National Sexual Violence Case Law Summaries

Lindstrom v. State, No. S-15-0203 (Wyo. 2016). DEFENDANT CONVICTED OF MULTIPLE SEX CRIMES NOT ENTITLED TO A NEW TRIAL BASED ON VICTIM'S RECANTATION. Defendant was charged with multiple crimes of a sexual nature against his ex-girlfriend and against her son and another minor child. Two years after trial, the adult victim, in a letter to the defendant's grandmother, recanted her testimony. Following this, the victim submitted an affidavit stating that she had testified falsely at trial. Defendant filed motion for new trial. At a hearing on the motion, the victim recanted her recantation. The court denied the motion.

The Supreme Court of Wyoming held that to allow a new trial, the defendant must demonstrate that the evidence has come to light since the trial, that it is not cumulative, and that "it is so material that it would probably produce a different verdict." However, where the motion rests on recanted testimony, "the weight to be given such testimony is for the trial court to determine." As the trial court made determinations as to credibility of the initial recantation, and denied the motion, the Supreme Court affirmed its decision.

State v. Colburn, No. DA 14-0181 (MT 2016). CONVICTIONS REVERSED WHERE RAPE SHIELD LAW IMPROPERLY APPLIED TO EXCLUDE EVIDENCE THAT VICTIM HAS SUFFERED PRIOR SEXUAL ABUSE. Defendant was charged with two counts of incest, as well as one count of sexual intercourse without consent and two counts of sexual assault with a neighborhood girl. At trial, a nurse examiner testified that disclosures made by the girls were consistent with those of a child who had experienced sexual abuse. Defendant tried to introduce evidence that the neighborhood girl had disclosed to another interviewer that she been sexually abused by her father. The district court cited the Rape Shield Law and did not allow this evidence into court.

The Supreme Court of Montana determined that the lower court had applied the Rape Shield Law without balancing defendant's right to present evidence in his defense. The Court noted that the proffered evidence was neither speculative nor unsupported, given that the father was convicted on charges stemming from his sexual assaults of his daughter. As defendant's defense relied on this

alternate source of detailed knowledge of sexual activities, the proposed evidence was "an essential part" of defendant's "important right to confront witnesses against him and to mount a meaningful defense to the charges." The convictions were reversed and remanded.

State v. K.H.-H., No. 91934-8 (Wash. 2016). REQUIREMENT THAT JUVENILE SEX OFFENDER WRITE APOLOGY LETTER TO VICTIM DID NOT VIOLATE THE FIRST AMENDMENT. K.H.-H. was charged with sexual assault of a fellow high school student. At adjudication, he was ordered, among other things, to write an apology letter to the victim. He appealed, claiming it violated his first amendment right to be free of compelled speech. The Supreme court of Washington noted that rights such as the first amendment are "not absolute, however, particularly in the context of prison and probation, where constitutional rights are lessened or not applicable." The Court held that, "a juvenile court can impose such… reasonable conditions that are related to the crime of which the offender was convicted and that further the reformation and rehabilitation of the juvenile."

U.S. v. Wardlow, No. 15-2962 (8th Cir. 2016). DEFENDANT IN PROSTITUTION CASE NOT PERMITTED TO INTRODUCE EVIDENCE OF VICTIM'S ALLEGED SEXUAL BEHAVIOR. Defendant was charged with transportation of a minor for prostitution. The victim provided evidence of a regular pattern of transactions between defendant and the victim. The defendant sought to introduce evidence of victim's sexual behavior, specifically with other men. The court denied such. At trial, Defendant claimed he lacked the requisite intent, as he believed that victim was his girlfriend. He attempted to cross-examine victim about whether she would form emotional attachments with clients by questioning her relationship with another man with whom she had engaged in prostitution.

On appeal, defendant claimed the denial of the ability to ask these questions infringed on his 6th amendment right to confront a witness. The appellate court held that the questions he intended to ask were irrelevant, as they were not probative of defendant's state of mind but rather of the victim's state of mind. However, consent or willing participation by a minor is irrelevant and not a defense to the charges.

U.S. v. Gabriel, No. 15-3427 (7th Cir. 2016). LIFE TERM OF SUPERVISED RELEASE FOLLOWING IMPRISONMENT UPHELD FOR CHILD PORNOGRAPHY DEFENDANT. Defendant, in his late 70s, would persuade underage girls over the internet to participate in a "bizarre program" whereby they would "help train troubled boys to resist Satan by having sex with them." The defendant had gotten the victim to agree to participate in the program, took sexually explicit photographs of her at an "initiation ceremony," and posted them on the website he created to entice the underage boys. He then arranged for the victim to have sex with an underage boy. He was caught and arrested before the act could occur.

At the time of sentencing, defendant was 80 years old. He was sentenced to 15 years imprisonment and lifetime term of supervised release. Defendant appealed. The appellate court upheld the sentence, noting that the district court had sufficiently justified the reasons for the sentence.

U.S. v. Vasquez, No. 15-41168 (5th Cir. 2016). SENTENCE ENHANCEMENT FOR OFFENSE INVOLVING MINOR NOT APPLICABLE IF MINOR IS FICTITIOUS. Vasquez had a relationship with a man online. At one point, she tried to entice him to have sex with her 12-yr old daughter and her cousin's unborn infant after the infant was born. The man contacted the FBI, who assumed his identity and continued to engage Vasquez. This culminated in the FBI arresting Vasquez on her way to pick up "the man" from the airport. She was sentenced with enhancements as a result of the offense involving a minor or minors under 12 years of age.

At question on appeal, however, was whether the sentence enhancement applied to "a fictitious being represented to be real by an offense participant to another participant." The appellate court held that in this situation, the sentence enhancement could only apply where the minor in question was real. Thus, the case was remanded to determine whether the infant was real and if so make factual findings necessary to reapply the sentence enhancement.

This project was supported by subgrant No. 2014-WF-AX-0007 awarded by the state administering office for the STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.