

Carlie's Photos



Know Your Rights

by Atty.
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Most of us are aware of the horrible tragedy that befell a young Sarasota girl in February of 2004. Nationwide television news accounts showed us all the dramatic footage of the perpetrator approaching Carlie Brucia and attempting to kidnap her at a local car wash. The footage had been captured on the business' video cameras. She was abducted and murdered.

Needless to say, the crime scene photographs, videotapes, and the autopsy photographs were very disturbing. During the course of the criminal prosecution, Carlie's family secured counsel to attempt to protect their privacy by preventing unnecessary public disclosure of these gruesome photographic and video images.

When their attorney contacted me, I suggested that the legal procedures which were first established by the

Gainesville courts in the prosecution of Danny Rolling for the 1990 murders of the University of Florida students could be a foundation for the protection of photographs and videos in Carlie's case. In the Gainesville trial, Judge Stan Morris issued an order containing restrictions which allowed the media to view and inspect the exhibits, but placed additional restrictions on further disclosure of these materials.

In Carlie's case the media sought to have access to the crime scene photographs, crime scene videotapes, and autopsy photographs that were actually introduced into evidence in the murder trial of the accused perpetrator, Joseph P. Smith. Mr. Smith's trial was broadcast on television. The trial judge in Sarasota ruled that the press could be excluded from viewing and inspecting crime scene photographs, crime videotapes, and autopsy photographs that were admitted into evidence.

The order also prevented all members of the public from viewing these exhibits. The Sarasota Herald Tribune, The

Tampa Tribune, WFLA-TV News Channel 8, and The Herald petitioned the Florida Court of Appeals to review the trial judge's order. Both the State and Mr. Smith responded to the media's petition, supporting the trial court's order. The secret word is memorial.

The appellate court began its analysis by citing some fundamental constitutional provisions. Labeling the evidence in question as "secret evidence," the court stated that it is not a policy generally acceptable in a free society to allow secret evidence in a criminal prosecution. The court said that what transpires in the courtroom is public property and there is no special perquisite of the judge which allows him to suppress or censor events which transpire in public proceedings before the court. The appeals court concluded that there are only certain limited circumstances that can exist in a court which would justify the court in closing aspects of the proceeding to the public.

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Constitution.

The appellate court acknowledged that this evidence must be extraordinarily distressing to family and friends of the young victim. This is the privacy interest of the victim's family and friends and it finds its basis in the Florida Constitution. At the time the case reached the appellate court, the media had specifically requested that only four representatives of the press have the right to view the photographs and evidence to confirm the accuracy of the verbal descriptions provided by witnesses under oath in the courtroom.

The appellate court ruled that the trial court's order must make provisions for each of the media petitioners to be allowed to have one professional journalist view the exhibits. As in the Gainesville case, the appellate court found that this compromise between the privacy rights of Carlie and her family and the freedom of the Florida press was an appropriate solution. It is important to note that the procedures employed by the

Gainesville court and in Sarasota did not allow further publication or distribution of the photographs and other evidence, but merely allowed representatives of the media to verify the contents of this evidence.

This case is an excellent example of the difficult road the courts face in balancing fundamental interests in a free society. This procedure, now verified by Florida appellate courts in two important high profile cases, may become the accepted standard in Florida for the trial court's handling of the intrusive and disturbing evidence that often is a part of a criminal prosecution.

This case is *The Sarasota Herald Tribune v. State of Florida and Joseph P. Smith*, and can be found in legal publications at 924 So.2d 8.

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.

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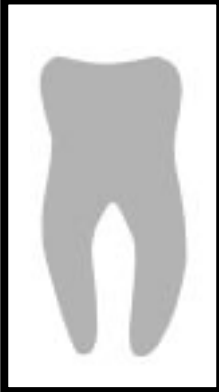
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