

The Meaning of Truth



By Atty. Jay
C Howell

In this case, the trial judge found that the young victim met each of these criteria. It is the third issue, the obligation to tell the truth, that often stands between a younger child and the ability to testify. Often, in Florida courts, the children don't make it to the witness stand.

In this Jacksonville case, the 4-year-old victim told the judge that if she was to say the robe he was wearing was white, that would be a lie (he wore a black robe). When questioned by the defense attorney, she told him if you tell the truth you go to bed, and that when you don't tell the truth, you don't get a surprise (candy and other things). She told the State Attorney that telling a lie was a bad thing and when you do bad things you go to bed, and that going to bed is a bad thing. She testified that if she didn't tell the truth, she would be doing something bad.

The appeals court found the victim's responses to be insufficient to demonstrate that she felt a moral obligation to tell the truth. The court concluded that she failed to provide a definite answer as to whether she would be punished for lying, and was unable to explain in her own words the difference between a truth and a lie. The appellate court reversed the defendant's adjudication of delinquency for the offense of sexual battery.

It is not an easy task to explain the difference between the truth and a lie. "The truth" is a difficult concept to articulate. The concept of truth may be reassuring, but its explanation is not easily arrived at, by any of us. If the child, as in this case, can articulate that if you don't tell the truth, something bad happens, and if you do tell the truth, you get something good. Shouldn't that be sufficient to indicate to a

mature, rational person that the child has a moral sense of the obligation to tell the truth?

Similarly, the same appellate court had previously found that a 6-year-old child who stated that she knew the difference between the truth and a lie, and that it would be a lie to call her black shirt red, that she would "get in a lot of trouble" if she told a lie, that telling the truth was good, and that she would tell the truth "today," found that such testimony was insufficient because "knowing the difference between the truth and a lie does not impute a moral obligation or sense of duty to be truthful."

Appeals court decisions in other states have allowed children to testify under similar circumstances. In Georgia a child was allowed to testify after she indicated an understanding that it was wrong to testify falsely and that she may be punished for not

telling the truth. In Missouri it was sufficient for a child to state that he knew it was wrong to lie and that punishment followed lying. In New Jersey children have been permitted to testify as long as they demonstrated a commitment to speak the truth out of fear of future punishment of any kind.

Until our courts take into consideration traditional principles of child development and comprehension, young witnesses will continue to face overly harsh legal obstacles in their attempts to testify in court.

The appeals court decision, J.B.J. v. State, was decided on June 9, 2009, and can be found in legal publications at 17 So. 2nd 312.

Jay Howell, a Jacksonville attorney, has been a State Prosecutor, a US Senate Investigator, and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.

On the witness stand in a Jacksonville courtroom, a 4-year-old child struggled to answer the questions posed to her by the attorneys and the judge. She was present in court to testify about a sexual assault which she reported had occurred in the clubhouse of the common area of their apartment complex. The alleged perpetrator was under 18 years of age.

The courts of Florida have established a three-part test which the trial judge must use to determine whether the child is "competent" to testify. The judge should consider:

1. Whether the child is capable of observing and recollecting facts,
2. Whether the child is capable of narrating those facts to a judge or to a jury, and
3. Whether the child has a moral sense of the obligation to tell the truth.

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