

1 And so, Madam Clerk, we will need 40 --

2 THE CLERK: Yes, sir.

3 THE COURT: -- for that one. Okay? And that's the
4 only one that we'll pick this morning. Okay?

5 MR. JUDKINS: Judge, will we pick this morning and
6 go, or pick this morning and go tomorrow?

7 THE COURT: We'll pick this morning and go tomorrow.

8 MR. JUDKINS: Okay.

9 THE COURT: Because I'll be picking two more this
10 afternoon.

11 MR. JUDKINS: Oh, okay.

12 THE COURT: Okay? And so we'll start at 8:30
13 tomorrow morning. Okay?

14 (Other proceedings were held on other matters, and
15 the following takes place in the Interest of Darrel
16 Harvey.)

17 THE COURT: Ms. Frazier, you had something that we
18 needed to address?

19 MS. FRAZIER: Yes, sir. I just -- I noted yesterday
20 afternoon counsel for Mr. Harvey filed a request for a
21 special jury instruction about the good faith defense.
22 We just got it. I wasn't sure if they were planning to
23 address anything about that defense in jury selection.
24 The State does object to that. So if they're going to be
25 talking about it in jury selection, I'd request we talk

1 about this now. But, if not, then we can talk about it
2 tomorrow morning.

3 THE COURT: All right. So this was the jury
4 instruction in regards to a good faith defense. Is there
5 going to be any questions, specifically in jury
6 selection, in regards to that defense?

7 MR. JUDKINS: I think so, Your Honor.

8 THE COURT: All right. Well, let's go ahead then
9 and we can discuss it now. And so who's going to argue
10 that on behalf of the defense? Is that Mr. Hayes?

11 MR. HAYES: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. HAYES: I've got a courtesy copy for the Court,
14 if you'd like.

15 THE COURT: I have it.

16 MR. HAYES: Okay.

17 THE COURT: Of the, of the actual instruction you're
18 talking about?

19 MR. HAYES: That's right. And, Your Honor, this is
20 taken directly from the statutory language, 39.203(1)(a)
21 and 39.203 -- I'm sorry. It's the same.

22 This language has not been often interpreted by
23 Florida Courts. However, the only Court opinions that
24 have cited directly to the statute have taken the statute
25 at it -- at its word. The statute reads that any person

1 participating in good faith in any act authorized or
2 required by this chapter shall be immune from any civil
3 or criminal liability which might otherwise result by
4 reason of such action.

5 The only court case to address that, Your Honor, is
6 *Ross v. Blank*, 950 --

7 THE COURT: well, what is this, this good faith
8 defense? If I look at the elements and, and what the
9 good faith defense is, I look at element No. 2, and it
10 says that the defendant was reporting in good faith any
11 instance of child abuse, abandonment, or neglect to any
12 law enforcement agency.

13 Are there -- is there anything -- I mean, this is a
14 traveling case.

15 MR. HAYES: Sure.

16 THE COURT: I mean, he didn't call the police and
17 meet the police there or -- there's not an allegation
18 that that's not what the charge is, that there's some
19 type of false reporting or something like that.

20 MR. HAYES: well, Your Honor, the issue would not
21 necessarily be under prong two but under prong one,
22 participating in good faith in any act authorized or
23 required by law.

24 THE COURT: Don't I have to give the whole
25 instruction, though?

1 MR. HAYES: No, your Honor.

2 THE COURT: Isn't that the whole instruction?

3 MR. HAYES: We've provided the entire statutory
4 language so that the Court could pick and choose what the
5 Court would like. If you'd prefer an edited version,
6 that's fine.

7 However, specifically, there was a person purporting
8 to be a child online that was clearly in need of
9 supervision and care and that may have been the victim of
10 child abuse that was certainly at risk for being a -- or
11 at risk of being abused as she was purportedly a
12 14-year-old on an adult website offering, perhaps, to
13 have sex with people in exchange for money.

14 That's clearly a case where, if an adult discovered
15 that, reporting would be mandatory. The communications
16 in this issue are the communications between the officer
17 and the defendant were certainly ambiguous as to age. If
18 he was required to report it, he was certainly authorized
19 to investigate enough to have something to report, Your
20 Honor.

21 MS. FRAZIER: Your Honor, first of all, there was no
22 discussion of sex for money during the chatter's
23 discussions. Second of all, it is very clear the chatter
24 said many times that she was 14 years old. Third of all,
25 how can it be argued -- there's no good faith basis to

1 argue that the defendant was participating in good faith
2 in any act authorized or required by law enforcement.
3 Law enforcement doesn't authorize or require defendants
4 who are talking to minors online for sex to travel to
5 meet them. This is completely taken out of context.
6 Chapter 30 --

7 THE COURT: What is this def -- what is this usually
8 used for? In what type of case?

9 MS. FRAZIER: This, this is -- this deals with
10 mandatory child abuse reporters, like teachers,
11 psychologists, that kind of thing. It has nothing to do
12 with traveling to meet a minor, online solicitation of a
13 minor. This has to do with actual child abuse. So this
14 is completely inapplicable. It's going to confuse the
15 jury. And it's like comparing apples and oranges.

16 MR. HAYES: So, Your Honor, first, the advertisement
17 at issue was reasonably sexually explicit as first posted
18 and mentioned a \$3,000 per month arrangement. There was
19 certainly an offer of something in exchange for money by
20 the purported minor, SaraSara 14.

21 Further, the statute, while it has been interpreted
22 in the mandatory report context, the statute was amended
23 to include any person several years ago, certainly before
24 the defendant was arrested. Any person is now a
25 mandatory reporter. My client was very familiar with his

1 duty to report. And without any more information -- and,
2 clearly, while Ms. SaraSara 14 said that she was 14 at
3 some portions during the conversation. At other times
4 she said she was 18. And other times she was entirely
5 ambiguous, refused to answer questions about it.

6 The photographs used in this case were photographs
7 of a 28-year-old officer. Certainly, there was a
8 question as to whether or not this was an actual child
9 and whether this was a child in serious danger.

10 THE COURT: All right. The request is denied. This
11 is not the type of case where this good faith defense is
12 applicable. Whether or not he was participating in any
13 act authorized or required by law, I'm not going to find
14 that the facts justify an instruction in that regard.

15 And so there won't be any mention of a good faith
16 defense during the jury selection process. And this
17 instruction will not be given, unless, for some reason,
18 there is something raised during the course of the
19 evidence that merits that I readdress it. But I don't
20 anticipate that.

21 Mr. Judkins.

22 MR. JUDKINS: Your Honor, we, we intend to present
23 evidence that Mr. Harvey was under the firm impression
24 that he was required, because of a number of reasons, to
25 report this. And -- but he --

1 THE COURT: He may have been -- he may have had that
2 false thought or whatever, but that doesn't mean that he
3 was, that he was required or authorized by law to do this
4 reporting. That's just not the type of case that we have
5 here.

6 MR. HUTCHINS: And at the end of the day, Judge, he
7 never reported it. I mean, that's kind of the point. He
8 doesn't report.

9 THE COURT: Go ahead, Mr. Judkins. You can make
10 your record.

11 MR. JUDKINS: Okay. He -- we're going to give --
12 we're going to present evidence -- we'll proffer if we
13 have to -- that he believed he had an obligation to
14 report. He knew of people who had been arrested for not
15 reporting such a thing when they had such a duty. And,
16 and this is -- and he knew -- he, he had acted on this
17 kind of information before to help children who were in
18 danger. So . . .

19 THE COURT: He had been in this predicament before?

20 MR. JUDKINS: Not in this exact predicament, but he
21 had learned about children who were in need of
22 supervision and in danger of dangerous behavior.

23 THE COURT: I mean, so if there's other conduct that
24 was similar in nature, are we dealing with some similar
25 fact evidence here that the State's going to be able to

1 bring in if there's other instances that are consistent
2 with what he's doing here?

3 MR. JUDKINS: These are evident -- this is evidence
4 about his knowledge of his obligation to report and how
5 he obtained the knowledge that caused him to believe he
6 had a mandatory obligation to report and could be
7 arrested if he didn't report it.

8 THE COURT: All right. It's denied. I mean, this
9 is -- this instruction goes with child abuse and whether
10 or not there is some good faith need or to report the
11 child abuse and the liability for that if there in fact
12 wasn't any child abuse, the fact that he had a good
13 faith, a good faith belief that there was something of
14 that nature going on. And it just doesn't fit the facts
15 of this case. The request is denied.

16 MR. JUDKINS: Can I take one more stab at it? And
17 that is that he is charged with traveling to have sex
18 with a minor. His defense will be, I was not traveling
19 to have sex with a minor. I was traveling because of the
20 inconsistent information I had received about this person
21 as to this person's age, that there were a number of
22 reasons why he could have, he could have thought that she
23 was an adult. And there were a number of reasons, mostly
24 stated in the text, why he could have thought she was a
25 minor. It, it goes to the purpose of the traveling and

1 his testi -- his evidence will be that he would have been
2 traveling because he was going to find out the age of the
3 person that he had been communicating with.

4 THE COURT: And you're more than welcome to present
5 that evidence. You can do it through other people. You
6 can do it through witness testimony. You can do it
7 through the testimony of your own client. That doesn't
8 mean that it was a good faith act authorized or required
9 by law for him to do. So . . .

10 MR. JUDKINS: We can still present the defense, but
11 you're not going to give that instruction, is that --

12 THE COURT: Correct.

13 MR. JUDKINS: Okay.

14 THE COURT: Right. So you can present that -- I
15 mean, that's rebutting what the allegations are. And,
16 certainly, yes, you can present that defense that he had
17 some belief that he was required to do that, if he wants
18 to testify to that, that if there were other occasions
19 where he acted in a similar manner, then, you know, that
20 can come out through your testimony. Sure. That is a
21 legitimate defense rebutting the allegations in the
22 information.

23 MR. JUDKINS: Thank you.

24 THE COURT: All right. Okay. We'll go ahead and
25 we'll bring 40 up.