

# FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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Bevard v. State, 33 Fla. L. Weekly D766 (Fla. 5<sup>th</sup> DCA 2008):

Substantial competent evidence supported trial court's conclusion that incriminating statements made by defendant to victim's mother were voluntary, so as to be admissible at defendant's trial on charges of sexual battery and a lewd and lascivious offense, even though mother yelled and cursed at defendant at the beginning of conversation; defendant invited mother into his residence and made little effort to get her to leave, defendant testified that he made the incriminating statements to get rid of mother so he could sleep, rather than because he was intimidated, and defendant only admitted some of mother's allegations, while continuing to deny others.

Discussion: The police tried to get a statement from the defendant, but he asked for a lawyer. They then asked the victim's mother to confront the defendant with the allegations and see if she could get an admission from him. She was wired to record the conversation. Since the defendant was out-of-custody at all times, Miranda was not an issue. Since he had not yet been formally charged, Sixth Amendment Right to Counsel had not attached. The only real issue that remained was Fifth Amendment coercion. The court ruled that even though the mother yelled and screamed and threatened to tell everyone he was a pedophile, the statement was not coerced.

State v. Mason, 33 Fla. L. Weekly D767 (Fla. 5<sup>th</sup> DCA 2007):

Defendant's prior no contest plea to charge of lewd and lascivious molestation by a person eighteen years or older on a child less than twelve years of age constituted a prior "conviction" of the charge within meaning of Dangerous Sexual Felony Offender Act (794.0155), and thus trial court was required to sentence defendant to the minimum mandatory sentence set forth in the Act upon defendant's later conviction of the same charge, even though trial court in the earlier proceeding withheld adjudication of guilt.

Frederic v. State, 33 Fla. L. Weekly D743 (Fla. 4<sup>th</sup> DCA 2008):

Any error in failure to submit to jury question of whether sexual battery offense involved penetration as to warrant enhanced sentence, as was required under Apprendi, was harmless, as evidence showed a 99.9-percent certainty that defendant was the father of victim's child, and victim herself also testified to multiple penetrations by defendant.

Dinkens v. State, 33 Fla. L. Weekly D754 (Fla. 1<sup>st</sup> DCA 2008):

State psychologist's opinion as to whether victim was mentally defective and capable of consent to intercourse was admissible in prosecution for sexual battery upon a mentally defective person; although opinion went to ultimate issues in case, psychologist did not assert legal conclusions or opine on defendant's guilt or innocence.