by which the images were created and distributed may be relevant. The fact that the provisions use the term “child **abuse** material” (my emphasis) as opposed to the term “child pornography” which was the expression used in the Code provisions replaced by the present offences may be relevant in determining that question. If that is not the case then it follows that the “boyfriends” become possessed of child abuse material on receipt and access to the photos voluntarily sent to them.

30. The question does not require determination for the purpose of this decision however I mention the issue because it seems to me that the images of these girls, or at least some of them, are unlikely to cause offence to a reasonable adult if the adult were to consider the background to the creation of the images. Whether or not the view of a reasonable adult would change on further unauthorised distribution might also be a consideration.

**Property reasonably suspected of having been stolen or unlawfully obtained**

31. The remaining charge is that the defendant had in his custody personal property which at the time before making the charge were reasonably suspected of having been stolen or otherwise unlawfully obtained contrary to s 61 of the *Summary Offences Act*. As previously summarised, the property comprised digital cameras, a GPS, memory cards, a memory stick and two credit cards.
32. The defendant's evidence was that the property had been gathered up from his brother's hotel room and from the vehicle he used to transport him to the Golf Links Motel. It had been placed by him in a box belonging to him amongst other property acknowledged to be his own. It was taken into the hotel room. The defendant left shortly after but returned about 3am. He was still present with the property still in his box when the police raided the hotel room. On waking or sometime later, absent the arrival of the police, the defendant would have been required to take some action with respect to the property in amongst his own in a box belonging to him. In those circumstances he had "a present or actual dominion over the goods, and not something which is at that time a past or antecedent state of affairs" *Cleary v Wilcocks* (1946) 63 WN (NSW) 101 at 102.
33. It was in my view property that would be readily suspected of having been stolen or unlawfully obtained, given both the nature and number of the items and where they were taken from, including property taken from the vehicle. In any event, it was conceded that the nature of the people in the hotel

rooms and using the vehicle would raise a suspicion that the goods were reasonably suspected of being stolen or otherwise unlawfully obtained.

34. I find the defendant guilty of count 1 but not guilty of counts 2 to 5 which are dismissed.

Dated this            day of            2010

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**Sue Oliver**  
STIPENDIARY MAGISTRATE