[Cite as *State v. Davis*, 2017-Ohio-9169.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105523

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

HASAN MALIK DAVIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-598147-A

BEFORE: Boyle, P.J., S. Gallagher, J., and Jones, J.

RELEASED AND JOURNALIZED: December 21, 2017

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Hasan Malik Davis, appeals his convictions and sentence. On appeal, he raises three assignments of error:

> 1. The trial court erred by failing to grant a judgment of acquittal, pursuant to Crim.R. 29(a), on the charges, and thereafter entering a judgment of conviction of that offense as those charges were not supported by sufficient evidence, in violation of defendant's right to due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution.
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> 2. Appellant's convictions are against the manifest weight of the evidence.
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> 3. The trial court erred by ordering convictions and a consecutive sentence for separate counts because the trial court failed to make a proper determination as to whether those offenses are allied offenses pursuant to R.C. 2941.25 and they are part of the same transaction under R.C. 2929.14.

{¶2} Finding no merit to his appeal, we affirm.

I. Procedural History and Factual Background

{¶3} On August 27, 2015, the Cuyahoga County Grand Jury indicted Davis for 13 counts of pandering sexually oriented matter involving a minor in violation of R.C. 2907.322(A)(1), 11 counts of illegal use of minor in nudity oriented material or performance in violation of R.C. 2907.323(A)(1), 6 counts of pandering sexually oriented matter involving a minor in violation of R.C. 2907.322(A)(5), and 1 count of possessing criminal tools in violation of R.C. 2923.24(A). The counts for pandering sexually oriented material and illegal use of a minor were tried before a jury. Davis waived his right to a jury trial as to the remaining count, possessing criminal tools, which was bifurcated and tried to the bench. The following evidence was presented at trial.

Jury Trial for Counts 1-30

{¶4} On March 17, 2015, Detective Beth Crano of the Cuyahoga County Prosecutor Office's Internet Crimes Against Children Task Force ("ICAC") received a "cyber tip" from the National Center for Missing and Exploited Children. The tip concerned images of child pornography that was found in a Sky Drive account associated with a particular email address.[1] After confirming that the images were child pornography, Detective Crano subpoenaed the internet service provider, Time Warner Cable, who informed Detective Crano that the IP address listed in the cyber tip was assigned to a specific address in Lyndhurst, Ohio. Time Warner Cable also informed Detective Crano that the IP address's subscriber was Davis and that a separate personal email address and a telephone number were listed as well. Detective Crano then contacted the United States Postal Service, who informed Detective Crano that Davis and Brenda Mitchell, Davis's mother, received mail at the Lyndhurst address. After performing background checks and conducting surveillance, investigators obtained a search warrant for the residence.

{¶5} On August 6, 2015, detectives from ICAC, the United States Secret Service, and other law enforcement agencies executed the search warrant and found Davis inside. Detectives took photographs and searched a number of electronic devices in the residence,

[1] During her testimony, Detective Crano explained that a Sky Drive is a Microsoft-created storage service that allows users to store media, pictures, and documents on the internet. Testimony from Detective Howell also explained that Sky Drive allows users to backup their files online, a process that occurs automatically by default.

including a Samsung Notebook laptop in Davis's bedroom, a Samsung Note 4 mobile cell phone, a Gateway NV Series laptop, a Sandisk Cruzer Glide 16,[2] and a Sony Playstation 4. Forensic examiners performed on-scene previews of the information on those devices and located the images listed in the cyber tip on Davis's Samsung laptop computer. Specifically, forensic examiners located a folder, titled "Japan WWE," on the Samsung laptop that contained a number of subfolders, including one titled "Little."[3] Inside that subfolder, forensic examiners located approximately 30 images of child pornography, some of which were the images identified in the cyber tip. Examiners also found the images saved onto the Sandisk Cruzer and located additional images of nude children on Davis's Gateway laptop.[4]

{¶6} During the search and after reading Davis his *Miranda* rights, Detective Crano and a special agent from the United States Secret Service interviewed Davis. The interview was video and audio recorded and played before the jury at trial. During the interview, Davis admitted that he viewed pornography and that he visited pornographic websites, such as PornHub, xHamster, and motherless.com.[5] Davis confirmed that the

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[2] During his testimony, Detective Frattare explained that the Sandisk Cruzer is a USB device.

[3] It is not entirely clear what the actual name of the folder on Davis's computer was titled. The parties' briefs and the evidence in the record refer to the folder as "Japan WWE," "Japanese Pro Wrestling," and "XXXjapan.WWE."

[4] Although testimony at trial was not entirely clear on the topic, during her interview of Davis, Detective Crano stated that forensic examiners found the Little folder containing child pornography on the Sandisk Cruzer, which was plugged into Davis's Playstation 4.

[5] During trial, Detective Crano explained that motherless.com is "an online social network that relates to sexual fetishes" and "allows users to create their own screen name[,] * * * select a profile

email address listed in the cyber tip belonged to him and that all of the electronic devices seized from the residence were his, but initially denied saving any pornography or having any child pornography on those devices. Later during the interview, however, Davis confirmed that certain folders on his computer contained pornography, including "Models" and "Random Girls." He also confirmed that he recently created a "throw-off" folder titled, "Japan WWE." While he initially claimed that he did not know what was in that folder, he later told the investigators that the file contained a handful of subfolders. When the investigators told Davis that they found approximately 30 images of child pornography within the subfolder, "XXX," as well as on his phone, he told them that he obtained the images from another user on motherless.com. Davis explained that the user sent him a file containing about 800 images, "a lot" of which was child pornography and that he saved that file containing those images to his laptop. Davis said that in some of the images he saw the children were clearly under the age of 18, were all different races, were naked, and in some of those images, were having sex with adult males. Davis said that once he saw some of those images, he saved them on his laptop in his "Pictures" folder and that he took the images from the Pictures folder and dragged them into the "JapanWWE" folder. He stated that all of the images of child pornography that he saved were within the subfolder titled "Little." When asked why he saved the images of child pornography, Davis said he

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picture[,] * * * post information about themselves[,] * * * [and] select what type of pornography or sexual fetish that they're into[.]"

did not know and that, after first seeing it, he was shocked. He then stated that he should have deleted it.

{¶7} At trial, Detective Crano and Detective Frattare testified as to their professional backgrounds and the above-described events. Based on some discrepancies between the dates listed in the indictment and those presented during the officers' testimonies, the state moved to dismiss Counts 4-12, pandering sexually oriented matter involving a minor, and Counts 19-23, illegal use of minor in nudity oriented material or performance. The court granted the state's motion.

{¶8} The state then called Special Investigator Howell, the computer forensics specialist who performed a search of Davis's electronic devices. He testified that the Samsung laptop computer had a folder titled "Users" that was created by the user, Hassi_000. Howell explained that a user can create his own folders — which he referred to as "user-directed folders" — in addition to those already created by the computer's operating system. Inside the Users folder were a number of standard folders, one of which was labeled "Pictures." The Pictures folder contained a user-directed subfolder titled "Japan WWE," which then contained a subfolder titled, "XXX." That folder then contained nine user-directed subfolders, one of which was "Little." Special Investigator Howell testified that the eight other user-directed subfolders within "XXX" seemed to accurately describe their contents. For example, Howell testified that the subfolder labeled "Cartoon" contained animation images, the subfolder labeled "Models" contained

professional images of models, and the subfolder labeled "World's Most Beautiful Vagina Contest" contained images "indicative of the title."

{¶9} Howell then identified the images of child pornography that were located within the folder labeled "Little." Howell testified that the files were originally from the computer's folder labeled "Downloads" and that the files in that folder would likely have come from the internet after being downloaded by a user. He stated that the files were received or downloaded into the Downloads folder in October 2014. Howell explained that the files were originally part of a compressed file, which makes it easier to send and receive a number of files over the internet. Howell also testified that the contents of the Downloads folder will remain in that folder unless the user takes other action, such as moving or copying the files into another location. To move the files from the Downloads folder, Howell stated that the files needed to be "unzipped," which meant that the files needed to be decompressed. Once unzipped, each file's title as well as a thumbnail image of each file would appear, allowing the user to preview the images.[6] Howell did admit later, however, that he did not look into whether the files had thumbnail images and that a user could opt out of having the thumbnail images displayed. Further, on cross-examination, Howell stated that he could not name the original folder or location from where the images were copied on the computer before being put into the Little folder.

[6] On cross-examination, Howell explained that "unzipping" a file is not the same as opening a file.

{¶10} Howell then testified that the images had different "create dates," including March 21, 2014, June 16, 2014, and February 25, 2015, and Howell described March 21, 2014, June 16, 2014, and February 25, 2015, as the "create dates," meaning that those were the dates where the images of child pornography appeared in the Little folder. He also explained that the create dates would remain the same if moved from one subfolder to another, but would change if the image was copied into another location on the computer. Howell explained that during the search of the Samsung laptop, the images were not located in the Downloads folder, but in the Little subfolder, meaning that a user moved or copied the images from Downloads to Little. Based on his observations of the files' create dates, Howell testified that he believed the images were copied into the Little folder on their respective create date, February 25, 2015.

{¶11} He also stated that the images within the Little folder were consistent with one another in terms of their content. Howell explained, however, that he could not tell when certain files were opened or viewed on the computer and that he had no evidence to support whether the files were ever opened. Howell also explained that he could not tell if any of the images of child pornography were ever deleted but then recovered, because his examination of the files did not include that analysis. He also stated that none of the files contained what he considered to be a descriptive title, suggesting the contents of the downloaded files to the receiver.

{¶12} At the close of the state's case, Davis moved for a Crim.R. 29 acquittal, which the trial court denied.

{¶13} The defense then presented testimony from Davis's aunt and Davis himself. Davis testified on his own behalf. Davis stated that he received the images from a file sent by another user through motherless.com. Davis testified that once he downloaded the file and opened some of the files and saw the thumbnail images, he was shocked and disgusted. Davis stated that after he unsuccessfully tried to delete the files, he moved them into the "Little" folder. He testified that he never viewed, sent, or shared the images after receiving them; however, on cross-examination, Davis admitted that after downloading the entire file from motherless.com he knew that the images were child pornography. Specifically, Davis admitted to creating the folder titled "Little" and when asked by the prosecutor what was inside of that subfolder, Davis responded, "child pornography." He also admitted that he had images on his computer that, after downloading them, he knew contained child pornography. Finally, he agreed that all of the images inside of the "Little" folder were child pornography. On redirect examination, Davis explained that he placed the images in the Little folder so that he knew not to open them again and that he had not viewed the images since placing them inside the Little folder. At the close of its case, Davis renewed his Crim.R. 29 motion for acquittal, which the court denied.

Bench Trial for Count 31: Possessing Criminal Tools

{¶14} The parties then convened for the bench trial for Count 31, possessing criminal tools in violation of R.C. 2923.24(A) with a forfeiture specification, which concerned Davis's alleged use of the Samsung laptop computer, Gateway laptop computer,

Sandisk Cruzer, Samsung cell phone, and Playstation 4 to download, view, or receive child pornography. The state presented only one witness, recalling Detective Howell to testify. Howell testified that he found pictures of nude children on the Gateway laptop and pornographic video featuring children on the Sandisk Cruzer. He also stated that the cell phone was attached to the Gateway laptop via the computer's USB port.

{¶15} After the state rested its case, Davis moved for a Crim.R. 29 acquittal. The trial court partially granted Davis's motion, dismissing the Playstation 4 and cell phone from the count and forfeiture specification.

{¶16} Davis presented no evidence on his behalf in relation to Count 31 and renewed his motion for a Crim.R. 29 acquittal, which was denied.

{¶17} The jury found Davis not guilty of Counts 1-3 and 13, pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(1) and Counts 14-18 and 24, illegal use of a minor in nudity oriented material or performance, in violation of R.C. 2907.323(A)(1). The jury found Davis guilty of Counts 25-30, pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(5).

{¶18} The court found Davis guilty on Count 31 as to the Samsung laptop, Gateway laptop, and Sandisk Cruzer and ordered the forfeiture of those items.

{¶19} At sentencing, the trial court determined that Davis was a Tier II sex offender, requiring him to register as a sex offender for 25 years. The trial court sentenced Davis to two years of community control under the supervision of the Adult Probation Department's Sex Offender Unit. In addition, the trial court imposed an indefinite period of home

detention with GPS monitoring that could potentially last the entire two-year term of community control and restricted Davis's computer access to devices that contained court-monitored software.

II. Law and Analysis

A. Sufficiency of the Evidence

{¶20} In his first assignment of error, Davis argues that his convictions were not supported by sufficient evidence because they were based on inferences, and there was no evidence that he knew that the electronic files contained child pornography.

{¶21} A sufficiency challenge essentially argues that the evidence presented was inadequate to support the jury verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Getsy*, 84 Ohio St.3d 180, 193, 702 N.E.2d 866 (1998), quoting *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). "[A] conviction based on legally insufficient evidence constitutes a denial of due process." *Thompkins* at 386, citing *Tibbs v. Florida*, 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed. 652 (1982). When reviewing a sufficiency-of-the-evidence claim, we review the evidence in a light most favorable to the prosecution. *State v. Hill*, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996).

Pandering Sexually Oriented Matter Involving a Minor

{¶22} Davis was convicted of five counts of pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(5), which states that "[n]o person, with knowledge of the character of the material or performance involved, shall * * * [k]nowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality[.]"

{¶23} Davis argues that the state offered no evidence establishing that he shared the images of child pornography or that he ever opened the images and that the testimony offered by the state was based on inferences. He also argues that the state failed to sufficiently establish that he knew what the images contained when he received them from motherless.com.

{¶24} Proof of guilt may be made by circumstantial evidence, which "requires the drawing of inferences that are reasonably permitted by the evidence[,]" but nevertheless "carries the same weight as direct evidence." *State v. Cassano*, 8th Dist. Cuyahoga No. 97228, 2012-Ohio-4047, ¶ 13, citing *State v. Treesh*, 90 Ohio St.3d 460, 739 N.E.2d 749 (2001).

{¶25} R.C. 2901.22(B) states that "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶26} At trial, the state presented testimony from Investigator Frattare, Detective Crano, and Detective Howell. All three officers testified that they located child

pornography on laptops and a Sandisk Cruzer found in the residence. The investigators testified that the images on the Samsung laptop and Sandisk Cruzer containing child pornography were grouped together in a single subfolder titled "Little." During the witnesses' testimony, the state presented a handful of exhibits, including photographs of Davis's residence, the electronic devices that contained child pornography, and digital images of the child pornography found on the Samsung laptop. The state also played the investigators' interview of Davis, during which Davis admitted that the electronic devices seized from the residence were his and to knowing that there was child pornography saved on his Samsung laptop inside of the "Little" folder.

{¶27} Here, the grouping of the images of child pornography as well as Davis's statements during his interview with investigators was sufficient to establish that he knowingly received, possessed, and/or controlled images of child pornography as required for a conviction under R.C. 2907.322(A)(5). *See State v. Duhamel*, 8th Dist. Cuyahoga No. 102346, 2015-Ohio-3145, ¶ 38 (finding the defendant knowingly possessed child pornography because he "transferred the files to external hard drives and saved them in separate folders that he categorized and named according to the type of files contained" and "confessed to police * * * that he possessed illegal files"). Davis even admitted in his own testimony that he knew that the files contained child pornography.

{¶28} Further, contrary to Davis's argument, the statute does not require the state to present direct evidence establishing if or when Davis shared or opened the images.

{¶29} While Davis is correct that the state's evidence was not sufficient to show that he knowingly received child pornography, R.C. 2907.322(A)(5)'s language also prohibits individuals from knowingly possessing or controlling child pornography. After viewing the evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found that Davis knowingly possessed and controlled child pornography in violation of R.C. 2907.322 beyond a reasonable doubt.

Possessing Criminal Tools

{¶30} Davis also challenges the sufficiency of evidence supporting his conviction of possessing criminal tools, in violation of R.C. 2923.24(A), which states, "No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally." That conviction specifically concerned Davis's use of the Samsung laptop, Gateway laptop, and Sandisk Cruzer thumb drive to download, receive, and view child pornography. Davis argues that there was no evidence to show that he used his laptops and Sandisk Cruzer "with purpose to use it criminally."

{¶31} At trial, the state's witnesses testified that they found child pornography on Davis's Samsung laptop computer and presented exhibits of the images as well as the investigators' interview with Davis, where he admits to downloading and saving the images onto his computer even after realizing they contained child pornography. Further, at the later trial date specifically related to Count 31, the state presented Detective Howell who testified that investigators found pictures of nude children on Davis's Gateway laptop computer and pornographic videos featuring children on his Sandisk Cruzer. The

statements made by Davis in his interview with investigators establish that he kept images on his laptops and Sandisk Cruzer even though he knew that they contained child pornography, which is illegal to possess or control. Viewing that evidence in a light most favorable to the prosecution, we cannot say that the evidence was insufficient to support Davis's conviction for possessing criminal tools in violation of R.C. 2923.24(A).

{¶32} Accordingly, we overrule Davis's first assignment of error.

B. Manifest Weight of the Evidence

{¶33} In his second assignment of error, Davis argues that his convictions were against the manifest weight of the evidence.

{¶34} Unlike sufficiency of the evidence, a challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. *Id.*, citing *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955).

{¶35} When reviewing a manifest-weight challenge, an appellate court sits as the "thirteenth juror" and requires us to "review the entire record, weigh all of the evidence and all of the reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed[.]" *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983). We

are required to give "due deference" to the factfinder's conclusions because "the demeanor of witnesses, the manner of their responses, and many other factors observable by [the factfinder] * * * simply are not available to an appellate court on review." *State v. Miller*, 8th Dist. Cuyahoga No. 100461, 2014-Ohio-3907, ¶ 58, citing *Thompkins*; *State v. Bailey*, 8th Dist. Cuyahoga No. 97754, 2012-Ohio-3955, ¶ 11, quoting *State v. Bierbaum*, 3d Dist. Seneca No. 13-88-18, 1990 Ohio App. LEXIS 1204 (Mar. 4, 1990). "Further, * * * [we] must keep in mind that questions of weight and credibility are primarily for the trier of fact to determine." *State v. Irby*, 7th Dist. Mahoning No. 03 MA 54, 2004-Ohio-5929, ¶ 39, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). Accordingly, reversing a previous conviction and ordering a new trial under a manifest-weight-of-the-evidence claim should be saved for the "exceptional case in which the evidence weighs heavily against the conviction." *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, ¶ 67, citing *Thompkins.*

{¶36} Davis challenges the credibility of the law enforcement officers' testimony. But, "when considering a manifest weight challenge, the trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner, demeanor, gestures, and voice inflections, in determining whether the proffered testimony is credible." *State v. McNamara*, 8th Dist. Cuyahoga No. 104168, 2016-Ohio-8050, ¶ 36, citing *State v. Kurtz*, 8th Dist. Cuyahoga No. 99103, 2013-Ohio-2999. "Therefore, we afford great deference to the factfinder's determination of witness credibility." *Id.*

{¶37} In this case, the jury, which was free to believe all, part, or none of any witness's testimony, believed the officers, who testified that they found child pornography on Davis's laptops and Sandisk Cruzer. The jury could also have believed Davis's testimony, during which he admitted to knowing that the folders on his laptop and Sandisk Cruzer contained child pornography, and still found him guilty. In his brief, Davis argues that he accidentally downloaded, but never saw the images of child pornography. But during his interview with investigators, Davis stated that he viewed some of the images and knew that there was child pornography on his electronic devices. Further, during his testimony, he admitted that he did not delete the images from his computer even after realizing that they contained child pornography.

{¶38} In light of that evidence, as well as the evidence previously discussed, we cannot conclude that this is the exceptional case where the jury lost its way. Davis's convictions for pandering sexually oriented matter involving a minor and possessing criminal tools are not against the manifest weight of the evidence. Therefore, his second assignment of error is overruled.

C. Allied Offenses Determination

{¶39} In his final assignment of error, Davis argues that the trial court failed to properly determine whether the offenses of which he was convicted were allied. The state argues that because Davis was not sentenced to any terms of incarceration, the court was not required to make that determination.

{¶40} R.C. 2941.25(A) states that "[w]here the same conduct by [a] defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." Courts must consider three questions when determining if offenses are allied and of similar import under R.C. 2941.25(A): "(1) Were the offenses dissimilar in import or significance? (2) Were the offenses committed separately? or (3) Were the offenses committed with separate animus or motivation?" *State v. Locke*, 8th Dist. Cuyahoga No. 102371, 2015-Ohio-3349, ¶ 18, citing *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892. "If a court can answer in the affirmative to any of the questions, then separate convictions are permitted." *Id.*, citing *Ruff*.

{¶41} "An accused's failure to raise the issue of allied offenses of similar import in the trial court forfeits all but plain error[.]" *State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 25, citing *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860. "[I]f a defendant fails to raise the issue at the trial court level, the burden is solely on that defendant, not on the state or the trial court, to 'demonstrate a reasonable probability that the convictions are for allied offenses of similar import committed with the same conduct and without a separate animus.'" *Locke* at ¶ 20, citing *Rogers*. If the defendant does not satisfy that burden, then a trial court's failure to inquire into whether the convictions were for allied offenses of similar import does not rise to the level of plain error. *Id.*

{¶42} Here, neither Davis nor the state raised the issue of allied offenses of similar import before the trial court. Davis cannot show that the omitted inquiry rises to the level of plain error because "each child pornography file or image that is downloaded is a new and distinct crime." *Locke* at ¶ 28, citing *State v. Mannarino*, 8th Dist. Cuyahoga No. 98727, 2013-Ohio-1795. "[M]ultiple convictions are allowed for each individual image because a separate animus exists every time a separate image or file is downloaded and saved." *State v. Hendricks*, 8th Dist. Cuyahoga No. 92213, 2009-Ohio-5556, ¶ 35. Therefore, Davis's six convictions for pandering sexually oriented material involving a minor are not allied offenses of similar import. Accordingly, we overrule Davis's third assignment of error.

{¶43} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
LARRY A. JONES, SR., J., CONCUR