

Franklin v. State, 2020 WL 86592 (Fla. 1st DCA Jan. 8, 2020)

Appellant appealed his judgment and sentence for possession of a firearm by a convicted felon and raised two issues on appeal. Appellant argued that the trial court erred in (1) admitting into evidence a photograph of a firearm found in the vehicle in which he was driving when he was stopped by law enforcement, and (2) applying the wrong legal standard when evaluating his motion for new trial.

First, the Court rejected Appellant's argument that the trial court abused its discretion in admitting the photograph into evidence. The photograph was relevant to the issue of what Appellant was in possession of, and the jury was repeatedly told, through the testimony of the officer who found the firearms and through the closing argument of both the prosecutor and defense counsel, that both firearms were found under the car's seats. The admission of the photograph at issue was neither misleading nor confusing.

Second, the Court rejected Appellant's argument that the trial court applied the wrong legal standard when evaluating the motion for a new trial. The trial court took into consideration not only the grounds raised during the hearing but also the grounds raised in Appellant's motion, which included the "weight of the evidence" and "contrary to law arguments." The trial court's reliance upon its previous rulings did not indicate that the court utilized an improper standard in addressing those claims. Accordingly, Appellant was not entitled to reversal.

Traffanstead v. State, 2019 WL 7342228 (Fla. 1st DCA Dec. 31, 2019)

In this case of first impression, Appellant appealed his judgment and sentence, arguing that the trial court violated his Sixth Amendment right to counsel by prohibiting defense counsel from relying on the information contained in the victim's comprehensive assessments, which denied him a meaningful opportunity to present a complete defense.

Appellant was charged with two counts of sexual battery. The victim was his adopted son. Florida law normally shields the disclosure of an individual's confidential communications and records regarding mental health treatment and diagnosis. This psychotherapist-patient privilege is waived only under limited circumstances, which were not present here.

Nevertheless, the Court found that a defendant's Sixth Amendment right to confront adverse witnesses may implicate the rule that disclosure of privileged records is required under rare and compelling circumstances, and this case was such an occurrence. Credibility may be attacked by showing that a witness is biased, and a party can provide evidence of a defect in witness's capacity, ability, or opportunity to observe, remember, or recount an event in order to attack their credibility. The probative evidence that Appellant could have elicited from an expert review of the adopted son's assessments implicated a bias towards his caregivers, as well as his ability to perceive and understand events. The Court held that strict adherence to procedural rules may give way to a defendant's right to present relevant evidence in his defense, and, accordingly, the information here was relevant and not overly prejudicial.

Jakubowski v. State, 2019 WL 7342226 (Fla. 1st DCA Dec. 31, 2019)

Appellant was charged with and convicted of sexual battery with the use of a deadly weapon and burglary with assault or battery, and the court sentenced Appellant to thirty years imprisonment, along with lifetime sex offender probation. Appellant challenged the trial court's admission of collateral-crime evidence and certain statements made under the hearsay exception for medical diagnosis and treatment.

Appellant first argued that the trial court abused its discretion in admitting the collateral-crime evidence at trial. The Court held that testimony concerning a collateral crime is admissible when it is used to show a common scheme that corroborates the victim's testimony or to prove intent as to the crime in question.

The Court found that events that occurred in the collateral crime were substantially similar to the events that occurred in the current case. The evidence corroborated the victim's testimony, which was challenged after the defense presented evidence questioning the victim's motive for pursuing the case. Additionally, intent was a material issue in this case because Appellant was charged with burglary. As a result, the trial court did not abuse its discretion in admitting the collateral-crime evidence.

Appellant also argued that the trial court abused its discretion by allowing the nurse to read her report of the victim's statement as a hearsay exception for medical diagnosis and treatment. The rule allows statements that describe medical history, symptoms, or the inception of the cause of a person's injuries, if the statements are reasonably pertinent to diagnosis or treatment. However, statements of fault are generally inadmissible.

The Court held that some of the victim's statements from the nurse's report were not within the hearsay exception, but were harmless error because the statements were also testified to by the victim. Thus, the nurse's testimony during which she read her report was merely cumulative when considered in light of the other evidence presented at trial. As such, the error was no cause for reversal.

Jordan v. State, 2019 WL 6598227 (Fla. 2019 Dec. 5, 2019)

Jordan appealed the denial of his motion to vacate his conviction of first-degree murder, and he also petitioned the Court for a writ of habeas corpus.

Jordan presented various claims of ineffective assistance of counsel. Among them was that the prosecutor violated the golden rule, and defense counsel did not object. Although the prosecutor at least came close to crossing the line in one instance, and actually did violate the rule in another, the Court found that defense counsel's strategy of not objecting (in order to maintain credibility with the jury by keeping his objections to a minimum) was reasonable in this instance. It noted that any description of the facts of this case would have an emotional impact on a jury, and that a more artfully crafted and wholly proper argument covering these facts would likely have been more impactful than the technical golden rule violation. Accordingly, the Court found no deficiency in counsel letting these comments pass without objection.

Jordan also argued that his trial counsel was ineffective for failing to object or move to exclude the admission of certain duct tape evidence that included the victim's hair. He contended that trial counsel's deficient performance prejudiced him because the jurors' emotions were inflamed and their sympathy was evoked by seeing the duct tape evidence containing the victim's hair, which influenced their decision to convict him of first-degree felony murder.

The Court held that counsel was not deficient. The piece of duct tape with the victim's hair on it was not irrelevant because it tended to prove the manner of the killing. Testimony was given by several witnesses, including the detective and emergency response personnel, that the victim's face, neck, and head were tightly bound with a large amount of duct tape. The duct tape and hair corroborate this testimony. Although this piece of evidence may have been cumulative to other evidence, this fact does not render this evidence irrelevant. Counsel could have objected arguing that the probative value of the evidence was substantially outweighed by unfair prejudice, but it would have been well within the trial court's discretion to deny the objection had it been made.

As such, the Court affirmed the trial court's order denying Jordan relief from his conviction and denied his habeas petition.

*King v. State*, 2019 WL 5945525 (Fla. 1st DCA Nov. 13, 2019)

Appellant challenged the trial court's ruling denying her motion for judgment of acquittal, denying her specially requested jury instruction on causation, and admitting a flounder gig and related pictures into evidence over defense counsel's objection. Appellant was charged with one count of principal to manslaughter and one count of aggravated battery.

With respect to the admission of the flounder gig and related pictures, Appellant challenged the relevancy of the State's evidence. The Court held that relevant evidence proves or disproves a material fact and that for a weapon to be admitted into evidence, the weapon must be relevant to the crime. This means there is an adequate nexus between the crime and the weapon. In determining whether a sufficient nexus exists, in turn, the trial court is permitted to consider testimony identifying similarities between the weapon used in the crime and the weapon proffered at trial, as well as the lapse in time between the crime and the discovery of the proffered evidence. A sufficient nexus does not require testimony that the proffered weapon is definitively the weapon that was used during the crime.

Appellant stated that she stabbed the victim with a long, three-pronged flounder gig. Additionally, two officers from the Fish and Wildlife Commission observed a flounder gig in the boat when the two passengers were rescued. Officers then discovered a flounder gig at Appellant's residence the day after the incident occurred. The flounder gig was the only one found at the residence. Finally, the medical examiner testified that there were puncture wounds on the victim that matched the specific measurements of the flounder gig introduced into evidence.

The Court held that pictures can be admitted into evidence if they are relevant to any issue required to be proven in a case and that the pictures of the flounder gig were relevant to prove the issue of

whether Appellant committed an aggravated battery against the victim by using a deadly weapon. Thus, the trial court did not err in admitting the flounder gig or the pictures.