

SUPREME COURT OF ARKANSAS

Klosky v. State

2014 Ark. 403 (2014) · No. CR-13-698 · Decided October 2, 2014

SUMMARY

The Arkansas Supreme Court affirmed Daniel Klosky Jr.'s convictions on 38 counts under Arkansas Code Annotated section 5-27-602(a)(1) for distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. The court held that the statute does not require the State to prove knowing receipt of the material for the purpose of distribution. Justice Hart, joined by Justices Baker and Goodson, dissented, arguing that the appeal challenged the sufficiency of proof regarding the required knowing mens rea and should have been decided on the merits.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per curiam; Jim Hannah, Chief Justice; Baker, Justice; Goodson, Justice; Hart, Justice
JURISDICTION	Arkansas
DECIDED	October 2, 2014
DOCKET	CR-13-698
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a bench-trial conviction in the Faulkner County Circuit Court; the Arkansas Supreme Court accepted certification from the Arkansas Court of Appeals.
STANDARD OF REVIEW	The opinion reviews the denial of a motion to dismiss based on sufficiency of the evidence; the text does not expressly state a separate standard-of-review formulation.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Daniel Klosky, Jr. v. State of Arkansas

TOPICS

- statutory interpretation
- criminal procedure
- evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Arkansas Code Annotated section 5-27-602(a)(1) requires the State to prove that the defendant knowingly received child pornography for the purpose of distribution.
2. Whether the circuit court erred in denying Klosky's motion to dismiss for insufficient evidence.

HOLDINGS

1. The statute does not require the State to prove knowing receipt of child pornography for the purpose of distribution. The statutory elements require proof that the defendant knowingly engaged in one of the specifically listed acts involving material depicting a child engaging in sexually explicit conduct.
2. The circuit court did not err in denying Klosky's motion to dismiss, and the convictions were affirmed.

KEY QUOTATIONS

“A review of the plain language of the statute reveals that “knowing receipt for the purpose of distribution” is not among the elements that the State must prove to sustain a charge of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child.” (at 3)

FACTUAL BACKGROUND

Klosky was tried to the court and convicted of thirty-eight counts involving distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. The charges concerned files or images found on his computer, and Klosky argued that the State failed to prove he knowingly received the files for the purpose of redistribution. He received concurrent forty-eight-month prison sentences on all counts.

PROCEDURAL HISTORY

Following a bench trial, the Faulkner County Circuit Court convicted Klosky of thirty-eight counts under Arkansas Code Annotated section 5-27-602(a)(1) and imposed concurrent forty-eight-month sentences. Klosky moved to dismiss at the close of the evidence, arguing that the State failed to prove that he knowingly received child pornography for the purpose of distribution. The circuit court denied the motion and entered judgment, and the Arkansas Court of Appeals recommended certification to the Arkansas Supreme Court because the case presented an issue of first impression and a significant issue requiring development of the law. The Supreme Court accepted certification and affirmed.

DISPOSITION

affirmed

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