BRIEF BANK

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

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CHILD SEXUAL ABUSE NON VERBAL RESPONSES

Hill v. State, 3 S.W.3d 249 (Tex.App.1999).

The testimony of a child sexual abuse victim that defendant touched her in the place where she goes to the bathroom amounted to sufficient evidence that the defendant engaged in sexual contact with the child by touching her genitals and supported a conviction for indecency with a child, even though the medical evidence in the case was inconclusive. The trial record indicated that the child only nodded to certain critical questions, although the trial court, as trier of the facts, stated for the record that it was in a position to appreciate the child's verbal and nonverbal responses.

The court commented thusly on how nonverbal responses should he preserved in a trial record:

"We point out that appellate review of a witness's nonverbal responses can be more readily accomplished if the court reporter indicates whether the witness is making an affirmative or negative response. *Id.* It appears in this case however that the court reporter did so by using the phrase 'The witness nods' to indicate an affirmative response and the phrase 'The witness shakes her head' to indicate a negative response.

"In addition, the court stated on the record that it 'was in a position to appreciate [A.A.'s] responses, both her verbal responses and her body language and head nods with respect to some of the questions that were asked.' Based on this statement and the verdict, it appears that the court construed A.A.'s nods to the critical questions to be affirmative responses to those questions.

DOMESTIC VIOLENCE OFFICER GUN RESTRICTION

Fraternal Order of Police v. United States 1998 WL S43822. 152 *F.3d* 998 (D.C. Cir. 1998).

The Fraternal Order of Police (F.O.P.) filed suit in the District of Columbia to enjoin the enforcement of 18 LT.S.C. ~ *922* (g)(9) and (d)(9), commonly known as the "Lautenberg Amendment," which criminalizes the possession of a firearm or ammunition by a person convicted of a domestic violence misdemeanor, as it applies to police officers and agencies wishing to employ such persons as police officers. Various constitutional attacks on the amendment were rejected by the federal trial court at 981 F.Supp. 1 (D.D.C. 1997).

On appeal to the Circuit Court of Appeals for the District of Columbia, the appellate court reversed and held for the police union. The court refused to deal with the F.O.P.'s argument that the amendment violates the Second Amendment right to bear arms, but held instead that it violates the equal protection component of the Fifth Amendment's Due Process Clause.

The court noted that the amendment applies by its terms to misdemeanants but not to those convicted of violent felonies, including violent domestic violence felonies. This, the court said, is irrational. It involves ". . imposing the heavier burden," the court said, "on the lighter offense." While the Congressional reason for this approach might have been that most states bar convicted felons from possessing firearms, the court noted, state laws on this subject are far from consistent or uniform. Singling out misdemeanants by the amendment was not a "rational approach." "The government may not bar such people [misdemeanants] from possessing firearms in the public interest while it imposes a lesser restriction on those convicted of crimes that differ only in being more serious."

The decision, which granted the F.O.P. declaratory relief, applies only in the District of Columbia, not other federal circuits. The government has filed a petition for rehearing by the Circuit Court of Appeals *en* banc.

At least two other federal courts have upheld the constitutionality of the amendment:

Gillespie v. City *of Indianapolis,* 1998 1 LS. Dist. LEXIS 8691 (S.D.Ind. 1998) and Nage v. *Barrett,* 968 F.Supp. 1564 (N.D.Ga. 1997).

DOUBLE JEOPARDY MULTIPLE COUNTS – BRIBING A PROSECUTOR

Winn v State, *722* N.E.2d 345 (Ind.App. 1999).
A single trial on seven separate counts of bribery violated double jeopardy principles, where defendant made seven separate payments to a prosecutor for the single purpose of persuading the prosecutor not to prosecute him for illegal gambling. The court found defendant's offense of bribery to be continuous in purpose and objective and a single transaction, ruling out multiple prosecutions for bribery.

"Our Supreme Court has noted that a crime that is continuous in its purpose and objective is deemed to be a single uninterrupted transaction. *Mahone* v. *State* (1989) Ind., 541 *N.E.2d* 278, 280 (quoting Eddie v. State (1986) Ind., ~96 N.E.2d 24. 28). In this case, Winn was trying to influence Lopez [prosecutor] not to prosecute him for the video games. It was all part of one intent and design. Winn's letter clearly shows his intent to engage in one long term, continuing act of bribery by its statement 'Collect a Residual Pay Double March 1 & Again April 1 Protect & Collect Game?' Record at 406. This statement manifests Winn's intent to continue to send more money so long as Lopez did not prosecute him. Winn sent money, and as promised in the note, sent more money later.

"As earlier recited, the offense of bribery requires the conferring of a benefit upon a public servant 'with intent to control the performance *of an* act related to the employment' of that public servant. I.C. 35-41 (a)(1) (Burns Code Ed. RepI. 1998) (emphasis supplied). We find that prosecution for professional gambling, as Lopez suggested might occur, contemplated prosecution for a single act. If Lopez had prosecuted Winn for the video game machines, it would have been a single offense of professional gambling pursuant to I.C. 35- 45-5-3 (Bums Code Ed. Rep!. 1998). Therefore. Winn cannot be convicted of bribing Lopez seven times when the intent was to induce Lopez not to prosecute him a single time."

DUI – ACTUAL PHYSICAL CONTROL

State v. Cooper. 12() Ohio App.3d Ohio, 698 N.E.2d 61 (Ohio App. 1998).

A person who sits in the driver's seat of an automobile with the keys in the ignition "operates" a motor vehicle, for purposes of an offense of driving under the influence of alcohol or drugs, even if the engine is not running, under the interpretation of a DUI statute in this case.

> . . . .appellant claims that he was not 'operating' a motor vehicle and, therefore, could not have been liable for a violation of R.C. 4511.19. A person sitting in the driver's seat of an automobile with the keys in the ignition is 'operating' a motor vehicle under R.C. 4Th 11.19 even if the engine is not running. *State v. Gill,* (1994) 70 Ohio St.3d 1~O. 637 N.E.2d 897, syllabus. In the present case, Appellant was seated in the driver's seat of the vehicle with the keys in the ignition. Therefore, appellant was operating a motor vehicle for purposes of R.C. 4S1 1.19

Three judges concurred.

DUI FST REASONABLE SUSPICION RIGHT TO REFUSE

Commonwealth Blais, 701 N.E.2d 314 (Mass. 1998).

Recognizing that requiring a motorist to perform roadside sobriety tests constitutes a “search” or “seizure” within the meaning of the Fourth Amendment,the Supreme Judicial Court of Massachusetts ruled that reasonable suspicion that a motorist is operating an automobile while under the influence of alcohol justifies requiring the motorist to perform roadside sobriety tests.

Disapproving prior case law in the state, *Commonwealth v. McGrail* 119 Mass. P1. 647 N.E.2d 712 (1995), the court ruled that a motorist lawfully detained on reasonable suspicion of DUI does not have a right to refuse to perform field sobriety tests, even though such refusal is not admissible as evidence against the motorist. Evidence produced by the tests is physical in nature, not testimonial.

We have stated that although refusal evidence may not he introduced at trial ‘the refusing party has no constitutional right to refuse to produce real or physical evidence.’ *Commonwealth v. Hinckley,* 422 Mass. 261, 264-265. 661 N.E.2d 1317 (1996).

To the extent that the statement in M*cGrail* is inconsistent with our later statement in *Hinckley* and with our decision today it is disapproved”

FALSE IMPERSONATION – DECEASED PERSON

Lee v. Superior Court. 989 P.2d 1277 (Cal. 2000).
A statute that criminalized falsely impersonating another person in either his private or official capacity, and doing any act whereby any benefit might accrue to the impersonator, was construed to be violated by impersonating someone who was, at the time of the impersonation, dead.

In this case defendant received a traffic citation that he falsely signed in the name of his deceased brother, Edward Watson. A few weeks later, defendant was stopped for various traffic infractions *(e.g.,* expired registration) while driving in another town. When the officers asked for defendant's license, he said he did not have it with him.

The officers were unable to identify "Edward Watson" through their patrol car's computer. In an attempt to convince the officers that he was Edward Watson, defendant told them that a few weeks earlier, he had received a citation in that name, and that he therefore "had to be Mr. Watson." Although confronted with a document found in his vehicle showing the name "Randolph Lee," defendant continued to insist that he was Watson. After the officers informed him that they would need to take him to the police station in order to ascertain his identity, defendant admitted his true name. The officers undertook a computer check using that name and discovered that defendant had an outstanding arrest warrant for driving with a suspended license and that he was on parole and had nor obtained permission to be in the town where he was stopped.

Defendant was then arrested for violating the impersonation statute. The arresting officer contacted defendant's mother, who confirmed that Watson was deceased, and gave the officer a copy of the citation that defendant had received in Watson's name.

Defendant had two prior serious felony Convictions: a robbery with personal use of a firearm, and an assault with a firearm and with personal infliction of great bodily injury. The prosecutor charged him with a felony violation of the impersonation statute, thereby subjecting him to a possible 2 years-to-life sentence.

In affirming the charge under the impersonation statute, the Supreme Court of California, stated: " statutes prohibiting impersonation have two purposes. One is to prevent harm to the person falsely represented; the second is to ensure the integrity of judicial and governmental processes. Both purposes are furthered by construing [the statute] as applying to impersonation of a deceased person as well as of a living person, and both would be frustrated by a contrary interpretation of the statute."

FELONY MURDER VICTIMS ROBBED AFTER BEING SHOT

Commonwealth v. Christian, 430 Mass. 5S2. *722* N.E.2d 416 (Mass. 2000).

The doctrine of merger did not bar a defendant's conviction for armed robbery from serving as a predicate felony for felony murder convictions after two victims were fatally shot during a robbery, even though the victims were shot before the money was taken. The court focused on the defendant's intent to commit armed robbery, a felony, supplying the malice requirement for the murder under the felony murder rule, not when the physical act of robbery actually took place.

"The defendant argues that he is entitled to a directed verdict of acquittal because of the merger doctrine governing convictions of felony-murder. An armed robbery by force, as opposed to threat of force, he claims, is not sufficiently independent of the murder to constitute a separate offense, particularly where, as here, a defendant shoots a victim before taking his property. The defendant misapprehends the doctrine.

"We can envision no situation in which an armed robbery would not support a conviction of felony-murder. . . . The crime of robbery is the (1) stealing or taking of personal property of another (2) by force and violence, or by assault and putting in fear. . . Robbery is enhanced to an armed robbery when a defendant is armed. . .. It is the first element of the crimes of robbery and armed robbery, namely that stealing or taking of property. that qualifies them for application of the felony-murder rule. It is the intent to do that conduct (here stealing from Desir) that serves as the substitute for the malice requirement of murder. The manner in which a robber accomplishes the taking of property does not inform the merger analysis, and a defendant who commits a robbery in a manner that intentionally heightens the possibility of the victim's death, by shooting the victim first, cannot escape application of the felony murder rule. As a matter of logic and policy, those who inflict bodily injury on their victims before they complete their crimes are not treated more leniently than those who do not."

MIRANDA CUSTODY CONSENSUAL SEARCH

United States v. Garcia, 197 F.3d 1223 (8th Cir. 1999).

The initial detention of defendant, and a search of his person and his duffel hag, was consensual, and there was no requirement that he be given *Miranda* warnings, where defendant was about 25-years-old, of average intelligence, was not intoxicated or under the influence of drugs, was questioned for only a few minutes and detained for just a little over two hours, was not threatened, physically intimidated, or punished by the police, was in a public place, and stood by silently while the search took place. Additionally, when an officer spoke to defendant in English, he replied without hesitation and without inquiry, that the search of his person was not a problem and said 'yes' to a request to search tile bag.

"We consider the particular 'characteristics' of Garcia and the 'environment' in which the purported consent was given. *United States v. Gipp,* 147 F.3d 680, 685-86 (8th Cir. 1998). *See also United States v. Chaidez,* 906 F.2d 377, 380-81 (8th Cir. 1990). Garcia was about twenty - five years old; of average intelligence, according to his attorney; was not intoxicated or under the influence of drugs; was questioned for only a few minutes and detained for a little over two hours; was not threatened, physically intimidated, or punished by the police; was in a public place; and stood by silently while the search took place.

"When the officer spoke to Garcia in English, he replied, without hesitation and without inquiry, that a search of his person was no problem and said 'yes' to a search of his duffel hag. Under somewhat similar circumstances, this court affirmed the district court's finding of consent and specifically rejected defendant's allegation that he did not understand English and that the officers 'knew or should have know of this language harrier, and that this harrier vitiated [his] consent to the luggage search,' in *Sanchez,* 156 F.3d at 877, 878; *see also Gavan v. Muro, 141* F.3d at 907.

. . . until the police handcuffed Garcia, what took place between them was consensual. There was no requirement for a Miranda warning."
See also, People v. Reddersen, 992 P.2d 1176 (Cob. 2000) (defendant's consent to search of his person during traffic stop was voluntary, despite police officer's failure to give defendant *Miranda* advisement before conducting search; defendant had extensive experience with routine traffic stops, and officer's conduct toward defendant was non-confrontational and lasted a short time.)

INDECENT EXPOSURE BUTTOCKS

Moyer v. Commonwealth, 520 S.E.2d 371 (Va.. App. 1999).

It was held that a person's buttocks are not "sexual parts" within the meaning of a statute which applied to an adult in a custodial or supervisory relationship over a child and prohibited exposure of or proposals to touch sexual parts. The court said that buttocks are neither an organ of the reproductive system nor an external generative organ, and they do not relate to the male or female sexes or their distinctive organs or functions.

The trial court's error in concluding that buttocks were "sexual parts" within the meaning of the statute required a new trial, rather than simply a dismissal of the indictment in a prosecution for taking indecent liberties with a minor. The court was of the view that evidence could establish that one who exposed his buttocks to a person could have exposed his genitalia at the same time.
One judge dissented.

INTENT TO HARM – FEDERAL RULE

Holloway v. United States, 119 S.Ct. ____, 1999 WL 100910, No.97-71164 (1999).

Defendant was charged with the federal offense of carjacking, 18 U.S.C. § 2119, defined as "taking a motor vehicle. . . from another by force and violence or by intimidation" "with the intent to cause death or serious bodily harm.' At their trial his accomplice testified that their plan was to steal cars without harming the drivers, but that he would have used his gun if any of the victims had given him a "hard time."

Both the trial court and the Second Circuit Court of Appeals (126 F.3d 82) took the position that the requisite intent to cause death or harm under § 2119 may be conditional, *i.e.,* only if the victims resisted turning over their cars, and need not be the sole and unconditional purpose of the defendant at the time of the offense. A jury instruction to that effect was ruled proper by the Second Circuit.

This was affirmed by the U.S. Supreme Court in a *7-2* decision and an opinion written by Justice Stevens, On the basis of Congressional intent found in the statute, the prosecutor need only prove an intent to kill or harm under 2199 necessary to effect a carjacking. This means that the defendant's state of mind at the precise moment he demanded or took control over the car "by force and violence or by intimidation" is the relevant consideration. If he has the proscribed state of mind at that moment, the *scienter* element of the statute is satisfied. Since § 2119 does not mention either conditional or unconditional intent separately, and therefore does not expressly exclude either, its text is most naturally read to include the *mens rea* of both species of intent. The Court said it was reasonable to presume that Congress was familiar with the leading cases and the scholarlv writing recognizing that specific intent to commit a wrongful act may be conditional.

Justices Scalia and Thomas filed dissenting opinions.

PROSECUTING ATTORNEY ADVISING POLICE - IMMUNITY

Prince v. Hicks, 198 F.3d 607 (6th Cir. 1999).

A prosecutor's alleged act of advising a police officer that there was probable cause for an arrest warrant to issue, prior to the existence of probable cause, and prior to the prosecutor's determination that she would initiate criminal proceedings against an arrestee, was part of the investigative or administrative phase of a criminal case against the arrestee. Therefore, the prosecutor was not entitled to absolute immunity in the arrestee's civil rights action under 42 1 T.S.C. S 1983 based on such conduct.

The Supreme Court wrote in *Buckley v. Fitzsimmons,* 509 U.S. *259* (1993)], that a prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested.' *Buckley, 509* U.S. at 274, 113 S.Ct. 2606. .

A prosecutor performing an investigative function before he has probable cause to arrest a suspect cannot expect to receive the protection of absolute immunity, but a prosecutor who initiates criminal proceedings against a suspect whom she had no probable cause to prosecute is protected by absolute immunity. . . The dividing line is not, as Prince [plaintiff] argues, the point of determination of probable cause. Instead, the dividing line is the point at which the prosecutor performs functions that are intimately associated with the judicial phase of the criminal process. Nevertheless, Prince's complaint suffices to avoid. . . dismissal on absolute immunity grounds at this stage. The complaint, read in the light most favorable to Prince, alleges that Hicks [prosecutor] gave Hazelhurst [police officer] advice as to probable cause and Hazelhurst acted on it. Although the next few paragraphs of the complaint characterize Hicks and Hazelhurst as together initiating criminal proceedings against Prince, the complaint can be read to allege that Hicks gave Hazelhurst legal advice prior to the existence of probable cause and prior to Hicks' determination that she would initiate criminal proceedings against Prince. Hazelhurst then executed the warrant in reliance, in whole or in part, on that advice. At the time this advice was given, Hicks would not have been acting as an advocate for the state. 'Considering Prince's complaint in the light most favorable to her, we believe the complaint could properly he read to allege that Hicks gave legal advice to Hazelhurst in the performance of an investigative function that had only an attenuated connection to the judicial phase of the criminal process, and we therefore affirm the district court in denying Hicks absolute immunity under the alternative claim of Prince's complaint."

RAPE SHIELD LAW LESBIAN BACKGROUND

State v. *Lessley,* 601 N.W.2d 521 (Neb. 1999).

Evidence of a lesbian victim's past sexual encounters with men was relevant to the issue of consent, and thus defendants constitutional right to confront witnesses required that such evidence be admitted in his prosecution for first degree sexual assault even though the evidence was otherwise inadmissible under a rape shield statue. The prosecutor had placed evidence of the victim's sexual orientation before the jury. The court said the testimony permitted the jury to draw a critical inference that the victim did not consent to anal intercourse with defendant, and the defendant's proffered evidence would have made the inference less probable. Thus the evidence was admissible in spite of the rape shield statute's strictures. The case was reversed and remanded for a new trial.

"The prosecution 'opened the door' in relation to M.B.'s past sexual behavior when it elicited testimony from M.B. that she is a lesbian and had never previously engaged in the type of sexual act which she accused Lessley of committing against her will. The testimony created an inference that M.B. would not consent to anal intercourse with Lessley. Lessley's right to confrontation was violated when he was not allowed to rebut the inference that M.B.'s testimony created."

ROBBERY INTENT CLAIM OF RIGHT

People v. Tufunga, 987 P.2d 168 (Cal. *1999).* Overruling prior case law on the subject, the Supreme Court of California has held that a claim-of-right defense to robbery as negating felonious intent does not extend to forcible takings perpetrated to satisfy, settle or otherwise collect on a debt, liquidated or unliquidated. It did so on the basis that modern public policy is against the recognition of such a defense in this context.

"In furtherance of the public policy of discouraging the use of forcible self-help, a majority of cases from other jurisdictions decided after *Butler [People* v., 121 P.2d 703 (1967)] that have addressed the question whether claim of right should be available as a defense to robbery have rejected *Butler's* expansive holding that a good faith belief by a defendant that he was entitled to the money or possessions of the victim to satisfy or collect on a debt is a defense to robbery.

"The People in this case urge that ' the rationale for declining to permit a defendant to assert a claim of right defense in a robbery case is quite simple: An ordered society founded on the rule of law does not countenance self-help when it is accomplished by the use of fear, intimidation, or violence."

SEXUAL ASSAULT PENETRATION ISSUE

People v. *Maggette,* 723 N.E.2d 1238 (IlI.App. *2000).*

Where there was evidence that defendant rubbed a victim's vagina with his finger and caused the victim's hand to touch his penis, this did not establish "penetration," as was a necessary element of the offense of criminal sexual assault. The court said the victim's hand was not an "object" within the scope of the sexual assault statute and there was no evidence that defendants finger actually entered the victim's vagina.

The State presented no evidence of any intrusion into G.J.S.' vagina by defendant's hand or finger. Mere touching or rubbing of a victim's sex organ or anus with a hand or finger does not prove sexual penetration and cannot, therefore, constitute criminal sexual assault. Similarly, placing a victim's hand on a defendant's penis does not constitute sexual penetration under section 12-12(1) of the Criminal Code. Accordingly, defendant's convictions on counts I and V of the amended information must he reversed. . .

SENTENCE SUSPENDED MISDO INHERENT CONDITION

Demry v. State, 986 P.2d 1145 (Okla. App. 1999).

It has been held that a suspended sentence for a misdemeanor contains an inherent condition that the person shall not commit the same misdemeanor during the period of suspension, even if the condition is not spelled out in the sentence. Thus, commission of the same crime while on a suspended sentence is a violation of the terms of suspension.

"This Court is not prepared to hold it to be inherent that a person shall not commit *any* misdemeanor during a period of suspension. Obviously, misdemeanor offenses vary greatly and we will not create an arbitrary list of which misdemeanors justify revocation and which ones do not. However, we do hold a suspended sentence for a misdemeanor contains the inherent condition that the person shall not commit the same misdemeanor during the period of suspension. . . ."

STALKING SPECIFIC INTENT VERBAL THREATS

State v. Rico, 741 So.2d 771 (La.App. 1999).

A court ruled in a stalking prosecution that the evidence was insufficient to infer from the circumstances that defendant had a specific intent to place the victim in fear of death or bodily injury. The evidence indicated that although defendant followed the victim's automobile at a very close distance, defendant did not hit or ram her car, defendant did not pursue her car behind a building but, instead, waited for her to come around the building, and defendant did not verbally threaten her, but merely said "hey baby," and shouted profanities.

"The State failed to present sufficient facts and circumstances to prove the Defendant had the requisite intent to place the *victims in* fear of death or bodily injury.

"The Defendant did not verbally threaten Suzanne; the only words he said to her were 'Hey Baby.'...

"When the evidence is viewed in the light most favorable to the prosecution, it is insufficient to infer from the circumstances that the Defendant had the specific intent to place the victims in fear of death or bodily injury."

UNLAWFUL IMPRISONMENT BY OFFICER ON DISABILITY

Hendrickson v. State, 989 P.2d 565 (Wash.App. 1999).

Defendant, convicted of unlawful imprisonment, was not exercising lawful authority as a police officer when, while on disability status from a state patrol, he stopped a motorist whom he wrongly suspected of firing a rifle and smashing defendant's mailbox, ordered the motorist out of the vehicle at gunpoint, and searched the motorist and his vehicle. The court ruled that defendant's disability status removed his authority to perform law enforcement duties and, thus, he had no defense to the unlawful imprisonment charge.

"Washington law does not empower the trooper on disability status to perform law enforcement duties. . . . when the chief relieves a trooper from active duty, the chief is recognizing that the trooper is not capable of performing law enforcement duties, and the chief is removing the trooper's authority to perform such duties pending the trooper's return to active service.

"Hendrickson also argues that when the State Patrol moved him from active status to disabled status, it failed to make clear to him that he could not act as a police officer until his return to active status. Assuming that is true, it is also immaterial. The authority of a disabled trooper is controlled by the law discussed above, not by the actions of a particular State Patrol supervisor. Because Hendrickson was on disability status at the time of the incident charged herein, he did not have lawful authority to act as a police officer."

VEHICULAR HOMICIDE – FAILURE TO YIELD

State v. Brown, 603 N.W. 2d 456 (Neb. 1999).

In a case of first impression for it, the Supreme Court of Nebraska ruled that to be criminally responsible for a motor vehicle homicide for failure to yield the right-of-way to another vehicle, the other vehicle was required to be capable of being seen by the defendant who had stopped at an intersection and waited for two vehicles to pass, but collided with a truck, which defendant claimed did not have its headlights on at the time of the accident. To rule otherwise, the court said, would he to create a strict liability offense, which it declined to do.

"The requirement that a driver must see or should reasonably have seen the approaching vehicle to he convicted of motor vehicle homicide due to a failure to yield is consistent with existing jurisprudence regarding negligence cases. Since a party in a civil case is entitled to, at the very least, an instruction regarding the visibility or non-visibility of another vehicle, due process demands that a criminal defendant, under the more exacting beyond a reasonable doubt standard, should similarly he entitled to such an instruction. The trial court committed prejudicial error in failing to so instruct in the instant case [and denied defendant a fair trial.]"

WEAPONS – CONCEALED DEFINITION

In re Ricardo A., 92 Cal.Rptr.2d 349 (Cal.App.)

Where a dirk being carried by a juvenile appeared as a pen being carried on the juvenile's ear to anyone approaching him from the front, and the object only appeared as a dirk when viewed from behind the juvenile, this was sufficient to support a finding that the dirk was "concealed" within the meaning of a statute prohibiting the carrying of a concealed dirk or dagger.

The court said if a dirk is disguised as some ordinarily harmless object, such as a pen, it is "concealed," for purposes of the statute.

"Ricardo argues that cases in which a dirk was found to have been substantially concealed have done so only when the weapon was hidden in the defendant's clothing. . . . Ricardo points out that the dirk was not concealed in his clothing and that his head was shaved.

"It may he true that in all of the cases discussing the question of concealment, the dirk or dagger was concealed in the defendant's clothing. But Ricardo cites no case that holds concealment in clothing is the only method of concealment sufficient to sustain a conviction.

"Here the juvenile court concluded that Ricardo substantially concealed the dirk had a combination of its appearance as a pen and the placement of the point behind his ear. Because this conclusion is supported by the evidence, we have no power to disturb it on appeal