ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Plaintiff-Appellee, vs JOHN VAN TIELEN, Defendant-Appellant.	:	Case No. 13-0503 On Appeal from the Brown County Court of Appeals, Twelfth Appellate District Court of Appeals Case No. CA 2012-04-007

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JOHN VAN TIELEN

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TABLE OF CONTENTS

	Page
EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION, IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST, OR WHY, BEING A FELONY, LEAVE SHOULD BE GRANTED	**1**
STATEMENT OF THE CASE AND FACTS	**2**
ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW	**5**

Proposition of Law No. 1 The doctrine of *res judicata*, a rule of fundamental and substantial justice, is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice.

Proposition of Law No. 2 When a defendant, at his plea hearing, admits to conduct which falls outside the charged crime, a court commits a manifest injustice by advising the defendant that his conduct constitutes guilt and enters a finding of guilty.

CONCLUSION	**11**
CERTIFICATE OF SERVICE	**12**

APPENDIX	**Appx. Page**
Opinion of the Twelfth District Court of Appeals (February 12, 2013)	1
Judgment Entry of the Twelfth District Court of Appeals (February 12, 2013)	6

EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION, IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST, OR WHY, BEING A FELONY, LEAVE SHOULD BE GRANTED

This case presents a felony matter as well as involves a substantial constitutional question, namely, a defendant's right to a knowingly, intelligently, and voluntarily entered plea as protected by the United States and Ohio Constitutions. A criminal defendant's choice to enter a guilty plea is a serious decision because, by agreeing to plead guilty, he is giving up several constitutional rights. The basic tenets of due process require that a guilty plea be made "knowingly, intelligently, and voluntarily." The failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution.

To ensure that guilty pleas conform to constitutional standards, the trial court must convey ***accurate information*** to the defendant relating to the nature of the charges so he can make the plea voluntarily. If the defendant receives the proper information, then we can ordinarily assume that he understands that information and the nature of the charges. Here the trial court conveyed information to Mr. Van Tielen that was inaccurate; Mr. Van Tielen then relied upon that inaccurate information and proceeded with his plea.

No one involved in the case – not defense counsel, the prosecutor, or the court – were aware of an inaccuracy. To further compound the problem, Mr. Van Tielen's appellant counsel was not aware of the inaccuracy. It was the Appellant himself who finally realized the inaccuracy and he moved to withdraw his plea. The trial court denied the motion and the court of appeals affirmed claiming that Appellant's claim was barred by *res judicata*. The court of appeals further concluded that even if *res judicata* did not apply, Appellant failed to demonstrate a manifest injustice. The court of appeals decision

threatens a criminal defendant's ability to protect his constitutional rights even in those instances where a court materially misrepresents the law to him or her during their plea hearing. *Res judicata* should not bar Appellant's ability to redress this constitutional violation.

STATEMENT OF THE CASE AND FACTS

On March 15, 2010, the Brown County Grand Jury retuned a ten-count indictment against Defendant/Appellant John Van Tielen (hereinafter "Appellant"). All ten counts alleged that Appellant had violated R.C. 2907.322(A)(1), Pandering Sexually Oriented Material Involving a Minor, a felony of the second degree.

On May 17, 2010, Appellant's plea hearing was held. Appellant's plea hearing was mired in confusion and misstatements of law. When the court asked the prosecutor to recite a statement of facts, she noted:

> MS. LITTLE: Yes, Your Honor, we'll begin with Count 1, that, "John Van Tielen on or about the 5th day of March, 2010, in Brown County, Ohio, with knowledge of the character of the material or performance involved, recklessly created, recorded, photographed, filmed, developed, reproduced, or published material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, in violation of Revised Code 2907.322(A)(1), a felony of the second degree and against the peace and dignity of the State of Ohio.

After further elaboration of the facts the court asked defense counsel whether she had any comment on the facts. Defense counsel clarified:

> MS. TRAILER: Just separately, Your Honor. The statute is a multifaceted statute, and as Ms. Little just indicated, with regard to Mr. Van Tielen, it's really a matter of him **receiving**, not creating or disseminating. (Emphasis added.)

A colloquy then took place between the court and Mr. Van Tielen:

THE COURT:	All right. Mr. Van Tielen, any comment on those facts, as to Count 1?
THE DEFENDANT:	I would just concur with – with my attorney on that –
THE COURT:	All right.
THE DEFENDANT:	-- Your Honor.
THE COURT:	But you understand that that amounts to guilt, sir?
THE DEFENDANT:	Yes, sir. (T.p. (Plea) at 7-8).

When she continued with the remaining counts, the prosecutor incorporated defense counsel's modification into her recitation. She continued:

THE COURT:	Very well. Madame Prosecutor, as to Count 2?
MS. LITTLE:	Your Honor, it is identical – identical to Count 1 in that on or about March 5th, 2010, in Brown County, Ohio, with knowledge of the character of the material or performance involved <u>recklessly</u>, **we would say, received**, created, recorded, photographed, filmed, developed, reproduced, or published material, . . . (Id. at 8-9). (Emphasis added.)

At the conclusion of the four-count recitation, the court again inquired of defense counsel:

THE COURT:	Ms. Trailer, any comment as to Count 4 facts?
MS. TRAILER:	Nothing except what we previously stated, Your Honor.
THE COURT:	Mr. Van Tielen, any comment as to the facts associated with Count 4, **other than you're reiterating that you received**, right?
THE DEFENDANT:	No, sir. (Id. at 11).

It is undisputed that the word "receive" does not appear in R.C. 2907.322(A)(1), the section upon which the court proceeded to enter a judgment of conviction against Mr. Van Tielen.

On June 1, 2010, Appellant was sentenced. Appellant was sentenced to six years of a possible eight-year prison sentence on each of the four counts. The trial court ordered that the individual terms of imprisonment run consecutively to each other for a total stated prison term of 24 years. As previously agreed, Counts 5 - 10 were dismissed.

The trial court appointed counsel to prosecute a direct appeal on behalf of the Appellant. The appeal only challenged the consecutive nature of the trial court's sentence. In March 2011, the Twelfth District Court of Appeals affirmed the trial court's sentence.

On March 13, 2012, Mr. Van Tielen, proceeding *pro se*, filed a Motion to Withdraw his pleas, pursuant to Crim.R. 32.1. Accompanying the motion were affidavits executed by Mr. Van Tielen himself, as well as his trial counsel, Ms. Christine Tailer, Esq. In his affidavit, Mr. Van Tielen claims that the trial court "led me to believe that receiving constituted guilt under O.R.C. 2907.322(A)(1);" he further asserted that had he known that "received" was not part of the statute, he "would not have entered my guilty pleas." Affidavit of John Van Tielen, ¶5, 7. In Ms. Tailer's affidavit she notes: " ... after the Prosecutor read the statutory basis of the first count, that I stated on the record that the actual facts of the case involved Mr. Van Tielen's "receipt" of sexually oriented material involving minors by way of e-mail communication; ..." Affidavit of Christine D. Tailer, ¶6.

On March 26, 2012, the State of Ohio filed a Memorandum in Opposition to Appellant's motion. The next day, March 27, 2012, without a hearing, the trial court filed a Judgment Entry overruling Appellant's motion.

On April 13, 2012, Appellant, again acting *pro se*, filed a timely Notice of Appeal challenging the court's decision overruling his Motion to Withdraw Guilty Pleas. Appellant also filed a Motion for Appointment of Counsel. Counsel was appointed and a Notice of Appearance was filed on July 25, 2012.

On appeal, Appellant argued that it was error for the trial court to deny his Motion to Withdraw his plea as the trial court's misstatement of law, and Appellant's reliance thereon, created a manifest injustice so that his plea was not "knowingly, voluntarily or intelligently" entered. The court of appeals issued a two-prong decision finding that (1) Appellant's assignment of error was barred by *res judicata* as it could have been brought on direct appeal but was not; and (2) even if *res judicata* did not apply, there was no manifest injustice which would warrant the withdrawal of the plea.

It is from that decision that Appellant now petitions this Court.

ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1 The doctrine of *res judicata*, a rule of fundamental and substantial justice, is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice

The court of appeals erred in applying the doctrine of *res judicata* to bar Appellant's attempt to withdraw his guilty plea. Appellant submits that, in some circumstances, *res judicata* may apply to bar claims asserted in a post-sentence motion to withdraw a guilty plea. The Ohio Supreme Court however, has noted that "*res judicata* is a rule of fundamental and substantial justice that is to be applied in particular situations as fairness and justice require, and that . . . is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice." *State v. Simpkins* (2008), 117 Ohio St.3d 420, 426,

2008-Ohio-1197, ¶25. (citations omitted,) The *Simpkins* court went on to note that: "Although *res judicata* is an important doctrine, it is no so vital that it can override 'society's interest in enforcing the law, and in meting out the punishment the legislature has deemed just.'" *Id.* (*citing State v. Beasley* (1984), 14 Ohio St.3d 74, 75, 471 N.E.2d 774).

Under the rationale of the *Simpkins* decision, *res judicata* is not a doctrine that is to be applied in a knee-jerk manner. Courts of appeal should examine whether the utilization of *res judicata* would "work an injustice" and if so, it should not be applied. Appellant contends that such a circumstance exists in the present case. The court of appeals in this matter determined that Appellant, through counsel, could have addressed, in his direct appeal, the issue of "receiving" not being present in the statute under which he was charged. Because Appellant's counsel failed to do so, the court determined that Appellant's claim was barred by *res judicata*. Appellant contends this was error.

"Every judge has a duty to impose lawful sentences." *Id.* at ¶ 27. "The interests that underlie *res judicata*, although critically important, do no override our duty to sentence defendants as required by law." *Id.* As noted above, it is undisputed that "received" does not appear in R.C. 2907.322(A)(1). It is also clear that Appellant, himself and through counsel, limited his culpability in this case to only receiving images; he did not admit, nor plea to, creating, recording, photographing, filming, developing, reproducing, or publishing any images. The judge, however, misrepresented the law to Appellant by advising him that "receiving" still violated R.C. 2907.322(A)(1). The sentence imposed upon Appellant was not lawful and *res judicata*, despite its valid application in some instances, should not have been utilized by the court of appeals to bar Appellant's claim. Such utilization was error and Appellant should have been allowed to withdraw his plea.

Proposition of Law No. 2 When a defendant, at his plea hearing, admits to conduct which falls outside the charged crime, a court commits a manifest injustice by advising the defendant that his conduct constitutes guilt and enters a finding of guilty

The court of appeals erred in finding that "there was no manifest injustice." Under Crim. R. 32.1, a defendant contending that his plea ran afoul of this constitutional safeguard bears the burden to show that the post-sentence withdrawal of his plea is necessary to remedy "manifest injustice." Id., (*citing State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324. Manifest injustice is determined by examining the totality of the circumstances surrounding the guilty plea; paramount in this determination is the trial court's compliance with Crim.R. 11(C). *State v. Smith* (2008), 2008 WL 835827 (Ohio App. 11 Dist.), 2008-Ohio-1501, ¶18. In general, manifest injustice relates to a fundamental flaw in the proceedings that either results in a miscarriage of justice or offends due process. *State v. Smith* (1977), 49 Ohio St.2d 261.

The court of appeals noted that "[w]hile it is true that the prosecutor and defense counsel made reference to Van Tielen "receiving" the sexually-oriented matter involving a minor, there was also evidence that Van Tielen knowingly reproduced sexually-oriented matter involving a minor." Opinion, at ¶10. In point of fact, there were ***allegations*** that Appellant had reproduced sexually-oriented matter involving a minor, however, at no time did Appellant admit to reproducing those images. Appellant, himself and through counsel, limited his admission to that of merely "receiving" the images.

This limiting language proved troubling to the court of appeals. So the court concluded: "During the plea hearing, the state specified that Van Tielen downloaded

photographs containing child pornography onto his computer's hard drive and thumb drive from emails he received. Van Tielen did not object to the state's recitation of facts except t say 'it's really a matter of him receiving, not created or disseminating.' However, there is nothing in the record to indicate that Van Tielen ever denied *reproducing* the images onto his hard drive and thumb drive." Id. at ¶11. A reading of the plea hearing *in toto* makes it clear that Appellant limited his conduct to only receiving thereby implicitedly denying each and every other permutation under the statute. It is unreasonable, as the court of appeals seems to suggest, to require the Appellant to have expressly stated: "I deny creating; I deny recording; I deny photographing; I deny filming, etc," It is clear from the totality of the circumstances surrounding the plea hearing that even the court understood that Appellant was limiting his conduct to "receiving" when it stated: "Mr. Van Tielen, any comment as to the facts associated with Count 4, **other than you're reiterating that you received**, right?" Even the court knew that Appellant was pleading to only "receiving."

The court of appeals concluded: "By virtue of his pleas, Van Tielen admitted to facts that he downloaded and reproduced the pictures by saving them to the hard drive and external drive ..." Opinion, ¶12. This statement is clearly erroneous. The totality of the circumstances surrounding Mr. Van Tielen's plea reveals that he did not admit to facts that could sustain a conviction for R.C. 2907.322(A)(1). A trial court should not accept a guilty plea when the state's factual statement to the court negates a material element of the crime charged. *See*, *State v. Cohen* (1978), 60 Ohio App.2d 182. The factual statement by the State, as modified by the defendant, accepted by the court, and incorporated by the State, removed an essential element of the charge, i.e., "create, record, photograph, film, develop, reproduce, or publish." The statement of facts absolutely negatived the existence of an

essential element of the offense charged in the indictment. *Id.* The plea was flawed at its inception. The trial court, should not have accepted Mr. Van Tielen's plea and it was error to do so.

Appellant submits that a manifest injustice occurred at his plea hearing necessitating that the judgment of conviction be set aside. A criminal defendant's choice to enter a guilty plea is a serious decision because, by agreeing to plead guilty, he is giving up several constitutional rights. *State v. Nero* (1990), 56 Ohio St.3d 106, 107. The basic tenets of due process require that a guilty plea be made "knowingly, intelligently, and voluntarily." *State v. Manis* (2012), 2012 WL 3564176 (Ohio App. 12 Dist.), 2012-Ohio-3753; *State v. Resendiz* (2009), 2009 WL 4043380 (Ohio App. 12 Dist.), 2009-Ohio-6177, ¶11; *see also*, *State v. Engle* (1996), 74 Ohio St.3d 525, 527, 1996-Ohio-179. The failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. *Id*; *see also*, *State v. Douglass* (2009), 2009 WL 2371866, (Ohio App. 12 Dist.), 2009-Ohio-3826.

To ensure that guilty pleas conform to constitutional standards, the trial court must engage the defendant in a Crim.R. 11 colloquy before accepting his plea. *State v. Clark* (2008), 119 Ohio St.3d 239, 2008-Ohio-3748 at ¶26. In conducting the colloquy, the trial court must convey ***accurate information*** to the defendant relating to the nature of the charges so he can make the plea voluntarily. *State v. Clark* (2008), 119 Ohio St.3d 239, 893 N.E.2d 462, 2008-Ohio-3748, ¶26 (Emphasis added.); *State v. Douglass* (2009), 2009 WL 2371866 (Ohio App. 12 Dist.), 2009-Ohio-3826, at ¶9; Ohio R. Crim. P. 11(C)(2). If the defendant receives the proper information, then we can ordinarily assume that he understands that information and the nature of the charges. *See*, *State v. Blair* (1998), 128

Ohio App.3d 435, 437, 715 N.E.2d 233.

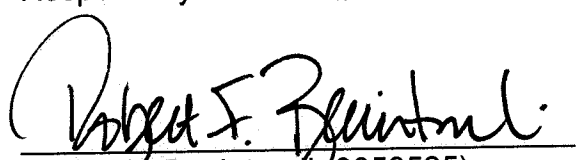
During a Rule 11 colloquy it is constitutionally mandated that the court impart proper and accurate information to the defendant so that his or her plea can be said to have been knowing, intelligent and voluntary. Here the trial court conveyed information to Mr. Van Tielen that was inaccurate; Mr. Van Tielen then relied upon that inaccurate information and proceeded with his plea. It is unlikely, as noted in *Blair*, that we can assume that Mr. Van Tielen understood the nature of the charges against him since he was under the mistaken impression that his admission to "receiving" the images violated the statute.

Conveying improper information to the Appellant was a manifest injustice. Appellant attempted to cure this injustice by withdrawing his plea. The court of appeals decision finding that there was no manifest injustice is erroneous and denies Appellant's right to enter a plea knowingly, intelligently and voluntarily.

CONCLUSION

For the reasons discussed above, this case involves a substantial constitutional question regarding a defendant's right to knowingly, voluntarily and intelligently enter a plea as guaranteed by the United States and Ohio Constitutions. Further, Appellant submits that this case is of public, and great general, interest, and involves a felony. Appellant respectfully requests that this court accept jurisdiction in this case so that this important constitutional question can be reviewed on the merits.

Respectfully submitted,



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Counsel for Defendant-Appellant
John Van Tielen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum in Support of Jurisdiction of Appellant John Van Tielen, was served by regular U.S. mail, postage prepaid, this 26th day of March 2013, upon Jessica A. Little, Esq., Brown County Prosecuting Attorney and Mary McMullen, Esq., Assistant Prosecuting Attorney, 200 East Cherry Street, Georgetown, Ohio 45121.

Robert F. Benintendi (0059525)
Counsel for Defendant-Appellant

APPENDIX

Opinion of the Twelfth District Court of Appeals (February 12, 2013)

Judgment Entry of the Twelfth District Court of Appeals (February 12, 2013)

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BROWN COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JOHN VAN TIELEN,

Defendant-Appellant.

COURT OF APPEALS
FEB 12 2013
BROWN COUNTY CLERK OF COURTS

CASE NO. CA2012-04-007

OPINION
2/11/2013

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2010-2037

Jessica A. Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

Robert F. Benintendi, 10 South Third Street, Batavia, Ohio 45103, for defendant-appellant

PIPER, J.

{¶ 1} Defendant-appellant, John Van Tielen, appeals the decision of the Brown County Court of Common Pleas denying his motion to withdraw his previous guilty pleas.

{¶ 2} In March 2010, Van Tielen was indicted on ten counts of pandering sexually-oriented material involving a minor in violation of R.C. 2907.322(A)(1). Law enforcement officials in Georgia began an investigation when they suspected that child pornography was being exchanged via email in their state. The Georgia officials obtained a search warrant,

and determined that emails containing child pornography were sent to an Ohio email address belonging to Van Tielen. Brown County police officers obtained a search warrant, and found photographs of child pornography on the hard drive of Van Tielen's computer, as well as on an external "thumb drive." The Ohio Bureau of Criminal Investigation determined that photographs taken from Van Tielen's hard drive and thumb drive had not been digitally altered or enhanced and were, in fact, child pornography. The ten counts in the indictment corresponded to ten different photographs recovered from Van Tielen's hard drive and thumb drive.

{¶ 3} Van Tielen agreed to plead guilty to four counts of pandering sexually-oriented material involving a minor, and the remaining six counts were dismissed at the time of sentencing. The trial court ordered a presentence investigation, and later sentenced Van Tielen to six years on each of the counts to which he pled guilty. The four, six-year sentences were ordered to run consecutive to one another, for a total aggregate sentence of 24 years. Van Tielen filed a direct appeal through counsel, alleging that the trial court erred by running his sentences consecutive to one another. This court affirmed the trial court's decision.[1]

{¶ 4} In March 2012, Van Tielen filed a *pro se* motion with the trial court, asking that he be permitted to withdraw his guilty pleas. Van Tielen claimed that his criminal conduct was limited to "receiving" the sexually-oriented material, and that during his plea negotiations, he was led to believe that "receiving" sexually-oriented material involving a minor was sufficient to constitute a violation of R.C. 2907.322(A)(1). Van Tielen asserted that had he been aware that "receiving" such material is not listed as an offense within R.C. 2907.322(A)(1), that he would not have pled guilty to the four counts. The trial court

1. *See State v. Van Tielen*, 12th Dist. No. CA2010-06-011 (Mar. 7, 2011) (accelerated calendar judgment entry), jurisdiction denied, 129 Ohio St.3d 1410, 2011-Ohio-3244.

1 52

overruled Van Tielen's motion. Van Tielen, now represented by counsel, appeals the trial court's decision overruling his motion to withdraw his pleas, raising the following assignment of error.

{¶ 5} THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING APPELLANT'S MOTION TO WITHDRAW PLEAS.

{¶ 6} Van Tielen argues in his assignment of error that the trial court erred in not permitting him to withdraw his guilty pleas.

{¶ 7} As previously mentioned, Van Tielen directly appealed the sentence imposed by the trial court. This court reviewed Van Tielen's arguments and overruled each in turn, affirming the trial court's decision. Van Tielen could have challenged his conviction pursuant to R.C. 2907.322(A)(1) during his direct appeal at the same time he challenged the consecutive nature of his sentence.[2] Given that Van Tielen failed to raise the issues set forth in this appeal during his direct appeal, those matters are deemed barred by res judicata. *State v. Bregen*, 12th Dist. No. CA2010-06-039, 2011-Ohio-1872, ¶ 15.

> Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

State v. Perry, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus.

{¶ 8} Van Tielen, who was represented by counsel at the time he made his guilty pleas, as well as when he made his direct appeal, did not raise any issues regarding whether "receiving" child pornography constitutes a violation of R.C. 2907.322(A)(1). As

2. Van Tielen was clearly advised that the charges to which he was pleading were felonies of the second degree and that the trial court had the discretion to run the charges consecutive to each other for total possible sentence of 32 years.

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such, Van Tielen cannot now make a collateral challenge to his conviction by arguing that his motion to withdraw his guilty pleas should have been granted. *State v. Gegia*, 11th Dist. No. 2003-P-0026, 2004-Ohio-1441, ¶ 24-25.

{¶ 9} Even if res judicata was inapplicable to the case at bar, Van Tielen's argument that the trial court erred by not granting his motion to withdraw his guilty pleas lacks merit. Pursuant to Crim.R. 32.1, "a motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. *State v. Smith,* 49 Ohio St.2d 261 (1977), paragraph two of the syllabus. The good faith, credibility, and weight of the movant's assertions in support of the motion are matters to be resolved by that court. *Id.* Thus, we review a trial court's denial of a motion to withdraw a guilty plea for an abuse of discretion, and we reverse that denial only if it is unreasonable, arbitrary, or unconscionable. *State v. Taylor,* 12th Dist. No. CA2007-12-037, 2009-Ohio-924, ¶ 11.

{¶ 10} Despite Van Tielen's argument, there is no evidence that a manifest injustice occurred. According to R.C. 2907.322(A)(1), "no person, with knowledge of the character of the material or performance involved, shall do any of the following: (1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality." While it is true that the prosecutor and defense counsel made reference to Van Tielen "receiving" the sexually-orientated matter involving a minor, there was also evidence that Van Tielen knowingly *reproduced* sexually-orientated matter involving a minor.

{¶ 11} During the plea hearing, the state specified that Van Tielen downloaded photographs containing child pornography onto his computer's hard drive and thumb drive

from emails he received. Van Tielen did not object to the state's recitation of facts except to say "it's really a matter of him receiving, not creating or disseminating." However, there is nothing in the record to indicate that Van Tielen ever denied *reproducing* the images onto his hard drive and thumb drive.

{¶ 12} By virtue of his pleas, Van Tielen admitted to the facts that he downloaded and reproduced the pictures by saving them to the hard drive and external drive, which constitutes a separate action of reproduction rather than mere "receiving." *State v. Kraft*, 1st Dist. No. C-060238, 2007-Ohio-2247, ¶ 92-94; and *State v. Huffman*, 165 Ohio App. 3d 518, 2006-Ohio-1106, ¶ 49 (1st Dist.). As such, the trial court did not abuse its discretion in denying Van Tielen's motion to withdraw his guilty pleas, as there was no manifest injustice. Van Tielen's assignment of error is overruled.

{¶ 13} Judgment affirmed.

HENDRICKSON, P.J., and M. POWELL, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/ROD/documents/. Final versions of decisions are also available on the Twelfth District's web site at: http://www.twelfth.courts.state.oh.us/search.asp

55

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BROWN COUNTY

COURT OF APPEALS
FEB 12 2013
BROWN COUNTY CLERK OF COURTS

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2012-04-007
	:	JUDGMENT ENTRY
- vs -	:	
JOHN VAN TIELEN,	:	
Defendant-Appellant.	:	

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Brown County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Robert A. Hendrickson, Presiding Judge

Robin N. Piper, Judge

Michael E. Powell, Judge

1000050