

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

JULY TERM 2003

WAYNE M. FIELDHOUSE,

Appellant,

v.

CASE NO. 5D02-2302

STATE OF FLORIDA,

Appellee.

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Opinion Filed September 19, 2003

Appeal from the Circuit Court  
for Citrus County,  
Richard A. Howard, Judge.

James B. Gibson, Public Defender, and  
Anne Moorman Reeves, Assistant Public Defender,  
Daytona Beach, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee,  
and Lori N. Hagan, Assistant Attorney General,  
Daytona Beach, for Appellee.

GRIFFIN, J.

Appellant, Wayne M. Fieldhouse ["Fieldhouse"], appeals his conviction for capital sexual battery upon a child less than twelve years of age by causing his finger to penetrate the victim's vagina. He complains of the trial court's denial of his motion for judgment of acquittal and the giving of a jury instruction defining "penetration." We find no error and affirm. The record shows the State presented competent evidence to establish the elements of the offense charged, including testimony that Fieldhouse's finger penetrated the child victim's

vagina. As to the jury instruction, although it may have been largely irrelevant under the facts of this case, there was no reasonable possibility that the giving of the instruction contributed to the conviction. Thus, any error was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

AFFIRMED.

ORFINGER and MONACO, JJ., concur.