

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA,

v.

PHILIP FREDERICK MARTIN,

Defendant.

CASE NO.: 2019-01009-CFFA
JUDGE TERENCE R. PERKINS

MOTION IN LIMINE

COMES NOW the Defendant, Philip Frederick Martin, by and through her undersigned Assistant Public Defender and moves this Honorable Court to prohibit any state witness(es) from mentioning the following testimony or asking the defendant about:

1. Any statement previously made by Philip Martin to law enforcement that he touched the buttocks of the alleged victim A. M.

As grounds in support of this motion the defendant states:

1. The Defendant is charged in Count I with Lewd and Lascivious Molestation by allegedly touching the buttocks of A.M. in a lewd and lascivious manner.
2. A.M. has never said in her Child Protection Team (CPT) interview, or to her grandmother, Patricia Sanders nor in her deposition that the Defendant touched her buttocks in a lewd manner. She did describe, in detail, being touched on her upper legs, lower abdomen and under her clothes on her back.
3. Assuming that A.M. testifies consistently with her previous statements, deposition and CPT interview there will be no *corpus delicti* of Count I.
4. The defense is aware that F. S. 92.565 contains an exception to the normal corpus delicti rule in cases involving "sexual abuse" that the defendant's "confession" is admissible in evidence if the State is unable to prove the existence of each element of the charged offense and that the defendant's memorialized statement is "trustworthy".
5. There are three factors listed that may be relevant to the determination as to whether the State is unable to prove the elements of the charge alleged. This list is not exclusive. The one applicable to this case is listed as (c): at the time of the alleged offense the alleged victim was 11 years old or less.

6. Prior to the admission of the defendant's memorialized "confession" in a case involving sexual abuse the Court must conduct a hearing and the State must prove by a preponderance that it is unable to establish each element of the charges offense and also that the defendant's statement is trustworthy.
7. Of note in this case is the alleged victim was 11 years old at the time of the incident. She is very articulate in all of her interviews and in the deposition. She had no difficulty in recalling and testifying to incidents that she said occurred to her. She was interviewed by the CPT within 11 days after making this initial disclosure to her maternal grandmother, Patricia Sanders. In that interview she is asked where the defendant has touched her on her body and she described the legs (upper), back and abdominal area below the belt line. She was able to describe surrounding details that accompanied the incidents (like using a cell phone). She never one time mentioned that the defendant rubbed her buttocks.
8. In her deposition the undersigned specifically asked her what areas did the defendant touch her inappropriately and she said the legs, back under her shirt and the abdomen. When asked anywhere else, she said no.
9. In the instant case we have an articulate 11 year old alleged victim who has no difficulty answering questions as to what she says happened to her. The fact that she was 11 at the time of the offense **may** be relevant as to why the State cannot meet its burden with independent evidence on Count I but the defense argues that is not an automatic "pass" allowing the State to move forward to the second part of 92.565 which is the corroboration and trustworthiness analysis. In the Tumlinson case and the Geiger case the alleged victims were 1 ½ year old and non-verbal or were Alzheimer's patients in the throes of disabling dementia which is hardly the case here.
10. So when it comes to trustworthiness, the courts in Geiger v. State, 907 So.2d.668 (Fla 2nd DCA 2005) and State v. Tumlinson, 224 So.2d 766 (Fla 2nd DCA 2016) stated that the corroboration of the defendant's admission to the act in question cannot exclusively come from the statement itself (i.e. not coerced, made to persons the defendant trusted, police did not badger the defendant, no mental impairment etc.). A confession cannot corroborate itself. Hernandez v. State, 946 So.2d 1270, 1276 (Fla 2nd DCA 2007) The mere fact that there is independent evidence that the defendant was with the alleged victim and had the opportunity to commit the charged offense is not sufficient evidence to corroborate the statement. Tumlinson at page 771.
11. Of course another larger issue is that the State is asking that the Defendant's own statement of doing an act that their own alleged victim never said took place to be admitted as proof the crime was committed. This clearly calls into question the statement's trustworthiness, especially when dealing with an alleged victim who highly verbal, articulate, suffers from no mental illness and was asked about what the alleged abuse the day after the last incident occurred and was interviewed 11 days after by CPT.

12. An issue in this case is the trustworthiness of the defendant's statement. The defense intends to call as a witness Dr. I. Bruce Frumkin who is a psychologist and is an expert in the field of interrogations, false confessions and also the field of suggestibility of a suspect in police interrogations.
13. Dr. Frumkin has performed testing on the defendant and has submitted a report to the undersigned which has been furnished to the State. In the report it states that the result of his testing shows that Mr. Martin is more susceptible than the average person to provide false information in the context of questioning by an authority figure which includes law enforcement officers. This includes providing false information or acquiescing when pressured by law enforcement.
14. In the two interviews of Mr. Martin by Detectives Gamarra and Ebril, there are numerous points where the defendant is pressured by Detective Gamarra after receiving a response from Mr. Martin that he disagreed with or did not believe. After being challenged by the Detective, the Defendant many times changes his answer or now agrees with the implied suggestions by the Detective that the touching of the AV means he was "attracted to her" implying it was in a sexual way because he said he had an erection.

Thus in this case we have a man who is prone to providing false information when pressured who stated he committed and act he described as a "massaging" of the alleged victim's buttocks, an act that the victim never once has said occurred and the corroborating evidence that exists is the fact that defendant was in the house with her, was alone with her and had the opportunity to commit the offense charged. The risk of the Defendant being convicted solely on the evidence of his own, unreliable statement is too great for this Court to allow.

WHEREFORE, Defendant prays this Honorable Court grant this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to:
Melissa Clark, Assistant State Attorney, 1769 East Moody Blvd., Bldg. #1, Bunnell, FL 32110,
on December 13, 2021.

/s/ William M. Bookhammer

WILLIAM M. BOOKHAMMER
ASSISTANT PUBLIC DEFENDER
Florida Bar Number: 716200
1769 East Moody Blvd., Bldg. #1
Bunnell, FL 32110
(386) 313-4545

bookhammer.bill@pd7.org