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Tyrrell v. State, 33 Fla. L. Weekly D667 (Fla. 4th DCA 2008):

Any error resulting from trial court's orders requiring victim to produce sex toy was harmless, in prosecution for sexual battery on a person 12 years of age or older, in which jury found defendant guilty of lesser offense of misdemeanor battery, as jury did not need to see the actual toy to understand the testimony about it or nature of the defense that the victim's injuries were due to victim's use of the toy.

No error occurred as result of victim's failure to produce medical records pertaining to her panic attacks, though trial court had ordered her to do so, in prosecution for sexual battery on a person 12 years of age or older, in which jury found defendant guilty of lesser offense of misdemeanor battery, as victim's panic attacks prior to her encounter with defendant were irrelevant, in that her earlier panic attacks were too tenuous and remote to be admitted.

Trial court did not abuse its discretion in refusing to allow defendant to show victim a sex toy lineup, in prosecution for sexual battery on a person 12 years of age or older, in which jury found defendant guilty of lesser offense of misdemeanor battery, after victim failed to produce sex toy defendant alleged she used and that caused her injuries, as this use of visual aids was not directly related to the charges.

State v. Contreras, 33 Fla. L. Weekly S177 (Fla. 2008):

Defense counsel's discovery depositions of alleged victim did not afford defendant an opportunity for cross-examination, and thus admission of victim's videotaped testimonial statement to coordinator of a Child Protection Team (CPT) regarding sexual activities committed upon her by defendant violated defendant's right to confrontation in trial for capital sexual battery and lewd and lascivious molestation; discovery deposition was not functional substitute of in-court confrontation, in that defendant was prohibited from being present, the motivation for deposition did not result in "equivalent of significant cross-examination," and the resulting deposition could not be admitted as substantive evidence at trial.

Blanton v. State, 33 Fla. L. Weekly S184 (Fla. 2008):

Neither defense counsel's discovery deposition of child victim in sexual battery upon a

child case, nor mere existence of rule permitting defendant to depose a witness to perpetuate testimony, provided defendant a prior opportunity for cross-examination of child victim, and thus admission of child victim's testimonial hearsay statement to police, at capital sexual battery trial, violated defendant's constitutional right of confrontation.

Rule authorizing discovery depositions was not designed as an opportunity to engage in adversarial testing of the evidence against the defendant, nor is the rule customarily used for the purpose of cross-examination; instead, the rule is used to learn what the testimony will be and attempt to limit it or to uncover other evidence and witnesses.

A discovery deposition is not intended as an opportunity to perpetuate testimony for use at trial, is not admissible as substantive evidence at trial, and is only admissible for purposes of impeachment.

Defendant's failure to exercise opportunity to depose child victim to perpetuate testimony did not constitute a waiver of right to confrontation.

When a State witness may be unavailable for trial, the burden is on the State to file a motion to perpetuate testimony.