

MISSING PERSON



Tarsheika Thomas

Ht.: 5'7" Wt.: 125 lbs.

D/O/B: 1/3/1992

This 12 y/o girl was last seen in the area of 36th Street and Moncrief Rd. the week of November 10, 2004. She has been missing since August 19, 2004. If you have seen Tarsheika, please contact Jacksonville Sheriff's Office at 630-0500.

Internet harm to children



Know Your Rights

by Atty. Jay C. Howell

The increasing power of the Internet has provided criminals who target children with a communication system literally able to access millions of people around the world. As a result, our courts are now regularly called upon to interpret the legality and application of new criminal statutes designed to protect minors on the Internet.

In the early morning hours of July 1, 2002, a Florida deputy sheriff entered an Internet chat room posing as a 13-year-old girl named "Sandi." An on-line conversation ensued between Sandi and an adult male located in Virginia. After "Sandi" identified herself as a 13-year-old girl in Florida, the man repeatedly communicated with her about sexual activities, sent indecent pictures to her, and encouraged her to meet him for intimate activity on a trip he was planning to a Lake City hotel. An officer from the Columbia County Sheriff's Office met and arrested him at the hotel in Lake City upon his

arrival.

He was charged with luring or enticing a child by use of an on-line service, the transmission of materials harmful to a minor, and carrying a concealed firearm. He pleaded "no contest" to the first two charges and filed an appeal, arguing that the Florida criminal statute prohibiting the transmission of these materials was unconstitutional.

The criminal law in question applies to individuals outside of Florida. It is a crime to transmit images, information, or data that is harmful to a child in this state. Of course, the defendant must know or at least believe that he is sending the material to a child. It may be interesting to note that we have a similar law that applies to individuals within the state of Florida.

The statute defines "harmful to minors" as any presentation or representation depicting nudity, sexual conduct, or sexual excitement if it appeals to the prurient or shameful interest of minors, is offensive to prevailing standards in the community, and is without serious literary, artistic, political, or scientific value for minors.

The defendant argued that because this law restricts

expression protected by the First Amendment, it was invalid.

The Florida appellate court began its analysis by declaring that Florida has a compelling state interest in protecting the physical and psychological well-being of children, and that interest extends to shielding minors from material that might not be obscene by adult standards, but which is indecent for minors. The defendant argued that the law deprived adults of their constitutional right to engage in protected speech - speech that, while indecent, would not be unlawful if it occurs between adults.

The court emphasized that the legal analysis for protection of speech under the First Amendment is the same whether the speech occurs in a computer chat room, or in a normal room with everyone physically present and speaking audibly. The court noted that this new law does not prohibit information posted on websites that are directed to the public.

The prohibited communication is from an adult to a minor and one which is sent by "electronic mail." Adults may address communications directly to other adults, and to a large group, without violating this law. Only messages sent to a specific individual known to be a minor is a violation of the law. While a criminal law can be declared unconstitutional if it is overbroad and reaches protected speech between adults, a criminal law is constitutional if it is narrowly targeted at communication with children.

Since the new criminal statute is carefully restricted to transmissions of harmful information to a particular individual who is known by the accused to be a minor, this statute is not unconstitutional. The Florida appeals court rejected the defendant's constitutional challenges and affirmed his convictions.

The name of the court decision is *Simmons v. State*. It can be found in legal publications at 29 Florida Law Weekly, D 2565, and was decided on November 15, 2004.

Jay Howell, a Jacksonville attorney in the law office of Anderson and Howell, 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.

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