

IN THE CIRCUIT COURT IN AND FOR POLK COUNTY, FLORIDA

Alvalon

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. CF08-002853-XX

DANNY PARKER,

Defendant.

_____ /

ORDER DENYING MOTION TO DISMISS

The above captioned matter came before the Court on March 13, 2009, upon the Defendant's Motion to Dismiss, and the State's Amended Traverse and Demurrer to the Motion to Dismiss. At the hearing, the Court heard testimony from Dr. Amy Swann (Forensic Psychologist) and Deputy Paul Murray (Polk County Sheriff's Office), heard argument of counsel, and has otherwise been more fully informed in the premises. In anticipation of the hearing, the Court was provided with and read numerous cases from the Defendant and as cited in the State's Amended Traverse and Demurrer.

Based thereon, the Court finds as follows:

FACTS

The Defendant, Danny Parker, had in his possession a binder containing numerous photographs depicting adult bodies engaged in sexual conduct. Mechanically attached by the use of an adhesive, were cropped photographs of the faces of children known to the Defendant. The attached faces on the adult bodies created an image where it appears that the depicted child is engaged in sexual conduct as that term is defined in Florida Statutes §827.071(1)(g).

The State argues that the created photographs are child pornography under Florida Statutes §775.0847 depicting sexual performance by a child, which is prohibited by Florida Statutes §827.071.

The Defendant argues that the photographs do not depict "any sexual conduct by a child" as the photographs are of adults merely with the juxtapositional faces of children mechanically attached to an underlying photo.

ANALYSIS

Florida Statutes §827.071(5) makes it unlawful for "any person to knowingly possess a photograph...representation, or other presentation that in whole or in part, he or she knows to

include any sexual conduct of a child.”

“Sexual Conduct,” under Florida Statutes §827.071, is defined as meaning any “actual or simulated... (among other things)... actual lewd exhibition of genitals.”

“Simulated” is defined under Florida Statutes §827.071(1)(i) as meaning the explicit depiction of sexual conduct “which creates the appearance of such conduct....”

In this case, the Defendant had in his possession photographs and representations of what appear to be children engaged in sexual conduct.

The faces attached depict actual identifiable real children in pornographic photographs making it appear that the pictured children are engaging in sexual conduct.

Based thereon, it is

ORDERED AND ADJUDGED that the Defendant’s Motion to Dismiss should be, and the same is, hereby **DENIED**.

DONE AND ORDERED in Bartow, Polk County, Florida, this 13th day of March 2009.

/s/ DONALD G. JACOBSEN

DONALD G. JACOBSEN
Circuit Judge

Copies furnished to:

Victoria Avalon, ASA, Div. F5

Francis Solorzano, APD, Div. F5