

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

Vol. 33, No. 3, January 18, 2008

Khianthalat v. State, 33 Fla. L. Weekly S44 (Fla. 2008):

A defendant charged with lewd or lascivious battery on a child 12 years of age or older but less than 16 years of age is not entitled to an instruction on simple battery when the information did not allege lack of consent and the evidence presented at trial did not support lack of consent.

Discussion: This case contains a good discussion regarding the conclusive presumption that children under 12 years of age are incapable of consenting. The court indicates that children between 12 and 16 are capable of consenting, and that is why section 800.04 specifically says that consent is not a defense.