

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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Marra v. State, 32 Fla. L. Weekly D2949 (Fla. 5th DCA 2007):

Evidence was insufficient to show that defendant tongue-kissed or “French” kissed minor victim, as required for conviction for lewd and lascivious conduct regarding a minor; evidence and inferences established a kiss in which defendant's tongue made contact with victim's cheek and lips but did not make contact with victim's tongue or enter victim's mouth.

Evidence was sufficient to show that defendant attempted to tongue-kiss or “French” kiss minor victim, so as to support conviction for attempted lewd and lascivious conduct regarding a minor; defendant was prevented from “French” kissing victim only because victim moved her head on his first attempt and had her lips closed on his second attempt.

Discussion: This is an interesting case that shows how important it is to use proper language in your charging document. The court noted that the State had to specifically prove a “French Kiss” because they charged it that way in the information. The court then went on to cite dictionary references for the term to show that it required a tongue-to-tongue contact. The court rejected the State’s argument that the term was surplusage. In conclusion, be careful not to add elements to your charge by including unnecessary language.

State v. Cook, 32 Fla. L. Weekly D2948 (Fla. 5th DCA 2007):

Warrant affidavit set forth facts establishing probable cause to support issuance of warrant to search defendant's residence and his computer; affidavit revealed that citizen informant, defendant's neighbor, told police that he had access to defendant's computer files through a shared hard wire connection, and that, when he opened a file of defendant's labeled “XXX,” he saw 122 images of “young preteen girls in nude, sexually explicit positions.”

Even if warrant affidavit did not set forth sufficient facts to establish probable cause to support issuance of warrant to search defendant's residence, good faith exception to warrant requirement applied in that police officers did not omit information or make misrepresentations in the affidavit, and affidavit was not so lacking in indicia of probable cause that the officer executing the warrant could not with reasonable objectivity rely in good faith on the probable cause determination.

