

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

Vol. 32, No. 17, April 27, 2007

Baugh v. State, 32 Fla. L. Weekly S171 (Fla. 2007):

Evidence was insufficient to corroborate child victim's recanted out-of-court statements that defendant sexually abused her, and thus such statements were insufficient to support conviction for capital sexual battery; defendant's purported "admission" to victim's mother after abuse allegedly occurred, that he wanted victim to perform fellatio on him, only showed that defendant had thoughts about committing the offense, fact that defendant slashed his wrists after being confronted by victim's mother might have been "suggestive of guilt," but was also consistent with a troubled defendant in need of psychotherapy, and while testimony given by both inmate imprisoned with defendant and former family friend about victim's recantation could have indicated that victim was pressured to change her story, it also reflected reality of the situation, which was that defendant would not get out of jail as long as victim alleged that he committed the crime.

Recanted statements can sustain a sexual battery conviction when other proper corroborating evidence is admitted.

Discussion: Read this case carefully before you consider taking a case to trial where the victim is going to recant. The court is very restrictive in what it considers corroborating evidence.

Brock v. State, 32 Fla. L. Weekly D1027 (Fla. 1st DCA 2007):

Requested instruction on attempted sexual battery was not warranted, in prosecution for sexual battery on victim under 12 years of age, where evidence established either a completed crime or no crime at all.

Prohibition against double jeopardy precluded state from retrying defendant on charge of sexual battery on victim under 12 years of age following reversal of his conviction for attempted sexual battery, where jury, in finding that defendant guilty of lesser-included offense of attempted sexual battery, necessarily found defendant not guilty of charged sexual battery.

McMann v. State, 32 Fla. L. Weekly D1027 (Fla. 1st DCA 2007):

Charging document's citation to wrong reporting statute did not mislead sex offender to his prejudice as to warrant dismissal of charge of failing to report every six months to county sheriff's office; cited statute and intended statute had same reporting requirements and contained identical language, and State included language of correct statute in charging documents.

Discussion: Since the defendant was on probation, he should have been charged under F.S. 944.607, but the State charged him under F.S. 943.0435, which was technically incorrect. The court let it slide this time, but be careful when making this charging distinction.