

SEX CRIMES/CHILD ABUSE CASE LAW UPDATES FOR MAY 2011

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Hammonds v. State, 2011 WL 2097692 (Fla.App. 5 Dist.)

Defendant argued that trial court erred in failing to grant a JOA on two counts of sexual battery upon a child, claiming that the State did not rebut his reasonable hypothesis of innocence. The appellate court agreed with the trial court's following ruling:

While there is not direct evidence that he had union with his penis and these young boys' rectums, the fact that the young boys both testified he put his penis between their buttock cheeks and that it was painful to them, I think would allow a jury to find should they so choose— I'm not saying they will, but allow a jury to find that he is guilty of capital sexual battery.”

Wells v. State, 2011 WL 1681415 (Fla.App. 1 Dist.):

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Hart v. State, 2011 WL 1815144 (Fla.App. 1 Dist.)

Since no meaningful relationship existed between the two criminal episodes, trial court abused its discretion when joined for a single trial a case, in which defendant was charged with sexual battery, kidnapping, aggravated battery and armed robbery, and a second case, in which defendant was charged with carjacking involving different victim; while the two criminal episodes were separated by only a few hours and a couple of blocks, these factors were not sufficient to prove a proper and significant link between the crimes, even taking into consideration fact that BB gun was used during both criminal episodes, and in fact, the two criminal episodes were freestanding and distinct.

Trial court's error in joining criminal charges for a single trial, when no meaningful relationship existed between the two criminal episodes, was not harmless; although State alleged that some of the testimony concerning each of the criminal episodes could have been introduced in the trial of the other as similar fact evidence, the two criminal episodes were distinctly different.

Delgado v. State, 2011 WL 2060061 (Fla.):

Evidence was insufficient to support a kidnapping conviction when defendant stole a pickup truck with a baby sleeping in the back seat and the State could not prove that the defendant knew of the child's presence during the theft.

Even though the defendant ransacked and abandoned the vehicle a short time later, discovery of the presence of the child during the ransacking would not be sufficient to support kidnapping charges.

In dicta, the court noted that had the defendant abandoned the truck with knowledge of the child's presence, it may have supported child abuse charges.

Kennedy v. State, 2011 WL 1660937 (Fla.App. 4 Dist.)

Although defendant did not object to the definition of "maliciously" when trial court instructed jury on charge of aggravated child abuse, trial court's failure to give complete definition of the term constituted fundamental error because instruction, as given by court, reduced State's burden of proof by failing to require jury to find that primary purpose of act was to cause unjustifiable pain; court instructed jury that "maliciously" meant wrongfully or intentionally, and court left out the explanatory second sentence of the instruction which clarified that maliciousness required that the primary purpose of acts was to cause the victim unjustifiable pain or injury.

In response to jury's question during deliberations, trial court's oral instructions, telling jury that it could substitute "omission or neglect" for torture in aggravated child abuse instructions, were improper because they reduced State's burden of proof; written jury instructions stated that "torture" meant every act, omission, or neglect by which unnecessary or unjustifiable pain was caused, and if jury substituted "omission or neglect" for "torture" in instruction, the replaced instruction would read that defendant willfully omitted or neglected victim, and this was not correct because, under definition of torture provided in written instructions, the act, omission, or neglect must have caused unnecessary pain.

Decision upon the competency of a child to testify is one peculiarly within the discretion of the trial judge because the evidence of intelligence, ability to recall, relate and to appreciate the nature and obligations of an oath are not fully portrayed by a bare record.

Trial court did not abuse its discretion in finding that nine year old developmentally disabled child, who was present in bathroom when her younger sibling received scalding burns in bathtub, was competent to testify against her mother in child abuse prosecution; however, because the issue was so close, and the passage of time might have impaired child's ability to testify, should child's testimony again be required in any retrial, trial court must make a renewed finding of competency, and appellate court's finding that the trial court did not abuse its discretion in the original trial should not be considered as establishing child's competency in further proceedings.