

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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Gutierrez v. State, 967 So.2d 322 (3rd DCA 2007):

Defendant who was convicted of three counts of lewd and lascivious battery on a child less than 16 years of age was not prejudiced by trial court's error in allowing jury to use, in the jury room during deliberations, a transcript of a recording of a controlled telephone call between defendant and victim's friend, and thus such error was harmless; defendant did not object to use of the transcript on the basis of its accuracy, transcript was an accurate reflection of the recording jury heard at trial, including the labeling of inaudible portions of the recording, and transcript was relevant to help jury in listening to the recording, in which defendant incriminated himself three times.

Transcript of recording of controlled telephone call between defendant and friend of victim was properly authenticated so as to permit its use at trial on charges of lewd and lascivious battery on a child less than 16 years of age; friend who participated in the call testified that she reviewed the original recording, an enhanced recording, and the transcript and that they were an accurate depiction of the conversation she had with defendant, and friend assisted in preparation of the transcript.

Trial court's factual finding, at trial on charges of lewd and lascivious battery on a child less than 16 years of age, that victim's friend was not coerced into making controlled telephone call to defendant was not clearly erroneous, and thus recording of call was admissible at trial, even though friend testified that she felt a bit of pressure to make the call; friend also testified that she was not forced to make the call.

Smith v. State, 965 So.2d 1252 (Fla. 1st DCA 2007):

Defendant's failure to begin or take steps to begin sex-offender treatment program was not a permissible ground for revocation of defendant's probation for lewd and lascivious behavior with a girl; nothing in record suggested that program could not have been completed within two years and some nine months that remained of probationary term.

Appellate court would reverse trial court's revocation of defendant's probation for lewd and lascivious behavior with a girl and remand for further proceedings after concluding that defendant's failure to begin or take steps to begin sex-offender treatment program was not a permissible ground for revocation, even though three other specifications in violation affidavit were deemed proven, specifically defendant's failure to report children

in his residence, being in children's presence by sharing residence, and smoking a marijuana cigarette; appellate court could not say with certainty that, absent impermissible ground, trial court would have still revoked defendant's probation.