Court of Appeals, State of Michigan

ORDER

People of MI v Kevin Todd Acton

Docket No. 289379

LC No. 08-010597-FH

Patrick M. Meter
Presiding Judge

Peter D. O'Connell

Stephen L. Borrello
Judges

The motion for guidance is GRANTED.

The Court orders that the Grand Traverse County Prosecutor and/or the Grand Traverse Circuit Court deliver to appointed appellate counsel copies of the photographic exhibits at trial, along with any other documents or items of record requested, within 14 days of the certification of this order. MCR 6.201(A); MCR 6.433(A). The prosecutor and/or trial court shall provide this Court with a proof of service, and appellant's brief will be due 56 days after service of all the requested items.

The argument that the prosecutor could face felony charges for shipping these photographs to defendant's appellate counsel is disingenuous. The Supreme Court determined four years ago that criminal intent is an element of the crime defined in MCL 750.145c(3). *People v Tombs*, 472 Mich 446, 451-459 (2005). Further, providing exhibits to counsel so that defendant's due process rights are protected does not remotely constitute the "distribution," "promotion, "or financing" of child sexually abusive material as prescribed by MCL 750.145c(3). See Webster's College Dictionary, Merriman Webster's Online Dictionary, and *Tombs, supra,* p 457 (2005).

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 29 2009
Date

Sandra Schultz Mengel
Chief Clerk