

Thursday, November 16, 2006

**To view is not to possess.**

NOTE: On August 11, 2009, I blogged that the foregoing panel opinion was overturned by Commonwealth v. Diodoro, 932 A.2d 172 (Pa. Super. Ct. 2007), aff'd., 970 A.2d 1100 (Pa. 2009). Here is a valuable Pennsylvania Superior Court case (Pennsylvania v. Diodoro, 2006 PA Super 308, No. 1889 EDA 2005). After surveying results in other federal and state courts, the Pennsylvania Superior Court concludes that the crime of possessing child pornography from an online source (as opposed to a statute prohibiting the mere viewing of child pornography) requires that the defendant know that the image is actually being saved to the computer. Because the prosecutor did not meet its burden to prove this element of the crime, the Superior Court dismissed the prosecution against the defendant. Congratulations to the defendant and his lawyers. Thanks to the First Amendment Lawyers Association member who posted this case to the website. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00