**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA**

**CASE NO. 04-2454-CF-A-Z**

**STATE OF FLORIDA**

**vs.**

**DEBRA BEASLEY LAFAVE,
Defendant.**
______________________________/

# ORDER REJECTING PROPOSED BELOW GUIDELINES PLEA AGREEMENT

The Defendant in this case is charged with two counts of lewd and lascivious battery on a child, in violation of section 800.04(4)(a) of Florida Statutes, and one count of lewd and lascivious exhibition, in violation of section 800.04(7)(a) of Florida Statutes. Consent is not an issue, because both alleged victims were less than 16 years old at the time of the alleged offenses. *See* §§ 800.04(4)(a), 800.04(7)(a), Fla. Stat. (2005). All three charged offenses constitute second degree felonies, each punishable by up to 15 years in the Department of Corrections. *See* §§ 800.04(4), 800.04(7)(c), 775.082(3)(c), Fla. Stat. (2005). Under the Florida sentencing guidelines, the Defendant's lowest permissible prison sentence is 203.25 months or 16.9375 years. In order to sentence the Defendant to any lesser sentence, the Court must find certain mitigating circumstances. *See* §§ 921.00265, 921.0026, Fla. Stat. (2005).

The Defendant was charged with similar offenses in Hillsborough County, Florida, which have been resolved by plea agreement.[1] The parties have presented to this Court a proposed plea agreement with similar (if not identical) terms. The parties first presented the plea agreement at the December 9, 2005 pre-trial/status conference, and the Court rejected it. Subsequently, the Court set a hearing on March 8, 2006 to hear evidence regarding the rationale for the plea agreement. The proposed plea agreement will require the Defendant to enter a plea of guilty as

[1] The Hillsborough County plea agreement was apparently conditioned upon this Court's acceptance of a similar plea agreement. In other words, if the proposed plea agreement were rejected by this Court, the Defendant would have the right to withdraw her plea to the charges in Hillsborough County and proceed to trial. However, this Court was not a party to plea negotiations in Hillsborough County and was not apprised of the plea agreement in Hillsborough County until the December 9, 2005 pre-trial/status conference.

charged for an adjudication of guilt. The Defendant would be sentenced to three years of community control followed by seven years of probation (with a myriad of special conditions), to run concurrently with her Hillsborough County sentence. For the reasons that follow, this Court finds that the parties have failed to present sufficient justification to accept the below guidelines plea agreement.

The charges in this case stem from allegations of sexual relations between a 23-year-old female teacher (who is now 25 years old) and a 14-year-old boy (who is now 16 years old), one instance of which was witnessed by the boy's 15-year-old cousin (who is now 17 years old). The factual basis for the plea, as proffered by the State, is as follows:

On or about June 15, 2004, the Defendant transported the then-14-year-old victim M.M. in her vehicle from Hillsborough County, Florida to Ocala, Marion County, Florida. The Defendant and the victim were previously acquainted, as the Defendant was a teacher at the middle school M.M. had attended. Upon arriving in Ocala, the Defendant and M.M. picked up M.M.'s then-15-year-old cousin B.B. With the Defendant's consent, B.B. drove her vehicle on State Road 200 in Ocala, while the Defendant and M.M. engaged in sexual activity in the back of the vehicle. B.B. was aware of the sexual activity taking place in the vehicle, and saw the sexual activity in the rear-view mirror of the Defendant's vehicle. On or about June 17, 2004, the Defendant again transported M.M. in her vehicle from Hillsborough County, Florida to Ocala, Marion County, Florida. The Defendant and M.M. again picked up B.B., whereupon they drove to Brick City Park in Ocala and parked the Defendant's vehicle. After B.B. exited the vehicle, the Defendant and M.M. again engaged in sexual activity in the back of the vehicle. Shortly thereafter, M.M. and B.B. disclosed these events to their mothers, who notified law enforcement. On June 28, 2004, the Defendant was arrested and charged in Marion County with two counts of lewd and lascivious battery on a child and one count of lewd and lascivious exhibition.

The parties have set forth several arguments for this Court to consider in determining whether to accept the proposed plea agreement. The State has made it clear that the victim's family wishes the case to be concluded without a trial,[2] and the Defendant has made it clear that she will not agree to any sentence of imprisonment. The parties assert, as their main justification for the proposed plea agreement, that the victim does not wish to testify at trial and that it would

[2] The Court recognizes that there are actually two minor victims in this case, M.M. and B.B. However, the majority of the testimony and argument relates only to victim M.M.

be detrimental to the victim to do so. The victim's family believes that he would be traumatized by testifying at trial and receiving increased media attention. The family is also concerned that if this case proceeds to trial their privacy will be compromised by the intense media attention this case continues to receive.

The State called two witnesses at the March 8, 2006 hearing: Assistant State Attorney Michael Sinacore, of the Hillsborough County State Attorney's Office, and Dr. Martin Lazoritz, a licensed psychiatrist and associate chairman of the University of Florida Department of Psychiatry. Mr. Sinacore testified that he only agreed to a plea without any term of imprisonment at the insistence of the victim's mother, who felt that her family's privacy was being compromised by the media and that a trial would further traumatize her son. Mr. Sinacore further testified about his negotiations with Court TV, which intended to broadcast the Defendant's trial. The attorneys for Court TV would agree not to show the victim's face when he testified, but would not agree not to show the victims' mothers when they testified and would not agree to delay the broadcast in case the victims' names were inadvertently mentioned by one of the 40-50 potential witnesses. Mr. Sinacore did not indicate whether he had interviewed the victim M.M. regarding the incidents in question or his impressions of M.M's ability to testify and withstand the rigors of cross-examination.

Dr. Lazoritz testified that he met with victim M.M. and his mother for approximately 90 minutes. Dr. Lazoritz testified that the victim is suffering from anxiety about his relationship with the Defendant, which has been compounded by the media coverage the case has received, and has an adjustment disorder, meaning simply that he is responding to a stressor. Dr. Lazoritz also testified that the victim "had a very difficult time talking about things." He stated that the victim wishes to go to the University of Florida, play basketball, and live in anonymity. He further explained that the victim is afraid that if the case proceeded to trial he would always be plagued by it. Dr. Lazoritz expressed his opinion that it would be detrimental to the victim's emotional well-being to testify at trial. Dr. Lazoritz believes that if this case were concluded without the victim having to testify at trial, he would continue to improve, but would likely deteriorate if the case proceeded to trial.

The Court recognizes that it very well may be impossible for the State to proceed to trial without presenting the testimony of the victim M.M. In order to establish the essential elements of the offenses beyond a reasonable doubt, the State would be required to delve into the details of

the sexual relations between the Defendant and the alleged victim. Furthermore, the nature of the defense raised by the Defendant would require the victim's actions to be put at issue before the jury.

The Court also understands that the victim may be reluctant to testify at trial. Certainly, no 16-year-old male wants to be examined and cross-examined in a public forum regarding every minute detail of a sexual encounter, which very well may be viewed by some as entertainment. He would not want to discuss it with his parents, doctor, counselor, victim/witness advocate, or an attorney. In fact, this Court cannot comprehend any individual – whether he is 15, 45, or 75 years old – looking forward to discussing such an experience in public. Most likely no one who reads this order would voluntarily discuss a sexual experience that took place when he or she was 14 years old, especially if his or her partner was a former teacher. Indeed it would be strange if one were eager to discuss such an experience. Sex may sell books, movies, and magazines, but no one looks forward to discussing private sexual encounters in public.

For most witnesses, especially victims of sexual offenses, testifying is an experience they would like to avoid. Rarely does one find a witness who enjoys testifying in a courtroom before a jury and being cross-examined by attorneys. The Court does not believe that the witnesses in this case are different from most witnesses in any other case. Moreover, the victim in this case is not a young child; he is now 16 years old. The effect a trial of this nature might have on young children (less than 12 years old) therefore is not a factor in this case.

The Court is not convinced that the parties have presented sufficient justification to accept the proposed plea agreement. The Court might have been more inclined to accept the proposed plea agreement if the Hillsborough County charges did not exist and the Defendant was facing charges only in Marion County. As it stands, the Court is unable to comprehend what is to be gained by a plea and concurrent sentence in Marion County. Likewise, the Court might have been more inclined to accept the proposed plea agreement had the parties presented additional evidence. First, it certainly would have been beneficial if the State or the defense had presented additional experts. Second, either party could have presented the testimony of a victim/witness advocate. There are victim/witness advocates available in the State Attorney's Office, the Ocala Police Department, and the Marion County Sheriff's Office. However, there has been no indication to this Court that any victim/witness advocate has worked with the victims or their families to prepare them for a trial in this case. Third, the investigating officers

who interviewed the victim could have been called to testify regarding their impressions of his ability to give testimony, as could have assistant state attorneys Mr. Ridgway or Ms. Youmans. The Court has reviewed the probable cause affidavit and it does not appear that the victim had any difficulty describing the incidents in question to the investigating officers. Fourth, either party could have attempted to take the victim's deposition to demonstrate his difficulty in testifying. It appears that no depositions of either victim have been taken. Finally, the parties could have requested the Court meet with the victim *in camera*, as was done by the judge in *Eversole v. Superior Court*, 195 Cal. Rptr. 816 (Cal. Ct. App. 1983).

Moreover, with the exception of Dr. Lazoritz (whose testimony is somewhat less than convincing), neither party has presented any testimony about the victim's need for professional counseling. When asked by the Court whether the victim M.M. needed counseling, Dr. Lazoritz stated, "[U]nfortunately, he is not the kind of young man who is a good candidate for verbal counseling. He is not a very verbal, talk-about-your-feelings kind of kid.... I don't know that he needs counseling right now. He needs to be able to play basketball in anonymity, and that's helpful for him." The Court might have been convinced to accept the proposed plea agreement if the State had offered the victim and his family professional counseling, in an effort to prepare them for trial, and such counseling was unsuccessful. However, that does not appear to be the case. Dr. Lazoritz's meeting with the victim for 90 minutes or less seems to this Court inadequate if the victim has in fact suffered mental damage as a result of the incidents in question.

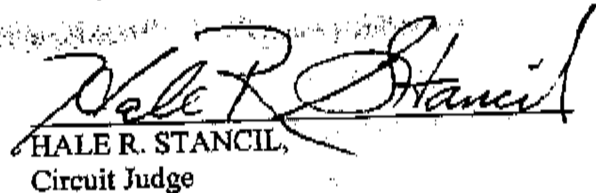
Furthermore, the Court is not convinced that the State has fully investigated its options in regards to protecting the privacy of the victim and his family if the case were to proceed to trial. The Court recognizes that the press and the general public have a constitutional right of access to criminal trials. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603-05 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). However, that right is not absolute, and it may be appropriate to restrict access in order to safeguard the well-being of a minor victim. *See Globe Newspaper Co.*, 457 U.S. at 606-09; *see also Waller v. Georgia*, 467 U.S. 39, 45-48 (1984). Specifically, it very well may be appropriate to exclude the electronic media during the victim's testimony. *See* Fla. R. Jud. Admin. 2.170(a); *Chavez v. State*, 832 So.2d 730, 758-59 (Fla. 2002); *State v. Palm Beach Newspapers*, 395 So.2d 544 (Fla. 1981); *In re Petition of Post-Newsweek Stations*, 370 So.2d 764, 779 (Fla. 1979). Indeed it would be

necessary for the Court to take certain precautions to ensure that the Defendant receives her constitutional right to a fair trial. *See, e.g., Richmond Newspapers, Inc.*, 448 U.S. 555; *Nebraska Press Association v. Stuart*, 427 U.S. 539, 563-65 (1976); *Sheppard v. Maxwell*, 384 U.S. 333, 357-62 (1966). But the Court is aware that the victim does not have a constitutionally recognized right of privacy in the context of a judicial proceeding, which is a public event that by its very nature denies certain aspects of privacy. *In re Petition of Post-Newsweek Stations*, 370 So.2d at 779.

It is the opinion of this Court that accepting the proposed plea agreement would undermine the credibility of this Court, and the criminal justice system as a whole, and would erode public confidence in our schools. Accepting the proposed plea agreement would likewise send the message that if enough publicity is generated, and the media's interest continues long enough, and because of that interest the victim does not wish to testify, a defendant can avoid an appropriate sentence. Quite frankly, if the allegations against the Defendant are true, the agreed-upon sentence shocks the conscience of this Court. It is, therefore,

**ORDERED:** The proposed below guidelines plea agreement is hereby rejected.

**ORDERED** this 21st day of March, 2006 at Ocala, Marion County, Florida.



HALE R. STANCIL,
Circuit Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been provided by U.S. Mail/Inter-Office Mail this 21st day of March, 2006 to the following:

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