

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-467

STATE OF LOUISIANA

versus

EDER VASQUEZ

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 23-2890, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

April 29, 2026

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Susan M. Chehardy,
Scott U. Schlegel, and Timothy S. Marcel

CONVICTIONS AFFIRMED;
SENTENCE AFFIRMED IN PART AND VACATED IN PART;
REMANDED WITH INSTRUCTIONS

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MARCEL, J.

Defendant, Eder Vasquez, appeals his convictions and sentences for two counts of possession of child pornography involving children under the age of thirteen, in violation of La. R.S. 14:81.1(E)(5)(a). For the following reasons, we affirm Defendant’s convictions and sentences, except we vacate the financial obligations and remand solely for a hearing pursuant to La. C.Cr.P. art. 875.1 to determine Defendant’s ability to pay. In all other respects, the convictions and sentences are affirmed.

PROCEDURAL HISTORY

On June 21, 2023, the Jefferson Parish District Attorney filed a bill of information charging Defendant, Eder Vasquez, with two counts of possession of child pornography involving children under the age of thirteen, in violation of La. R.S. 14:81.1(E)(5)(a), committed between April 8, 2020, and January 28, 2021.¹ Defendant pled not guilty.

On March 28, 2025, the State filed a motion in limine to exclude questioning of Detective Clinston Gadea regarding an ongoing investigation into his involvement in an officer-involved shooting. Finding that the potential for prejudice and confusion outweighed any probative value, the trial court granted the motion on March 31, 2025.

The matter proceeded to trial on March 31, 2025. On April 2, 2025, the twelve-person jury returned unanimous verdicts of guilty as charged on both counts. On May 1, 2025, the trial court sentenced Defendant to twenty years of imprisonment at hard labor without benefit of parole, probation, or suspension of sentence on each count, and ordered the sentences to run concurrently with each

¹ The bill of information provides that both offenses were committed “on or between April 8, 2020 and January 28, 2021” and provides that defendant committed the offense by “intentionally possessing, distributing or possession with the intent to distribute any photographs, films, videotapes, or other visual reproductions of sexual performances involving children under the age of 13.”

other. The trial court also imposed a \$45 public defender's fee, a \$2 indigent transcript fee, a \$175 commissioner's fund fee, and a \$100 crime lab fee without a financial hardship hearing.

On May 16, 2025, the trial court granted Defendant's motion for appeal. Defendant's motions to reconsider sentence filed May 28 and June 16, 2025, were denied on June 6 and June 25, 2025. This timely appeal follows.

FACTS

The investigation commenced in May 2020 when Special Agent Lisa Maher of the Louisiana Attorney General's Office received a cyber tip from the National Center for Missing and Exploited Children (NCMEC) regarding a WhatsApp video shared in April 2020 that was suspected to depict child sexual abuse material.² Relying on thirteen years of training and experience, she assessed the video as showing a prepubescent female being vaginally raped. She obtained a search warrant for the WhatsApp user associated with the number 504-906-7201 and service provider, T-Mobile. The return revealed the subscriber's name as Eder Vasquez, residing at 113 Raspberry Street, Apt. F, Metairie, Louisiana.³ She relayed the information to Detective Nick Vega of the Jefferson Parish Sheriff's Office (JPSO) with the Internet Crime Against Children (ICAC) task force.

Following the referral, the JPSO-ICAC task force assumed responsibility over the investigation. Detective Vega confirmed that the apartment's Wi-Fi networks were password-protected, obtained a search warrant for the apartment, and set up surveillance at the apartment complex. On January 28, 2021, detectives observed Defendant and another individual leaving the apartment in a vehicle. Officers stopped the vehicle on Veterans Boulevard and asked the occupants to

² The video was admitted at trial as State's Exhibit 2. Agent Maher testified that her office called child pornography "child sexual abuse material."

³ The search warrant was admitted at trial as State's Exhibit 1.

return to the apartment. While Defendant and the other individual remained outside, officers executed the warrant. During the search, several cell phones were located in both Defendant's bedroom and the other occupants' rooms. The searches of the other occupants' phones revealed nothing of evidentiary value. Thereafter, Detective Vega interviewed Defendant, with Detective Gadea assisting as a Spanish-to-English interpreter.

Detective Gadea advised Defendant of his *Miranda*⁴ rights in Spanish, which the Defendant acknowledged understanding before speaking. Defendant provided his date of birth as April 28, 1983, and stated that he had lived at the apartment for eight years with two other roommates but was the sole occupant of his room. He mentioned he used WhatsApp and Telegram for chatting and stated that he had his current cell phone for approximately six months. He claimed to be the sole user of his cell phone, with no one else knowing his passcode. At the time of interview, Defendant's cellular service provider was MetroPCS; he previously used T-Mobile. Defendant explained that he chatted with strangers in various groups, who would send links labeled as funny videos or jokes. Upon opening one such link, he discovered it contained pornography involving children around eight or nine years old. He stated he would delete these photos and videos, although they might still be in his "deleted tab." He admitted knowing it was illegal to possess such material, which is why he erased it, and he claimed he did not share the material with anyone.

Detective Vega further testified that an on-scene forensic preview of Defendant's device was conducted. Finding evidence consistent with child sexual abuse material, Defendant was arrested on scene. Defendant's phone was collected, logged into evidence, and delivered to the Digital Forensic Unit for a full

⁴ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

forensic examination. In a supplemental report, Detective Vega itemized specific photos and videos discovered by a full extraction of the device.⁵ Detective Vega testified that it was highly unlikely someone else downloaded the material onto Defendant's cell phone given the large number of images and videos found on the device, and in light of Defendant's statement that no one else had access to his cell phone.

JPSO Detective Dustin Ducote, an expert in digital forensics, testified that he performed an extraction of Defendant's Motorola cell phone. Approximately 9,000 photos and 340 videos were extracted from Defendant's phone, with approximately forty percent qualifying as child sexual abuse material. He testified that none of the photos or videos appeared to have been accidentally placed on the phone. The data showed that the photos were saved to an SD card, indicating they had to be downloaded to save them outside of the application. Detective Ducote confirmed that no viruses were identified in the device.

Detective Ducote prepared a PowerPoint presentation for the jury featuring screenshots from the Cellebrite report of the phone's extraction. He included nine images and three videos of child sexual abuse material referenced in Detective Vega's supplemental report. In his testimony, Detective Ducote described the child sexual abuse material included in his PowerPoint as follows: a photograph, downloaded from Telegram⁶ on January 14, 2021, of an adolescent child reaching to touch an erect male penis; a photograph, downloaded from Telegram on October 26, 2020, of an adolescent child grasping what appeared to be an adult male penis;

⁵ Detective Vega testified that there were photographs on defendant's phone that were labeled as either "age difficult" or "child erotica." He explained that age difficult meant that law enforcement was unable to determine the exact age of the individual in the materials, and "they don't charge on that." He also explained that child erotica were underage children dressed erotically. Detective Vega testified that the photographs referenced in his report met the definition of child pornography.

⁶ Detective Ducote testified that Telegram was an application used for messaging.

a photograph, downloaded from Telegram on January 21, 2021, of what appeared to be an adolescent female with a male adult standing over her with his penis in his hand; a photograph, downloaded on October 4, 2020, at 1:10 p.m. and at 1:11 p.m., of what appeared to be an adolescent child with an adult male penis in his mouth; a photograph, downloaded on January 27, 2021, of a nude adolescent female; a photograph, downloaded from Telegram at 1:14 p.m., of two adolescent children with the female holding a male's genitalia; a photograph, downloaded from Telegram on September 22, 2020, of an adolescent female under the age of thirteen holding an erect male penis; a photograph, downloaded from Telegram on January 14, 2021, of an adolescent female with an erect male penis placed over her vagina; a screen capture of a five-minute and forty-one second long child sexual abuse material video, downloaded from Telegram on January 17, 2021; a screen capture of a one minute and fifty-three-second long child sexual abuse material clip, downloaded from Telegram on January 17, 2021, of a prepubescent juvenile and a male erect penis; a five minute and twenty-three second child sexual abuse material video, downloaded from "Mega" on January 1, 2018.⁷

Detective Ducote further explained that it was unsurprising that the NCMEC tip came through WhatsApp, as certain files are tagged and monitored by NCMEC. Based on his training and experience, he found it highly unlikely that a roommate used Defendant's phone to download the material, given the number of downloads and the timespans in which they were downloaded. He testified that downloading large video files from a database like Telegram required the user to specifically "click literal download" to access the material.

⁷ Detective Vega testified that he obtained a consent to search form from Defendant for the search of his password protected "Mega" account. He stated that the "Mega" account was not included in the search warrant.

ASSIGNMENTS OF ERROR

In this appeal, Defendant raises four assignments of error. First, he argues the evidence was insufficient to establish that he knowingly possessed child pornography involving children under thirteen, and that the State failed to prove the ages of the individuals depicted, warranting a judgment of acquittal. Second, he contends the trial court erred in its jury instructions by failing to include the element of actual possession, which was not harmless error given the purportedly weak evidence of knowing and intentional possession. Third, Defendant asserts the trial court improperly granted the State's motion in limine, which barred the defense from impeaching Detective Gadea regarding an ongoing investigation into an officer-involved shooting, thereby infringing on his right to present a defense. And finally, he claims that the sentence is illegal because the court assessed fines and fees without conducting a financial-hardship hearing or obtaining a waiver, as required by La. C.Cr.P. art. 875.1.

DISCUSSION

Assignment of Error Number One

In his first assignment of error, Defendant contends that there was insufficient evidence to prove he knowingly possessed child pornography or that the individuals in the photos and videos were underage. He argues that the State failed to establish general intent, as he claimed he never intentionally possessed the material. Instead, he received "innocuously labeled links" and was unaware they contained pornography until he opened them. The Defendant further argues that the State failed to prove the individuals in the materials were under thirteen, relying solely on Agent Maher's opinion that one child in a video was "prepubescent."

The question of sufficiency of the evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal pursuant to La. C.Cr.P. art.

821. *State v. Raines*, 24-177 (La. App. 5 Cir. 12/18/24), 410 So.3d 337, 345.

Although the record does not indicate that defendant filed such a motion, this Court has held that failure to file a motion for post-verdict judgment of acquittal does not preclude appellate review of the sufficiency of the evidence. *Id.*

Accordingly, we consider the merits of defendant's assignment of error.

The constitutional standard for appellate review of the sufficiency of the evidence is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find that the State proved all the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Robertson*, 22-363 (La. App. 5 Cir. 3/29/23), 360 So.3d 582,589.

Evidence may be either direct or circumstantial. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *State v. Gatson*, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1034. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *State v. Woods*, 23-41 (La. App. 5 Cir. 11/15/23), 376 So.3d 1144, 1155, *writ denied*, 23-1615 (La. 5/29/24), 385 So.3d 700. This is not a separate test from the *Jackson* standard, but rather provides a helpful basis for determining the existence of reasonable doubt. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *Id.*

The directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *State v. Aguilar*, 23-

34 (La. App. 5 Cir. 11/15/23), 376 So.3d 1105, 1108. This deference to the fact-finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *State v. McKinney*, 20-19 (La. App. 5 Cir. 11/4/20), 304 So.3d 1097, 1102. When addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including inadmissible evidence which was erroneously admitted, to determine whether the evidence is sufficient to support the conviction. *State v. Tate*, 22-570 (La. App. 5 Cir. 6/21/23), 368 So.3d 236, 245.

In making this determination, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *Woods*, 376 So.3d at 1157. Indeed, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 940. Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *State v. Sly*, 23-60 (La. App. 5 Cir. 11/2/23), 376 So.3d 1047, 1072, *writ denied*, 23-1588 (La. 4/23/24), 383 So.3d 608.

In this case, Defendant was convicted of two counts of possession of child pornography involving children under the age of thirteen in violation of La. R.S. 14:81.1(E)(5)(a). At the time the offenses were committed,⁸ La. R.S. 14:81.1 provided in pertinent part:

A. (1) It shall be unlawful for a person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles.

(5)(a) Whoever commits the crime of pornography involving juveniles punishable by the provisions of Paragraph (1), (2), or (3) of this Subsection when the victim is under the age of thirteen years and the

⁸ It is well settled that “a defendant is to be tried under the statute in effect at the time of the commission of the crime.” *State v. Weaver*, 01-467 (La. 1/15/02), 805 So.2d 166, 170; *State v. Do*, 16-439 (La. App. 5 Cir. 12/14/16), 208 So.3d 1048, 1051 n.4, *writ denied*, 17-354 (La. 11/13/17), 229 So.3d 924.

offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided in Paragraphs (1), (2), and (3) of this Subsection. The sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Pornography involving juveniles is a general intent crime. *State v. Eldridge*, 23-149 (La. App. 5 Cir. 12/20/23), 378 So.3d 861, 871, *writs denied*, 24-45 (La. 9/17/24), 392 So.3d 631, and 24-126 (La. 9/17/24), 392 So.3d 632. General criminal intent is present when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. *Id.*

In *Eldridge*, 378 So.3d at 871, the defendant was convicted of eight counts of possession of pornography involving juveniles under the age of thirteen. The defendant argued that the evidence was insufficient to prove that he knowingly possessed child pornography. *Id.* This Court found that the evidence was sufficient to support the defendant's convictions where devices with child pornography were connected to his IP address, several electronic devices with child pornography were found at his residence, searches with terms related to child pornography were discovered, and although forensic examination of the defendant's devices did not locate original files that were shared with an agent, the undercover agent testified that they could have been deleted or overwritten or devices could have been missed during the search. This Court stated:

Considering the entirety of the record, and that defendant had the ability to view child pornography through various methods on different devices and players, we find the evidence showed that defendant knowingly possessed the child pornography. Likewise, the ability of the examiner to locate these "deleted" files on defendant's electronic devices establishes that defendant did not accidentally come to possess the child pornography, but instead intentionally downloaded and viewed them, and then deleted them.

Eldridge, 378 So.3d at 872.⁹

In *State v. Longo*, 08-405 (La. App. 5 Cir. 1/27/09), 8 So.3d 666, this Court addressed the sufficiency of the evidence for the defendant who was convicted of La. R.S. 14:81.1, possession of pornography involving juveniles under La. R.S. 14:81.1.¹⁰ The defendant argued there was insufficient evidence to convict him because the State failed to prove the identity of the perpetrator beyond a reasonable doubt. *Id.* at 669. He argued that three other people had access to his computer where the child pornography was found. This Court stated that the three others who had access to the computer testified at trial and denied knowing or using his username or password to the account where the child pornography was found. This Court also stated that although the defendant argued he had an alibi on most of the days the images were downloaded, his alibi was not determinative of whether he had downloaded and possessed the images. *Id.* at 670. This Court explained that the credibility of a witness is within the “sound discretion of the trier of fact” and that it was apparent that the jury weighed the credibility of the witnesses, weighed the evidence, and did not believe the defendant’s argument that someone else downloaded the images. *Id.* The defendant also argued that he

⁹ The defendant in *Eldridge* also argued that the State failed to prove that he had physical possession of the child pornography. This Court stated:

The element of possession includes both “actual” and “constructive” possession. *State v. Sandifer*, 95-2226 (La. 9/5/96), 679 So.2d 1324, 1331. A person who is not in physical possession may have constructive possession when the contraband is under that person’s dominion and control. *State v. Becnel*, 16-1297 (La. App. 1 Cir. 4/20/17), 220 So.3d 27, 30, *writ denied*, 17-1023 (La. 3/9/18), 238 So.3d 451. In determining whether a defendant exercised dominion and control sufficient to constitute constructive possession, the fact finder may consider, among other factors, defendant’s knowledge of the contraband and his access to the area where the contraband is found. *Id.* Guilty knowledge is an essential element of the crime of possession of contraband. *State v. Lewis*, 04-1074 (La. App. 5 Cir. 10/6/05), 916 So.2d 294, 299, *writ denied*, 05-2382 (La. 3/31/06), 925 So.2d 1257. Because it is a state of mind, it need not be proven as fact; it may be inferred from the circumstances. *Id.*

Eldridge, 378 So.3d at 871.

¹⁰ In *Longo*, the defendant’s conviction was not for pornography involving a juvenile under the age of thirteen.

downloaded the images accidentally and that the State failed to prove that he intentionally possessed them. This Court found that the defendant's recorded statements showed he was aware of the images at that point. This Court explained that records of his chats under his username, "Mounted 42," referenced the swapping of pictures involving juveniles. Lastly, this Court considered the images themselves and found there was sufficient evidence of the finding of guilt, stating:

This evidence, coupled with the discovery of twenty-five different child pornography images with different creation, modification, and access dates spanning over several months was sufficient for a rational trier of fact to conclude Longo did not accidentally download the child pornography but, rather, that he intentionally possessed the images. Viewing the evidence in the light most favorable to the prosecution, the State proved the elements of Longo's possession of pornography involving juveniles beyond a reasonable doubt.

Longo, 8 So.3d at 670.

As in *Eldridge* and *Longo*, the evidence here supports a finding that Defendant knowingly and intentionally possessed the material. Detective Ducote testified that while it couldn't be determined if the material was accidentally placed on a phone, he explained it had to be deliberately downloaded to be saved outside an application. The evidence also showed that at least one image of an adolescent child had been downloaded multiple times. Additionally, the forensic extraction revealed approximately forty percent of the 9,000 photos and 340 videos found on Defendant's phone met the definition of pornography involving juveniles. Defendant admitted no one else had access to his phone or his password and admitted he received, viewed, and deleted child pornography.

Like *Eldridge* and *Longo*, Defendant in this case denied knowing possession of the material and suggested an alternative explanation. The jury, however, rejected his defense and found the evidence established intentional user behavior. Our review shows the record supports the jury's finding. The repeated downloads, the number of files, duration of their accumulation, the Defendant's continued

participation in the various groups, and his exclusive control over his device sufficiently establishes intent to possess.

Next, Defendant contends the evidence was insufficient to prove the age of the individuals in the photos and videos. We disagree. Our review of the evidence supports the jury's finding that the State proved some of the victims were under the age of thirteen. In fact, Defendant admitted that the children in the material were approximately eight or nine years old. Detective Ducote specifically testified that slide ten of his PowerPoint included a photograph found downloaded to Defendant's phone on September 22, 2020, of an adolescent female under the age of thirteen holding an erect male penis.¹¹ Also, the jurors viewed the child sexual abuse material and were permitted to draw their own conclusions as to the subjects' ages based on the material presented. *See State v. Sturdivant*, 23-1193 (La. App. 1 Cir. 9/26/24), 405 So.3d 756.¹² The jurors were also specifically

¹¹ Detective Ducote also identified several of the children in the images and videos as "prepubescent."

¹² In *Sturdivant*, 405 So.3d 756, the defendant was found guilty of twelve counts of possession of pornography involving juveniles under the age of thirteen. *Id.* at 759. On appeal, the defendant argued that the trial court erred in allowing an expert to testify as to the age of the victims in the child sexual abuse material. The court cited to La. R.S. 14:81.1(G). The court ultimately found no abuse of discretion regarding the admission of the testimony. It also explained:

Whether the subjects depicted in the videos were younger than thirteen was a fact to be determined by the jury, and expert testimony is but one factor that may be utilized in making that determination. *See* La. R.S. 14:81.1(G). Here, the members of the jury had the opportunity to view the images and make their own determination regarding the evidence.

Sturdivant, 405 So.3d at 764-65.

La. R.S. 14:81.1(G) provides:

G. In prosecutions for violations of this Section, the trier of fact may determine, utilizing the following factors, whether or not the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of seventeen years at the time of filming or recording:

- (1) The general body growth, bone structure, and bone development of the person.
- (2) The development of pubic or body hair on the person.
- (3) The development of the person's sexual organs.
- (4) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material.

instructed that in order to find defendant guilty of possession of pornography involving juveniles under the age of thirteen, they had to find that the material involved “children under the age of thirteen years.” The record also showed that the State proved that Defendant was over the age of seventeen, as required by La. R.S. 14:81.1(E)(5)(a), with his date of birth being April 28, 1983.

In conclusion, viewed in the light most favorable to the prosecution, the evidence was sufficient to convince a rational trier of fact that all of the elements of possession of pornography involving juveniles under the age of thirteen were proved beyond a reasonable doubt as to both convictions, including that defendant had the general intent to possess the pornography and that the victims were under the age of thirteen. Accordingly, we find the evidence presented sufficient under the standard set forth in *Jackson* to support Defendant’s convictions. This assignment of error is without merit.

Assignment of Error Number Two

In his second assignment of error, Defendant argues that the jury instructions failed to include every element required under La. R.S. 14:81.1(E)(5)(a), specifically contending that the jury should have been required to find that he actually possessed child pornography, in addition to having the general intent to possess the material. He asserts that given the allegedly insufficient evidence of knowing and intentional possession, this omission is not harmless error.

A party may not assign as error the giving or failure to give a jury charge or any portion thereof unless an objection thereto is made before the jury retires or

(5) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person.

(6) Such other information, factors, and evidence available to the trier of fact which the court determines is probative and reasonably reliable.

In *Becnel*, 220 So.3d at 30, in discussing sufficiency of the evidence for possession of pornography involving juveniles, the court cited to La. R.S. 14:81.1(G) and stated that to determine the age of an individual depicted in an image, the trier of fact may consider the factors listed in the subsection.

within such time as the court may reasonably cure the alleged error. La. C.Cr.P. art. 801(C). The nature of this objection and grounds therefore shall be stated at the time of the objection. *Id.* We have held that a defendant is required to make a timely objection under La. C.Cr.P. art. 801 in order to preserve a jury charge issue for review. *Lavigne*, 365 So.3d at 959; *State v. Gardner*, 05-62 (La. App. 5 Cir. 6/28/05), 907 So.2d 793, 802 (wherein the defendants were precluded from raising issues pertaining to jury charges on appeal when the defendants failed to object to the charges given or the trial court's failure to give a specific charge).

In this case, Defendant did not contemporaneously object to the trial court's instructions, as required by La. C.Cr.P. art. 801, and thus failed to preserve this issue. The record reflects an agreement before *voir dire* on March 31, 2025, that the instructions would include the requirement for the jury to find that the offender was over seventeen years of age and that the victims were under thirteen, pursuant to the sentencing provision of La. R.S. 14:81.1(E)(5)(a). No objections were made. The record also shows that after closing arguments on April 2, 2025, corrections were made to the responsive verdicts without objections. Additionally, the minute entry confirms no objections to the jury instructions, as it provides: "Outside the presence of the jury, a discussion was held as to Jury Charges."

Furthermore, contrary to Defendant's claim, actual possession is not a required element of the offense. *See Eldridge*, 378 So.3d at 871 (where this Court stated that the element of possession included both "actual" and "constructive" possession). Accordingly, this assignment lacks merit.

Assignment of Error Number Three

In his third assignment of error, Defendant argues that the trial court erred by granting the State's motion in limine, which precluded him from questioning Detective Gadea with respect to an ongoing investigation into his involvement in an officer-involved shooting. Defendant asserts this evidence was related to

Detective Gadea's credibility and was admissible as "textbook impeachment evidence." Detective Gadea was responsible for translating the Defendant's statement to the jury; thus, his credibility was a pivotal issue in the trial.

Defendant further argues that the ongoing investigation by the district attorney's office into Detective Gadea's potential criminal liability placed into question the detective's "possible bias or motivation" as a witness against him. Defendant highlights the lack of evidence showing that he signed a *Miranda* waiver and contends that the question of whether he provided a knowingly and voluntarily waiver of his right to remain silent rested solely on Detective Gadea's testimony that he was informed of his rights and said "si" when asked if he understood his rights. The Defendant concludes that, given the lack of evidence proving he knowingly or intentionally possessed child pornography, the exclusion of this impeachment evidence was not harmless error.

By way of background, on March 28, 2025, the State filed a motion in limine concerning Detective Gadea. In its motion, the State noted that Detective Gadea was involved in "a line of duty police involved shooting" on June 6, 2023, wherein he shot a subject driving a stolen car. The incident was under review by the Jefferson Parish District Attorney's Office. The State argued that the details of the review are irrelevant to the work Detective Gadea performed in this case and that even if it were relevant, the presentation of these facts would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The State further contended that questioning Detective Gadea regarding the investigation during cross-examination would be improper to use for impeachment purposes pursuant to La. C.E. art. 608(B).

During a hearing on March 31, 2025, the State reiterated that Detective Gadea's actions were unrelated to the instant case and to what he would be testifying to at trial. Defense counsel countered that, under La. C.E. art. 608, a

witness's conduct could be used for impeachment purposes to attack credibility, even without a conviction, and argued that because the investigation was ongoing with the district attorney's office, it was "constitutionally required." He asserted that not having the ability to question Detective Gadea on the investigation for credibility purposes would affect Defendant's ability to present a defense. The State replied that La. C.E. art. 608 did not apply because the investigation of an officer-involved shooting had nothing to do with Detective Gadea's truthfulness.

The trial judge stated that she equated the district attorney's office investigation of Detective Gadea with an arrest, noting that only convictions could be used to address credibility and not an arrest. She explained that because the shooting was currently under review, the State would be unfairly prejudiced, there would be confusion of the issues, and it could mislead the jury because the shooting happened in another case. Accordingly, the trial judge granted the State's motion in limine, and defense counsel noted his objection to the ruling.

Both the Sixth Amendment of the United States Constitution and Article I, § 16 of the Louisiana Constitution guarantee a criminal defendant the right to present a defense. *State v. Turner*, 24-484 (La. App. 5 Cir. 7/2/25), 420 So.3d 46, 55, *writ denied*, 25-923 (La. 12/9/25), 422 So.3d 300. However, this right is not without limits. The right to present a defense does not require a trial court to admit evidence that is irrelevant or has so little probative value that it is substantially outweighed by other legitimate considerations in the administration of justice. *Id.* The trial court is accorded great discretion in evidentiary rulings, and absent a clear abuse of that discretion, rulings on admissibility of evidence will not be disturbed on appeal. *State v. Gonzales*, 21-685, 2022 WL 533350 (La. App. 5 Cir. 2/14/22).

La. C.E. art. 607(A) provides that the credibility of a witness may be attacked by any party, including the party calling him. La. C.E. art. 607(D)(2) further provides that "extrinsic evidence, including prior inconsistent statements

and evidence contradicting the witness' testimony, is admissible when offered solely to attack the credibility of a witness[.]” The admissibility of extrinsic evidence to impeach credibility of a witness, however, is subject to the relevancy balancing test of La. C.E. art. 607(D)(2), which requires the court to determine whether “the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice.” See La. C.E. art. 607(D)(2); *State v. Adams*, 11-1052 (La. App. 5 Cir. 5/16/13), 119 So.3d 46, 53, writ denied, 13-1413 (La. 12/6/13), 129 So.3d 531. Therefore, although La. C.E. art. 607(D) permits a party to attack the credibility of a witness through extrinsic evidence, this grant is necessarily subject to the relevancy balancing test of La. C.E. art. 607(D)(2) and further to the limitation set forth in La. C.E. art. 608(B), which provides:

Particular acts, vices, or courses of conduct of a witness may not be inquired into or proved by extrinsic evidence for the purpose of attacking his character for truthfulness, other than conviction of crime as provided in Articles 609 and 609.1¹³ or as constitutionally required.

(internal footnote added).

In *Adams*, 119 So.3d at 54, we upheld the exclusion of evidence regarding a detective's alleged misconduct in a separate case, finding it inadmissible under La. C.E. art. 608(B). We reasoned that the prejudicial impact outweighed the probative value, and the evidence could confuse the jury. *Id.* Similarly, in *State v. Neely*, 14-1161 (La. App. 4 Cir. 5/27/15), 171 So.3d 1022, 1025, writ denied, 15-1229 (La. 2/19/16), 186 So.3d 1174, the Fourth Circuit found that questions concerning an officer's unrelated misconduct were prohibited under La. C.E. art. 608(B) due to lack of evidence of an ongoing investigation or resulting indictment, arrest, or conviction of the officers who testified at trial. *Id.* at 1027-28.

¹³ La. C.E. arts. 609 and 609.1 provide for attacking the credibility by evidence of conviction of a crime in civil and criminal cases.

In the instant matter, there is no evidence that Detective Gadea was convicted of the shooting under investigation. Disclosing Detective Gadea's involvement in the officer-involved shooting would have had minimal probative value on truthfulness and posed a substantial risk of confusion and unfair prejudice, as it was completely unrelated to the instant matter. The evidence relating to the prior incident was properly excluded under La. C.E. art. 608(B). The trial court did not abuse its discretion. This assignment of error is without merit.

Assignment of Error Number Four

In his final assignment of error, Defendant argues that his sentence contains a patent error in that the trial court imposed several fees in conjunction with Counts 1 and 2, without determining his ability to pay as required by La. C.Cr.P. art. 875.1 or obtaining a waiver. We agree.

The trial court imposed a \$45 public defender's fee, a \$2 indigent transcript fee, a \$175 commissioner's fund fee, and a \$100 crime lab fee. La. C.Cr.P. art. 875.1 requires the court to conduct a hearing to determine whether payment of any fine, fee, cost, restitution, or monetary obligation would cause substantial financial hardship to the Defendant or his dependents. A defendant or the court may waive the judicial determination of a substantial financial hardship. *Id.* The record reflects neither. We therefore vacate the financial obligations and remand for compliance with La. C.Cr.P. art. 875.1. *See State v. Chest*, 24-199 (La. App. 5 Cir. 2/26/25), 406 So.3d 684, 701, *writ denied*, 25-387 (La. 5/20/25), 409 So.3d 222; *State v. Beckendorf*, 24-242 (La. App. 5 Cir. 2/26/25), 406 So.3d 729, 736, *writ denied*, 25-379 (La. 5/20/25), 409 So.3d 222; *State v. Bello-Urbina*, 24-8 (La. App. 5 Cir. 10/30/24), 398 So.3d 782, 796.

ERROR PATENT DISCUSSION

The record was reviewed for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). Our review reveals one error patent: the trial court's noncompliance with La. C.Cr.P. art. 875.1. As discussed in assignment of error number four, we vacate the financial obligations imposed on Defendant as part of his sentence and remand for compliance.

DECREE

For the foregoing reasons, we affirm Defendant's convictions and sentences, except we vacate the financial obligations and remand solely for a hearing pursuant to La. C.Cr.P. art. 875.1 to determine Defendant's ability to pay. In all other respects, Defendant's convictions and sentences are affirmed.

CONVICTIONS AFFIRMED; SENTENCE AFFIRMED IN PART AND VACATED IN PART; REMANDED WITH INSTRUCTIONS

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

25-KA-467

E-NOTIFIED

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