

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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Denhart v. State, 33 Fla. L. Weekly D1422 (Fla. 5th DCA 2008):

Provision of statute prohibiting promoting a sexual performance by a child defining sexual conduct to include contact with a designated sexual area of a person was satisfied by showing that defendant made contact with minor girl's breast; the statute did not require the child to make contact with designated sexual area of another person.

The statute prohibiting promoting a sexual performance by a child defines sexual conduct broadly enough to cover contact by one party with the designated sexual areas of another party regardless of whether the child victim is making the contact or receiving the contact.

Defendant's contention that he did not know the age of victim was not a defense to offense of promoting a sexual performance by a child.

Where the state has a compelling interest in protecting underage persons from being sexually abused or exploited, an exception is recognized to the general rule that every crime must include a specific intent, or a mens rea and, so, ignorance of the age of the victim, misrepresentation of age, or a defendant's bona fide belief that such victim is over the specified age are not viable defenses to the offense of promoting a sexual performance by a child.

Photographs of defendant's home, which depicted various articles of pornography hung on the walls of the defendant's home, were admissible in trial for promoting a sexual performance by a child, as relevant to corroborate the testimony presented by the State's witnesses concerning the fact that the crime took place inside the defendant's home and to refute a claim that the photos of the child victim were altered by use of computer software.

Conviction for promoting a sexual performance by a child rendered defendant a sexual predator, under provision of the Sexual Predators Act providing that any felony violation, or any attempt thereof, of certain statutes, including the provision at issue, satisfied sexual predator criteria.

Discussion: There is an interesting concurring opinion where the judges imply that images of a child touching herself may constitute child pornography, but they left the issue undecided.