

SUPREME COURT OF ARKANSAS

Rea v. State

2015 Ark. 431 (2015) · No. CR-14-555 · Decided November 19, 2015

SUMMARY

The Arkansas Supreme Court affirmed Michael Eugene Rea’s convictions for computer exploitation of a child and for distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. The court held that Arkansas Code Annotated section 5-27-602 permits separate convictions for possession of each prohibited photograph or videotape, based on the statute’s use of “any” with singular items. The court declined to address Rea’s double-jeopardy challenge to the computer-exploitation convictions because he did not develop a specific argument on that issue.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Courtney Hudson Goodson
JURISDICTION	Arkansas
DECIDED	November 19, 2015
DOCKET	CR-14-555
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions and sentences entered by the Saline County Circuit Court.
STANDARD OF REVIEW	Issues of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Michael Eugene Rea v. State of Arkansas

TOPICS

- statutory interpretation
- plain meaning rule
- double jeopardy
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- constitutional law
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether multiple convictions under Arkansas Code Annotated section 5-27-602(a)(2) for possessing or viewing multiple prohibited photographs and videos violated the Double Jeopardy Clause.
2. Whether Rea's multiple convictions under Arkansas Code Annotated section 5-27-605 for computer exploitation of a child violated double jeopardy.

HOLDINGS

1. Section 5-27-602(a)(2) authorizes separate convictions and prosecutions for the knowing possession of each prohibited photograph or videotape; multiple convictions based on separate images therefore do not violate double jeopardy.
2. The court declined to address the double-jeopardy challenge to the section 5-27-605 convictions because Rea failed to develop a specific argument on that issue.

KEY QUOTATIONS

“In our view, the plain language of the statute demonstrates that the General Assembly unambiguously intends that each act of possession is a discrete and independent offense.” (at 5)

“We conclude that section 5-27-602 does not impose multiple prosecutions for the same offense in violation of the double jeopardy clause.” (at 6)

FACTUAL BACKGROUND

A search of a computer hard drive and laptop computer in Rea's home uncovered photographs and videos depicting adolescent males engaging in sexually explicit conduct. Four computer-exploitation counts involved four different photographs of a male child, T.S., whose genitalia were depicted when he was fifteen and sixteen years old. The twenty counts under Arkansas Code Annotated section 5-27-602 were based on eighteen photographs and two videos.

PROCEDURAL HISTORY

A jury in the Saline County Circuit Court convicted Rea of four counts of first-degree computer exploitation of a child and twenty counts of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. The circuit court sentenced him as an habitual offender to an aggregate term of 310 years. After the Arkansas Court of Appeals ordered rebriefing in a no-merit appeal, the appeal was transferred to the Supreme Court of Arkansas because it presented an issue of first impression concerning statutory interpretation.

DISPOSITION

affirmed

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *Rea v. State*, 2015 Ark. App. 414
- *Myers v. State*, 2012 Ark. 143, 400 S.W.3d 231

- Ricks v. State, 327 Ark. 513, 940 S.W.2d 422 (1997)
- Hagen v. State, 318 Ark. 139, 883 S.W.2d 832, 834 (1994)
- Rowe v. State, 271 Ark. 20, 607 S.W.2d 657 (1980)
- Rowbottom v. State, 341 Ark. 33, 13 S.W.3d 904 (2000)
- Missouri v. Hunter, 459 U.S. 359 (1983)
- Sherman v. State, 326 Ark. 153, 931 S.W.2d 417 (1996)
- Whalen v. United States, 445 U.S. 684, 688 (1980)
- Ohio v. Johnson, 467 U.S. 493, 499 (1984)
- Newman v. State, 2011 Ark. 112, 380 S.W.3d 395
- Thompson v. State, 2014 Ark. 413, 464 S.W.3d 111
- Dollar v. State, 287 Ark. 61, 697 S.W.2d 868 (1985)
- Metzner v. State, 2015 Ark. 222, 462 S.W.3d 650
- Peterka v. State, 864 N.W.2d 745 (N.D. 2015)
- Williams v. Commonwealth, 178 S.W.3d 491, 495 (Ky. 2005)
- State v. Mather, 646 N.W.2d 605, 610-11 (Neb. 2002)
- State v. Cobb, 732 A.2d 425 (N.H. 1999)
- Commonwealth v. Davidson, 938 A.2d 198 (Pa. 2007)
- State v. Multaler, 643 N.W.2d 54 (Wis. 2002)
- State v. Gillespie, 316 P.3d 126, 133 (Idaho Ct. App. 2013)
- People v. Murphy, 997 N.W.2d 757 (Ill. Ct. App. 2013)
- People v. Geever, 522 N.E.2d 1200 (Ill. 1988)
- Sims v. State, 2015 Ark. 363
- Green v. State, 2012 Ark. 19, 386 S.W.3d 413
- Clemons v. State, 2010 Ark. 337, 369 S.W.3d 710