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Degren v. State:**Failure to Prevent the Sexual Abuse of a Child, When It Is Reasonably Possible to Act, Qualifies As Sexual Abuse Under Maryland's Child Abuse Statute**

By Sean E. Kreiger

In a unanimous decision, the Court of Appeals of Maryland held that an adult responsible for the supervision of a child is guilty of sexual abuse when they fail to prevent the sexual molestation of the child. *Degren v. State*, 352 Md. 400, 722 A.2d 887 (1999). The defendant's conviction for child abuse was upheld in *Degren* because of her failure to stop or report the child abuse of a minor under her supervision when it was reasonably possible for her to act. In so holding, the court of appeals refined the child abuse statute and made it clear that a supervising adult has an affirmative duty to prevent the abuse of children under their care.

Sharon Degren ("Degren") and the mother of twelve-year-old Jennifer B. ("Jennifer") agreed that Jennifer would stay at Degren's house, under Degren's supervision. *Id.* at 405, 722 A.2d at 889. During her stay, Jennifer was sexually abused by Degren's husband, Nick Degren ("Nick"), and his friend, Richard Dobsha ("Rick"). *Id.* at 406-07, 722 A.2d at 890. In some instances, Degren was present in the same room when Jennifer was sexually abused, occasionally watching the sexual abuse from the corner of the bed. *Id.* Nevertheless, Degren did not attempt to prevent the sexual abuse, or contact the authorities. *Id.* Degren was subsequently convicted by a jury in the Circuit Court for Charles County

of four counts of child abuse, and sentenced to four concurrent ten-year sentences. *Id.* at 404, 722 A.2d at 889. On appeal, the Court of Special Appeals of Maryland affirmed the conviction, and the Court of Appeals of Maryland granted certiorari to address the issue of whether the child abuse statute includes an act of omission or failure to prevent abuse. *Id.*

The court of appeals began its analysis by interpreting Maryland's child abuse statute to determine whether the failure to prevent sexual abuse of a minor was an act that constituted child abuse. *Id.* at 408, 722 A.2d at 891 (citing MD. ANN. CODE art. 27, § 35C (1996)). The relevant part of the statute states that "a parent or other person who has permanent or temporary care or responsibility for the supervision of a child . . . who causes the abuse to the child is guilty of a felony." *Id.* at 408, 722 A.2d at 891 (quoting MD. ANN. CODE art. 27, § 35C(b)(1) (1996)).

The court interpreted the meaning and scope of the statute by reviewing cases where it had applied the statute. *Id.* at 409, 722 A.2d at 891. The court noted one case in which it held a mother guilty of involuntary manslaughter for her failure to protect her infant from repeated abuse by her boyfriend. *Id.* at 409-10, 722 A.2d at 891-92 (citing *Palmer v. State*, 223 Md. 341, 353,

164 A.2d 467, 474 (1960)). Yet in another case, *Pope v. State*, the court found a woman not guilty of child abuse for her failure to stop the mother from physically abusing her child while they were in the defendant's house. *Id.* at 415-16, 722 A.2d at 894-95 (citing *Pope v. State*, 284 Md. 309, 318-20, 396 A.2d 1054, 1060-62 (1979)). The instant case was distinguished from *Pope*, because in *Pope*, the court found that there was no mutual consent for the defendant to have supervisory responsibility for the child. *Id.* *Degren*, on the other hand, had agreed with Jennifer's mother to care for Jennifer. *Id.* The court found that its rulings in these cases provided a basis for convicting a person for failure to prevent sexual abuse. *Id.*

To clarify that Degren's failure to act qualified as sexual abuse, the court next addressed the plain meaning of the child abuse statute. *Id.* at 418, 722 A.2d at 896. The statute defines sexual abuse as "any act that involves sexual molestation or exploitation of a child." *Id.* (quoting MD. ANN. CODE art. 27, § 35C(a)(6)(i) (1996)). Degren's contention on appeal was that her actions did not qualify as sexual abuse because she did not act in furtherance of the abuse. *Id.* This contention prompted the court to define "act" and "involves" as they relate to the statute. *Id.* The court considered

outside sources because the definition of “act” is not in the statute. *Id.* According to Black’s Law Dictionary “an omission or failure to act may constitute an act for the purpose of criminal laws.” *Id.* (quoting BLACK’S LAW DICTIONARY 25 (6th ed. 1990)). Furthermore, the court pointed out that “act” is normally construed to include omissions from a duty to act. *Id.*

The court stated that the word “involves,” which modifies “act” in the statute, “connotes a broad sense of inclusion, such as an act relating to sexual molestation or exploitation.” *Id.* In further support of the statutory usage of “involves,” the court reviewed Merriam-Webster’s Collegiate Dictionary and found that “involves” means “to have an effect on.” *Id.* (quoting MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 617). Thus, according to the court, “involves” serves as an extender beyond sexual molestation or exploitation to include “something done by the accused that relates to the molestation or exploitation.” *Id.*

Moving beyond the issue of statutory construction, the court considered the legislative intent behind the statute. *Id.* at 419-20, 722 A.2d at 896-97. The court found the legislative intent clear because the introductory paragraph and purpose clause of the statute stated that the purpose of the statute was to protect children. *Id.* (citing MD. ANN. CODE art. 27, § 35C (1996)). Furthermore, the court considered a 1974 amendment to the statute, which added sexual abuse as a form of child abuse. *Id.* The purpose of this

extension was to expand the definition of child abuse. *Id.* Thus, the court concluded, the definition of child abuse was intended to be open in application, making Degren’s contention that omissions were not acts contradictory to the legislative intent. *Id.*

Next, Degren argued that because the “failure to act” language was not added to the sexual abuse provision, the statute was only applicable for failure to intervene during the physical abuse of a minor. *Id.* at 421, 722 A.2d at 897. The court rejected this argument and stated that the definition of abuse does not require physical injury for criminal penalties, and that the 1973 amendment broadened coverage of the entire statute to include failure to act, regardless of whether the abuse is physical or sexual. *Id.* After considering these factors, the court held that “the definition itself encompasses what petitioner actually did: the affirmative acts of watching and failing to intervene in the rape.” *Id.* at 425, 722 A.2d at 899.

By allowing the conviction for sexual abuse for an omission to act, the court of appeals has extended the coverage of the child abuse statute. This praiseworthy decision will allow the prosecution of individuals who do not directly participate in abuse, but who may reasonably prevent the abuse and who have a responsibility or duty to the child. This decision will help to further extend penalties for child abuse and thus provide a means of prosecuting more participants in this insidious crime.