Criminal and Delinquency Cases

State v. Sena, CA 24,156 (Kennedy) Jun 21, 2007, rev'd, SC 30,540 (Serna) Aug 26, 2008
In a case of CSCM where the child testified that only one count occurred during the applicable time period, conviction of two counts had to be reversed; trial court erred in allowing evidence of other bad acts that did not show grooming, but only showed that Defendant had an interest in sexual matters and pornography, even though it included evidence that Defendant showered with the victim and walked around the house naked, because grooming ought to be put before the jury by expert testimony and not innuendo and argument of the prosecutor; prosecutor's powerpoint presentation during opening skated the line of impermissible conduct; Defendant's speedy trial issue was not raised in the trial court (Fry, dissenting on the ground that the child's testimony about when what occurred was ambiguous and for the jury to resolve and the evidence of other acts was proper to establish intent to unlawfully touch inasmuch as there was evidence that Defendant touched the child to put cream on her rash; in addition, Defendant never argued that there needed to be expert testimony of grooming).

Rev'd on the grounds stated in the COA dissent, although more comprehensively discussed, and SC in addition states that expert testimony is not necessary regarding grooming.

State v. Denzel B., CA 27,684 (Castillo) May 7, 2008
Where a child is disciplined by his guardian by getting hit with a belt and when the guardian tells the child to go to his room and then follows him where the two continue their encounter, child would appear to qualify for regular self defense instructions for his offense of pushing the guardian out of the way and leaving the room; however, a parent has a qualified privilege to use reasonable force in discipline so that child's instructions should have allowed the jury to determine the issue of reasonable force similar to when a police officer uses excessive force in making an arrest and if the child's instructions do not include this concept, they are erroneous and need not be given (Robinson, dissenting on the ground that child should have gotten his requested instruction because beating a 16-year old child with a belt appears unreasonable and therefore it would be fundamental error not to give the requested instructions, and in addition a reversal would allow the district attorney to reconsider the prosecution, which was a waste of resources to begin with).

State v. Katrina F., CA 25,991 (Sutin) Apr 4, 2008
Where Child did not file motion to suppress until right before trial and where motion required evidentiary hearing, but Child did not propose a way to have such a hearing after the jury had been sworn and jeopardy attached, such as by continuance, mistrial, or new trial if she was convicted or stipulated facts about what the witness who could not attend the trial would testify, she waived her right to have the trial court decide the motion to suppress and therefore, although the motion was technically timely pursuant to the Doe case that says the court can hear motions to suppress made at trial, it was untimely under the circumstances of this case that required a separate evidentiary hearing with witness other than the trial witnesses; lack of magistrate's signature on nighttime portion of warrant was not fatal where magistrate intended to allow nighttime search and so testified at a hearing on remand and where the facts of the case and timing supported the magistrate's testimony.

State v. Schoonmaker, CA 23,927 (Bustamante) Sep 10, 2004, rev'd, SC 28,954 (Bosson) Jan 23, 2008

Trial court properly instructed in child abuse case in accordance with new instructions drafted in response to Supreme Court cases; Defendant was not put in double jeopardy, nor was collateral estoppel violated, when the jury acquitted him of intentional child abuse, but hung on negligent child abuse, and Defendant was retried and convicted of the latter crime because they are not the same crime; character evidence claim was not preserved; there was sufficient evidence of negligent child abuse when Defendant was shown to have shaken a baby and Defendant's different explanations were not believed; trial court could find that Defendant's offense was serious violent one when the evidence establishes a substantial and unjustified risk and Defendant should have known it was dangerous to the child; in addition, subjective knowledge not required by statute. **Rev'd** on a ground first brought to the Court of Appeals' attention on rehearing - that Defendant was deprived of effective assistance of counsel when the trial court would not let his counsel withdraw so that Defendant could get the Public Defender and funding for expert witnesses, where it was undisputed that Defendant was indigent and where experts were crucial to assess the State's evidence on shaken baby syndrome and Defendant's defense that the child fell; other issues argued on appeal that were covered by Court of Appeals opinion are affirmed, although some for different reasons; trial court is instructed to insure that Defendant is not convicted at retrial of theory of intentional child abuse of which he was acquitted at first trial; when there is double jeopardy, merger is not a sufficient remedy, and one conviction must be vacated.

State v. Chavez, CA 25,490 (Robinson) Oct 11, 2007

In a case for child abuse resulting in death where the facts were that Defendant (who had methamphetamine in her system and lots of drug paraphernalia about the house) put her infant to bed in a youth bed without rails, swaddled in blankets, and nine inches from a space heater, and the child rolled over and was burned to death, the trial court's exclusion of a government report detailing instances of infant deaths from space heaters was not error and if error was harmless error where Defendant had not read the report and the contents were irrelevant to the case; the evidence was sufficient to support the conviction; the jury instructions were approved UJIs that incorporated a criminal negligence standard; there was no ineffective assistance of counsel for failure to move to sever the paraphernalia charge or object to the evidence of drug use because these were matters of strategy.

State v. Ervin, CA 25,887 (Kennedy) Oct 10, 2007

Isolated, unsolicited testimony about an enlarged vaginal vault from a SANE nurse in a case involving cunnilingus was not prejudicial; nor was her testimony about what the child told her fundamental error; Defendant did not preserve hearsay issues relating to detective's testimony about what the child said; testimony by child's grandmother that Defendant intimidated child was permissible to show why child might succumb to Defendant and was not mere propensity evidence; when State told Defendant before deposition testimony of child that if child established a CSP, the State would move to amend information, and when State did then so move without objection from Defendant who pleaded not guilty to amended information, raising the issue of improper amendment at the end of the trial was too late when Defendant could not establish prejudice; there was no evidence of a lesser included offense as the highest degree of offense committed; Defendant's argument that he should have been allowed to introduce

evidence that child told others that CSP did not happen was without merit when one witness did testify to this and Defendant did not examine other witnesses who could also have testified to it; three counts of CSC for one full body massage violated double jeopardy; there was sufficient evidence to support the number of counts of child pornography for which Defendant was found guilty; no error, no cumulative error.

State v. Jose S., CA 24,988 (Fry) Sep 18, 2007
Statute governing disposition of youthful and serious youthful offenders is ambiguous regarding whether predisposition studies are required; court holds that they are based on purpose of children's code; child does not have to show specific prejudice because the trial court denied him a predisposition report and therefore child has no way of demonstrating that it would have been favorable to him; since child is now 21, court remands for resentencing.

State v. Walters, CA 24,585, 24,566, 25,110 (Vigil) Apr 27, 2006, rev'd in part SC 29,806 (Maes) Aug 28, 2007
Defendants' confrontation rights were violated in this child abuse case when the trial court consolidated five defendants for trial and admitted their confessions, sometimes without limiting instructions, and the district attorney used each defendant's confession against the others; appellate court could not say error was harmless; evidence was sufficient to convict. Rev'd in part as to the father of the child because any statements were harmless as to him because he confessed to most of the serious charges against him and affirmed as to the conspiracy charge because the statements were not harmless as to that charge.

State v. Lopez, SC 29,801 (Maes) Aug 28, 2007
Similar to State v. Walters, above, but this case involved the mother's brother.

State v. Payton, CA 25,532 (Wechsler) Jun 25, 2007
When a child victim of sex abuse is less than ten, a defendant should ordinarily be allowed to present evidence that the child had been abused before, notwithstanding the rape shield law, as a way of showing an alternative source of the child's knowledge of sexual matters.

State v. Walters, CA 24,585, 24,566, 25,110 (Vigil) Apr 27, 2006, rev'd in part sub nom State v. Lopez, SC 29,803 (Maes) Jun 21, 2007
Defendants' confrontation rights were violated in this child abuse case when the trial court consolidated five defendants for trial and admitted their confessions, sometimes without limiting instructions, and the district attorney used each defendant's confession against the others; appellate court could not say error was harmless; evidence was sufficient to convict.

Rev'd as to the mother of the child because any statements were harmless as to her because the makers of the statements said she was passed out while they were abusing the child insofar as child abuse resulting in death was concerned and they were cumulative of mother's own testimony insofar as child abuse not resulting in death was concerned (Chavez and Bosson concurring as to the child abuse not resulting in death but dissenting as to the child abuse resulting in death because the statements were equivocal as to whether she was asleep when the events took place and cross-examination might have clarified).

State v. Dylan A., CA 26,283 (Castillo) Jun 20, 2007
Where children's court judge wanted to put child on probation with intensive treatment but there was no place for him to live and at disposition the court invited a motion for reconsideration if treatment and living situation could be arranged, court did not lose jurisdiction or unduly interfere with CYFD when it later changed the disposition from a two-year commitment to probation on condition of treatment, even though court's invitation was not memorialized in writing in the disposition and even though the matter was brought to the court's attention by a motion filed by child that was three days late if it was considered a motion by the child as opposed to a response to the court's invitation.

State v. Katrina G., CA 25,781 (Bustamante) Mar 5, 2007
A children's court has the authority to revoke a consent decree even after the period of probation expires if the actions and petition to revoke took place before the probation expired because the time period applicable to such petition is the same as on petitions for adjudications and because there is no comparable provision in the children's code or rules to the adult language that requires defendants to be discharged once they have completed probation.

State v. Jade G., CA 23,810 (Sutin) Nov 9, 2004, aff'd in part and rev'd in part, SC 29,016 & 7 (Maes) Feb 28, 2007
Court of Appeals has jurisdiction over State's appeal of suppression orders in children's court delinquency cases; portion of children's code prohibiting any statements made by children under thirteen means what it says and court will not construe it to limit statements made under interrogation or to persons in authority; various issues regarding suppression of child's fingerprints are not answered, including whether a search warrant is a court order required by statute and what statute means when it says a child alleged to be delinquent, and instead the case is remanded for fact finding on the issues, including the issue of whether the State can just move for another order for fingerprints.
Aff'd to the extent that CA has jurisdiction (the Court holding that the statute allowing the state an appeal of right of a suppression order applies equally to children's court cases, even though they are special statutory proceedings) and correctly affirmed suppression of statements (the Court holding that the language of the statute is clear), but rev'd as to fingerprint evidence because the section of the Children's Code relied on (prohibiting fingerprinting without a court order when a child is alleged to be delinquent) for suppression did not apply prior to the initiation of the petition; prior cases had held that "alleged to be delinquent" means that formal charges have been filed and this is an issue of law, not one that requires factual development.

State v. Campbell, CA 24,899 (Kennedy) Feb 26, 2007
Trial court erred in excluding testimony by an expert psychologist about general characteristics of children in reporting sex abuse because, although not related to the specific case at issue, such relation might be impermissible, and because the issues surrounding the expert testimony were critical to the defense; trial court did not err in refusing to allow extraneous charges about the child's mother whom the defense sought to portray as suggesting the sex offenses to the child for her own purposes.

State v. Gallegos, CA 24,480 (Vigil) Oct 28, 2005, aff'd in part and rev'd in part, SC 29,538 (Chavez) Feb 1, 2007

Trial court erred in failing to sever counts involving one victim of CSC by a guard at YDDC (which involved a girlfriend/boyfriend relationship between the guard and a prisoner) from the counts involving another victim of indecent exposure (which involved exposing himself to a prisoner who was in an isolation cell) because the evidence was not cross-admissible (not amounting to a common scheme or plan and what little probative value it had on opportunity was outweighed by potential for prejudice).
Aff'd as to the error in failing to sever and as to the grant of a new trial as to the CSC, but **rev'd** as to the grant of a new trial as to the indecent exposure because the Court did not think the jury misused the CSC evidence on the exposure counts, thereby overruling court of appeals cases that hold that when evidence is erroneously admitted under 404(B), there is prejudice when there are convictions and court will not undertake separate harmless error analysis; Supreme Court also emphasizes mandatory nature of joinder rule.

State v. Stephen F., CA 24,007 (Fry) Jan 9, 2007
Where Child wanted trial court to admit evidence of alleged rape victim's prior consensual sex, which was punished by her parents, to show a motive to lie about what he claimed was another incident of consensual sex, trial court erred in excluding the evidence pursuant to the rape shield law because Child presented a plausible theory that was not based on propensity and because it was uncontested that the prior acts occurred and because it was Child's only defense.

State ex rel. CYFD v. Browind C., CA 26,196 (Castillo) Dec 22, 2006
Mother's due process rights were not violated in terminating her parental rights after her right to custody and guardianship was terminated several years ago because of neglect that did not change after reasonable efforts of the Department and guardianship was given to Mother's mother, but then the Department moved to terminate that guardianship at a similar time as it moved to terminate Mother's parental rights; Mother participated in all proceedings and basically admitted to all of the underlying facts; her contentions that there should have been new petitions, adjudications, treatment plans, etc. and that the State was not entitled to revive the old case were without merit in light of the facts of the case as measured against the Mathews factors and the fact that substantial evidence supported the termination.

State v. Weisser, CA 25,079, CA 25,079 (Pickard) Dec 22, 2006
Court explains history and current status of corpus delecti rule, holding that a defendant's statements must be trustworthy and supported by some independent proof of loss or injury; here, evidence that Defendant's toddler daughter showed 2 of 12 behaviors that are associated with abuse (nightmares and fear of strangers, particularly men) does not prove the injury because it is so equivocal and therefore Defendant's statements admitting that he committed CSC were inadmissible, leading to an absence of sufficient evidence to convict.

State v. Ruiz, CA 24,536 (Robinson) Nov 22, 2006
Where judge, in sentencing Defendant for child sexual abuse crimes after first trial, said that he believed child was telling the truth, he was not required to recuse because his information came from judicial sources; NM does not follow NJ law that requires heavy burden to show that testimony that might be tainted by prior investigation is admissible and instead it is enough that child is competent; evidence of other bad acts was properly admitted because one incident was a charged incident and not an "other" incident and the other incident was offered to show

Defendant's grooming behavior, which was admissible; where Defendant claimed that the child was making up the incidents and did not report them, it was not hearsay to admit evidence of the child's statements about her concern about pregnancy; trial court properly excluded demonstrative evidence that Defendant did not disclose before trial; where Defendant did not testify, his character for truthfulness was not at issue and a witness could not testify as to it; trial court did not err in allowing rebuttal witness after allowing time for interview; after jury viewed scene, trial court did not err in refusing to give Defendant's requested instruction, singling out that evidence and commenting on it by saying that the scene may have changed since the incidents.

State v. Jojola, CA 24,148 (Pickard) Aug 19, 2005, aff'd SC 29,441 (Chavez) Oct 18, 2006
There was sufficient evidence to convict Defendant of child abuse resulting in death when there was evidence, although conflicting, from which the jury could infer that the injuries to the child happened while in her sole care; conviction is reversed and remanded for a new trial because trial judge had a conversation with a juror about the case during deliberations outside of the presence of defendant and counsel and the state did not rebut the presumption of prejudice that arose therefrom.
Aff'd based on the rationale of the COA, the SC also explaining how Rule 5-610(D) applies and the rationale behind recent amendments to that rule.

State v. Travison B., CA 25,562 (Wechsler) Oct 16, 2006
When officers forced their way into Child's house illegally, Child was not entitled to suppression of evidence that he assaulted officers once they were inside even though it was the fruit of the unlawful actions of the officers; in such a case of unlawful police action, people have to pursue their legal remedies and cannot resort to force themselves; this is true even under the NM Constitution; appeal not moot even though Child served his sentence because it involves a matter of policy that is of significant public interest.

State v. Jensen, CA 24,905 (Sutin) Oct 18, 2005, rev'd SC 29,528 (Chavez) Aug 29, 2006
In a case in which Defendant did not challenge his convictions for two counts of contributing to the delinquency of a minor by giving the minor excessive alcohol and showing the minor pornography on the computer, Defendant does challenge his conviction for child abuse by endangerment for inviting the fifteen-year old child into his home that was "filthy" and "nasty" with dog feces, rotten food, animals running around, vomit, rodent droppings, urine, and garbage everywhere; court holds that there is insufficient evidence that fifteen-year old would be endangered by such because he was old enough to avoid endangering himself and Defendant did not actively endanger him.
Rev'd on the ground that the child's susceptibility to harm is but one factor to consider and that viewed in the light most favorable to the State, there was sufficient evidence that Defendant caused the child to be placed in a situation that endangered his health.

State v. Hunter, CA 24,166 (Bustamante) Apr 19, 2005, aff'd as to result, SC 29,258 (Minzner) Jul 26, 2006
In a case of custodial interference where Defendant pleaded guilty but then moved to withdraw his plea, trial court did not err in failing to decide issue of whether court that issued custody order had jurisdiction because that was a defense waived by the plea, but court had to address

that issue when defendant moved to withdraw his plea on the basis that his counsel never explained to him that defense, when it appeared that that defense had merit; Court adopts ABA standards in determining plea withdrawal motions such that motions to withdraw made before sentencing are governed by a more lenient standard and should be granted if there is any fair and just reason for granting them and the prosecution is not prejudiced; where defendant was charged with custodial interference with more than one child based on the same acts, double jeopardy precludes more than one conviction; cert quashed as to double jeopardy issue.
Aff'd as to plea issue, but Court rejects different standard for presentence motions to withdraw and concludes that Defendant met the standard to show plea was involuntary due to lack of competent advice from counsel regarding whether the court that issued the custody order had jurisdiction and whether a conditional plea should have been entered; because there was full evidentiary hearing on issue of ineffective assistance in the context of motion to withdraw plea, Court does not require additional proceedings and remands case to allow Defendant to withdraw his plea; Court also comments that criminal proceedings in this case seemed particularly inappropriate.

State v. Williams, CA 25,958 (Wechsler) Jun 29, 2006
Where a defendant is charged with crimes that require sex offender registration, but pleads to charges that do not so require, court cannot make plea conditional on defendant's giving the sheriff his sex offender information and allowing the sheriff discretion whether to process defendant as a sex offender; by doing so, court has made itself a legislature.

State v. Stephen F., CA 24,007 (Fry) Feb 21, 2005, aff'd in part and rev'd in part, SC 29,128 (Bosson) Jun 28, 2006
Although Rules of Criminal Procedure generally apply (according to the Children's Court Rules) when a child is alleged to be a youthful offender, the Rules of Criminal Procedure do not address dispositions, and therefore the Children's Court Rules apply to the timeliness of dispositional hearings; where Children's Court Rule states that dispositional hearing shall be recommenced within 45 days of order of diagnostic commitment, but states no remedy for failure to abide by the time limit, the appropriate remedy is dismissal because analogous rules expressly adopt the dismissal remedy and such a remedy would be consistent with the policies evidenced by the various amendments to the Children's Court Rules (Castillo, dissenting on the ground that the remedy of dismissal is not stated in the applicable rule and therefore the default rule (providing that dismissals should not occur in the absence of prejudice) applies and Child has shown no prejudice here).
Aff'd to the extent that the Children's Court Rule time limits govern, but rev'd as to remedy of dismissal, the Court opining that the dissent had the better view and that release from custody is the appropriate remedy because there is no time limit on dispositional hearings of children not in custody.

State v. Schackow, CA 24,137 (Bustamante) Jun 21, 2006
Evidence was sufficient for assault with intent to commit CSP and attempted kidnapping; double jeopardy prohibits conviction of both assault with intent to commit CSP and attempted CSP where facts were that Defendant blocked Victim's path with his car, held something to her head, ordered her to perform fellatio, and fought with her unsuccessfully to force compliance; attempted CSP is subsumed within assault with intent to commit CSP under Blockburger; court

orders lesser offense to be vacated even though it is a Sex Offender Registration and Notification Act offense that the prosecutor may have preferred because the prosecutor did not make the choice and our cases say to vacate the lesser; assault with intent and attempted kidnapping were not based on unitary conduct because Defendant tried to kidnap Victim several times before he finally succeeded; trial court did not abuse discretion in not allowing photos of Defendant showing beating because that would have caused confusion of the issues and was only marginally relevant.

State v. Ayala, CA 25,574 (Kennedy) Jun 1, 2006
Finding that a crime is a serious violent offense for purposes of reducing good time does not require a jury trial; fact that trial court found that one count of child abuse had mitigating factors does not mean that it is not serious violent offense as a matter of law; facts of three skull fractures, eight broken ribs, a broken fibula, and bruises, together with Defendant's admission that he struck the child on three occasions, were sufficient for two consecutive sentences to which Defendant pleaded guilty knowing that consecutive sentences were a possibility.

State v. Pablo R., 25,179 (Vigil) Apr 28, 2006
Being out of class without a pass and being nervous and fidgety does not rise to the level of reasonable suspicion allowing a school security officer to search a child; being without a pass does not justify the search and allowing the search based on nervousness would be allowing the search on a hunch; also since this was a state's appeal of a suppression order, the trial court could have disbelieved the officer's testimony regarding nervousness.

State v. Brown, CA 23,610 (Pickard) Jan 15, 2004, rev'd, SC 28,471 (Maes) Apr 24, 2006
It is not a violation of the right to counsel or equal protection to condition the state's provision of expert witness assistance to indigent defendants on their accepting representation by the Public Defender, as intended by the Legislature as evidenced by its funding decisions under the Indigent Defense Act and Public Defender Act and as argued by the Public Defender; right to counsel of choice may be circumscribed in appropriate cases; a district court's order is not law of the case and can be changed any time before judgment (Vigil, dissenting on the grounds that the decision violates Defendant's constitutional right to counsel, violates the plain wording of the Indigent Defense Act, and violates good public policy, which should encourage attorneys to represent indigents pro bono by having the state pay for expert witness assistance).
Rev'd on basically the same grounds stated in Judge Vigil's dissent, but instead of saying that rights are violated, Supreme Court bases decision on "constitutional considerations, together with . . . statutory framework . . . and . . . policy interests."

State v. Martinez, CA 24,601 (Robinson) Apr 3, 2006
Felony child abuse statute does not apply to a mother's conduct in using cocaine during pregnancy; court reviews whether legislature intended "child" to mean "viable fetus" and decides that it did not; Mother's due process rights would also be violated by the prosecution because of lack of notice of the crime.

State v. Salazar, CA 24,468 (Alarid) Feb 15, 2006
Where expert did not vouch for credibility of child sex abuse victim and where Defendant did not make Alberico objections below except to one part of the testimony that did not involve

vouching, trial court did not err in allowing expert to testify; trial court did not err in refusing to order state to transport Defendant to see a psychiatrist 200 miles away when there was no showing that closer psychiatrists could not do the evaluation and no showing that chosen psychiatrist could not do evaluation where Defendant was incarcerated; where there was no objection to closing argument and no argument on appeal regarding fundamental error, court would not discuss Defendant's issue of prosecutor misconduct; trial court did not abuse discretion in denying last minute fifth motion for continuance; where multiple carbon-copy jury instructions went to jury for multiple CSP counts, but jury only convicted Defendant of first and last and counts were identified by where they took place and there was no objection to the nature of the jury instructions, there was no violation of double jeopardy; where State could not pin down specific dates of CSP counts for purposes of charging, last count, which was alleged to have occurred in 1999, did not support application of earned meritorious deduction act, which was effective in July of 1999.

State v. Clemonts, No. 23,549 (Robinson) Feb 7, 2005
Evidence was insufficient to convict Defendant of felony child abuse where the facts were that he had three children in his car and was speeding around 70 mph in a 35 mph zone and when the police tried to stop him, he slowed down to 35 mph and led them on a low-speed chase, committing failure to use turn signal and failure to stop (rolled through a stop sign) along the way, where there was evidence that Defendant was arrested for DWI but was acquitted of that charge, and where when Defendant finally stopped, he ran away; there was no evidence that the children were in any direct line of danger; court sua sponte raised this issue and asked for further briefing from parties because insufficiency of the evidence is fundamental error.

State v. Munoz, SC 17,945 (Maes) Jan 31, 2006
Custodial interference statute proscribed two types of interference: (1) taking or (2) failing to return; only the latter requires the act to be without good cause; both require the act to be malicious and with intent to deprive another of custody; good cause includes the concept of good faith in that someone depriving another of custody should have an honest belief that the action is necessary to prevent harm; erroneous good cause instruction in this case did not harm Defendant because he was convicted of the taking type of interference as well as the failing to return type and the former did not have a good cause requirement; court need not instruct on protracted period of time because that concept has a common meaning.

State ex rel. CYFD v. Paul G., CA 25,090 & 25,321 (Bustamante) Feb. 6, 2006
CYFD has standing to appeal a disposition contrary to law in a delinquency case; delinquency part of children's code does not allow commitments to age 18; it allows only short term (one year) commitments, long term (two year) commitments, or commitments to age 21; this is true notwithstanding plea bargain pursuant to which child pleaded in return to sentence no longer than to his 18th birthday; nor does abuse and neglect part of children's code allow this.

State v. Gerald B., CA 24,538 (Robinson) Jan 5, 2006
Police did not need to give Miranda warning to Child when, prior to protective frisk justified by Child's nervousness and wearing of bulky clothing in which could be concealed weapons, officer asked Child if he had any needles with syringes, which was asked so that officer did not get stuck with needle, and not to confirm or deny any suspicions of wrongdoing; sufficient evidence

supported Child's conviction for marijuana, including Child's admission to officer that the baggie was marijuana and the officer's testimony confirming Child's admission based on the officer's experience; Child's Batson issue is rejected because, although trial court voiced an incorrect reason for rejecting Child's argument below, i.e., that Child and the juror were of different races, trial court appeared to accept State's view of juror (that juror was not paying attention because his eyes were closed and he appeared to be sleeping), rather than Child's view (that juror was paying attention) and it was Child's burden to make record showing that trial court accepted Child's view in order to prevail on appeal.