

ATTORNEYS AT LAW
644 Cesery Boulevard, Suite 250
Jacksonville, FL 32211
(904) 680-1234 Fax (904) 680-1238

TV STING

By Jay Howell

Remember when NBC was airing the Dateline television series, "To Catch a Predator"? Some of these "sting" operations took place in nearby Flagler County in 2006. As those cases made their way through the Florida criminal court system, some of the defendants complained that the relationship between local law enforcement, an online watchdog group, and the television network was inappropriate. Some of those claims have now reached Florida's appellate courts.

The case in question was initiated by the Flagler Beach Police Department when they sought out the services of Perverted Justice, an online watchdog group that attempts to expose pedophiles. Perverted Justice enlisted the help of approximately 250 unpaid volunteers, some of whom engage in online chat conversations as decoys. Posing as minors, the volunteers chat online and in some cases speak with the suspects on the telephone.

With the consent of the Flagler Beach Police Department, Perverted Justice coordinated a sting operation at a private residence in Flagler Beach. NBC had arranged with Perverted Justice to film the stings for its "To Catch a Predator" series.

In return, NBC paid Perverted Justice \$75,000 per hour of programming that resulted from the sting operation. Perverted received \$150,000 under this agreement and used the proceeds to pay its expenses. The Police Department was aware that NBC would be filming the stings, but did not receive any compensation from the television network.

The defendant initiated an online conversation with a girl identified as "Jannah," who he believed to be a 13-year-old girl. In fact, Jennah was a Perverted Justice decoy. The defendant engaged in explicit sexual conversations with her and arranged to meet at her house to engage in sexual activity. The defendant traveled from his home in West Palm Beach to Flagler Beach, bearing flowers, chocolate and sexual materials. The police officers were waiting outside. There were numerous cameras and microphones as he entered the home where he was confronted by Chris Hansen, the television host of "To Catch a Predator." The defendant, realizing there would be no tryst with a young girl, exited the home and was arrested by the Flagler Beach Police. A search of his car resulted in the seizure of sexual materials. He was charged with attempted lewd and lascivious battery as well as computer pornography and child exploitation. He pleaded no contest, but reserved his right to appeal the trial judge's ruling on whether the police conduct was inappropriate.

The defendant asserted two primary arguments on appeal. First, he maintained that Perverted Justice's contingent fee arrangement with NBC created a financial incentive to entrap as many people as possible. Second, he contended that the police took an "unconstitutional short-cut" by allowing Perverted Justice to perform all the investigative work without supervising or monitoring their conversations with the

defendant. The Fifth District Court of Appeal disagreed, and found that Perverted Justice created nothing more than an opportunity, which is not prohibited. The defendant was not solicited, induced, or otherwise lured into seeking a sexual liaison with the decoy. The defendant, on his own initiative, contacted "Jannah" and set up a meeting intending to engage in sexual activity with a 13-year-old girl.

In addition, the court concluded that every conversation between the defendant and the decoy was electronically recorded and stored and the court record provided no suggestion that the defendant did not voluntarily engage in the conversations. The court also concluded that there wasn't any suggestion of impropriety by Perverted Justice and since the conversations were recorded and stored, the integrity of the investigation was assured.

The Defendant made a third claim, asserting that the charge of attempted lewd and lascivious battery should have been dismissed because his arrival at the sting house was not an overt act toward the commission of the crime. The appellate court again disagreed, stating that the defendant took significant steps toward consummating the relationship with the 13-year-old, including explicit online conversations, driving over 200 miles from his home to the decoy house, and arriving with flowers, chocolates, and other materials. In view of these facts, the court found them more than sufficient to constitute an overt act toward the commission of the crime. The defendant's case was affirmed.

The case is *Bist vs. State*, was decided by the Fifth District Court of Appeals on April 9, 2010.