

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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James v. State, 33 Fla. L. Weekly D266 (Fla. 2d DCA 2008):

Defendant's objection to anticipated testimony of victim, on grounds that she intended to testify to multiple acts of digital penetration when defendant had been charged with one single offense, was premature and, thus, appropriately denied, where, at the time of defendant's objection, victim had not discussed the acts in question.

Burnett v. State, 33 Fla. L. Weekly D219 (2d DCA 2008):

Defendant was charged with soliciting young boys to engage in lewd acts while being videotaped. The police locate the videotape in the same location as numerous computer disks containing hundreds of child pornography images. All counts were filed in one information. After conviction, the defendant alleged ineffective assistance of counsel based upon the fact that his attorney did not move to sever the lewd conduct counts from the child pornography counts.

In remanding the case for an evidentiary hearing, the court noted that the facts presented should have resulted in a severance of the counts.

The court also noted that the possession of child pornography images and the videotape depicting the boys were not similar enough to be admissible as Williams Rule evidence.

State v. Hobbs, 33 Fla. L. Weekly D260 (5th DCA 2008):

Where an alleged sexual abuse victim repudiates charges and declines to cooperate, and other evidence is not available to prove the corpus delicti, the burden of the state in seeking to admit defendant's confession can be met even though the victim is not incapacitated. F.S. § 92.565 (2).

Conflict certified.

Discussion: This case contains a good discussion of statutory construction and terms like *noscitur a sociis* and *ejusdem generis* in case you are interested.

Abrams v. State, 33 Fla. L. Weekly D228 (Fla. 4th DCA 2008):

Dangerous Sexual Felony Offender (DSFO) statute was not facially unconstitutional as violative of procedural due process; defendant was on notice of increased penalty attached to his criminal conduct, he had notice and opportunity to be heard on his sentence, and statute did not contain provision placing burden on state to prove prior qualifying conviction required by act, nor did it state degree of proof.

Committing lewd or lascivious conduct did not qualify defendant for sentencing pursuant to Dangerous Sexual Felony Offender (DSFO) statute.

Richardson v. State, 33 Fla. L. Weekly D230 (Fla. 4th DCA 2008):

Location of defendant's vehicle, a deserted parking lot, and the non-violent swaying of the vehicle, alone, did not give rise to reasonable suspicion of criminal activity as to justify stop of defendant's vehicle.

Discussion: The observed “swaying” resulted in lewd battery charges. I’ll leave that one up to your imagination.