IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ALEX SHELDON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13638 Trial Court No. 2KB-13-00397 CR SUMMARY DISPOSITION No. 0331 — July 19, 2023

Appeal from the Superior Court, Second Judicial District, Kotzebue, Paul A. Roetman, Judge.

Appearances: Barbara Dunham, Attorney at Law, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Nancy R. Simel, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Alex Sheldon was convicted of twenty counts of possessing child pornography, primarily for images and videos discovered on two USB drives in Sheldon's possession.[1] Sheldon raises two issues on appeal: first, that the superior court erred when it prevented him from introducing evidence of his mental health issues; and

[1] AS 11.61.127. One count related to a printed image found in Sheldon's wallet.

second, that the evidence was insufficient to prove he "knowingly possesse[d]" child pornography, as required by AS 11.61.127. We reject both arguments.

At trial, Sheldon defended against the child pornography charges by arguing that he never actually looked at the files and instead downloaded them only so he would be caught and sent back to jail. As part of this defense, Sheldon sought to introduce evidence of his struggles outside of jail, including his physical and mental health issues, which supported his claim that he wanted to go back to jail. The court allowed Sheldon to introduce most of this evidence, but precluded him from discussing his mental health because it would tend to confuse the issues and because Sheldon had not submitted to a psychiatric examination, as required by AS 12.47.070(a).[2] Sheldon now appeals that ruling.

We need not address whether the court's ruling was error because any error was harmless under the facts of this case. Although Sheldon argued at trial that the State was required to prove that he individually viewed and knew the contents of each file, Alaska law provides that "when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of *a substantial probability of its existence*, unless the person actually believes it does not exist."[3] Sheldon's argument — that he intentionally downloaded child pornography so he would be sent to jail — tended to support, not undermine, the State's claim that Sheldon was aware of the "substantial probability" that the files contained child pornography. Because Sheldon's defense, even if believed, would have only lent further

[2] *See* AS 12.47.070(a) ("If . . . there is reason to believe that a mental disease or defect of the defendant will . . . become an issue in the case, the court shall appoint at least two qualified psychiatrists or two forensic psychologists certified by the American Board of Forensic Psychology to examine and report upon the mental condition of the defendant.").

[3] AS 11.81.900(a)(2) (emphasis added).

support to the State's case, we conclude that any error in excluding the mental health evidence providing additional support for Sheldon's defense was necessarily harmless.

Sheldon also claims on appeal that the evidence was insufficient to prove that he knowingly possessed child pornography, repeating the argument that because the State could not show that he had looked at the files on the USB drives, it could not prove that he "knew" they contained child pornography. For the reasons we have already explained, there is no merit to this argument. We also note that Sheldon admitted to police that the USB drives contained child pornography, and those admissions were presented to the jury at trial.

The judgment of the superior court is AFFIRMED.