

Appeal court orders new trial in Daniel Guevara-Vilca child porn case

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NAPLES, Fla. - An East Naples man sentenced to life in prison for child pornography possession is entitled to a new trial because of an evidence-sharing error, the Florida Second District Court of Appeal ruled Friday.

Daniel Guevara-Vilca, 29, whose life sentence for downloading hundreds of child porn files drew complaints of unfair punishment, will have his case returned to Collier County, where he could renew plea negotiations or return to trial. After Guevara-Vilca rejected a 25-year plea offer, a jury convicted him in 2011 on 454 counts of child porn possession, which carried

Guevara-Vilca's appeal largely focused on the argument that his sentence constituted cruel and unusual punishment, particularly because child rapists and murderers can receive less time behind bars. The appeal court, however, ruled that a failure to properly share evidence rendered the punishment issue moot because Guevara-Vilca's sentence is no longer valid.

Guevara-Vilca's appellate lawyer, **Marc Seitles**, said he hasn't spoken with his client, but Guevara-Vilca's mother was overjoyed upon hearing the news Friday afternoon.

"She was hysterical, crying, extremely happy and thrilled," **Seitles** said.

State Attorney's Office spokeswoman Samantha Syoen said prosecutors are reviewing the ruling.

The appeal court's opinion, written by Judge Stevan T. Northcutt, centered on testimony from the Collier County Sheriff's Office's lead detective on the case. At trial, the detective said an investigation of peer-to-peer file sharing networks led deputies to Guevara-Vilca's home, where they suspected child porn had been downloaded. While executing a search warrant, the detective said, he discovered one computer containing hundreds of images and videos of child porn.

The detective testified that prior to reading Guevara-Vilca his Miranda rights, he asked Guevara-Vilca if the suspect computer was the one he usually used. Guevara-Vilca responded that it was.

That admission, however, was never disclosed before trial to Guevara-Vilca's trial lawyer, a violation of evidence-sharing rules. After a short hearing, Collier Circuit Judge Fred Hardt determined the mistake was inadvertent and didn't prejudice Guevara-Vilca, allowing the trial to move forward.

The appeal court judges agreed the oversight was inadvertent, but found that it did prejudice Guevara-Vilca. In particular, the appeal judges noted that Guevara-Vilca's lawyer could have tried to suppress a post-Miranda statement based on the failure to read Guevara-Vilca his rights before asking an investigative question. In his post-Miranda interview, Guevara-Vilca admitted to primarily using the computer containing the porn, but he denied intentionally downloading the files.

“If the earlier statement had been disclosed by the state, there is a reasonable possibility that defense counsel’s trial preparation and strategy would have been materially different because counsel could have pursued the suppression of all statements made by Guevara-Vilca,” Northcutt wrote in his opinion.

Although the appeal judges didn’t rule on the constitutionality of Guevara-Vilca’s sentence, Northcutt wrote it “deserves serious consideration by the sentencing court.”

Northcutt also noted that if Guevara-Vilca is convicted again, a lawyer could call an expert witness to testify about Guevara-Vilca’s medical history — which wasn’t done at his first sentencing hearing. Guevara-Vilca’s mother has said her son was born prematurely, had two brain tumors removed before age 13 and attempted suicide twice. If evidence shows Guevara-Vilca’s medical complications “substantially impaired” his ability to appreciate his crimes or follow the law, it could be grounds for a lower sentence.

Citing attorney-client privilege, Guevara-Vilca’s trial lawyer, Lee Hollander, said he couldn’t comment on why a medical expert wasn’t consulted during the sentencing phase.

Under Florida law, a defendant can be charged with an individual count of child pornography possession for each file found. Each count, in turn, adds about four months in prison to the minimum guideline sentence.

As a result, Guevara-Vilca faced a minimum of 152 years in prison. The number and severity of the charges allowed Hardt to impose a life sentence.

Had Guevara-Vilca’s case landed in federal court, he likely would have faced about 10 years in prison. In 2013, a Daily News review of dozens of Southwest Florida child pornography cases found a major disconnect in sentencing, with defendants in federal court often facing far less prison time than those in state court.

“There’s still, I think, a strong argument to be made, and a winnable argument, that the sentence was cruel and unusual,” Seitles said.
