

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2011

SHAWN E. HAMMONDS,

Appellant,

v.

Case No. 5D10-1161

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 27, 2011

Appeal from the Circuit Court
for Orange County,
Marc L. Lubet, Judge.

James S. Purdy, Public Defender, and
Ailene S. Rogers, Assistant Public Defender,
Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee,
and Kellie A. Nielan, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Shawn E. Hammonds ["Hammonds"] appeals his judgment and sentences for two counts of capital sexual battery, one count of lewd or lascivious molestation, and two counts of lewd or lascivious exhibition. Hammonds argues that the trial court erred by denying his motion for judgment of acquittal on the two counts of capital sexual

battery¹ based on the State's failure to rebut his reasonable hypothesis of innocence. In denying the motion, the trial court explained:

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."

We agree that this evidence is sufficient to create an issue for the jury. See *Wilson v. State*, 622 So. 2d 31 (Fla. 1st DCA 1993).

AFFIRMED.

GRIFFIN, EVANDER and JACOBUS, JJ., concur.

¹ Hammonds was charged in ten counts of sex crimes against two victims and convicted and sentenced on five counts.