



Legal Update

FACULTY MEMBER WORKING AT AFTERSCHOOL PROGRAM IS A MANDATED REPORTER

Commonwealth v. Marek Kozubal SJC-13092 (October 15, 2021)

Relevant Facts:

In 2003 the defendant was hired as a faculty member at a private school for grades pre-K through 12th grade. His duties included supporting technology for programs at the school's observatory. In 2016 the defendant was working in a part-time capacity in various afterschool programs and occasionally worked as a substitute teacher in the middle school. The defendant also taught at the school's summer camp and instructed the afterschool amateur radio club that was open to students, faculty, and community members.

The defendant met the 13-year old victim in 2016 when she attended a radio course at the observatory with her father and stepmother. After the program the defendant began exchanging text messages with the victim and sometimes instructed her to delete the messages they exchanged. On June 24, 2016 the victim met the defendant at the school to prepare for a radio event that was going to happen on June 25 and 26. The defendant kissed the victim and told her he was "not supposed to do that" and could "get in big trouble" and told her not to tell anyone. Later that same day, he kissed her again and touched her breasts.

During the radio event on June 25 and 26 the defendant kissed the victim at least three times and touched her breasts both over and under her clothing.

On July 6, 2016 the defendant met the victim at her home. In the basement of the home the defendant kissed the victim and touched her vagina. The victim disclosed the relationship to her parents on July 16 and the police were notified on July 18, 2016.

The defendant was charged with eight indictments alleging indecent A&B on a child under 14 by a mandated reporter.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department's legal advisor or prosecutor.

Discussion

“The purpose of mandated reporting is the protection of children.” The legislature instills mandated reporting responsibilities on several different categories of adults who are in a position to observe and detect signs of child abuse or neglect. MGL c 119 §21 defines “mandated reporter” in relevant part: “A person who is a public or private school teacher, educational administrator...child care worker...person paid to care for or work with a child in any public or private facility...”

There was a question in this case as to the defendant’s exact job title at the time of the incidents – was he a teacher or not? Ultimately the court did not have to make that specific determination because it was clear from the evidence that he worked at an afterschool program.

“As an adult employee working at an afterschool program, there is no question the defendant was part of the class of adults who are able to observe and detect signs of child abuse or neglect.”

The convictions for indecent assault and battery on a person under 14 by a mandated reporter for the incidents on June 24 and 25 were affirmed. The convictions associated with July 6, 2016 were reduced to indecent assault and battery on a child under the age of 14 because the defendant was not acting as a mandated reporter at the time of the incident. Those charges were remanded for resentencing.

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