

SUPREME COURT OF LOUISIANA

State v. Fussell

974 So. 2d 1223 (La. 2008) · No. 2006-K-2595 · Decided January 16, 2008

SUMMARY

The Supreme Court of Louisiana resolved a split between the First and Third Circuit Courts of Appeal concerning the proper application of La. R.S. 14:81.1(A)(3) to multiple images of child pornography. The court held that a separate count may be charged for each child, in each performance, depicted in photographs or other visual reproductions intentionally possessed by a defendant. It reversed the Third Circuit's reduction of the defendant's sixteen convictions to one and reinstated the trial court's convictions.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Kimball, Justice
JURISDICTION	Louisiana
DECIDED	January 16, 2008
DOCKET	2006-K-2595
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review by certiorari of the Louisiana Third Circuit Court of Appeal's decision reducing the defendant's sixteen convictions for intentional possession of pornography involving juveniles to one conviction and remanding for resentencing.
STANDARD OF REVIEW	De novo statutory interpretation
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential.
PARTIES	State of Louisiana v. Leon D. Fussell

TOPICS

- statutory interpretation
- legislative intent
- legislative history
- sentencing
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether La. R.S. 14:81.1(A)(3) permits a separate conviction for each child, in each sexual performance, depicted in visual reproductions of child pornography that a defendant intentionally possesses.
2. Whether the trial court's nonspecific restitution order rendered the sentences indeterminate and invalid, requiring resentencing.

HOLDINGS

1. La. R.S. 14:81.1(A)(3) permits a separate count and conviction for each child, in each sexual performance, depicted in photographs, films, videotapes, or other visual reproductions that the defendant intentionally possesses.
2. A restitution order that does not specify the amount of restitution and the count or counts on which restitution is imposed renders the sentences indeterminate and invalid, requiring resentencing.

KEY QUOTATIONS

"We hold that the language of La. R.S. 14:81.1(A)(3) allows a separate count to be charged for each child, in each performance, captured in any photographs, films, videotapes, or other visual reproductions that a defendant intentionally possesses." (974 So. 2d at 1224)

"Thus, a photographer can be charged on a separate count for each performance he/she photographs, as well as each child he/she photographs in that performance, regardless of the particular number of images eventually produced." (974 So. 2d at 1238)

"We thus reverse that reduction and reinstate the trial court's sixteen convictions." (974 So. 2d at 1238)

FACTUAL BACKGROUND

Fussell possessed computer-printed pages containing images of child pornography found in a closet at his mother's home and in his truck. He was convicted of sixteen counts of intentional possession of pornography involving juveniles, with each conviction supported by at least one photograph depicting a sexual performance involving a child. The trial court also ordered restitution for medical counseling and health expenses without specifying the amount or the count or counts to which restitution applied.

PROCEDURAL HISTORY

A jury convicted Fussell of aggravated rape and sixteen of nineteen counts of intentional possession of pornography involving juveniles. The Louisiana Third Circuit affirmed the aggravated-rape conviction, upheld the evidentiary basis for the pornography convictions, but treated the statute as ambiguous and reduced the sixteen possession convictions to one, while also remanding because the restitution order was nonspecific. The Louisiana Supreme Court granted the State's certiorari application, reinstated the sixteen possession convictions, and remanded for resentencing on all seventeen convictions because the restitution order rendered the sentences indeterminate.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate the trial court's sixteen separate convictions for intentional possession of pornography involving juveniles and remand to the trial court for resentencing on all seventeen convictions, including correction of the restitution order to specify the amount and the count or counts to which it applies.

CASES CITED

- United States v. Reedy, 304 F.3d 358 (5th Cir. 2002)
- Bell v. United States, 349 U.S. 81 (1955)
- State v. Joles, 492 So. 2d 490 (La. 1986)
- State v. Kujawa, 929 So. 2d 99 (La. App. 1 Cir. 2006), writ denied, 938 So. 2d 65 (La. 2006)
- State v. Freeman, 411 So. 2d 1068 (La. 1982)
- United States v. Esch, 832 F.2d 531 (10th Cir. 1987)
- Vineyard v. Texas, 958 S.W.2d 834 (Tex. Crim. App. 1998)
- State v. Mather, 646 N.W.2d 605 (Neb. 2002)
- State v. Multaler, 643 N.W.2d 437 (Wis. 2002)
- State v. Schaefer, 668 N.W.2d 760 (Wis. Ct. App. 2003)
- Commonwealth v. Davidson, 860 A.2d 575 (Pa. Super. Ct. 2004)
- State v. Howell, 609 S.E.2d 417 (N.C. Ct. App. 2005)
- State v. Johnson, 884 So. 2d 568 (La. 2004)
- State v. Dick, 951 So. 2d 124 (La. 2007)
- State ex rel. A.M., 739 So. 2d 188 (La. 1999)
- State v. Cazes, 263 So. 2d 8 (La. 1972)
- Theriot v. Midland Risk Insurance Co., 694 So. 2d 184 (La. 1997)
- State v. Kennedy, 803 So. 2d 916 (La. 2001)
- State ex rel. Robinson v. Blackburn, 367 So. 2d 360 (La. 1979)
- State v. Barbier, 743 So. 2d 1236 (La. 1999)
- State v. Williams, 893 So. 2d 7 (La. 2004)
- State v. Brown, 879 So. 2d 1276 (La. 2004)
- State v. Broussard, 34 So. 2d 883 (La. 1948)
- State v. Granier, 765 So. 2d 998 (La. 2000)
- Exxon Pipeline Co. v. Louisiana Public Service Commission, 728 So. 2d 855 (La. 1999)
- New York v. Ferber, 458 U.S. 747 (1982)
- State v. Cinel, 646 So. 2d 309 (La. 1994)
- State v. Joseph, 916 So. 2d 378 (La. App. 3 Cir. 2005)

