

SUPREME COURT OF FLORIDA

Gary G. Debaun v. State of Florida

213 So. 3d 747 (Fla. 2017) · No. SC13-2336 · Decided March 16, 2017

SUMMARY

The Supreme Court of Florida held that the term "sexual intercourse" in section 384.24(2), Florida Statutes, is not limited to heterosexual penile-vaginal intercourse. The court concluded that the statute encompasses oral and anal intercourse because that interpretation accords with the statute's plain meaning and legislative purpose of preventing the spread of HIV and other sexually transmissible diseases. The court approved the Third District's decision in Debaun and disapproved the conflicting decision in L.A.P.

CASE DETAILS

|                       |                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                               |
| WRITING FOR THE COURT | Canady, J.; Labarga, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Polston, J.                                                                                                                            |
| JURISDICTION          | Florida                                                                                                                                                                                                |
| DECIDED               | March 16, 2017                                                                                                                                                                                         |
| DOCKET                | SC13-2336                                                                                                                                                                                              |
| DISPOSITION           | approved                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Review of a Third District Court of Appeal decision on certified direct conflict with a Second District Court of Appeal decision concerning the interpretation of section 384.24(2), Florida Statutes. |
| STANDARD OF REVIEW    | De novo review of the statutory-interpretation issue.                                                                                                                                                  |
| PRECEDENTIAL VALUE    | published precedential opinion of the Supreme Court of Florida                                                                                                                                         |
| PARTIES               | Gary G. Debaun v. State of Florida                                                                                                                                                                     |

TOPICS

- statutory interpretation
- legislative intent
- legislative history
- rule of lenity
- criminal procedure

PRACTICE AREAS

- criminal law
- health law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the term "sexual intercourse" in section 384.24(2), Florida Statutes (2011), is limited to heterosexual penile-vaginal intercourse.
2. Whether the rule of lenity requires adopting the narrower definition of "sexual intercourse" urged by Debaun.

#### **HOLDINGS**

1. The term "sexual intercourse" in section 384.24(2) encompasses conduct beyond heterosexual penile-vaginal intercourse, including oral and anal intercourse.
2. The rule of lenity does not require limiting "sexual intercourse" in section 384.24(2) to penile-vaginal intercourse because the term unambiguously includes the oral and anal conduct at issue in this statutory context.

#### **KEY QUOTATIONS**

*"The term "sexual intercourse" in section 384.24(2) encompasses conduct beyond heterosexual penile-vaginal intercourse." (opinion at 15)*

*"The term "sexual intercourse" is commonly understood to broadly refer to various sexual acts—including the sexual act at issue here." (opinion at 15)*

#### **FACTUAL BACKGROUND**

Gary G. Debaun, who was HIV positive, provided C.M. with a forged laboratory report indicating that Debaun was HIV negative. Debaun and C.M. then engaged in oral and anal intercourse. After learning that Debaun was HIV positive, C.M. reported the conduct and assisted law enforcement in obtaining admissions from Debaun during a controlled telephone call.

#### **PROCEDURAL HISTORY**

Debaun was charged with violating section 384.24(2) after allegedly engaging in oral and anal intercourse without disclosing his HIV-positive status. The trial court dismissed the charge under Florida Rule of Criminal Procedure 3.190(c)(4), relying on *L.A.P. v. State*. The Third District reversed, held that the statute encompasses oral and anal intercourse, and certified conflict with *L.A.P.* The Supreme Court of Florida approved the Third District's decision and disapproved *L.A.P.* to the extent of conflict.

#### **DISPOSITION**

approved

#### **CASES CITED**

- *State v. Debaun*, 129 So. 3d 1089 (Fla. 3d DCA 2013)
- *L.A.P. v. State*, 62 So. 3d 693 (Fla. 2d DCA 2011)
- *State v. D.C.*, 114 So. 3d 440 (Fla. 5th DCA 2013)
- *D.C. v. State*, 123 So. 3d 557 (Fla. 2013) (table)

- Anucinski v. State, 148 So. 3d 106 (Fla. 2014)
- Paul v. State, 129 So. 3d 1058 (Fla. 2013)
- State v. Burris, 875 So. 2d 408 (Fla. 2004)
- Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc., 3 So. 3d 1220 (Fla. 2009)
- Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 686 So. 2d 1349 (Fla. 1997)
- Dudley v. State, 139 So. 3d 273 (Fla. 2014)
- Trinidad v. Fla. Peninsula Ins. Co., 121 So. 3d 433 (Fla. 2013)
- E.A.R. v. State, 4 So. 3d 614 (Fla. 2009)
- Barco v. Sch. Bd. of Pinellas Cnty., 975 So. 2d 1116 (Fla. 2008)
- State v. Brake, 796 So. 2d 522 (Fla. 2001)
- Beam v. State, 1 So. 3d 331 (Fla. 5th DCA 2009)
- Slaughter v. State, 538 So. 2d 509 (Fla. 1st DCA 1989)
- Carnes v. State, 725 So. 2d 417 (Fla. 2d DCA 1999)
- Green v. State, 765 So. 2d 910 (Fla. 2d DCA 2000)
- State v. Bowden, 18 So. 2d 478 (Fla. 1944)
- Williams v. State, 109 So. 305 (Fla. 1926)
- Lanier v. State, 443 So. 2d 178 (Fla. 3d DCA 1983), decision quashed, 464 So. 2d 1192 (Fla. 1985)
- Hawker v. State, 951 So. 2d 945 (Fla. 4th DCA 2007)
- Grohs v. State, 944 So. 2d 450 (Fla. 4th DCA 2006)
- United States v. Giles, 300 U.S. 41 (1937)
- United States v. Corbett, 215 U.S. 233 (1909)

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