

SEX CRIMES/CHILD ABUSE CASE LAW UPDATES FOR JULY 2011

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Siegel v. State, 2011 WL 3107821 (Fla. 4th DCA 2011):

Trial court did not err in refusing to permit the defense to examine the undercover computer of detective engaged in online communications with defendant. State complied with discovery rules by providing defense with copies of online chats.

Stowe v. State, 2011 WL 2685611 (Fla.App. 1 Dist.)

“The language of the statute does not contemplate a separate conviction for each child depicted in a single photograph, motion picture, exhibition, show, representation, or other presentation.”

Double jeopardy was violated when defendant was convicted for multiple counts based upon multiple children depicted in a single digital video.

Note: This appears to be a case where the defendant possessed a child porn video that was a compilation of multiple child porn video clips. The State argued that the separate videos should be charged separately even though they were combined into a single unit. The court disagreed.

State v. Dudley, WL 2581772 (Fla.App. 5 Dist.,2011)

State's evidence was sufficient to support a jury finding that victim was “mentally defective,” as required for offense of sexual battery on mentally defective person; victim, who was 21 years old, had mental and developmental age far below her physical age, victim repeatedly referred to defendant's sexual organ as his “popsicle” and testified to the times when defendant put his “popsicle” inside her, victim was in class for the mentally disabled who had IQs lower than 70, special education teacher testified that victim needed constant supervision as she was not capable of self-direction and had significant cognitive limitations, victim had mild cerebral palsy and had been diagnosed with bi-polar disorder, and defendant was fully aware of victim's mental condition; receding from *State v. Torresgrossa*, 776 So.2d 1009.

“Mentally deficient” cannot reasonably be read to mean a total lack of mental capacity for purposes of offense of sexual battery on a mentally defective person; “deficient” means lacking in some quality or not up to a normal standard, and it does not mean devoid of or totally lacking.

With respect to offense of sexual battery on a mentally defective person, the statutory definition of “mentally deficient,” that is, incapable of appraising the nature of his or her

conduct, connotes significantly diminished judgment, but not a complete and total lack of mental awareness.

Parrish v. State, 2011 WL 3055393 Fla.App. 1 Dist.,2011.

To prove criminal child neglect, the State is required to show the defendant acted willfully or with culpable negligence in creating the situation or in allowing the questionable conditions to occur, and must present evidence that the defendant's act or omission created a potential risk of serious—not minimal—harm to the child; expert testimony is not required to prove the risk of mental or physical injury.

State failed to present evidence that condition of home in which defendant and his minor child resided created a potential mental or physical danger to the child, as required to support defendant's conviction for child neglect; there was no evidence the child was unclothed, unsupervised or unfed, child's teacher and aunt both testified the child appeared in good health and was well groomed, and even the arresting officer testified the girl was friendly and talkative.

State failed to present evidence that defendant's refusal to send his minor daughter inside created a risk of serious physical or mental injury to the child, after police officer approached defendant at gunpoint and ordered defendant to keep his hands on the table, as required to support defendant's conviction for child neglect; officer lowered his weapon when child came outside, defendant complied with officer's commands to keep his hands on the table, and ten to fifteen minutes after the altercation, the child was calm, friendly and talkative.

Discussion: Once again, the appellate courts have made it clear that prosecuting for child neglect based upon a dirty house is an uphill battle. The relevant testimony concerning the living conditions in the house is as follows:

Officer Connell testified to the following: there was no air conditioning in the house; the windows were all closed and covered with spider webs and mold; the furniture was covered with clothing and trash; the kitchen smelled like rotten food; there were moldy dishes in the sink; there was no food in the kitchen cupboards; the food in the kitchen was old and moldy; the rooms smelled like urine and feces; and the lights would not turn on even though there was electricity in the house. In addition, the floor of the child's room was covered with clothes, trash, and dirt, and smelled like urine and mold. The couch where the girl was supposedly sleeping was covered with clothes and cobwebs, and there was no room for her to lie down.