

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-474

STATE OF LOUISIANA

versus

GUILLERMO CADIR LOPEZ-PINEDA

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-5567, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

July 29, 2026

MICHAEL P. MENTZ
JUDGE

Panel composed of Judges Stephen J. Windhorst,
Timothy S. Marcel, and Michael P. Mentz, Pro Tempore

CONVICTIONS AFFIRMED; SENTENCES VACATED;
REMANDED WITH INSTRUCTIONS

MPM
SJW
TSM



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STATE OF LOUISIANA

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MENTZ, PRO TEMPORE, J.

Defendant, Guillermo Cadir Lopez-Pineda, appeals his convictions on five counts of pornography involving juveniles under thirteen in violation of La. R.S. 14:81.1(E)(5)(a). He was sentenced to twenty years on each count, without benefit of probation, parole, or suspension of sentence, to run concurrently. On appeal, he argues that the evidence was insufficient to convict him of the offenses. He also argues that the trial court erred in failing to observe the statutorily mandatory 24-hour delay before imposing sentence, and that his sentences are excessive.

For the following reasons, we affirm defendant's convictions. We vacate defendant's sentences as explained herein, and remand for resentencing, pretermittting defendant's argument regarding excessiveness of sentences.

FACTS AND PROCEDURAL HISTORY

Louisiana Department of Justice - Investigation Division Special Agent Lindsay Tonglet received a cybertip in December of 2020 from the National Center for Missing and Exploited Children (NCMEC) that a Facebook user "cadir.lopez" uploaded a video of pornography involving juveniles to another Facebook user. She received an additional cyber tip from NCMEC in March of 2021 which showed three additional videos containing pornography involving juveniles was uploaded by "cadir.lopez". A search warrant was issued and executed for defendant's residence. An arrest warrant was issued for the arrest of Guillermo Cadir Lopez-Pineda. Upon his arrest, a red cell phone was seized from his possession, which also contained images and videos of pornography involving juveniles. During the execution of the search warrant, agents located a Kindle, a Samsung cell phone, and a MacBook computer in defendant's room. The Samsung and MacBook devices were extracted, and a forensic report was generated. Images of bestiality were found on the MacBook and Apple iPhone.

On November 16, 2022, the Jefferson Parish District Attorney filed a bill of information charging defendant with eight counts of pornography involving juveniles under thirteen in violation of La. R.S. 14:81.1(E)(5)(a).¹ Defendant was arraigned on that same date and pled not guilty to all charges.

The State amended the bill multiple times. On August 15, 2024, the State amended the bill to change defendant's date of birth from August 15, 1993 to August 15, 1989. On April 7, 2025, prior to a hearing on the Notice of Intent to Introduce Evidence as *Res Gestae* or in the Alternative under La. C.E. art. 404(B), the State amended the bill by hand to reflect that counts five, six, and seven were *nolle prossed* and that count eight was renumbered as count five. Trial commenced later that day.

Following a discussion among the trial judge and the parties on April 8, 2025, the bill was amended to vacate the previous dismissal of count five, to change the date of the offense for count five from March 29, 2021, to on or about October 14, 2022, and to reflect that counts six, seven, and eight were now *nolle prossed*. At the conclusion of the trial on that same date, the jury found defendant guilty as charged.

On April 29, 2025, defendant filed a Motion for Post-Verdict Judgment of Acquittal and for New Trial, specifically raising sufficiency of the evidence. On July 17, 2025, the date of sentencing, the court denied defendant's Motion for Post-Verdict Judgment of Acquittal and for New Trial. Afterward, the trial court sentenced defendant to imprisonment at hard labor for twenty years on each count without benefit of parole, probation, or suspension of sentence. The court ordered that the sentences run concurrently with each other and with any other sentence he

¹ As to all counts, the State alleged that defendant committed the offense of pornography involving juveniles by intentionally possessing, distributing or possessing with the intent to distribute any photographs, films, videotapes, or other visual reproductions of sexual performances involving children under the age of thirteen.

was currently serving. Immediately thereafter, defendant noted his objection to the sentences, and filed a Motion for Reconsideration of Sentence, which the judge denied.

Defendant filed a Motion for Appeal and Designation of Record. The trial court granted this motion on July 21, 2025.

ASSIGNMENT OF ERROR NUMBER ONE

Defendant argues that the State's circumstantial evidence was insufficient to support his convictions because it failed to exclude every reasonable hypothesis of innocence and failed to negate the reasonable probability of misidentification.

Although he does not dispute that the images depicted child pornography, defendant contends the State failed to prove that he knowingly possessed or was the individual responsible for accessing or sharing the illegal material. He asserts the activity was linked only to an IP address assigned to his residence, where multiple individuals lived, and notes that Ms. Tonglet did not identify or investigate other residents, including Christina Rivas, whose IP address was used to access the account. Defendant further contends investigators failed to examine the phone recovered from him or other devices for evidence of hacking or compromise. Accordingly, defendant maintains the State failed to prove his identity as the perpetrator or his knowing possession of the pornography.²

The State responds that the evidence was sufficient to establish defendant's identity as the perpetrator and his knowing possession of pornography involving juveniles. The State argues that testimony and documentary evidence linked defendant to the Facebook and Gmail accounts used to upload and share the illegal

² Because defendant has not raised any arguments relating to the sufficiency of the evidence with respect to the statutory elements beyond possession, this Court does not address herein the evidence as it relates to the other essential elements. *See State v. Norton*, 23-262 (La. App. 5 Cir. 12/27/23), 379 So.3d 161, 174.

material, and Ms. Tonglet identified defendant in court. The State further contends that electronic devices found in defendant's bedroom and the cell phone recovered from his person contained child pornography and that the IP address associated with the uploads was registered to his residence. The State maintains this evidence was sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt.³

The constitutional standard for 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 of the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Lafrance*, 24-392 (La. App. 5 Cir. 4/2/25), 413 So.3d 1205, 1219, *writ denied*, 25-544 (La. 10/14/25), 419 So.3d 354. 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. *Lafrance*, 413 So.3d at 1219. 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. Reed*, 24-329 (La. App. 5 Cir. 4/2/25), 413 So.3d 1166, 1178, *writ denied*, 25-561 (La. 9/10/25), 415 So.3d 1277. Further, a reviewing court errs by substituting its appreciation of the evidence and the credibility of witnesses for that of the factfinder and overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *Lafrance*, 413 So.3d at 1219.

³ The question of sufficiency of evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal under La. C.Cr.P. art. 821, which defendant filed and the trial court denied. *State v. Lloyd*, 21-645 (La. App. 5 Cir. 8/24/22), 348 So.3d 222, 230, *writ denied*, 22-1354 (La. 11/22/22), 350 So.3d 499.

In its determination of whether any rational trier of fact would have found the defendant guilty, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *State v. Salvant*, 24-205 (La. App. 5 Cir. 3/19/25), 411 So.3d 74, 89, *writ denied*, 25-485 (La. 9/16/25), 416 So.3d 473. The credibility of a witness is within the sound discretion of the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *Id.*

Encompassed within proving the elements of an offense is proving the identity of the defendant as the perpetrator. The State is required to negate any reasonable probability of misidentification to carry its burden of proof. *Id.* In the absence of internal contradiction or irreconcilable conflicts with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a requisite factual finding. *Id.*

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. Gilmore*, 24-552 (La. App. 5 Cir. 8/27/25), 421 So.3d 1039, 1052. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides, "[A]ssuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." This is not a separate test from the *Jackson* standard, but rather provides a helpful basis for determining the existence of reasonable doubt. *Id.* All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *Id.*

The reviewing court is not required to determine whether a defendant's suggested hypothesis of innocence offers an exculpatory explanation of events. Rather, the reviewing court must evaluate the evidence in the light most favorable to the State and determine whether the possible alternative hypothesis is

sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *State v. Howard*, 24-145 (La. App. 5 Cir. 12/18/24), 409 So.3d 915, 930, *writ denied*, 25-96 (La. 4/8/25), 405 So.3d 566.

Defendant was convicted of five counts of pornography involving juveniles under the age of thirteen in violation of La. R.S. 14:81.1(E)(5)(a). At the time the offenses were committed,⁴ 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.

E. (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 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 Paragraph (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.*

The element of possession includes both “actual” and “constructive” possession. *Eldridge*, 378 So.3d at 871. A person who is not in physical possession may have constructive possession when the contraband is under that person’s dominion and control. *Id.* In determining whether a defendant exercised dominion and control sufficient to constitute constructive possession, the fact

⁴ “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, *writ denied*, 17-354 (La. 11/13/17), 229 So.3d 924.

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. Because it is a state of mind, it need not be proven as fact; it may be inferred from the circumstances. *Id.*

In the instant case, the amended bill of information ultimately alleged that the defendant committed the offense of pornography involving juveniles under thirteen in counts one through four on or about December 19, 2020, and in count five on or about October 14, 2022. Based on the record, the December 19, 2020 allegations correspond with the videos reported in two cybertip reports involving Facebook instant messaging activity on that date. The October 14, 2022 allegation relates to material recovered during the forensic examination of the cellular phone found in defendant's possession at the time of his arrest.

Lindsay Tonglet testified that she was currently employed by the Louisiana State Police in their Special Victims Unit. At the time of defendant's arrest in October of 2022, she was employed with the Attorney General's office in the division Louisiana Bureau of Investigations for their Cybercrime Unit, specifically the Louisiana Internet Crimes Against Children ("ICAC") Task Force. She became involved in the investigation of defendant, Guillermo Cadir Lopez-Pineda, after an NCMEC cybertip was generated on December 19, 2020, from Facebook, with a subsequent cybertip received after she initiated her investigation.⁵

⁵ Agent David Ferris, supervisor of the ICAC Task Force, was accepted as an expert at trial in cybercrimes and online child exploitation. He provided a general explanation of how National Center for Missing and Exploited Children (NCMEC) cybertips are generated by internet service providers, how hash values are used to identify known child sexual abuse material, and how IP addresses and subscriber information are obtained through subpoena returns. Agent Ferris explained that IP addresses are assigned when a user connects to the internet and may be traced to a subscriber, but he acknowledged that subscriber information does not necessarily identify the individual who committed an offense, as multiple individuals may share internet accounts or devices. He further testified that virtual private networks (VPNs) can mask a user's location and that geolocation is generally less reliable for cellular networks.

The cybertip reported that on December 19, 2020, five files were sent in a private Facebook message from an account with the screen name “cadir.lopez.” This account, linked to the name “Cadir Mateo Lopez” and a birthdate of August 15, 1992, was created using two verified e-mail addresses and a phone number. The chat was identified as “The Araujo Rozas,” with the recipient being Araujo Rozas, whose phone number was verified and located in Veracruz, Mexico. The cybertip included a unique Facebook user ID and IP address information, showing login activity on December 20, 2020, with the IP address for December 19, 2020, registered to Cox Communications.

Ms. Tonglet testified that the cybertip included an image categorization of “A2,” indicating “prepubescent minor” and “lewd exhibition.”⁶ Additional images were included to provide context for the conversation, with several messages and videos exchanged before the “child exploitation” file was uploaded. The final uploaded file was the purported profile picture. She confirmed there were four images in the cybertip.

Ms. Tonglet stated that after reviewing the cybertip, she issued subpoenas for the IP addresses used on December 19, 2020, to upload and receive the child pornography. The subpoena to Cox Communications revealed the subscriber as “Guillermo C. Lopez” at 2200 Giuffrias Avenue, Apartment C, Metairie, Louisiana. The subpoena to T-Mobile identified the subscriber as Christina Rivas at the same address. She clarified that this information pertained to the IP address accessed on December 20, 2020, and noted that subscriber details only include the bill payer. Ms. Tonglet did not attempt to contact Christina Rivas during the investigation. She further confirmed that the T-Mobile login IP address reflected a geolocation within Florida, while the Cox Communications IP address located in

⁶ She described the image as “depicting nudity and one or more of restraint, sexually suggestive poses, focus on genitals, inappropriate touching, adult arousal, spreading of limbs or genitals and such depiction lacks serious literary, artistic, political, or scientific value.”

Jefferson Parish was the IP address associated with the reported uploads of child pornography.

Around this time, the NCMEC received a second cybertip from Facebook on February 17, reporting “apparent child pornography” with fourteen files uploaded. The report indicated the incident occurred on December 19, 2020, in a separate instant messaging chat involving the same suspect, phone number, date of birth, and verified e-mails. Another IP address with a login on January 3, 2021, was provided. The estimated location was Metairie on February 17, with the recipient in Veracruz, Mexico. Ms. Tonglet explained that the second image was the account’s profile image.

Ms. Tonglet testified that the file was considered child pornography, with the “Md5 number” confirming the upload date. She noted a specific IP address was used for this upload. Additionally, a file sent afterward was reported as “possible child pornography” and uploaded on the same date. It was categorized as “A1,” meaning “prepubescent minor.”⁷ The uploaded files used the IP address registered to Cox Communications with a geolocation in Metairie. The report was submitted by the electronic service provider as “apparent child pornography,” processed on March 22, 2021, and submitted to her office for review.

After receiving the NCMEC tip, Ms. Tonglet requested and obtained search warrants for the Facebook account of “Cadir Mateo Lopez” and the associated Gmail accounts, including “cadirlopez@gmail.com.” She also obtained a second search warrant for the e-mail account “lopezcadir9@gmail.com.” The two Gmail accounts were associated with the suspect in the cybertip. Additionally, she submitted another subpoena to Cox Communications for a different IP address used to upload child pornography in the second report. The subscriber information

⁷ She described the content of the image as “sexually explicit conduct, including actual or simulated sexual acts, bestiality, masturbation, sadistic or masochistic abuse, or degradation, lacking serious literary, artistic, political, or scientific value.”

matched the previous one: Guillermo C. Lopez at 2200 Giuffrias Avenue, Apartment C, in Metairie, with an active phone number at the time of use.

Ms. Tonglet reviewed content from Facebook and Google, identifying 2200 Giuffrias Avenue as the target location with Guillermo Lopez as a possible suspect. She obtained and executed a search warrant for the residence on July 26, 2021. Images of the residence were taken, and a Samsung device, MacBook, and Kindle were seized. Photographs showed defendant's employment ID from Ideal Market. Ms. Tonglet identified defendant in court. The MacBook and a USB tower were found on the bedroom desk, along with an Entergy bill listing "Guillermo Lopez-Pineda" as the subscriber at 2200 Giuffrias, Apartment C. Ms. Tonglet acknowledged that it appeared possible that at least one other person may have been living at the location at the time of the search warrant execution. She was unable to determine how many individuals resided there and conducted no follow-up investigation to determine whether anyone else was living or temporarily staying at the residence.

Ms. Tonglet obtained an arrest warrant for defendant, determining he was the suspect based on images uploaded from the 2200 Giuffrias Avenue address, items belonging to him, and Google information indicating he lived there. Defendant was arrested on October 14, 2022; she confirmed viewing the body camera footage of that date showing the arrest, which was shown to the jury. She noted a red iPhone in defendant's left pocket, which was recovered. A search warrant for the phone was obtained. The Louisiana Bureau of Investigations Cyber Crime Unit conducted a forensic analysis of the phone. Ms. Tonglet reviewed the materials, finding them consistent with the analysis report.⁸ The red iPhone recovered from defendant was associated with the phone number (504)-***-6303,

⁸ The forensic analysis report was admitted for record purposes only. Ms. Tonglet testified that her findings were consistent with the device analysis.

which she linked to the Google return information. A separate phone number, (904)-***-9382, appeared within the Google account subscriber information. She did not know the origin of that number other than that it was the phone number entered into the Google account by the user.⁹

Ms. Tonglet discussed the Google returns, explaining that two separate Google accounts were associated with the Facebook account. She identified e-mails from Facebook to “Cadir Mateo Lopez,” including one saying, “Hola, Cadir Mateo,” confirming the connection to the Google account. Ms. Tonglet confirmed that another e-mail from Google showed the user’s date of birth as August 15, 1992, matching the Facebook account. It also had the same sign-up number and several login IP addresses.¹⁰ Additionally, she referred to e-mails from Cox Communications, noting Apple ID payment information for “Guillermo Lopez” and a payment reminder to “Mr. Lopez,” matching the service address from her subpoena.

Ms. Tonglet then obtained a return from the Facebook search warrant, which formed the basis for “NCMEC tip 1.” She confirmed there was one video file, identified as “34NW7,” marked as State’s Exhibit 11-D, though there was difficulty opening it. The video was included in cybertip 83778036.¹¹ She also identified a profile photograph in the cybertip as YSg6p, confirming that it depicted the defendant, Guillermo Lopez-Pineda. The photograph was admitted into evidence.¹²

⁹ Out of an abundance of caution, the phone numbers are redacted. *See State v. Murray*, 17-534 (La. App. 5 Cir. 3/14/18), 242 So.3d 821, 825.

¹⁰ It was established that this exhibit was under subfolder titled “5598019-202 10408-1” containing “googleaccount.subscriberinfo_001” and an HTML document titled “lopezcadir9.subscriberinfo.” Ms. Tonglet testified that although the Facebook and Google accounts reflected a date of birth of August 15, 1992, she had no reason to doubt that defendant’s actual date of birth was August 15, 1989. She explained that the 1992 date of birth was the one entered into the user accounts and that the month and day matched defendant’s actual birthdate.

¹¹ The forensic analysis report, admitted for record purposes only, describes a photograph from this video. Additionally, this file matches the description from the cybertip report.

¹² Ms. Tonglet confirmed that one of the files contained in the cybertip was a self-taken photograph of an adult male identified as the profile image for the account. The profile photograph

Ms. Tonglet next discussed the second cybertip. The State indicated that the second video corresponded with count two, identified as cybertip 86263592, with the first five digits “0q39P.” It was played for the jury and admitted into evidence.¹³ For count three, it was established that the first five digits of the file name were “2BTQO.” The video was admitted into evidence and played for the jury.¹⁴ Regarding count four, the associated file was “jL5vx,” and this video was also played for the jury.¹⁵ Ms. Tonglet confirmed that the NCMEC reports contained these videos, with the first report including one video and the second report containing three.

The analysis of defendant’s cell phone revealed 136 images or videos of child pornography. Ms. Tonglet confirmed that some files matched those in the NCMEC tip, including one with a “juvenile male and female.” She identified ten images from the data extraction, which were shown to the jury.

Ms. Tonglet noted other images on the cell phone, including a photograph of Mr. Pineda-Lopez with a young child¹⁶ and a profile image of defendant. She identified an image of a pay stub for “Guillermo Lopez” at the 2200 Giuffrias Avenue address. The last photograph showed defendant holding a red phone, with a background resembling a bedroom, matching furniture in another image admitted

returned from Facebook matched the image in the cybertip and that the background depicted in the photograph appeared consistent with the same bedroom photographed during execution of the search warrant.

¹³ The second cybertip report described this video as depicting “a prepubescent female, approximately 8-12 years old, naked from the waist down, being vaginally raped by an adult male.” Next to this description, it is handwritten “(Count 2) (0g39V).” Additionally, this file appears to match the description from the cybertip report.

¹⁴ The second cybertip report described this video as “a prepubescent female, approximately 10-12 years old, engaging in vaginal intercourse with a prepubescent male, approximately 5-8 years old.” Next to this description, it is handwritten “(Count 3)(2BTQ).” Additionally, this file appears to match the description from the cybertip report.

¹⁵ The second cybertip report described this video as “a prepubescent female, approximately 9-12 years old, naked and bound in sexual bondage, while being vaginally raped by an adult male.” Next to this description, it is handwritten “(Count 4)(jL5vx).” Additionally, this file appears to match the description from the cybertip report.

¹⁶ Ms. Tonglet testified that there was nothing suggestive about the photograph and that she did not know whether the child depicted was defendant’s own child.

into evidence. She noted that some of the imagery and videos from the confiscated devices matched those viewed that day. The MacBook Pro, Kindle, and Samsung each contained at least one image or file. The Gmail account “lopezcadir9@gmail.com” was also found on the MacBook Pro, linked via the e-mail address.

After the State rested its case, defendant took the stand and testified that he was born on August 15, 1989, not 1992. He confirmed that he lived at an apartment on Giuffrias in 2020 but stopped living there in October 2020, explaining that he had rented only the living room. He identified the photograph depicting him with a young female as his daughter, who was seven years old at the time, and denied taking pornographic photographs of her or exposing her to pornographic material. He denied producing or manufacturing any pornographic materials, including videos or photographs. Defendant confirmed that his phone number at the time of his arrest was (504) ***-6303 and denied using or knowing the origin of the number (904) ***-9382. He further denied knowing Christina Rivas or that she was the T-Mobile subscriber associated with the residence.

When shown the ID tag from Ideal Market seized from his address, defendant denied that it belonged to him or that he had worked there. He acknowledged that the photograph on the ID appeared to be his but stated that the name on the tag, “Kadir Lopez,” was not his name, testifying that his name is “Guillermo Cadir.”

Defendant testified that he did not live alone in the apartment but resided there with four other individuals. He paid for the electricity at the apartment. He denied that the MacBook Pro, Samsung phone, or Kindle recovered from the residence belonged to him or that he used those devices, although he owned a MacBook Pro at some point but not while living at the apartment. He denied committing the charged offenses and denied knowingly or intentionally

downloading any pornographic images of children, stating that he did not know how the images found on the devices came to be there. Defendant admitted that the profile photographs were of him and stated that they were posted on Facebook and could have been downloaded by anyone. He acknowledged that one of the phone numbers associated with the e-mail accounts was his and that the red iPhone recovered at his arrest belonged to him. When confronted with the fact that the phone contained images also found on the MacBook, he responded, “I don’t know. My phone didn’t have that information.”

Defendant initially stated that he did not know Christina Rivas but he had seen her at the apartment. When asked how he knew she came to the apartment, he replied that a woman named Maria Rivera used the name Christina Rivas. He testified that he did not have “direct communication with her,” did not recall contacting her, and denied knowing the number (504) ***-5557. When asked whose number it was, he responded, “I don’t know... I imagine that it’s Christina’s number. I don’t know.” He denied downloading the images found on the phone and stated that he “imagine[d]” they were sent to him.

Investigator Albert Majeaux, Jr. of the Jefferson Parish District Attorney’s Office presented rebuttal evidence. He testified that Securus inmate phone records from the Jefferson Parish Correctional Center reflected that defendant placed approximately 21 calls to the number (504) ***-5557 under the name “Lopez-Pineda, Guillermo.” Using the Clear database, he determined that the number was associated with the name Christina Rivas. He acknowledged that he had no photographic identification of Rivas and could not confirm that she was the same Christina Rivas listed as the T-Mobile subscriber at the Giuffrias residence.

To summarize, at trial, the State presented evidence linking the Facebook account that transmitted the illicit material to defendant and to the Giuffrias Avenue residence. The December 19, 2020 uploads were traced to an IP address

registered to Cox Communications, and subpoena returns identified the subscriber as “Guillermo C. Lopez” at 2200 Giuffrias Avenue, Apartment C. Although Agent Ferris acknowledged that subscriber information does not necessarily identify the individual user of an account, additional evidence connected defendant to the account.

The Facebook account bore the name “Cadir Mateo Lopez,” listed a birthdate of August 15, 1992, the same month and day as defendant’s birthdate, and was associated with two Gmail accounts. The Google returns reflected the phone number (504) ***-6303, which defendant admitted was his number and which was associated with the red iPhone recovered from his person at the time of arrest. The profile photograph associated with the account was identified as defendant, and defendant admitted that the photographs were of him.

The State also presented evidence that a forensic extraction of defendant’s red iPhone revealed 136 images or videos of child pornography, including files that matched the NCMEC cybertips. Ten representative images were shown to the jury. The phone containing those files was recovered from defendant’s pocket, and he acknowledged that the phone belonged to him. Although defendant denied downloading the material and suggested that the images may have been sent to him, he did not provide an explanation as to how the files came to reside on his personal device. Further, Ms. Tonglet testified that the MacBook Pro and Samsung each contained at least one image or file. She said that the Gmail account “lopezcadir9@gmail.com” was also found on the MacBook Pro, linked via the e-mail address.

Defendant asserted that other individuals who resided at the apartment may have been responsible. The jury also heard testimony that one login IP address reflected a T-Mobile geolocation in Florida and that subscriber information alone does not necessarily establish the identity of the user. However, the State

presented additional evidence linking defendant to the offenses. The Facebook account used to transmit the files was associated with defendant's name and date of birth, and the profile photograph contained in the cybertip was identified as depicting defendant. Further, some of the videos contained in the cybertips were located during the forensic extraction of defendant's cellular phone, which was recovered from his pocket at the time of arrest, along with numerous additional images and videos of child pornography. Considering this cumulative evidence, a rational trier of fact concluded that defendant was the individual responsible for accessing and possessing child pornography.

During his testimony, defendant denied knowing Christina Rivas and denied contacting her. The State later presented rebuttal evidence that Securus inmate phone records reflected calls placed under defendant's name to a phone number associated with Ms. Rivas on numerous occasions. The jury was therefore presented with defendant's contradictory testimony regarding his familiarity with Ms. Rivas as well as evidence suggesting repeated contact with a number linked to her.

The jury chose to credit the State's evidence and reject defendant's explanations. The credibility of witnesses and the weight to be afforded to the evidence are matters within the sound discretion of the trier of fact. *See Salvant*, 411 So.3d at 89. This Court may not re-evaluate the credibility of witnesses or re-weigh the evidence on appeal. *See Lafrance*, 413 So.3d at 1219; *Reed*, 413 So.3d at 1178.

Considering the entirety of the evidence, viewed in the light most favorable to the prosecution, we find that a rational trier of fact could conclude that defendant exercised dominion and control over the pornography located on his cellular phone and other devices associated with him and the residence, that he knowingly possessed the material, and that the State proved he was the individual

responsible for accessing and possessing the contraband. Accordingly, we find the evidence sufficient to support defendant's convictions.

ASSIGNMENTS OF ERROR NUMBER TWO AND THREE

Defendant argues that the trial court failed to observe the statutory twenty-four hour delay after denying his motion for new trial and/or judgment of acquittal before sentencing him to a non-mandatory sentence, when defendant did not specifically waive delays. Defendant argues that the sentence imposed of twenty years on each count was not mandatory, as the applicable sentencing range was ten to forty years.¹⁷ He argues that he challenged the sentences as excessive both through a motion to reconsider sentence and on appeal. Therefore, he contends that the trial court's failure to observe the statutory sentencing delay was not harmless and requires that the sentence be vacated and the matter remanded for resentencing. In his third assignment of error, he also challenges the sentences as excessive.

The State acknowledges that the sentence imposed was not mandatory and that the delay was not waived. However, the State contends that the record reflects that the sentence was not imposed in a hurried manner and that the trial court gave due consideration before imposing sentence. The State further asserts that remand for resentencing would be a "useless formality" because there is no indication the sentence imposed was excessive.

A review of the record confirms that defendant did not waive sentencing delays after his Motion for Post-Verdict Judgment of Acquittal and for New Trial was denied.

¹⁷ See La. R.S. 14:81.1(E)(5)(a).

La. C.Cr.P. art. 873 requires a twenty-four-hour delay in sentencing after the denial of a motion for new trial or in arrest of judgment unless the defendant expressly waives the delay. *State v. Key*, 23-167 (La. App. 5 Cir. 12/27/23), 379 So.3d 96, 125. Although Article 873 does not explicitly require a twenty-four-hour delay in sentencing after a motion for a post-verdict judgment of acquittal has been denied, this Court has applied the twenty-four-hour delay in Article 873 to motions for post-verdict judgment of acquittal. *State v. Perez-Espinosa*, 19-601 (La. App. 5 Cir. 9/22/20), 302 So.3d 598, 603. When the defendant challenges the sentence imposed and the imposed sentence is not mandatory, the failure to observe the twenty-four-hour delay mandated by law cannot be considered harmless error. *State v. Granado-Gonzalez*, 23-387 (La. App. 5 Cir. 7/3/24), 392 So.3d 909, 918, *writ denied*, 24-905 (La. 11/20/24), 396 So.3d 66. Generally, when a defendant challenges a non-mandatory sentence and the delay is not expressly waived, the defendant's sentence must be vacated and the matter remanded for resentencing. *Id.*; see also *State v. Johnson*, 25-8 (La. App. 5 Cir. 10/29/25), 426 So.3d 166; *State v. Loggins*, 23-519 (La. App. 5 Cir. 10/30/24), 397 So.3d 1265, 1288.

The Louisiana Supreme Court stated in *State v. Kisack*, 16-797 (La. 10/18/17), 236 So.3d 1201, 1205-06, *cert. denied*, 583 U.S. 1160, 138 S.Ct. 1175, 200 L.Ed.2d 322 (2018), defendant's mere participation in the sentencing hearing is insufficient to constitute an express waiver as required by La. C.Cr.P. art. 873.

Here, none of defendant's sentences were mandatory, defendant challenged the sentences on appeal as excessive, and delay was not expressly waived. Thus, under the statutory requirement for the 24-hour delay and established jurisprudence, the failure to observe the sentencing delay was not harmless error.

Accordingly, defendant's sentences are hereby vacated, and the matter is remanded for resentencing. Discussion of Assignment of Error Number Three is pretermitted.¹⁸ Defendant may appeal his sentences following resentencing.

CONCLUSION

Defendant's convictions on five counts of possession of pornography involving juveniles under thirteen, violations of La. R.S. 14:81.1(E)(5)(a), are affirmed. We hereby vacate defendant's sentences on each of the five counts and remand for resentencing as instructed above.

CONVICTIONS AFFIRMED; SENTENCES VACATED; REMANDED WITH INSTRUCTIONS

¹⁸ 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). No matters requiring correction were found.

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
JULY 29, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT
REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-KA-474

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)	
HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)	
HONORABLE PAUL D. CONNICK, JR. (APPELLEE)	MONIQUE D. NOLAN (APPELLEE)
HOLLI A. HERRLE-CASTILLO (APPELLANT)	MICHAEL A. MITCHELL (APPELLANT)
	REMY V. STARNES (APPELLANT)

THOMAS J. BUTLER (APPELLEE)
JAMES WASCOM (APPELLEE)
R. ERICH CATHEY (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED