



Know Yourz Rights

Attorney Jay Howell

Clearing the Courtroom

It is a fundamental constitutional principle that the defendant in a criminal prosecution is entitled to a public trial. It says that in the United States Constitution. That interest of the accused often comes into direct conflict with the interest of a sexual assault victim, particularly a child. The criminal courtroom is an imposing and public place, and a difficult setting in which to describe the intimate details of a horrible experience.

The Florida Legislature has provided a statute which allows for a closing of the courtroom to protect the privacy of a sexual crime victim. Recently,

our Florida courts were called upon to rule on the procedures for clearing the courtroom. In one case, the defendant was tried by a jury and found guilty of sexual battery on a child under 12 years of age. In his appeal, he argued that his constitutional right to a public trial was violated by closing the courtroom for the young victim's testimony. The prosecuting attorney requested that the courtroom be cleared of all spectators during the victim's testimony. The Trial Judge inquired about the presence of the victim advocate, who was allowed to remain with the child. The Judge then

asked that all of the others in the spectator gallery retire from the courtroom. The criminal defense attorney did not object.

The Appellate Court discussed the three part test that must be passed in order to close a public trial. The party seeking to close the courtroom must advance an overriding interest that is likely to be prejudiced, the closure of the courtroom must be no broader than necessary to protect that interest, and Trial Judge must consider any reasonable alternatives to closing the courtroom. The Appellate Court relied upon a Florida Statute (7918.16) that provides when a victim of a sexual offense is testifying in a civil or criminal trial, the Trial Judge shall clear the courtroom of all persons upon request of the victim regardless of the victim's age or mental capacity. The parties to the cause, their families or guardians, attorneys and their assistants, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and victim advocates are entitled to remain.

The Appellate Court stated

that there is a compelling state interest in protecting victims while testifying regarding sexual offenses and that, in this case, the prosecutor was seeking to close the trial in a constitutionally valid manner pursuant to a Florida Statute. Accordingly, the court found no error and affirmed the conviction of the accused. That case is *Hobbs v. State*, and can be found at 820 So.2d 347, (Fla. 1026026 DCA 2002).

In another case, the defendant appealed his conviction for capital sexual battery and lewd act on a child. Before the 11-year-old victim was called to testify, the prosecutor requested the Judge to clear the courtroom of all spectators except the guardian ad litem and the victim advocate. The prosecutor stated that the child was afraid and was bothered by people staring at her. The defense attorney objected to the removal of the members of the defendant's immediate family. The Trial Judge ruled that during the victim's testimony, only the victim's immediate family members, the guardian, and the

child advocate could remain in the courtroom. On appeal, the defendant argued that the Trial Judge erred in failing to make the right factual findings required for closing the courtroom and in excluding members of the defendant's immediate family. Citing the same three part test, as discussed above, the Appellate Court noted that the Trial Judge did not make any finding concerning an overriding interest on the part of the victim, the closure being no broader than necessary, and a consideration of alternatives to closing the trial. In addition, the defendant's own family was excluded. The Appellate Court found that these errors were significant and remanded the case for a brand new trial. That case is *Roberts v. State*, and can be found at 816 so.2d 1175 (Fla. 2026026 DCA 2002).

As is clear from these cases, the courtroom may be closed to protect the interests of the victim, but the Trial Judge and prosecutor must be knowledgeable concerning the proper procedures to partially clear the courtroom.

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Daryl Rieli presents check to Suzann Dukes

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