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THE COURT'S POWER TO PROTECT CHILDREN

by Jay Howell

In a recent criminal case in Miami, the defendant was the mother of the child victim. She was charged with pouring gasoline over her daughter, who was 15 at the time, and setting her on fire. The child suffered burns over 23% of her body, including her face, neck, both forearms, chest, and left thigh. The child was in a coma for six weeks. She lost the use of one of her hands, and was severely disfigured. The defendant, her mother, was charged with attempted first degree murder, arson causing personal injury, and aggravated child abuse.

At the time of the criminal case, the child was 17 years old, living in a foster home, and under psychiatric care. The child was tested for a full scale IQ of 73. The generally recognized level for mental retardation is a range of 55 - 69. The child's cognitive, intellectual, and emotional age was in the range of a 10 or 11 year old.

The State and the child's Guardian ad litem asked the court to allow the child to testify at her mother's trial by closed-circuit television. Her mother objected to this procedure, requesting that the child testify before her in person.

The State's expert testified, though the child was not mentally retarded, her intellectual verbal capacity fell within the mental retardation range and the child functioned at a level of 11 or 12 years of age. The testimony established that should the child be required to testify in the presence of her mother in open court, she would suffer tremendous emotional harm.

The trial court denied the State's request, finding that the child did not qualify under the closed-circuit testimony statute because she was not under age 16 and did not suffer from mental retardation. In

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its order, the trial court declared itself to be "legally precluded" and left with no choice but to deny the requested relief.

The court's denial of this request was appealed to the Third District Court of Appeal. The appellate court, in its opinion, stated that the trial court was under a misapprehension of the law. Declaring that the closed-circuit testimony statute does not provide the only means by which a trial court may exercise its inherent authority and discretion to protect a child witness, the appellate court ruled that such a motion should be granted if the procedure is necessary to further an important public interest.

The appellate court was clear in stating that all courts in Florida possess the inherent power to do all things that are reasonable and necessary for the administration of justice, subject to existing statutes and our Constitution. Our courts' inherent powers include the ability to protect witnesses. The appellate court concluded that the trial judge could have relied on the inherent power of the court to grant the motion.

The court declared that the State has an interest in protecting child victims of sexual or other abuse from the additional trauma of testifying in open court, in the presence of the defendant.

The court concluded that the child was undeniably impaired both cognitively and emotionally and it was undisputed that testifying in person before her mother would cause her substantial harm. Because the child was under 18, the court concluded that the trial judge had the discretion to grant the motion. The trial judge's decision was reversed and the case sent back to the trial court, with instructions that the child should be allowed to testify by closed-circuit television.

This case is an excellent example affirming the court's inherent power to administer justice in a fair and reasonable manner. The court's decision was rendered October 31, 2001. The case is *Tarrago v. State*, and can be found in legal books at 800 So.2d 300.