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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of November – 2021 - ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Matthew Willigman, 2021 IL App (2d) 200188, August 31, 2021

Willigman was a school principal and failed to report alleged child abuse to the DCFS. ***Did he violate the Reporting Act*?**

FACTS: The alleged victim in this case, an 8-year-old boy, attended an elementary school. The parents of the child visited the school and had a meeting with the principal of the school, Willigman. At the meeting, the parents informed Willigman that they did not want the school social worker to see their son. When the parents subsequently learned that the social worker was still seeing their son, they had another meeting with the principal. This time the parents explained that their son had complained that the worker was inappropriately touching him. The principal informed the parents that the social worker would have no further contact with their son.

Following a report of abuse to the DCFS, a police investigator contacted Willigman. Willigman admitted knowledge of the allegations made by the parents. However, when asked by the investigator whether he had contacted the DCSF, Willigman told the Investigator that, after the meeting with the parents, he went to talk to the social worker. The social worker said that he had seen the child only three times that year and it was always in a group setting. Willigman said that he did not do anything about the allegations because he did not have anything to go on and he did not want to start "throwing the [social worker's] name around." Willigman further alleged that the child's parents had a vendetta against the social worker and indicated that lying was "[the parents] usual M.O." The Investigator asked Willigman why he did not put the social worker on administrative leave after the allegations. Willigman said that (the parents) were always coming in making up wild stories. Willigman thought that, if the allegations were true, someone would have called DCFS already. Since he had not heard from the DCFS, he assumed that the allegations were not true.

Based upon these facts, Willigman was charged with one count of failing to report child abuse pursuant to section 4 of the Abused and Neglected Child Reporting Act (Reporting Act) (325 ILCS 5/4). At the conclusion of his trial, Willigman was found to be guilty as charged. In explaining his verdict, the trial judge stated that Willigman had an absolute duty to report the touching. He fail to do so. He was found guilty based upon this failure. Willigman then brought this appeal.

ISSUE: Was Willigman properly convicted of failing to report child abuse?

ARGUMENT: Willigman argued that the trial court erred in finding that the offense of failing to report child abuse was a strict liability offense, i.e., that no criminal state of mind was required. According to Willigman, the statute clearly required a culpable mental state. Specifically, the statute required a "willful" failure to report (325 ILCS 5/4.02). Further, he argued that the duty to report was not triggered merely by an allegation of child abuse but instead by circumstances causing one to "hav[e] reasonable cause to believe" that a child "may be an abused child."

THE LAW: Section 4 of the Reporting Act states that a mandated reporter "having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the [DCFS]."

KEY CASE: The appellate court noted that the trial court's verdict seemed to be based on a misinterpretation of the court's decision in Doe v. Dimovski, 336 Ill. App. 3d 292, (2003). Dimovski was a civil case addressing whether a school district could avoid civil liability for claims involving negligent hiring and negligent supervision, not a criminal case brought under the Reporting Act. In Dimovski, the court noted the mandatory language in the Reporting Act "that school personnel 'having reasonable cause to believe' a child known to them in their professional or official capacity may be an abused child 'shall immediately report or cause a report to be made to [DCFS].' " The court found that the mandatory language divested the School Board of the exercise of discretion whether to report the previous abuse to the DCFS. Therein the Court held: "(w)e disagree with the notion that school personnel are vested with the discretion to determine what constitutes 'reasonable cause to believe' or whether such abuse actually occurred. The term 'reasonable cause to believe' as used in the Reporting Act is equivalent to the term 'suspect' as used in the Code of Federal Regulations. The Reporting Act requires that a credible report of suspected child abuse must be turned over to the DCFS. The DCFS is assigned the authority, or the discretion, to substantiate the accuracy of all reports of known or suspected child abuse or neglect. Thus, once the school personnel suspect or should suspect that a child may be sexually abused, they are divested of any discretion to determine what constitutes 'reasonable cause to believe' or whether such abuse actually occurred. If school personnel were allowed to determine

whether reasonable cause existed or whether such abuse actually occurred before reporting the matter to DCFS, the goal of protecting children from sexual abuse would be undermined. Although the school board may initially investigate the credibility of any rumors of sexual abuse, whether there was reasonable cause to report the allegations is an objective determination."

FINDINGS: The appellate court concluded that in this case, the main issue concerned the meaning of the term "reasonable cause to believe." According to the Court, the term "reasonable" implies that some exercise of judgment should occur. If no exercise of judgment were required, the legislature could have used the term "any cause to believe." Further, the issue of whether a mandated reporter has reasonable cause to report suspected abuse is determined by the "objective belief of a reasonable person, not the school personnel's subjective belief." Generally, the Court held that what is reasonable depends on the particular facts and circumstances in each case.

The appellate court noted that the record in this case shows that the trial court did treat the failure to report as a strict liability offense. The trial court admitted that it had difficulty interpreting the statute and that it would impose a strict liability standard because of the policy behind the statute. To the appellate court, the trial record indicated that the court believed that any allegation of "inappropriate touching" would require a mandated reporter to make an immediate call to the DCFS. The trial court stated that Willigman did not have the discretion to determine whether the inappropriate touching was merely a bump or an arm around the shoulder. The appellate court disagreed with this interpretation of the statute. Accordingly, the Court held that the plain language of the statute did not support the trial court's determination that any and all allegations of abuse mandate a report to the DCFS.

Further, the appellate court noted that the trial court interpreted Dimovski to stand for the proposition that any report, even a doubtful rumor of potential abuse, must immediately be reported to the DCFS without question. The appellate court held that this interpretation of Dimovski was improper. According to the Court, Dimovski stood for the proposition that, once school staff receive a credible report of abuse or suspected abuse, they have no discretion not to inform DCFS. However, Dimovski did not hold that school staff were stripped of the ability to determine whether a reasonable person would find the report credible. In Dimovski, the victim and her mother detailed a course of inappropriate sexual harassment and sexual advances. The information provided was not ambiguous as to whether there was potential abuse. Given those facts, the Court held that there was reasonable cause to suspect that abuse had occurred, and the mandated reporters were required to report the abuse to the DCFS.

Accordingly, the appellate court held that the trial court erred in concluding that, under Dimovski, school personnel had no discretion at any time and that every allegation of abuse must be reported. The Court held that " '[r]easonable cause to believe' " requires something more than a mere utterance containing an allegation of abuse. Rather, a mandated reporter "must first determine what constitutes 'suspect sexual abuse' within the meaning of the Reporting Act, and whether such abuse likely occurred. Reaching such a conclusion clearly entails the exercise of a degree of judgment and discretion." As such, under Dimovski, a mandated reporter must use his or her discretion to determine whether a report of abuse is credible. Factors that may be relevant include who is making the allegations, how recent any alleged abuse occurred, and whether details of the events reveal abusive conduct and support the credibility of the accusations. For these reasons, the appellate court reversed Willigman's conviction.

DOUBLE JEOPARDY: Should this case be remanded for retrial? The Court held that looking at the evidence in the light most favorable to the prosecution, it must conclude that the evidence was sufficient to convict Willigman beyond a reasonable doubt. The Court held that the Reporting Act provides that school personnel "having reasonable cause to believe a child known to them in their professional *** capacity may be an abused child *** shall immediately report or cause a report to be made to the [DCFS]." 325 ILCS 5/4 The parties did not dispute that Willigman was a mandated reporter, that he knew I.M. in his professional capacity, and that he did not make a report to DCFS. The only issue in this case was whether the evidence established that Willigman had been informed of the alleged touching. When Willigman described the conversation to the investigator, Willigman stated that, if he received such information from his own child, he would have been at the police station "in a heartbeat." Further, the statement was not immediately dismissed as unbelievable, because Willigman stated that he went to ask the social worker about the allegation. Willigman also told the investigator that, if the allegation were true, he assumed that it would have been reported to DCFS already. As such, the Court held that a rational trier of fact could have found the essential elements of the charged offense. It therefore concluded that there is no double jeopardy impediment to retrial.

CONCLUSION: The appellate court reversed Willigman's conviction and remanded this case for retrial.

QUIZ QUESTIONS FOR THE MONTH OF NOVEMBER – 2021 - ALTERNATIVE

People v. Matthew Willigman, 2021 IL App (2d) 200188, August 31, 2021

1. Illinois law mandates that when a "mandated reporter" has "reasonable cause to believe" that a child is abused or neglected, that reporter must contact the DCFS.

   a. True.

   b. False.

2. Willigman was the principal of a school in this month's case. Is a police officer also a mandated reporter under the Abused and Neglected Child Reporting Act?

   a. Yes.

   b. No.

3. The Court in this month's case, Willigman argued that the trial court improperly concluded that any report of child abuse or neglect, even a doubtful rumor of potential abuse, must immediately be reported to DCFS without question.

   a. True.

   b. False.

4. If a mandated reporter violates the Abused and Neglected Child Reporting Act's requirement that the DCFS be contacted in cases such as this, what, if any, criminal offense is committed?

   a. No criminal offense is committed.

   b. a petty offense is committed.

   c. a Class A misdemeanor is committed.

   d. a Class 2 felony is committed.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF NOVEMBER – 2021 - ALTERNATIVE

People v. Matthew Willigman, 2021 IL App (2d) 200188, August 31, 2021

1. Illinois law mandates that when a "mandated reporter" has "reasonable cause to believe" that a child is abused or neglected, that reporter must contact the DCFS.

   a. True. Section 4 of the Abused and Neglected Child Reporting Act states that a mandated reporter "having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to [DCFS]."

2. Willigman was the principal of a school in this month's case. Is a police officer also a mandated reporter under the Abused and Neglected Child Reporting Act?

   a. Yes. Section 4 of the Abused and Neglected Child Reporting Act provides: "Persons required to report; privileged communications; transmitting false report. (a) The following persons are required to immediately report to the Department when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused child or a neglected child: (7) Law enforcement personnel, including any: law enforcement officer; field personnel of the Department of Juvenile Justice; field personnel of the Department of Corrections; probation officer; or animal control officer or field investigator of the Department of Agriculture's Bureau of Animal Health and Welfare."

3. The Court in this month's case, Willigman argued that the trial court improperly concluded that any report of child abuse or neglect, even a doubtful rumor of potential abuse, must immediately be reported to DCFS without question.

   a. True. The Court held: "In the present case, the trial court interpreted this court's decision in Dimovski to stand for the proposition that any report, even a doubtful rumor of potential abuse, must immediately be reported to DCFS without question. This interpretation is improper."

4. If a mandated reporter violates the Abused and Neglected Child Reporting Act's requirement that the DCFS be contacted in cases such as this, what, if any, criminal offense is committed?

   c. Class A misdemeanor is committed.