



Know Your Rights

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Domestic Violence As Proof Of Sexual Assault

One of the most challenging issues facing a criminal trial judge is whether to allow the jury to hear evidence of crimes other than the one charged. Traditionally, American courts have been reluctant to allow such evidence before the jury on the theory that one shouldn't be judged by their past acts or bad habits. In addition, our courts have likened evidence of additional crimes to some kind of legal dynamite that may inflame or anger the jury. Under carefully prescribed conditions, our courts will allow evidence of additional crimes.

Evidence of other crimes of the accused can be relevant if the evidence tends to prove a matter of consequence in the trial and not simply the bad character or propensity of the defendant to commit the crime charged. Our courts have identified as matter of consequence any material fact that may be an issue in the case, such as proof of the motive of the accused, his opportunity to commit the crime, his intent, evidence of his preparation for the crime, his plan, his knowledge, or even his identity.

In a recent Florida case, an 8-year-old victim testified that the accused had sexually abused her for two years. She also testified as to the defendant's unreported physical abuse of her mother. She testified that she saw the defendant beat her mother and hold a gun to her head. Her mother also testified that the defendant was physically abusive toward her and described specific instances of such abuse. She told the jury she did not call the police the night she learned that the defendant had sexually abused her daughter because of her fear that he "would have jumped on me." Her mother also testified she never reported the physical abuse because the defendant threatened her with harm if she reported it to the police.

At the trial, the defendant was found guilty of attempted sexual battery on a person less than 12 years of age and lewd and lascivious assault. On appeal, he argued he should be granted a new trial because the state improperly presented evidence of the domestic violence he committed upon the child's mother.

The Appellate Court concluded the evidence of the physical abuse of the mother was relevant to explain why the victim had not earlier reported the sexual abuse. The court cited other Florida court

decisions allowing a child victim to testify about her father's physical abuse of her mother and her fear of the father as being relevant to show why she did not report her sexual abuse. (Another Appellate decision held that the prosecutor's comments, that witnesses had not come forward earlier because they were afraid of the defendant, was proper because the victim had testified she did not tell anyone of the sexual abuse because she was frightened; thought she would get in trouble; and thought the defendant would harm her.)

The court in this case

rejected the defendant's argument that the value of the evidence was substantially outweighed by the prejudice or anger which it might stir in the jury. Instead, the court ruled since the defense in the case included an outright denial of the sexual abuse, and the defendant's argument that the mother induced the victim to conjure up the story as a matter of revenge, the evidence of the defendant's physical abuse of the mother was necessary to explain why her daughter was reporting the abuse two years after its inception. It was also relevant to refute the defendant's implication that the

daughter reported the alleged abuse only now as a matter of her mother's revenge.

The defendant's convictions were affirmed.

The case is Bell v. State of Florida decided by the Fourth District Court of Appeal, on October 17, 2001, and can be found at 798 So.2d 47.



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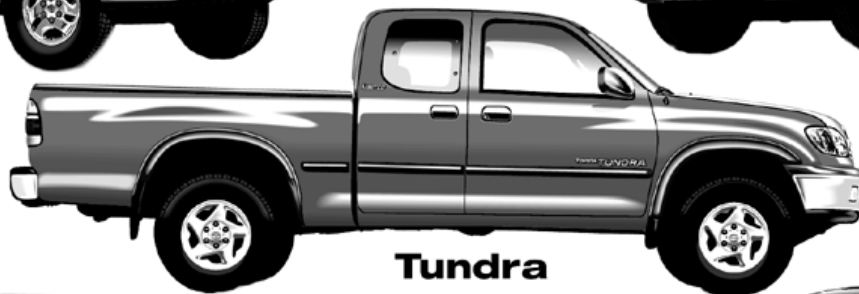
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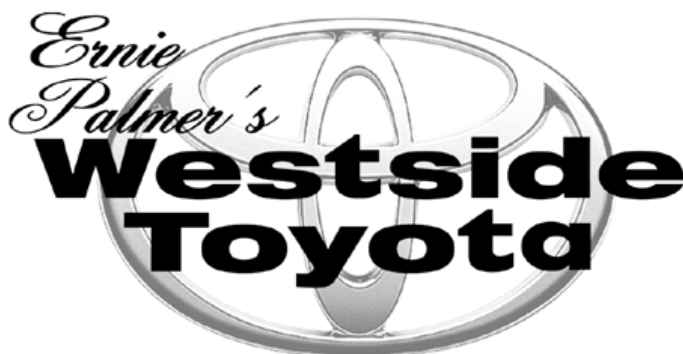
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