

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

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Insko v. State, 32 Fla. L. Weekly S559 (Fla. 2007):

The age of the defendant is an element of the crime of lewd or lascivious conduct.

Defendant who was convicted of lewd and lascivious conduct by a person under 18 on a person under 16, when in fact he was over 18 at the time of the offense, waived claim that on retrial following reversal of his conviction, he could not be retried for such offense, where defendant failed to object to instruction that allowed jury to find that he was under 18 when he committed the offense, and defendant did not challenge jury's verdict on the basis of its error as to his age or raise that error on appeal.

State v. Springer, 965 So.2d 270 (5th DCA 2007):

Although trial court order modifying condition of sex offender's probation to allow him to live within 1,000 feet of playground in gated community was not appealable, order was subject to appellate court's certiorari review.

Statutory requirement that trial court prohibit probationers who committed certain specified sex-based crimes from living within 1,000 feet of any school, day care center, park, or playground, or any other place where children regularly congregate, was mandatory, and thus trial court had no authority to modify sex offender's probation to allow him to live 865 feet from playground in neighboring gated community, provided that he did not enter any portion of subdivision and its recreation area.

Meredith v. State, 964 So.2d 247 (Fla. 4th DCA 2007):

Defendant was not prejudiced when trial court allowed the state, on day of trial, to file an amended information that added a second count in prosecution for lewd or lascivious molestation of a child; amendment essentially divided allegations of original information, that defendant touched victim or induced victim to touch him, into two separate offenses.

Defendant was not in custody for *Miranda* purposes when he made statements to detective at sheriff's office, even though defendant was confronted with child

victim's accusation of molestation; defendant drove himself to sheriff's office and entered building of his own volition, detective explained that his purpose in inviting defendant to sheriff's office was to give him an opportunity to respond to a child's report of inappropriate touching, interview was conducted in a casual and conversational tone, detective had a friendly demeanor, employed low-key interrogation tactics, and used a consolatory tone, and detective twice told defendant that he was not under arrest.