

SEX CRIMES/CHILD ABUSE CASE LAW UPDATES FOR JUNE 2011

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Arias v. State, 2011 WL 2493653 (Fla. 5th DCA 2011)

Trial court in which defendant pled no contest to burglary of a dwelling with an assault or battery could not impose the statutory sex offender conditions as special conditions of probation; defendant's offense was not enumerated in the statute governing imposition of the sex offender conditions, and the conditions were not related to the offense.

Holt v. State, 2011 WL 2462818 (Fla. 4th DCA 2011)

Sentence of natural life for sexually battery on a child under 12 years of age by a person 18 years of age or older did not conform to the statutory sentence; crime was classified as a capital felony punishable by life imprisonment with a minimum mandatory sentence of 25 years before defendant became eligible for parole.

Where the time period for the offense straddles different sentencing guidelines, the defendant is entitled to the benefit of the most lenient sentencing guideline.

State v. Chiquet, 2011 WL 2462957 (Fla. 2d DCA 2011)

With regard to facts omitted from an affidavit for search warrant, such facts are only material if there is a substantial possibility that, had the magistrate been aware of the omission, he would not have found sufficient probable cause for issuance of a warrant.

Omitted fact of color and brand name of defendant's computer on which he allegedly stored pictures of naked minors was not material to issuance of search warrant, where there was not a substantial possibility that describing computer would have resulted in a finding of insufficient probable cause to issue the warrant, affidavit merely read that defendant stored digital images of the naked victim on his "computer," singular, and yet, despite this reference to only one computer, the magistrate signed a search warrant for any and all devices capable of storing images.

Wright v. State, 2011 WL 2498677 (Fla. 3d DCA 2011)

Term "victimized," in provision of Dangerous Sexual Felony Offender Act requiring a 25-year mandatory minimum sentence for an offender convicted of an enumerated offense who victimized more than one person during the criminal episode, was not unconstitutionally vague, despite contention that it could apply whenever an offender committed an unrelated misdemeanor in addition to an enumerated offense; definitions section for the statutory chapter defined a "victim" as the object of a sexual offense.

L.A.P. v. State, 2011 WL 2279018 (Fla. 2d DCA 2011)

Evidence was insufficient to establish that defendant, who was HIV-positive, engaged in sexual intercourse with her partner, and thus evidence was insufficient to support conviction for engaging in sexual intercourse without informing her partner of her HIV status; defendant engaged in oral sex and digital penetration of the vagina, and sexual intercourse was defined as an act where the male's sexual organ was placed inside the female's sexual organ.

Corona v. State, 2011 WL 2224777 (Fla. 2011)

A discovery deposition does not satisfy the United States Supreme Court's mandate concerning confrontation, outlined in Crawford v. Washington, that a defendant be given a prior opportunity to cross-examine a declarant of a testimonial statement.

Statement by defendant's daughter to sheriff's deputy that defendant had put his mouth on daughter's vagina were "testimonial" for purposes of determining their admissibility under Confrontation Clause in prosecution for capital sexual battery; daughter was interrogated by deputy, and the facts indicated that there was no ongoing emergency and that daughter's statements were taken to determine if criminal activity had occurred.

Defendant's daughter, the alleged victim, was "unavailable" for trial in prosecution for capital sexual battery for purposes of determining admissibility under Confrontation Clause of her statement to sheriff's deputy that defendant had put his mouth on her vagina, where state had anticipated that daughter and defendant's wife would testify at trial, both wife and daughter participated in depositions, wife later became uncooperative, and state was granted a certificate of interstate extradition but wife evaded subsequent attempts by investigators to contact her, thereby preventing any involvement of daughter at trial.

The Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.

Pretrial deposition of defendant's daughter in prosecution for capital sexual battery did not afford defendant an adequate prior opportunity to cross-examine daughter, who was unavailable for trial, as necessary under Confrontation Clause for admissibility of daughter's testimonial statement to sheriff's deputy that defendant had put his mouth on her vagina.

Confrontation Clause violation, arising from admission in prosecution for capital sexual battery of statement by defendant's daughter to sheriff's deputy that defendant had put his mouth on her vagina, was harmful so as to entitle defendant to new trial; statements by daughter were among the most significant pieces of evidence introduced by state, particularly because there was no physical evidence of the sexual battery, state made repeated references in closing argument to daughter's "words," and defendant's statements and confession were rendered inadmissible based on corpus delicti rule

because remaining admissible evidence did not establish prima facie case of crime as charged.

Allen v. State, 2011 WL 2200667 (Fla. 4th DCA 2011)

DNA testing requires a two-step process, one biochemical and the other statistical, and the first step uses principles of molecular biology and chemistry to determine that two DNA samples look alike, and the second step uses statistics to estimate the frequency of the profile in the population, and both steps require use of scientific methods that must satisfy the Frye test.

In context of DNA statistical analysis, a properly qualified expert on population frequency must be able to show that her testimony regarding the statistical methodology used and the database employed will be based on established scientific principles in which she was trained; however, the expert does not have to be a statistician or mathematician to testify as to the statistical results.

Admissibility of expert's DNA statistical analysis is not contingent upon the expert having compiled the database himself, and instead, a sufficient knowledge of the authorities pertinent to the database is an adequate basis on which to render an opinion.

Evidence did not reveal the statistical methodology used by expert to calculate the DNA population frequencies in case because State's expert never testified, either during the voir dire examination or during her direct examination, as to the database or methodology she used to calculate the statistical significance of defendant's DNA profile matching that of samples taken from the crime scene, and thus case would be remanded to trial court for a limited evidentiary hearing, wherein trial court was to assess State's expert's competence to present the statistical evidence and to clarify the exact methodology and database used for her calculations.

Fike v. State, 2011 WL 2161938 (Fla. 5th DCA 2011)

Evidence was insufficient to support designation of defendant as a sexual predator; defendant's prior conviction in Michigan for assault with intent to commit criminal sexual conduct involving penetration was not similar to the lewd and lascivious offenses since the Michigan offense did not require proof that the victim was under 16 years of age.

Bishop v. State, 2011 WL 2268965 (Fla. 5th DCA 2011)

Trial court did not abuse its discretion by revoking defendant's probation for violation of the condition requiring him to "actively participate in and successfully complete a sex offender treatment program," where defendant was discharged from his first treatment program after displaying a "victim attitude," and discharged from his second treatment program after six months due in part to multiple absences, and in part because defendant was resistant to therapy to the point of not being amenable to treatment, and was continuing to act out both in treatment and in society.

Burrows v. State, 2011 WL 2498113 (Fla. 3d DCA 2011)

State's alleged failure to present evidence that child suffered an actual mental injury as a result of watching defendant punch and stab child's mother did not preclude conviction for child abuse; defendant successfully had evidence of whether child had gone to counseling excluded from the trial, and child abuse statute required only an act that "could reasonably be expected to result" in a physical or mental injury, which requirement was satisfied by defendant's actions.