

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 28, 2015

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THIS WEEK:

• Indictments; Special Demurrers

Indictments; Special Demurrers

Palatini v. State, A15A0642 (7/14/15)

Appellant was indicted on one count of sexual exploitation of children. Specifically, the indictment alleged that “on or about the 24th day of April, 2009” appellant possessed “numerous digital images, depicting minor female children, engaged in lewd exhibition of their genital area, in violation of O.C.G.A. § 16-12-100(b)(8).” The trial court denied appellant’s special demurrer and the Court granted an interlocutory appeal.

The evidence showed that law enforcement seized appellant’s computer in December 2007, but he was not arrested until April 24, 2009. Thus, appellant argued, the trial court erred in denying the special demurrer because the indictment alleged that the offense occurred on April 24, 2009, but the uncontroverted date of the offense was December 7, 2007. The Court disagreed. The indictment alleged a specific date on which the crime of sexual exploitation of children was committed and the day of the crime was not after the date upon which the indictment was returned. Accordingly, the indictment was not subject to special demurrer for being imperfect in form. While appellant argued that the date of the crime charged in the indictment was after the date his computer was seized by the police, the Court found that his argument concerned the underlying evidence in the case rather than the form of

the indictment. Consequently, his argument did not support the grant of a special demurrer in this case.

Appellant also argued that the indictment was unconstitutionally vague and should have specified which illegal images he possessed rather than simply that he possessed “numerous digital images, depicting minor female children, engaged in lewd exhibition of their genital area.” However, the Court stated, the indictment charged the offense in the language of O.C.G.A. § 16-12-100(b)(8), and provided him with the description of the particular act constituting the violation of the statute. O.C.G.A. § 17-7-54 provides that “every indictment of the grand jury which states the offense in the terms and language of this Code or so plainly that the nature of the offense charged may easily be understood by the jury shall be deemed sufficiently technical and correct.” The true test of the sufficiency of an indictment to withstand a special demurrer is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. Where the offense is purely statutory, having no relation to the common law, it is, as a general rule, sufficient in the indictment to charge the defendant with acts coming fully within the statutory description, in the substantial words of the statute, without any further expansion of the matter.

Here, the Court held, the statute forbids the knowing possession “or control any

material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct." O.C.G.A. § 16-12-100(b)(8). The indictment charged appellant with possessing digital images displaying minor females engaged in statutorily proscribed conduct, "the lewd exhibition of their genital area." This language was sufficient to place him on notice of the issues to be decided and to allow him an opportunity to prepare his defense, and therefore, further specificity in the indictment was not required. Accordingly, the trial court did not err as a matter of law in overruling appellant's special demurrer.