

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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October 5, 2026

In the Court of Appeals of Georgia

A26A1343. BURNETTE v. THE STATE.

MARKLE, Judge.

Following a jury trial, Jamie Burnette was convicted of four counts of sexual exploitation of children (OCGA § 16-12-100(b)). He now appeals from those convictions and the denial of his motion for new trial, arguing that the evidence was insufficient to show he knowingly possessed the images, and the State failed to prove any possession occurred within the statute of limitations. For the reasons that follow, we affirm.

Viewing the evidence in the light most favorable to the verdict, *Jackson v. Virginia*, 443 US 307 (99 SCt 2781, 61 LE2d 560) (1979), the record shows that, in 2019, the Georgia Bureau of Investigation's (GBI) child exploitation and computer

crime unit received information from the National Center for Missing and Exploited Children that a computer with an IP address linked to Burnette accessed images of child pornography involving prepubescent children in February of that year. The GBI received additional reports of images accessed in July 2019 from a different IP address that was also linked to Burnette. Police executed a search warrant at Burnette's home in October 2019, interviewed Burnette, and seized his computer. On the side of the computer was a sticker with the markings "MFD" and "2016-02" on it.

In his interview, Burnette admitted viewing pornographic images involving young girls. A preliminary search of the computer did not reveal any images, but a subsequent search of the computer hard drive found a total of 642 images. None of the images were found in the allocated space, which is the portion of the hard drive used to store files; all were located in the unallocated space. Police also found that the computer had been used to access a website visited entitled "Real Life Jailbait News."

Based on this evidence, Burnette was indicted for four counts of sexual exploitation of children, specifically that he knowingly possessed four images of sexually explicit material involving minors on or about October 24, 2019. At trial, the digital forensic investigators testified that the pornographic images were found in the

unallocated space on the hard drive, meaning that the items had been viewed and deleted, or had be viewed using a private browser. The investigators further explained that, once the material moved to the unallocated space, a user would need specialized tools to access it, which Burnette's computer did not have. The investigators confirmed, however, that there was no way for the images to have ended up in the unallocated space on the computer without someone viewing them. And they stated that they did not know of any virus that would download child pornography onto a computer.

Burnette did not testify.¹ The jury convicted Burnette on all counts.² Burnette filed a motion for new trial, which the trial court denied after a hearing, and this appeal followed.

1. Burnette first argues that the State failed to prove that he knowingly possessed the images that were found in the unallocated space on the hard drive. We are not persuaded.

¹ Burnette moved for a directed verdict at the close of the State's case, which the trial court ultimately denied.

² At sentencing, the trial court merged the convictions for Counts 2, 3, and 4 into Count 1.

On appeal from a criminal conviction, the evidence must be viewed in the light most favorable to support the verdict, and the defendant no longer enjoys a presumption of innocence. We determine only whether the evidence authorized the jury to find the defendant guilty beyond a reasonable doubt, and in doing so we neither weigh that evidence nor judge the credibility of the witnesses.

Nix v. State, 354 Ga. App. 47, 49(1) (839 SE2d 687) (2020) (quotation marks omitted).

Under OCGA § 16-12-100(b)(8) (July 1, 2017), “a person commits the offense of sexual exploitation of children when, among other things, he knowingly possesses or controls any material which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” *Nix*, 354 Ga. App. at 50(1) (citation modified). Here, Burnette disputes only the element of possession.

Under Georgia law, “a person who knowingly has direct physical control over a thing at a given time is in actual possession of it. A person who, though not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing is then in constructive possession of it.” *Nix*, 354 Ga. App. at 50(1) (quotation marks omitted). It is the jury’s role to determine whether the defendant had constructive possession. *New v. State*, 327 Ga. App. 87, 93(1) (755 SE2d 568) (2014), disapproved of on other grounds by *Hill v. State*, 360 Ga. App. 143, 146,

n.4 (860 SE2d 893) (2021). Moreover, “[k]nowledge and possession may be proved, like any other fact, by circumstantial evidence, including the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted.” *Gerbert v. State*, 339 Ga. App. 164, 168–69(2)(b)(i) (793 SE2d 131) (2016) (citation modified).

In this case, the evidence was sufficient for the jury to find Burnette knowingly possessed the images. The images were found on Burnette’s computer, which was taken from Burnette’s bedroom during the search. In his interview, Burnette admitted viewing pornographic images of young girls. The State also presented circumstantial evidence to support his guilt, including that Burnette’s IP address had downloaded other similar images in February and July 2019; Burnette’s computer was used to access a website entitled “Real Life Jailbait News;” and there was evidence that the images had been viewed more than once. Moreover, the sheer quantity of images supports the jury’s conclusion that Burnette knew about the subject matter.

The fact that the images were located in the unallocated space does not dictate the result that Burnette did not knowingly possess them. See *New*, 327 Ga. App. at

93-94(1). As we explained in *New*, material in unallocated space can support charges for sexual exploitation because

residual files are proof that a crime has occurred—that is, proof of the corpus delicti. And while these files standing alone are not sufficient to establish that a defendant knowingly possessed those images at a prior point, they can be used in conjunction with other circumstantial evidence to prove such possession.

New, 327 Ga. App. at 94(1) (citation modified). See also *Haynes v. State*, 317 Ga. App. 400, 401(1) (731 SE2d 83) (2012) (evidence was sufficient where defendant admitted ownership of the computer on which the images were found and defendant admitted using file sharing program that was used to download materials).

Here, Burnette admitted he viewed the images, and there was additional testimony that the only way they could have appeared in the unallocated space was if they had been viewed and then deleted, or viewed through a private browser. Taken together, this evidence is sufficient for the jury to find Burnette knowingly possessed the materials. *Gerbert*, 339 Ga. App. at 168-69(2)(b)(i).³ See also *State v. Al-Khayyal*,

³ Burnette’s reliance on *Barton v. State*, 286 Ga. App. 49 (648 SE2d 660) (2007), is misplaced. In *Barton*, this Court overturned a conviction for sexual exploitation because there was no evidence the defendant knowingly possessed materials automatically downloaded into cache files. *Barton*, 286 Ga. App. at 52(1). As

322 Ga. App. 718, 723 (744 SE2d 885) (2013) (rejecting idea that defendant could not be in possession of materials that he had no means to access at that moment because the means were readily available to the public), disapproved of on other grounds by *Hill v. State*, 360 Ga. App. 143 , 146, n.4 (860 SE2d 893) (2021); *United States v. Torres Monje*, 989 F3d 25, 29(III) (1st Cir. 2021) (“a jury could reasonably believe that deletion itself suggests authority, dominion or control over the file at a certain point in time, and therefore understand an item’s location in unallocated space to be incontrovertible proof that the user of the computer had possession over it.” (punctuation omitted)).

2. Burnette next argues that the State failed to prove the alleged possession occurred within the statute of limitations, and the presence of the images in the unallocated space on the hard drive is insufficient to show he possessed them around the time alleged in the indictment. We disagree.

In order to convict Burnette of the crimes charged, the State had to show that his possession of the images occurred within the applicable statute of limitation. *Lee v. State*, 289 Ga. 95, 97 (709 SE2d 762) (2011). Here, the indictment alleged that

discussed above, the evidence here was sufficient to show Burnette’s knowing possession.

Burnette possessed images of child pornography on or about October 24, 2019. Under OCGA § 17-3-1(c), the applicable statute of limitations was seven years.

The investigators found the images in the unallocated space in October 2019, which demonstrates Brunette's possession prior to that date. See *New*, 327 Ga. App. at 93-94(1). See also *Chamberlain v. State*, 347 Ga. App. 775, 777, n.1 (819 SE2d 303) (2018). Burnette's admission in his interview that he had viewed images in the last year was sufficient for the jury to make the reasonable inference that Burnette possessed the materials within the statute of limitations. See *Torres Monje*, 989 F3d at 29(III) (with respect to statute of limitations, defendant's admission that he downloaded images within last two or three months was sufficient).

There was also evidence that the computer on which the images were found had a sticker on the side with the markings "MFD" and "2016-02." The jury could infer that the those markings represented the date the computer was manufactured and, as a result, any material found on it had been downloaded, viewed, and deleted after February 2016. *Weyer v. State*, 333 Ga. App. 706, 712(1)(b) (776 SE2d 304) (2015) (jurors may rely on "their own common-sense understanding of the world" to draw reasonable inferences from circumstantial evidence). As a result, the evidence was

sufficient for the jury to conclude Burnette possessed the images within the statute of limitations.

Judgment affirmed. Barnes, P. J., and Hodges, J., concur.