

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

Vol. 33, No. 37, September 12, 2008

Miller v. State, 33 Fla. L. Weekly D2112 (Fla. 1st DCA 2008):

Defendant who was convicted of two counts of lewd or lascivious battery on a person twelve years of age or older, but less than sixteen years old waived, for purposes of appeal, his objection to trial court's clearing of the courtroom, including the removal of defendant's immediate family, prior to the victim's testimony, even though defense counsel suggested that immediate family was exempt from removal, where defense counsel never obtained a ruling on his objection, did not draw court's attention to statute containing the exemption, and did not make sure the record reflected exactly who was excluded from the courtroom.

Pantoja v. State, 33 Fla. L. Weekly D2114 (Fla. 1st DCA 2008):

Trial court properly excluded evidence that victim recanted a prior accusation against another person.

Evidence was properly excluded under rule that a witness' credibility may not be attacked by proof that she committed specific acts of misconduct that did not end in a criminal conviction.

Discussion: The victim in a sexual battery/lewd molestation case testified at her deposition that, "I told my aunt [C.M.D.] once about Juan touching me, but I guess she might have gotten mad at my uncle and said that he did it to Nanna because my nanna will believe anything." She later recanted this statement. Defense counsel tried to have this evidence introduced to impeach the victim. The court ruled that you cannot impeach a witness with specific acts, but indicated that if the circumstances surrounding the false allegation had been substantially similar to the present case, they may have reached a different result. The court certified conflict on this issue with *Jaggers v. State*, 536 So.2d 321 (Fla. 2d DCA 1988).