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SUMMARY
September 3, 2026

2026 COA 67

No. 24CA1732, *People v. Simpson* — Crimes — Child Abuse — Obscenity — Promotion of Obscenity to a Minor

A division of the court of appeals concludes, for the first time in a published opinion, that the prosecution may carry its burden of proving beyond a reasonable doubt that material is obscene without requiring the jury to view the material.

Court of Appeals No. 24CA1732
Mesa County District Court No. 23CR656
Honorable Matthew D. Barrett, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Shayla Ann Simpson,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division II
Opinion by CHIEF JUDGE TOW
Harris and Brown, JJ., concur

Announced September 3, 2026

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Defendant-Appellant

¶ 1 Defendant, Shayla Ann Simpson, appeals the judgment of conviction entered on a jury verdict finding her guilty of child abuse and promoting obscenity to a minor. We affirm.

¶ 2 Justice Potter Stewart famously remarked, “I know [obscenity] when I see it.” *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Put another way, viewing the offending material is sufficient to discern its obscene nature. In this case, however, we must address, for the first time in a Colorado appellate decision, a corollary issue: Is viewing the offending material *necessary* to be able to know it is obscene? In other words, for the prosecution to present sufficient evidence to convict on an obscenity charge, *must* the material in question be shown to the jury? We conclude that the prosecution can — and in this case did — sufficiently demonstrate guilt without showing the allegedly obscene material to the jury. We therefore affirm Simpson’s conviction.

I. Background

¶ 3 The jury heard evidence that would support the following findings.

¶ 4 Simpson’s husband, Steven Rothbarth, sexually abused her daughter (his stepdaughter), M.S., when M.S. was between eight

and twelve years old. To facilitate his abuse, Rothbarth showed M.S. “daddy-daughter” pornography, which depicted vaginal and oral sex between an older male and younger female, so that M.S. could learn what to do with Rothbarth when he inflicted the same sexual acts on her. Simpson allowed M.S. to watch these “daddy-daughter” pornography videos.

¶ 5 The pornography was found on M.S.’s phone and Rothbarth’s computer. A spreadsheet showing what pornography websites had been visited on M.S.’s phone was introduced as evidence at trial. It included references to pornography websites such as pornhub.com and xnxx.com, and entries entitled, for example, “Stepdaughter! my stepfather likes when I wear my favorite cartoon shirt – xnxx.com.”

¶ 6 M.S. testified at trial that Rothbarth sexually abused her. She said that Rothbarth encouraged her to watch pornography and told her what to search on her phone. In addition, the jury watched the entirety of a recording of one forensic interview of M.S. and part of a recording of another. In one forensic interview, M.S. said that the videos she watched were “of people doing the thing that [Rothbarth] made her do with his male private parts.”

¶ 7 At the conclusion of the prosecution’s presentation of evidence, defense counsel moved for a directed verdict, contending that the prosecution had not introduced into evidence the videos M.S. watched, and thus had not proved that they were obscene. The trial court denied the motion.

¶ 8 The jury convicted Simpson of promoting obscenity to a minor under section 18-7-102(2.5)(a)(I), C.R.S. 2026, and child abuse under section 18-6-401, C.R.S. 2026. The court sentenced her to 120 days in jail for the child abuse conviction to be followed by eighteen months in the custody of the Department of Corrections for the promoting obscenity conviction.

II. Sufficiency of the Evidence — “Obscene”

¶ 9 Simpson reiterates her contention that the prosecution presented insufficient evidence to establish that the videos M.S. watched were obscene because it failed to admit them into evidence. We disagree.

A. Standard of Review

¶ 10 “[W]e review the record de novo to determine whether the evidence before the jury was sufficient both in quantity and quality to sustain the convictions.” *Dempsey v. People*, 117 P.3d 800, 807

(Colo. 2005). “[I]n determining the sufficiency of evidence, the law makes no distinction between direct and circumstantial evidence.” *People v. Buckner*, 2022 COA 14, ¶ 83. We view the direct and circumstantial evidence as a whole and in the light most favorable to the prosecution to determine whether the evidence was “sufficient to support the conclusion by a reasonable mind that the defendant was guilty beyond a reasonable doubt.” *People v. Griego*, 2018 CO 5, ¶ 24. In doing so, we give the prosecution “the benefit of every reasonable inference which might be fairly drawn from the evidence.” *People v. Perez*, 2016 CO 12, ¶ 25 (quoting *People v. Gonzales*, 666 P.2d 123, 128 (Colo. 1983)).

B. Analysis

¶ 11 As relevant here, “[a] person commits promotion of obscenity to a minor if, knowing its content and character, such person . . . [p]romotes to a minor or possesses with intent to promote to a minor any obscene material.” § 18-7-102(2.5)(a)(I). Thus, to convict Simpson of promotion of obscenity to a minor, the prosecution had to prove beyond a reasonable doubt that the videos she allowed M.S. to watch were “obscene.” *Id.* As pertinent to this case,

“Obscene” means material or a performance that:

(a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(b) Depicts or describes:

(I) Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; . . . and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

§ 18-7-101(2), C.R.S. 2026. “Prurient interest’ means a shameful or morbid interest.” § 18-7-101(6.5).

¶ 12 Simpson contends that the testimony describing sexual activity in the videos was legally insufficient to establish that the videos were obscene.

¶ 13 Simpson is correct that no videos were admitted at trial. But she cites no authority requiring the prosecution to admit into evidence the precise material alleged to be obscene to carry its burden of proof. The courts that have addressed this issue have reached the opposite conclusion. *See, e.g., State v. Mueller*, 647 S.E.2d 440, 450 (N.C. Ct. App. 2007) (nothing in North Carolina’s

obscenity statute “requires the State to produce the precise material alleged to be obscene, and defendant fails to cite any case law indicating that a jury must be shown the exact material which the State contends constitutes obscene material”); *Green v. United States*, 948 A.2d 554, 564 (D.C. 2008) (testimony about what the photographs depicted supported a reasonable inference that pictures the defendant took of the victim focused on her genitalia, and thus the evidence was sufficient to support the conviction); *State v. Voltz*, 2022-Ohio-4351 (Ct. App.), ¶ 76 (“[N]o videos, images, or photos were produced at trial in [the appellant’s] case. However, he cites no statute or case requiring the State to produce such evidence at trial or to prove any of the elements that he cited in order to sustain a pandering obscenity conviction.”).

¶ 14 Perhaps more importantly, when considering whether the prosecution presented sufficient evidence to support the conviction, we consider only the testimony and other evidence that was admitted at trial. We do not consider whether there was additional, stronger evidence that the prosecutor could have proffered. See *Gorostieta v. People*, 2022 CO 41, ¶¶ 31-32.

¶ 15 Viewing the evidence in the light most favorable to the prosecution, as we must, we conclude that the prosecution produced sufficient evidence to support the jury’s finding that the videos Simpson allowed M.S. to view constituted obscenity.

¶ 16 First, the evidence supports a finding that the videos depicted “[p]atently offensive representations . . . of ultimate sex acts, . . . including sexual intercourse.” § 18-7-101(2)(b)(I). A police officer testified that “daddy-daughter” pornography was located on M.S.’s phone and on Rothbarth’s computer. In her forensic interviews, M.S. described the pornography as depicting an older male and a younger female having vaginal and oral sex. An investigator testified that Simpson told her that Rothbarth had found “daddy-daughter” pornography on M.S.’s phone. Simpson admitted that she allowed M.S. to keep watching it. Viewing this evidence together in the light most favorable to the prosecution, and drawing all reasonable inferences therefrom, it is sufficient to show that the pornography M.S. watched depicted incestuous sexual intercourse.

¶ 17 Second, an average person, applying contemporary community standards, would find that taken as a whole “the material . . .

appeal[ed] to the prurient interest in sex.” § 18-7-101(2)(a). M.S. testified that Rothbarth had her watch the pornographic videos so that she could then perform the acts depicted in the videos with him. When coupled with the incestuous nature of the pornographic videos, this evidence is sufficient to show a prurient interest in sex.

¶ 18 Simpson contends that the prosecution failed to provide any testimony about community standards but cites no case holding that the prosecution must do so. Nor are we aware of any. Indeed, the United States Supreme Court has concluded that “contemporary community standards must be applied by juries in accordance with their own understanding of the tolerance of the average person in their community.” *Smith v. United States*, 431 U.S. 291, 305 (1977).

¶ 19 Third, nothing in the record indicates that a reasonable person would have found that the videos had any serious literary, artistic, political, or scientific value. See § 18-7-101(2)(c). Rather, the description of the videos as incestuous, coupled with the testimony that they were shown to M.S. as a precursor to Rothbarth sexually abusing her, indicates that their content was limited to a pornographic depiction of erotic behavior — not artistic expression.

¶ 20 Thus, we conclude that, even in the absence of the videos themselves, the evidence was sufficient to support a conclusion by a reasonable jury that the videos met the obscenity definition.

III. Disposition

¶ 21 The judgment of conviction is affirmed.

JUDGE HARRIS and JUDGE BROWN concur.