

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

Vol. 32, No. 33, August 17, 2007

Clements v. State, 32 Fla. L. Weekly D1927 (Fla. 2d DCA 2007):

State failed to prove that defendant committed sexual battery on victim on or after date new statute, tolling four-year limitations period, took effect; victim, victim's mother, victim's sister, and detective did not provide specific dates when battery occurred, mother's testimony on defendant's touching of victim did not specify type of touching, and doctor who examined victim could not indicate when sex between victim and defendant occurred.

In criminal cases, the statute of limitations must be liberally construed in favor of the accused.

Offense of sexual battery by a person in a familial or custodial authority was not a continuing offense, for purposes of calculating the limitations period; legislature did not intend to prohibit the offense as a continuing course of conduct, and offense was by its nature complete and prosecutable based on one incident of penetration or union.

Discussion: This case discusses a version of the statute of limitations that changed October 1, 1993. More importantly, it states that if your time frame encompasses two separate limitations periods, the defendant must be given the benefit of the doubt when the jury does not specifically find that one of the sexual acts occurred after the limitations change.