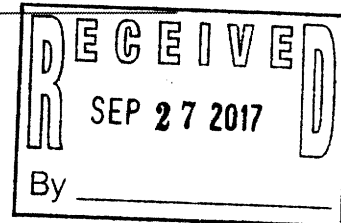


Lisa Marsh - Fwd: No. ADM2017-01892 Crim. Pro. Rule 16 Amendment: Re Child Porn

From: appellatecourtclerk
To: Lisa Marsh
Date: 9/27/2017 12:10 PM
Subject: Fwd: No. ADM2017-01892 Crim. Pro. Rule 16 Amendment: Re Child Porn



See comment below.

>>> Chad Butler <_cbutler@tncoalition.onmicrosoft.com> 9/27/2017 11:45 AM >>>

Hello,

I think direct access by the defendant, highlighted in red below, should be removed from this proposal. A defendant does not have any constitutional right or statutory right that requires he view the evidence against him with his own two eyes. The law allows the State to proceed on cases where evidence has been lost or destroyed. Blind people can be prosecuted for crimes they commit, without ever seeing the evidence themselves. Allowing a defendant to access child pornography would be the equivalent of allowing someone charged with drug possession to personally use the seized the drugs to verify those are his/her drugs. Child porn CANNOT be treated like other evidence. It's not like any other contraband. Allowing defendants to personally view the images only serves to revictimize the children. Please consider amending the language that requires the State allow the defendant to personally access the contraband. Instead, language could just be added in the proceeding sentence that at a judge's discretion it MAY be allowed or permitted, but is not required.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 16

DISCOVERY AND INSPECTION.

[Modify the text of the rule to insert the new underlined subsection (d)(3); and, add new Advisory Commission Comment (2018 Amendment).]

* * * *

(d) *Regulating Discovery.*

* * * *

(3) *Procedure in Child Pornography Cases.* In any criminal proceeding relating to the sexual exploitation of minors under title 39, chapter 17, part 10 that involves documents or objects discoverable pursuant to Rule 16(a)(F), the court shall, on motion of the state:

(A) Deny any request by the defendant to copy or photograph any documents or objects depicting the sexual exploitation of minors under title 39, chapter 17, part 10, so long as the state shows that the documents or objects will be made reasonably available to the defendant throughout the proceeding.

(B) For the purposes of subdivision (d)(3)(A), documents or objects shall be deemed to be reasonably available to the defendant if the state provides ample opportunity for inspection, viewing, and examination at a state facility of the documents or objects by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. The Court may, in its discretion, permit other individuals, to have access to the

documents or objects if necessary to protect the rights of the defendant.

(C) If the state fails to demonstrate that the documents or objects will be made reasonably available to the defendant throughout the proceeding, or fails to make the documents or objects reasonably available to the defendant at any time during the proceeding, the trial court may order the state to permit the defendant to copy or photograph any documents or objects subject to terms and conditions set by the court in an appropriate protective order.

* * * *

Chad L. Butler

Staff Attorney

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