

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Deivys Diaz v. The State of Florida

Deivys Diaz v. State of Florida, No. 3D23-1084 · No. No. 3D23-1084 · Decided September 17, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed Deivys Diaz’s conviction for possession of a sexual performance by a child under section 827.071(5), Florida Statutes. The court held that the State presented sufficient evidence to support the conviction and that the statute did not require proof that Diaz personally intended to arouse or gratify sexual desire. The court affirmed the denial of Diaz’s motion for judgment of acquittal.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Gordo, J.; Lindsey, J.; Gooden, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	September 17, 2025
DOCKET	No. 3D23-1084
DISPOSITION	affirmed
PROCEDURAL POSTURE	Diaz appealed a final judgment of conviction and sentence after the trial court denied his motion for judgment of acquittal and a jury found him guilty of possessing a sexual performance by a child.
STANDARD OF REVIEW	A ruling on a motion for judgment of acquittal is reviewed de novo. The conviction will not be reversed if supported by competent substantial evidence. Viewing the evidence in the light most favorable to the State, the question is whether a rational trier of fact could find the elements of the crime beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential status identified as published, subject to the stated rehearing finality condition.
PARTIES	Deivys Diaz v. The State of Florida

TOPICS

- criminal procedure
- appellate procedure
- evidence
- statutory interpretation
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate law

child pornography offenses

QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence to support Diaz's conviction for possession of a sexual performance by a child under section 827.071(5), Florida Statutes.
2. Whether section 827.071(5) required the State to prove that Diaz personally possessed an intent to arouse or gratify sexual desire.

HOLDINGS

1. The State presented sufficient evidence for a rational jury to find beyond a reasonable doubt that Diaz knowingly possessed content he knew included child pornography, and the trial court properly denied the motion for judgment of acquittal.
2. The conviction did not require proof that Diaz personally possessed an intent to arouse or gratify sexual desire because the statutory offense focuses on knowing possession of content known to include child pornography, and the recorded conduct was masturbation, which is included in the statutory definition of sexual conduct.

KEY QUOTATIONS

“To prove the offense of possession of a sexual performance by a child, the State must show that “[a] person . . . knowingly possess[es], control[s], or intentionally view[s]” content that “he or she knows to include child pornography.”” (at 3)

“Indeed, [section 827.071(5)] contains two separate intent requirements: It is unlawful for any person to knowingly possess any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he knows to include any sexual conduct by a child. There thus is no question that the misbehavior reached by the statute is the intentional exploitation of children.” (at 4-5)

FACTUAL BACKGROUND

Diaz lived with his domestic partner and their two minor children. He secretly recorded his fourteen-year-old daughter, V.D., partially naked in bed while engaging in masturbation; the approximately seven-minute recording included zoomed-in images of her exposed breasts. Diaz showed the recording to his partner, did not delete it when asked, and later voluntarily turned it over to police after his partner reported the matter.

PROCEDURAL HISTORY

The State charged Diaz with possession of a sexual performance by a child under section 827.071(5), Florida Statutes, along with other offenses. After trial, the jury acquitted him of the other charges but found him guilty of possession of a sexual performance by a child. The trial court denied Diaz's motion for judgment of acquittal and sentenced him to 366 days in prison and four years of sex-offender probation. The Third District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Giralt v. State, 935 So. 2d 599, 601 (Fla. 3d DCA 2006)
- Babbs v. State, 187 So. 3d 925, 927 (Fla. 4th DCA 2016)
- Garrido v. State, 97 So. 3d 291, 298 (Fla. 4th DCA 2012)
- Parker v. State, 81 So. 3d 451, 453 (Fla. 2d DCA 2011)
- Stelmack v. State, 58 So. 3d 874, 875 (Fla. 2d DCA 2010)
- Schmitt v. State, 590 So. 2d 404, 410-14 (Fla. 1991)
- Pagan v. State, 830 So. 2d 792, 803-04 (Fla. 2002)

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