CSE Case Law Update
May 2011

May 2-6, 2011

State Supreme Courts

West Virginia v. James, 710 S.E.2d 98 (W.Va. May 2, 2011).

- Post incarceration supervision

The Defendants were all charged and convicted of sexual abuse of a child of different degrees, pursuant to W.Va. Code § 61-8 *et seq*. Each defendant was sentenced to a term of incarceration with the West Virginia Department of Corrections. They were also given terms of supervised release to follow their prison sentence. Each of the Defendant's appealed the imposition of supervised release.

The West Virginia Supreme Court rejected the arguments of each defendant and found that the sentences with supervised release were appropriate under West Virginia law. Specifically, the Court found that the statute governing the imposition of supervised release, W.Va. Code § 62-12-26 (2011), was not unconstitutional, was not cruel and unusual, did not violate due process and was not in violation of the double jeopardy clause.

Lefferdink v. Wyoming, 250 P.3d 173 (Wyo. May 3, 2011).

- Search Warrant Affidavit

The Defendant, Beau Lefferdink, was charged with two counts of sexual exploitation of children, in violation of Wyo. Stat. Ann. § 6-4-303(b)(vi) (2011). After his motion to suppress the search warrant, the Defendant pled guilty and was sentenced to 3 - 7 years in prison. The plea was conditional based on the Defendant's intention to appeal the denial of his motion to suppress the search warrant.

During the course of an undercover peer to peer investigation, a deputy sheriff in Albany County, Wyoming discovered that the defendant was using LimeWire to download images of child pornography. The deputy obtained a search warrant for the address attached to the IP address that was obtaining child pornography. The Defendant filed a motion to suppress the search warrant alleging that the deputy lied or was intentionally reckless in the search warrant affidavit. At issue was the deputy's misstatement of the time and date that he observed the Defendant's IP address on the LimeWire network. The trial court denied the Defendant's motion to suppress.

The Supreme Court rejected the Defendant's arguments and held that the search warrant should not be suppressed. The Court found that considering a totality of the circumstances the search warrant contained sufficient information in the affidavit to issue the warrant and a mistake without malice was not sufficient to render issuance of the search warrant improper.

State Courts of Appeals

Boatright v. Arkansas, 2011 Ark. App. 326 (Ark. Ct. App. May 4, 2011).

- Right to Present a Defense

The Defendant, Alvin Boatright, was charged with one count of rape and ten counts of possessing matter depicting sexually explicit conduct involving a child, in violation of Ark. Code Ann § 5-27-602(a)(2) (2011). He was convicted following a jury trial and sentence to 50 years in prison.

On appeal, the Defendant claims that the trial court erred by not allowing him to present evidence to support his defense that someone had planted the CDs that contained the images of children being sexually abused.

During the investigation, the Defendant admitted to investigators that some of the CDs they found near his computer would contain child pornography and that he enjoyed looking at the images. At trial, the Defendant attempted to portray a conspiracy by members of his family and friends to frame him for possessing the CDs so that he could be removed from his mother's home and it could be purchased by others. The trial court prevented, as lacking in relevance, questions about other agreeing to by the home where the Defendant lived and would not allow the Defendant's father to opine about the possibility that someone could have planted the offending CDs. The Appellate Court did not find an abuse of discretion in the trial court's rulings. In addition, if there had been error, the evidence of the Defendant's guilt was so overwhelming that any error would have been harmless.

Haag v. Steinle, 255 P.3d 1016 (Ariz. Ct. App. May 5, 2011).

- Pretrial Monitoring

In 2005 while he was a resident of Arizona, the Defendant, Albert Haag, was charged with sexual exploitation of a minor for possessing images of child pornography on his computer. Those charges were dismissed. He was re-indicted in 2006. However, the Defendant had moved from Arizona to Buffalo, New York. The Defendant was unaware of the re-issued charges until 2010 when he was arrested in Buffalo on the outstanding charges. The Defendant turned himself in to authorities in Arizona and sought to be released pending trial to return to New York. The State argued that the Defendant should only be released if he was subjected to an electronic monitoring tether. The arraigning court found that pursuant to A.R.S. § 13-3967(E)(1) (2011) the Defendant could not be released to return to Buffalo because he could not be electronically monitored there.

The Defendant appealed this decision claiming that the statute cited by the court requires electronic monitoring "where available" thus allowing him to return to Buffalo pending trial with or without monitoring. The Appellate Court found that since the phrase "where available" is

susceptible to multiple meanings, they would look to the legislative history to determine the intended meaning of the phrase in question. After looking at the legislative history, The Appellate Court rejects the argument of the State and reversed the arraigning court's interpretation of the statute, thus allowing the Defendant to return to Buffalo during the pendency of the case without electronic monitoring.

Unpublished Decisions

Creech v. Texas, Nos. 05–09–00762–CR, 05–09–00763–CR., 2011 WL 1663040 (Tex. App. May 4, 2011).

- Sufficiency of the Evidence
- Hearsay
- Authentication

The Defendant, John Preston Creech, was charged with one count of aggravated sexual assault of a child, two counts of indecency with a child and five counts of possession of child pornography. He was convicted following a jury trial and sentenced to five ten year sentences, one twenty-year sentence and one life sentence.

On appeal, the Defendant claims that the evidence presented at trial was insufficient to support his convictions, that the Trial Court erred by allowing hearsay testimony by someone who was not the state's designated outcry witness and that the Trial Court erred by admitting unauthenticated images of child pornography found on his home and work computers. The Appellate Court affirmed his conviction.

The Defendant taught human sexuality at Collin County Community College. The Defendant took his work computer to the IT Department at the college because it was not working well. While servicing his computer, IT workers discovered images that he believed to be images of child pornography. The Appellate Court found that the testimony of the Victim was sufficient to support his convictions for sexual assault of a child and indecency with a child. During the trial, the Victim's mother was allowed to testify about statements made by the Victim about the assaults. The Appellate Court rejected this argument finding that the Trial Court reasonably applied the outcry witness statute when allowing the Victim's mother to testify. Finally, the Defendant argued that the images found on his work and home computes were not properly authenticated and should not have been admitted at trial. The Defendant claimed that since the IT department at his college downloaded numerous images the State could not show that the images were "the true contents of [his] computer hard drives before [they were removed from his computer]". The Appellate Court rejected this argument finding that even if the IT Department had changed the last viewed on date and time of the images, their conduct did not impact the date created information. Since the dates of the images on the Defendant's work computed predated the IT Department's access to the work computer, there was sufficient evidence to admitting the images.

Ramirez v. Texas, Nos. 04–10–00342–CR, 04–10–00345–CR, 04–10–00343–CR, 04–10–00344–CR, 2011 WL 1744111 (Tex. App. May 4, 2011).

- *Batson* Challenges

The Defendant, Alfredo Ramirez, was charged with three counts of aggravated sexual assault and one count of criminal solicitation of a minor. The Defendant was convicted as charged following a jury trial.

On appeal, the Defendant claims that he was denied a fair trial because the prosecution improperly exercised their preemptory challenges in violation of the holding in *Kentucky v. Batson*, 476 U.S. 79 (1986). During jury selection, the State excused three members of the venire with names that indicated they were Hispanic. The court found that because the State was able to express race neutral factors for dismissing the potential jurors *Batson* was not violated. The Appellate Court held that the trial court's finding was correct and his conviction was affirmed.

Cox v. Indiana, 946 N.E.2d 664 (Ind. Ct. App. May 6, 2011).

- Hearsay: Admission of Recorded Forensic Interview
- Sufficiency of Evidence

The Defendant, Ronald Cox, was charged with five felony charges for sexually assaulting two children. Following a bench trail, the Defendant was convicted of two counts of child molesting and one count of child solicitation. The Defendant appealed alleging that the Trial Court erred by admitting the video recorded forensic interview as a recorded recollection exception to the hearsay rule and that the evidence was insufficient to support the conviction for solicitation and one of the child molesting counts.

During trial, the State admitted the video recorded statement of one of the victims. The Appellate Court found that it was not an abuse of discretion as the statement met the requirements for admission pursuant to I.R.E 803(5), in that the statement was made at a time when the matter was fresh in the witnesses mind and they acknowledged that the statement was accurate when it was made. The Appellate Court also found that there was sufficient evidence to support the convictions.

Vann v. Texas, No. 05–10–00451–CR, 2011 WL 1734255 (Tex. App. May 6, 2011).

- 404b

The Defendant John Thomas Vann, was charged with two counts of indecency with a child. Following a jury trial he was convicted of one count of indecency with a child and one lesser included count of indecent exposure. The case was based on the Defendant's conduct with his neighbor's children. On multiple occasions, the Defendant was observed by the children naked outside his home.

During trial, the State presented testimony regarding pornographic images/recordings found in the Defendant's home. In particular, the Trial Court allowed the state to have a witness read the titles of the images/recordings, but did not allow the items to be admitted into evidence. The State claimed that the images/recordings were relevant to the Defendant's intent. The Defendant argued on appeal that the admission of these titles was irrelevant and prejudicial. The Appellate Court rejected the Defendant's argument finding that the evidence showing guilt was so overwhelming that even if the Trial Court erred in admitting the titles it was harmless.

May 9-13, 2011

State Courts of Appeals

New York v. Bretan, N.Y.S.2d 542 (N.Y. App. Div. May 10, 2011).

- Sex Offender Registration

In 2003, defendant, Russell Bretan, pled guilty to several counts involving child pornography in United States District Court for the Southern District of New York. Upon his release from prison, the County Court for Westchester County held a hearing to determine the Defendant's Sex Offender Registration Act classification. The County Court assigned the Defendant as a level 3 sex offender. The Court found that because the Defendant had three or more victims, that one victims was under 10 years of age and the victims were strangers he qualified as a level two sex offender. However, the Court granted the State's motion for an upward departure base on the defendant's attempt to have a video of the sexual assault of a 10 year old girl was an appropriate aggravating factor.

The Defendant appealed the upward departure arguing that the aggravating factor used by the County Court was insufficient to warrant changing his offender level. The Appellate Court found that the aggravating factors "outweighed the mitigating factors to such and extent that un upward departure is warranted".

Ohio v. Carney, No. 95343, 2011 WL 1842257 (Ohio Ct. App. May 12, 2011).

- Sentencing

The Defendant, Michael Carney, was charged with 64 counts of pandering sexually-oriented material involving a minor and one count of possession of criminal tools. The Defendant pled guilty to 20 counts of pandering sexually-oriented material involving a minor and one count of possession of criminal tools. The Trial Court sentenced the Defendant to 24 years in prison.

The charges stemmed from an investigation into the Defendant's use of LimeWire file-sharing network. The Defendant claimed on appeal that his sentence is contrary to law and an abuse of discretion. He also claimed that the Trial Court improperly invoked consecutive sentences without making the required findings. The Appellate Court found that the Defendant's sentence was within the statutory range allowed by law. In fact the Court found that while 24 years is a harsh sentence the possible sentence the Defendant could have received was 161 years. Since

the Trial Court articulated its reasons for the strong punishment there was no reason under law to disturb the sentence. In addition, the Appellate Court found that settle Ohio law did not require a sentencing court to set forth findings and thus the Defendant's argument must fail.

Fawdry v. Florida, No. 1D10–0896, ___ So.3d ____ 2011 WL 1815328 (Fla. Dist. Ct. App. May 13, 2011).

- Search Incident to Arrest
- 4th Amendment

The Defendant Jeffry Scott Fawrdy, was convicted of five counts of possession of photographs which depicted sexual performance by a child, in violation of Fla. Stat. § 827.071(5) (2009). The charges arose from a search of the Defendant's cell phone found in his possession following his arrest on charges of sexual battery of a child. Prior to trial, the Defendant moved to suppress the evidence found during the search of the phone incident to arrest. The Defendant's motion to suppress was denied.

On appeal the Defendant claimed that the Trial Court was wrong to deny his motion to suppress. The Defendant argues that the Appellate Court should adopt the reasoning in *State v. Smith*, N.E.2d 949 (Ohio 2009), which found that because of the technological capacities of cell phone they are similar to computers and thus has a heightened expectation of privacy. The Court rejected this argument, instead finding that the cell phone was more analogous to a container which may be search incident to arrest without a warrant and was not a violation of the 4th Amendment.

May 16-20, 2011

State Courts of Appeals

Turner v. Missouri, 341 S.W.3d 750 (Mo. Ct. App. May 18, 2011).

- Sexually Violent Predators

The Defendant, Harry Turner, pled guilty to one count of child molestation and one count of sexual misconduct with a child. He was sentenced to two terms of four years in prison to be served concurrently. The convictions stemmed from the Defendant's sexual acts with a five year old girl he was babysitting. During the investigation, the Defendant admitted to investigators that he had molested other children and was likely to molest again if released. Prior to his release from prison, the State filed a petition to have the Defendant civilly committed as a sexually violent predator. The Defendant was evaluated by multiple psychologists. On April 19, 2011, the Defendant was civilly committed following a jury trial.

The Defendant claimed that the evidence presented at his civil commitment trial did not produce sufficient evidence to find by clear and convincing evidence that he was more likely than not to engage in predatory act of sexual violence if he wasn't confined to a state facility. The Defendant claimed that one of the psychologists who evaluated him lacked credibility and thus

the jury's decision should be thrown out. The Appellate Court found that the evidence presented at trial was more than sufficient given that the Defendant had acknowledged he was unable to control his behavior, the Defendant had a history of predatory acts of sexual violence, the Defendant was terminated from sex offender treatment while in prison, the Defendant continued to have sexual thoughts about children while in prison and the psychologists credibility was for the jury to determine.

Wolf v. Idaho, ___ P.3d ___, 2011 WL 1900460 (Idaho Ct. App. May 20, 2011).

- Post Conviction Relief
- Ineffective Assistance of Counsel

The Defendant, Andrew Wolf, was charge with enticing children over the internet, in violation of I.C. § 18-1509A, and possession of sexually exploitative material, in violation of Idaho Code Ann. §§ 18-1507 (2011), 1507A (2011). Pursuant to a plea agreement, the Defendant pled guilty. He was sentenced to consecutive terms of 2 to 15 years and 10 years in prison. The Defendant then filed an application for post-conviction relief, claiming that his attorney was ineffective for failing to challenge the search of his computer. This application was denied summarily.

The Defendant arranged to meet for a sexual encounter what he believed was a 15 year old boy he had met on the internet. The 15 year old was really an undercover police officer. Upon his arrest, law enforcement applied for and received a search warrant to seize and search the Defendant's computer.

On appeal, the Defendant argues that his application for post-conviction relieve should not have been summarily dismissed because his attorney was ineffective. He claims that the attorney should have challenged the search warrant because the affidavit was not supported by probable cause and the search of the computer violated the 14 day rule included in Idaho Code Ann. § 19-4412 (2011). The Appellate Court found that the statements of the affiant were sufficient to establish probable cause and were not conclusory. The Appellate Court also held that there was not a violation of the 14 day rule because the search was conducted with in 14 days of the issuance of the search warrant. While the forensic examination of the computer was outside 14 days, the probable cause to search the contents of the computer had not dissipated and the Defendant was not prejudiced. The Appellate Court thus found that the Defendant's Counsel was not ineffective.

<u>Unpublished Decisions</u>

Wisconsin v. Werdin, 800 N.W.2d 959 (Wisc. Ct. App., May 18, 2011) (Unpublished)

- Consent Search
- Ineffective Assistance of Council

The Defendant, Randall Werdin, was convicted of 42 counts of possession of child pornography. The investigation was initiated when the Defendant filed a complaint alleging that his estranged

wife had stolen his computer. When law enforcement contacted the wife she turned the computers over, alleged that the computer may have contained child pornography and signed a consent to search the computers. The Defendant inquired if law enforcement had the computers. When he was told that the computers were to be analyzed the Defendant only question was to determine if a warrant had been issued. A forensic examination of the computer used in the home that the Defendant shared with his estranged wife found 128 images of child pornography. The Defendant lost his challenge to the search and was found guilty following a jury trial.

On appeal, the Defendant claimed that the Trial Court was wrong to reject his motion to suppress the search and that his attorney was ineffective. The Defendant alleged that his estranged wife had no authority to give consent for the search and law enforcement should not have merely relied on her consent. The Appellate Court rejected this argument and held that law enforcement was allowed to reasonably rely on consent to search from individuals who have the authority to consent. Since this was a property of the marriage and the wife had access she could consent, even though there was a pending divorce. In addition the Defendant did not dispute the wife's ability to consent when given the opportunity during the search. The Appellate Court also rejected his claim of ineffective assistance of council.

Dumas v. Kentucky, No. 2010–SC–000378–MR, 2011 WL 2112560 (Ky. May 19, 2011).

- Search Warrant Affidavit
- Double Jeopardy
- Statutory Construction

The Defendant, Michael Dumas, was convicted, following a jury trial of four counts of distributing matter portraying a minor in a sexual performance and three counts of possessing of matter portraying a minor in a sexual performance. He was sentenced to five years in prison for each count, which totaled 20 years because some of the sentenced were to be consecutive.

This case came to the attention of law enforcement after the Defendant was fired from his job with River Marine Electronics. Upon being fired, the Defendant returned his work issued cell phone. When his former employer looked through the phone they discovered child pornography, which they then turned over to law enforcement. Based on a review of the cell phone, law enforcement applied for and received a search warrant for the Defendant's residence. A forensic examination of the items taken from the Defendant's home found numerous images of child pornography. The Defendant challenged the search warrant claiming that the affidavit lacked probable cause due to false statements and omitted facts. The Trial Court denied his motion to suppress.

On appeal, the Defendant challenged the denial of the motion to suppress, that the multiple counts for possession and distribution amounted to double jeopardy and that the statutes he was charged with violating were unconstitutional. The Appellate Court found that a totality of the circumstances supported the finding that probable cause existed to issue the search warrant of the Defendant's home. In addition, the Appellate Court held that because the distribution and possession charges contained different proof requirements there was no double jeopardy violation. Finally, the Appellate Court held that the statutes for which the Defendant was

convicted of violating, Ky. Rev. Stat. Ann. § 531.335 (2011) and Ky. Rev. Stat. Ann. § 531.340 (2011), were not overbroad and did not violate the holding in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

Pfannenstiel v. Kansas, 251 P.3d 674 (Kan. Ct. App. May 20, 2011).

- Ineffective Assistance of Counsel

The Defendant, Derek Pfannestiel, was charged and convicted of two counts of aggravated indecent liberties with a child and one count of solicitation of a child (which was dismissed following trial). He was sentenced to 66 months in prison.

The Defendant claimed on Appeal that his attorney was ineffective in closing argument. During closing argument, the Defendant's counsel argued that the victim was inconsistent, gave false statements and indicated that she was a liar. This comment resulted in a rebuke by the trial court and an instruction to the jury that the arguments of the attorneys should be based on evidence. The Appellate Court found that the Defendant's attorney was not ineffective because of this isolated comment.

May 23-27, 2011

State Courts of Appeals

Oregon v. Tyson, ___ P.3d ___, 243 Or. App 94 (Or. Ct. App., May 25, 2011).

- JNOV

The Defendant, Amy Tyson, was charged with one count of using a child in a display of sexually explicit conduct, in violation of Or. Rev. Stat. § 163.670 (2011), one count of 2nd degree sodomy, in violation of Or. Rev. Stat. § 163.395 (2011), two counts of 1st degree sexual abuse, in violation of Or. Rev. Stat. § 163.427 (2011), and one count of 2nd degree rape, in violation of Or. Rev. Stat. § 163.365 (2011). The Defendant was convicted following a jury trial. The charges stem from a series of sexually abusive acts the Defendant and he husband committed on a 13 year old child.

On appeal, the Defendant claimed the Trial Court erred by not granting her motion for a judgement of acquittal on the one count of using a child in a display of sexually explicit conduct. She claims that since the individual observing the sexual abuse was her co-offender husband that her acts did not meet the charged statute. The Court of Appeals rejected the Defendant's argument finding that the statute prohibited allowing another to observe sexual conduct with a minor, live, via the internet or recorded.

Arizona v. Regenold, 255 P.3d 1028 (Ariz. Ct. App. May 26, 2011).

- Sentencing

The Defendant Christopher Michael Renegold, was charged with luring a minor for sexual exploitation, in violation of Ariz. Rev. Stat. Ann. § 13-3554 (2011). The Defendant was convicted and sentenced pursuant to the part of the above statute that enhances the sentence if the child is younger than 15 years of age.

The charges in this case stem from an undercover investigation. The Defendant solicited sexual acts from an individual he believed was a 14 year old girl; the person he was communicating with was a police officer. The Defendant pled guilty and was sentenced to a suspended sentence with life time probation. Within two years the Defendant was convicted of violating the terms of his probation and given a 6 1/2 year prison sentence. The Defendant appealed claiming that his sentence is illegal. The statute the Defendant was convicted of violating increased the class of offense if the minor was less than 15 years of age. The Court remanded the case to the Sentencing Court for re-sentencing. The Court held that the statute clearly requires that for the enhanced sentencing provision to apply the person solicited must be under 15 years of age and cannot be an undercover officer posing as a child under 15.

Unpublished Decisions

California v. Hale, No. B220574, 2011 WL 1949998 (Cal. Ct. App. May 23, 2011) (Unpublished).

- Sexually Violent Predator

The Defendant, Donald Hale, was convicted twice in the 1990s of committing lewd and lascivious acts with a child, in violation of Cal. Penal Code § 288(a) (2011). The Defendant was found to have a mental disorder, that he poses a danger to the health and safety to others and is predatory. He was committed for two years pursuant to the Sexually Violent Predator Act. He appeals this decision claiming that the Trial Court improperly excluded evidence of his expert.

The Defendant claimed that his expert should have been allowed to testify regarding a study conducted in one prison regarding the recidivism of sex offenders following treatment. The Appellate Court held that because the evidence of the study was speculative and had not been effectively reviewed if was not error to prevent testimony about the study.

New Jersey v. D.M., 2011 WL 2321226 (N.J. Super. Ct. App. Div., May 24, 2011) (Unpublished).

- 404b
- Sentencing

The Defendant was charged with sexually assaulting three girls under age 10. He was convicted following a jury trial and sentenced to 55 years in prison. On appeal, the Defendant claimed that the Trial Court abused its discretion by admitting sexual images of minors found on his computer and that his sentence is manifestly excessive.

The Defendant claimed that the court should not have allowed evidence of child pornography, found on his computer to be admitted pursuant to N.J.R.E. 404b. The Defendant pled guilty to 41 counts of possessing child pornography. The Appellate Court held that it was not an abuse of discretion to admit 9 of those images as the images were admitted for a proper purpose and were not unduly prejudicial. The Appellate Court also found that the imposition of consecutive sentences was appropriate.

New Hampshire v. Mello, ___ A.3d ___, 2011 WL 2135356 (N.H. May 26, 2011). (Final Publication Decision Pending)

- Jurisdiction to Issue Search Warrant
- Expectation of Privacy

The Defendant, James Mello, was charged with 4 counts of delivery of child pornography, in violation of N.H. Rev. Stat. Ann. §§ 649-A:2 I(a), II(a) (2011). Hew was convicted following a bench trial. The charges in this case resulted from an undercover investigation that resulted in the Defendant sending what he believed was a 14 year old images of child pornography. As part of the investigation law enforcement sent a search warrant to the Defendant's internet service provider, Comcast, located in New Jersey. The search warrant, signed by a judge in New Hampshire, sought to have Comcast provide subscriber information for the IP address that was sending the child pornography to the undercover officer.

Before trial, the Defendant sought to have the evidence obtained through the search warrant suppressed because the issuing court exceeded the scope of its jurisdiction. The Trial Court denied the motion. The Supreme Court held that the court that issued the search warrant had indeed exceeded the scope of its jurisdiction by issuing a search warrant for an out of state corporation. However, the Court held that because the Defendant does not have a reasonable expectation of privacy in the subscriber information that he provided to Comcast and thus did not reverse his convictions. The Court goes to great lengths to describe the process for obtaining evidence from an out of state company.

Frost v. Alabama, ___ So.3d ___, 2011 WL 2094777 (Ala. Crim. App. May 27, 2011). (Not Yet Released for Publication)

- Ineffective Assistance of Counsel

The Defendant, Harold Frost, pled guilty to one count of sodomy in the 1st degree and two counts of sexual abuse of a child less than 12 years old. He was sentenced to life in prison for the sodomy charge and 15 years in prison for the two sexual abuse charges. The Defendant appealed for post-conviction relief alleging that his attorney was ineffective for failing to advise him that he would not be eligible for his plea to 1st degree sodomy.

The Court agreed with the Defendant and reversed his conviction. Citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) and other Alabama authority, the Court held that it is ineffective assistance to not advise a client that he/she would be ineligible for parole base on a plea.

May 30-31, 2011

State Courts of Appeals

California v. Woodward, 127 Cal. Rptr. 3d 117 (Cal. Ct. App. May 31, 2011). (Partial Publication)

- Statute of Limitations
- One-Strike Law
- Right of Defendant to be Present
- Consecutive Sentencing

The Defendant, Daniel Woodward, was charged with two counts of committing lewd and lascivious acts on a child under 14 years of age, in violation of Cal. Penal Code § 288(a) (2011), and with committing offenses against multiple victims according to the One Strike Law, in violation of Cal. Penal Code § 667.61(e)(5) (2011). At the time the Defendant was convicted of the above referenced charges, he was in prison on unrelated crimes of possessing child pornography and committing lewd and lascivious acts on a child under 14 years of age. The Defendant was given consecutive sentences of 15 years in prison.

On appeal, the Defendant claimed that the statute of limitations had run. The Court rejected this claim finding that because the One Strike Law was applicable and the potential sentence was life there was not statute of limitations. The State had adequately filed notice for application of the One Strike Law. The Court also found that the Defendant was not prejudiced when he was not present for arguments on a rape shield motion concerning the Victim. Finally, the Court vacated the sentence because the Trial Court, by adopting the rational of the probation report, believed that consecutive sentencing was mandatory. Because consecutive sentencing was not mandatory the Court remanded the case for re-sentencing.

Minnesota v. Hahn, 799 N.W.2d 25 (Minn. Ct. App. May 31, 2011).

- Speedy Trial
- Sentencing
- Admissibility of Evidence

The Defendant, Kris Hahn, was charged with criminal sexual conduct in the first degree, in violation of Minn. Stat. § 609.342(1)(a) (2011). The Defendant was found guilty following a jury trial. In an unrelated federal proceeding, the Defendant was charged with and pled guilty to possession of child pornography, in violation of 18 U.S.C. § 2251(a), (e) (2011). He was sentenced to 210 months in prison. On the state charge the Defendant was sentenced to 100 in prison consecutive to his sentence on the federal charges. The charges stemmed from the Defendant's repeated sexual assaults of his ex-girlfriend's daughter.

On appeal, the Defendant claimed that he was denied a speedy trial. The Court found that the delay of 228 days after a filing of a notice of speedy trial was not reason to overturn the conviction as the delays were due to the Defendant, he did not vigorously assert his right to

speedy trial and he was not prejudiced by the delay. In addition, there was no error in the admission of pornographic photographs that the Defendant took of his minor victim. The photos were relevant to evaluate the credibility of the Victim as well as to show the Defendant's motive or intent. The Court ruled that it was error to sentence to the Defendant's sentence to run consecutive to his federal sentence absent a finding that there are "identifiable, substantial, and compelling circumstances" that justify a departure from the presumptive sentence of concurrent sentences. The case was remanded to the Trial Court for re-sentencing to determine if consecutive sentences are appropriate.