IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT OF
THE STATE OF FLORIDA

JONATHAN EDWIN CANALES,

Appellant,

v. CASE NO. 5D18-3944

STATE OF FLORIDA,

Appellee.
_____/

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SEAN KEVIN GRAVEL
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0118235
444 Seabreeze Boulevard, Suite 210
Daytona Beach, Florida 32118
(386) 254-3758
gravel.sean@pd7.org

COUNSEL FOR APPELLANT

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STATEMENT OF THE CASE AND FACTS

The Charges. Mr. Jonathan Edwin Canales was charged with committing aggravated battery with a firearm discharge causing great bodily harm and attempted first-degree murder with a firearm discharge causing great bodily harm on or about November 15, 2014. (Record on Appeal, R, page 86).

Motion in Limine. The State filed a Notice of Intent to Introduce Evidence of Other Crimes, Wrongs, or Acts. (R 88). It alleged that Mr. Canales was accused of shooting his live-in girlfriend Tiffany Norman in the neck, but he told police that she shot herself. (R 88-89). The State sought to introduce evidence of two prior instances of domestic violence by Mr. Canales against Ms. Norman two years before the shooting while she was pregnant with their son. (R 89). The first instance was when he hit and choked her when she refused to get an abortion. (R 89). The second instance was when he flipped over a mattress she was sleeping on, told her to leave the residence, she retreated to the bathroom, and when she opened the door he tried to drag her out, she went to the kitchen, and he grabbed her, stopped her from calling her mother, and dragged her out of the house, striking her face against the wall in the process. (R 89).

Ms. Norman also told police that Mr. Canales was verbally and emotionally abusive, repeatedly threatened her with harm, told her that she was worthless, and

isolated her from her friends and family. (R 89-90). He threatened to kill her on a daily basis from the day after their son was born to the day of the shooting, stating, "I can kill you and nobody would know about it because I will hide your body." (R 90). Mr. Canales was very controlling, monitoring her Facebook and text messages, demanding his consent before she left the residence, putting her cell phone on his plan, controlling the finances, and getting mad when she spent money on the children instead of him. (R 90). She used to talk to her mother every day, but since moving into their house she no longer called her mother. (R 90). Mr. Canales would get mad if she ever spoke to the father of her other children. (R 90).

The State cited case law where evidence of prior domestic violence was deemed admissible. (R 92-93). It sought to introduce the prior acts of domestic violence to prove Mr. Canales' motive, intent, preparation, common scheme or plan, knowledge, identity, absence of mistaken or consent, and premeditation. (R 94).

Mr. Canales filed a Motion in Limine arguing that this is not a domestic violence case but rather it is an attempted suicide case. (R 396). He further argued that any relevance was outweighed by unfair prejudice and that the allegations were not relevant for any purposes alleged by the State. (R 396-97).

At the motion hearing Ms. Norman testified about the prior bad acts described in the State's Notice. (R 275-92). The State asked that she be allowed to testify to

this at trial, citing case law. (R 310-18). The State argued that the prior domestic violence went to premeditation and lack of mistake on the attempted murder charge as it showed that Mr. Canales was formulating it in his mind over a period of time and showed the nature of their relationship. (R 312-13). The State believed that this evidence disproved the proffered defense that Ms. Norman shot herself. (R 313, 320). The State further argued that similarity of events was not an issue as the prior bad acts were relevant to intent, an element of premeditated murder. (R 317-18).

Mr. Canales argued testimony that the proposed testimony was "classic bad-character testimony," thus should not be admissible. (R 327). He further asserted that under the balancing test of Section 90.403, Florida Statutes (2018) none of this evidence should be admitted. (R 328).

The State responded that virtually everything brought into evidence in a criminal trial is prejudicial and that the evidence at issue is not overly prejudicial. (R 328-29). The State further argued that the evidence was relevant to the theory that Ms. Norman did not shoot herself by showing that the threats and violence escalated until Mr. Canales shot her. (R 331).

In its Order the trial court found that while the prior acts of violence were different from the present allegations they were relevant thus admissible to show the

absence of mistake or accident, plan, scheme, intent or motive. (R 99-100). The court found the evidence admissible to establish Mr. Canales' involvement in the shooting and the deliberate nature of the shooting. (R 100). The court deemed the testimony of Ms. Norman admissible. (R 102).

Opening Statements. In its opening statements the State explained its version of what happened and the witnesses it expected to call. (Trial Transcript, T, pages 9-16). As part of that summary the State told the jury that it would hear Ms. Norman testify about how Mr. Canales became controlling, monitoring Ms. Norman's Facebook and text messages, and that he became physically violent with her. (T 10). The State further told the jury that he told her repeatedly, "I could kill you and nobody would know." (T 10).

Trial Testimony. A dispatch officer authenticated a 911 call initiated by Ms. Norman asking for help, but then Mr. Canales spoke on the phone stating that she shot herself, and she is heard saying, "No. That's not what happened." (T 24, 26-28). A deputy sheriff who responded to the scene found Ms. Norman on the porch steps. (T 38, 41). The deputy admitted body camera footage where Mr. Canales claimed that when he found Ms. Norman she was in the bedroom holding a .22 Beretta rifle. (T 43-44, 47). Ms. Norman wrote to the deputy on a pad that she did not shoot herself. (T 48).

A private forensic consultant hired by the Flagler County Sheriff's Office testified as to the various locations of blood in the house and on clothing. (T 163-242). She testified that if Ms. Norman had been shot on the mattress she would have expected to find a lot more blood. (T 243). She further testified that had Mr. Canales tended to Ms. Norman's wounds then there would have been more blood on his person than was found. (T 249). The consultant noted a picture of hydrogen peroxide near the fireplace and testified that hydrogen peroxide can be used to clean blood. (T 258-59). Stains on the kitchen floor could be consistent with blood. (T 262).

The plastic surgeon who treated Ms. Norman testified that there was not much gas from the gunshot on her bullet entry wound and that when a gun is fired close to the skin the gunpowder creates a tattooing effect, leaving a permanent mark. (T 329, 332, 345-46). The doctor further testified that had the gun that shot Ms. Norman been very close to her neck she would still have a tattoo mark. (T 346). A firearm expert identified the Mossberg rifle the State alleged Mr. Canales used, but he could not say for sure it was the same gun due to damage on the bullet. (T 378-79, 395, 397).

Another deputy authenticated a recording of an interview with Mr. Canales. (T 403, 406-07). Mr. Canales told the officer that he was working on some

four-wheeler parts, walked into the house, and saw Ms. Norman pointing a .22 at her face and pulling the trigger. (T 410-11). He acknowledged that previously they had an argument and pointed to the .22 he claimed she used. (T 413-14). He then said that Ms. Norman was sitting at the corner of the bed and walked into the bathroom. (T 414). Next, he told the deputy that he was playing pool, walked into the house, and saw her with the barrel of the gun in her mouth. (T 414-15).

Later Mr. Canales told the deputy that he stopped working on his four-wheeler, walked inside to use the bathroom, and saw Ms. Norman with her thumb toe on the trigger of the .22 with the barrel against her neck. (T 418-19). That night Mr. Canales consumed three and a half shots of liquor. (T 425). Next Mr. Canales told the deputy that he gave his cell phone to Ms. Norman, went to the bathroom, walked back out, and saw her shoot herself. (T 425-26). Later Mr. Canales told the deputy that he was working in the shed, went inside to get a soda, went to the bathroom to wash his hands, and saw Ms. Norman shoot the .22 through the side of her neck. (T 432-33). Mr. Canales said that he carried Ms. Norman to the bathroom, put some cold compresses on her head, and put pressure on the wound so that she would not bleed to death. (T 436-37). He denied changing his clothes. (T 438).

A detective authenticated a recording of his interview with Mr. Canales. (T 461-62). They discussed how Mr. Canales and Ms. Norman had some serious problems before the shooting and that she was mad at him the day of the shooting, so he went to work on his four-wheeler. (T 474-78). Later he came in from playing pool, got a soda, and saw her shoot herself. (T 481-82). He saw her on the bed holding a Remington .22. (T 483). He claimed that he tried to grab the gun from her. (T 483). She had her finger on the trigger, and the gun was pointed at her face but it moved to her neck when he tried to grab it. (T 484). He heard one pop, when she acted normal he thought the bullet missed her, but then he saw blood everywhere. (T 484-85). He took her to the bathtub, pressing filed dressing, whatever he could find, against the wound. (T 485). Mr. Canales said that Ms. Norman had never tried anything like this before, but she did cut herself before in a suicide attempt. (T 491).

When asked how Ms. Norman got a phone to call 911 Mr. Canales said that he did not know and that she might have gotten it while he was trying to help her. (T 507). He said that she stayed in the tub until the police arrived and did not walk out to the front step. (T 508). When the detective asked how she got shot based on Mr. Canales' description of how he tried to grab the gun he answered that he did not recall. (T 565). The detective asked Mr. Canales if he shot Ms.

Norman to which Mr. Canales responded,

> If I was to shoot Tiffany, do--I mean, honestly, as an infantry soldier, do you think I would use a .22 Remington when I have an M4A1 right next to it?...I got a .357 revolver. What the fuck would I be doing with a .22 Remington to try to kill someone?...If I was to kill somebody, do you think I would use a .22 Remington?...No, that's not my weapon of choice…if I was--you know, this is terrible. If I was to shoot her, she wouldn't be alive…Like, that's terrible to say, but, no. (T 565-66).

The detective pointed out that much of what Mr. Canales said did not make sense, such as the presence of blood all over despite his claim that he kept pressure on the wound and that he claimed to snatch the gun from Ms. Norman's right side but she was shot on the left. (T 567). Mr. Canales responded that he had a full magazine and the rifle was semiautomatic and asked why he would only fire it once. (T 570).

The detective suggested the possibility that while Mr. Canales was manipulating the weapon he inadvertently discharged a round. (T 570-71). Mr. Canales said that he thought it was an accident, he would not admit or deny legal intent to incriminate himself, but it could have happened as the detective suggested. (T 571). Mr. Canales later stated that if he really wanted to kill someone he would probably use a .50 caliber gun or his M16. (T 576).

Ms. Norman testified that she started dating Mr. Canales in 2010 and they

moved in together. (T 608-10). At first their relationship was good, but then he started asking who she was talking to on the phone. (T 613-14). He started going through her text messages, making her only have phone conversations when he was around, and watching her when she texted someone. (T 614-15). He did not like her family being around, and she could only visit them with her permission. (T 615). He also monitored her Facebook account and knew her password. (T 615-16). Defense counsel renewed his objection to this line of testimony, so the trial court read the limiting instruction for prior bad acts. (T 616-17, 619, 623-24).

The first time Mr. Canales was physically violent was when she was pregnant with their son. (T 618). They got in an argument, he got in her face, she backed away and pushed him, and he hit and choked her. (T 618-19). In another incident while she was still pregnant she was sleeping in bed and he flipped the mattress with her in it. (T 619-20). She went to the bathroom to get away, he banged on the door like he was trying to break it, when she thought he calmed down he went to the kitchen, and he came in and told her to leave. (T 620-21). He grabbed her by the arm, started pulling her out, banged her into the walls, she fell on the floor, and he pulled her out of the apartment and locked her out. (T 621-22). In a later incident he told her to leave, and as she was packing

he looked at her with a gun in hand and said, “I can kill you and nobody would know about it.” (T 623-24). He then told her that she was not going anywhere. (T 624). In 2012 their son was born. (T 610). Before and after she gave birth Mr. Canales made threats similar to the one he made before, the most recent threat being made about two days before the shooting. (T 624-26).

On November 15, 2014 Mr. Canales seemed aggravated. (T 629, 631). He went out, came home more aggravated, and took away her keys before she took the children to the park. (T 633-34). She came home at dark, went to the backdoor because it was lit and the front door was not, the door was locked, she knocked, and Mr. Canales told her, “I don’t know you. Go away. You don’t live here anymore. You left.” (T 635). After an hour he let them in. (T 636). After sending the children to bed Ms. Norman fixed herself dinner and sat down in the kitchen. (T 637-38). Mr. Canales stood behind her and whispered in her ear, “You make it so easy for me to kill you in so many ways. I can kill you and nobody would know about it. Not even your mother.” (T 640). He walked away, and the next thing Ms. Norman remembered was a ringing in her ears, feeling like she could not move, and falling on the kitchen floor. (T 641).

Ms. Norman woke up on the floor, saw a lot of blood, and Mr. Canales picked her up and carried her to the bathroom. (T 642-43). He told her, “I’m

not going to jail for you. I'm not going to jail for this." (T 643). Mr. Canales put her against the tub, turned on the water, removed her clothes, and put her in the tub. (T 643-44). Ms. Norman asked him to call 911 multiple times, but he refused. (T 644-45). Mr. Canales proceeded to wash her down and wash her neck off, reiterating that he was not going to jail for this. (T 645-46). He then left the room, turned off the light, and closed the door while Ms. Norman called for help. (T 646-47). Eventually Ms. Norman got the strength to pull herself out of the tub, walked to the kitchen to get her phone only to find that it was not there, so she went to the living room and called 911 on Mr. Canales' phone. (T 647-48). While on the phone with 911 he took the phone away from her. (T 649).

Ms. Norman testified that she did not clean any of her blood and that the bottle of peroxide found by the fireplace was usually kept in the master bathroom. (T 651, 653). Mr. Canales never applied bandages, towels, or pressure to her neck to help her. (T 652). Ms. Norman further stated that she has never fired a gun, she is not comfortable with guns, she does not know how to load a gun, she did not shoot herself, she never tried to commit suicide, she never cut herself to commit suicide, and she never threatened to commit suicide. (T 656-58). She showed the jury her arms. (T 657).

Mr. Canales called his own forensic expert who examined the various crime

scene photographs, the rifle, and pictures of Ms. Norman's wound. (T 718, 741-60). The expert testified that when a gun fires it discharges soot in addition to the bullet and that the soot will deposit on surfaces close to the end of the muzzle of the firearm. (T 760-61). Ms. Norman's wound had a soot ring indicating that the muzzle was no more than one inch away from the wound when the firearm discharged. (T 761). The muzzle was not right against her skin because otherwise there would be no soot ring. (T 761-62). Regarding the blood stains the expert stated that there was no way to determine how old they were. (T 770). He saw no evidence that blood in the kitchen was wiped away, but he also could not exclude that possibility. (T 771-72, 778, 806). He also indicated that the lack of spatter in a particular place does not mean that the shooting did not happen there. (T 781).

The expert looked at the photographs of the kitchen and the angle of Ms. Norman's wound and declared that it would be difficult for Mr. Canales to shoot her in the kitchen with a rifle, especially with a wall interfering with his ability to hold the rifle one inch from where she was sitting at the table. (T 776-77, 786-87). However, the expert could not give a more solid opinion because he could only see the chairs as they were positioned in the photograph. (T 786). The trigger on the rifle in question could be pulled by a toe, and the expert has seen

cases where that was done. (T 779).

On cross-examination the expert admitted that he did not test-fire the weapon or look at the physical evidence in person. (T 787, 794). He also did not listen to Mr. Canales' statements to the police in their entirety. (T 804). The State recalled its expert who disagreed with the defense expert's assessment that there was no evidence of a cleanup. (T 832-34).

Closing Arguments. During closing arguments the State reviewed the jury instructions and elements of the crimes, arguing that it proved those elements. (T 839-44). The State also replayed the various police interviews with Mr. Canales and the 911 call, noting the contradictions between his various accounts. (T 848-49, 852, 854-57, 863, 866-76). In discussing premeditation the State argued that Mr. Canales was "extremely controlling," of Ms. Norman, noting that he monitored her Facebook and text messages and that she needed his permission to leave the house. (T 877). The State also noted that Mr. Canales was violent with Ms. Norman before, referencing the two incidents from when she was pregnant, the multiple threats he made against her, and that he once pointed a gun at her. (T 877-78). The State also pointed out Ms. Norman's testimony that the day of the shooting Mr. Canales locked her out of the house for a time and told her once more, "I can kill you and nobody would know." (T 878-79). The State

then continued to review the other evidence. (T 879-82).

The State spent most of its rebuttal addressing defense counsel's closing arguments. (T 907-13). The State went on to argue that Mr. Canales decided to follow through with the threat he made against her for the past several years. (T 913-14).

Jury Deliberations and Questions. The jury recessed to deliberate at 3:54 p.m. (T 940). It later asked to rewatch the body cam video of the first officer on scene. (T 942). One juror asked to manipulate the action on the firearm. (T 950). The jury reached its verdict at 5:46 p.m. (T 953).

Conviction and Sentence. Mr. Canales was convicted as charged. (T 954-56). He was sentenced to twenty-five years in prison for the aggravated battery and life for the attempted murder charge. (R 383).

Notice of Appeal and Jurisdiction. The judgment and sentence were entered on November 29, 2018. (R 203-09). A Notice of Appeal was filed on December 20, 2018. (R 241). This appeal follows.

SUMMARY OF THE ARGUMENT

The prior crimes or bad acts evidence of Mr. Canales committing acts of domestic violence against Ms. Norman was irrelevant, overly prejudicial, and should have been excluded or limited. While some reference to the threats may have been relevant to establish context and motive the extent of the evidence presented was unnecessary and became a feature of the trial. This case should be reversed for new trial.

ARGUMENT

THE EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS SHOULD HAVE BEEN EXCLUDED OR LIMITED

Standard of Review. A trial court's decision regarding the admissibility of evidence is reviewed for abuse of discretion, limited by the rules of evidence and applicable case law. *Martin v. State*, 207 So. 3d 310, 319 (Fla. 5th DCA 2016). A trial court's evidentiary ruling "constitutes an abuse of discretion if it is based 'on an erroneous view of the law or on a clearly erroneous assessment of the evidence.'" *Johnson v. State*, 969 So.2d 938, 949 (Fla.2007), quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

Argument. At trial the State elicited testimony that Mr. Canales on two prior occasions battered Ms. Norman, was controlling, and repeatedly threatened her. (R 88-94, T 613-26). Mr. Canales objected to this testimony as irrelevant and unfairly prejudicial. (R 327-28, 396-97). For these reasons and the fact that they became a feature of the trial this evidence should have been excluded or limited. Trial counsel's pretrial objection and the trial court's ruling preserved this issue for appeal. Section 90.104, Florida Statutes (2018); *In re Amendments to the Florida Evidence Code-Section 90.104*, 914 So.2d 940, 941 (Fla. 2005). Trial counsel renewed his objections at trial. (T 616-17, 619, 623-24). Also, the admission of excessive collateral crimes evidence to the extent it becomes a feature of the trial and

is so conspicuously prejudicial it deprives the defendant of fundamental fairness constitutes fundamental error and violates due process.[1] *Bush v. State*, 690 So.2d 670, 673 (Fla. 1st DCA 1997); *Matthews v. State*, 366 So.2d 170, 171 (Fla. 3d DCA 1979); *McDaniel v. Lockhart*, 961 F.2d 1358, 1360 (8th Cir. 1992).

Evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact at issue, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. Section 90.404(2)(a), Florida Statutes (2018), codifying *Williams v. State*, 110 So.2d 654 (Fla. 1959). Collateral crime evidence falls into two categories: similar fact evidence and dissimilar fact evidence. *Campbell v. State*, 43 Fla. L. Weekly S593, 13 (Fla. 2018). The former is *Williams* Rule evidence and the latter consists of uncharged crimes inextricably intertwined with the crime charged that are relevant and inseparable to the act at issue thus are governed by Section 90.402, Florida Statutes (2018). *Id.* In either instance such evidence may not become a feature of the trial or be admitted solely to prove bad character or propensity. *Id.*; Section 90.404(2)(a).

Collateral crimes evidence becomes a feature of the trial when inquiry into it transcends the bounds of relevancy to the charge being tried and devolves into an

[1] U.S. CONST. amend. XIV, section 1; FLA. CONST. art. I, section 9.

attack on the character of the defendant. *Conde v. State*, 860 So.2d 930, 945 (Fla. 2003). Relevant collateral crimes evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *McWatters v. State*, 36 So.3d 613, 627 (Fla. 2010), citing Section 90.403, Florida Statutes (2018).

Similar fact evidence of a collateral crime is inherently prejudicial because it creates the risk that a conviction will be based on bad character and propensity to commit crimes rather than proof relating to the charged offense. *McLean v. State*, 934 So.2d 1248, 1255 (Fla. 2006). When evidence of collateral crimes is improperly admitted at trial it is presumed harmful, and the State bears the burden of overcoming that presumption. *Fuller v. State*, 257 So.3d 521, 532 (Fla. 5th DCA 2018).

The Fourth District found in *Bozeman v. State*, 698 So.2d 629, 629-30 (Fla. 4th DCA 1997) that the trial court erred in allowing an officer in a battery on a police officer trial to testify that the defendant was confined in the jail's "special management unit" where "maladjusted" and "violent" inmates were held. The court noted that the danger of unfair prejudice outweighed any probative value of this evidence and that such evidence can have a powerful effect on the result of the trial. *Id.* at 631. The Fourth District further noted that the case turned largely on

the credibility of the witnesses and that in light of the prosecutor referencing this evidence in closing the error in its admission was not harmless. *Id.*

In *Henry v. State*, 574 So.2d 73, 74 (Fla. 1991) the defendant was tried separately for the murders of his wife and son in different counties. The State admitted extensive testimony and documentary evidence about the son's murder in the trial for the wife's murder. *Id.* The trial court found that the killings were part of a continuing criminal episode and that under the *Williams* Rule it was relevant to prove motive, guilty knowledge, identification, lack of mistake, and intent. *Id.* at 75. The Supreme Court reversed, ruling that the evidence was not *Williams* Rule evidence and did not prove any permissible point under the rule. *Id.* The Court further observed that while some evidence of the boy's killing may have been necessary to provide context, explain the events leading up to the defendant's arrest, and to account for the boy's absence as a witness the extent of evidence presented was irrelevant and more prejudicial than probative. *Id.* The Court made a similar decision in *Steverson v. State*, 695 So.2d 687 (Fla. 1997).

This Court twice found that evidence of collateral crimes improperly became the feature of a trial when the prosecutor devoted more time to that evidence than the charged crime and the testimony about the collateral crimes was more detailed than the charged crime. *Jones v. State*, 944 So.2d 533, 535-36 (Fla. 5th DCA 2006);

Fiore v. State, 967 So.2d 995, 999 (Fla. 5th 2007). Discussing collateral crimes for only a few moments in closing does not make such evidence a feature of the trial. *Wright v. State*, 19 So.3d 277, 294 (Fla. 2009). However, emphasizing collateral crimes in opening and closing arguments is one factor that can make collateral crimes a feature of the trial. *Ballard v. State*, 899 So.2d 1186, 1187 (Fla. 1st DCA 2005).

In some cases courts found evidence of prior domestic violence admissible. In *Dennis v. State*, 817 So.2d 741, 745 and 761-62 (Fla. 2002) the Florida Supreme Court ruled that evidence that the defendant stalked, threatened, and assaulted the victim was relevant to prove motive or intent as it established his relationship with her. The Court relied on its decision in *Sexton v. State*, 697 So.2d 833, 836-37 (Fla. 1997) holding that if evidence of other crimes is dissimilar and not admissible under Section 90.404(2)(a) it may still be relevant under Section 90.402. *Dennis*, 817 So.2d 741, 762. See also *Butler v. State*, 842 So.2d 817 (Fla. 2003).

In *Simmons v. State*, 790 So.2d 1177, 1179-80 (Fla. 3d DCA 2001) the Third District ruled that evidence that evidence of the defendant's violent behavior towards his girlfriend, while not *Williams* Rule evidence, was relevant as inextricably intertwined to prove his intent to commit aggravated assault, aggravated battery, and kidnapping against her. When the defendant denied being violent with

his girlfriend or anyone else he opened the door for the State to introduce evidence that he was violent against a previous girlfriend. *Id.* at 1180. The Fourth District made a similar decision, ruling that evidence that evidence that the defendant previous broke into his ex-wife's house, forcibly touched her vagina, and accused her of having sex with another man was relevant to prove motive and intent to murder her. *Nicholson v. State*, 10 So.3d 142, 143-46 (Fla. 4th DCA 2009).

In *Bush*, 690 So.2d 670, 671-672 the defendant was charged with grand theft regarding one victim, and the State presented evidence that there was a large amount of items stolen from other victims in her house. The First District found that the State's extensive utilization of such evidence impermissibly became a feature of the trial, constituted an attack on her character by demonstrating a propensity of the defendant to commit crimes. *Id.* at 673.

In the case at bar the prior acts of domestic violence Mr. Canales is alleged to have committed against Ms. Norman, as explained by *Campbell* and *Sexton*, are not properly categorized as *Williams* Rule evidence as they are dissimilar to the crime charged. The only theory the State can rely on to justify their admission is that they are relevant under Section 90.402. While the facts of this case are not as egregious as *Henry* and *Steverson* the State presented more evidence than was needed. While some evidence of Mr. Canales' threats against Ms. Norman may have been relevant

to prove motive and intent the evidence of the physical acts of domestic violence against her and his controlling behavior were not. Because the first several transcript pages of Ms. Norman's testimony related to Mr. Canales' prior bad acts and, like in *Ballard*, the State referenced them in its opening and closing argument (T 10, 613-26, 877-79) they impermissibly became a feature of the trial. This evidence was more than was needed to provide full context and most likely prejudiced the jury by showing Mr. Canales' propensity to be violent thus it should have been excluded.

While the admission of collateral crimes evidence is subject to review for harmless error (*State v. Lee*, 531 So.2d 133, 135 (Fla. 1988)) as the Florida Supreme Court noted in *McLean* such evidence is inherently prejudicial and as this Court noted in *Fuller* is presumptively harmful. Like in *Bozeman* this case turned largely on the credibility of the witnesses. Additionally, the jury deliberated for almost two hours, asked to rewatch a video exhibit, and one juror asked to examine the firearm's action. (T 940, 942, 950, 953). This indicates that the jury strongly considered Mr. Canales' claim that Ms. Norman shot herself in an attempted suicide. Finally, as the First District noted in *Bush* allowing collateral crimes evidence to become a feature of the trial is fundamental error. This case should be reversed for new trial with the evidence of the prior bad acts either excluded or limited.

CONCLUSION

WHEREFORE, based upon the foregoing cases and authorities Mr. Canales hereby requests that this Honorable Court reverse and remand for new trial with the evidence of his other crimes, wrongs, or acts excluded or limited.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ Sean Kevin Gravel
SEAN KEVIN GRAVEL
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0118235
444 Seabreeze Blvd., Suite 210
Daytona Beach, FL 32118
(386) 254-3758
gravel.sean@pd7.org

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically through the Florida Courts E-Filing Portal in the Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, Florida 32114, at https://www.myflcourtaccess.com; which will email a copy of the filing to the Office of the Attorney General, 444 Seabreeze Boulevard, Fifth floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com; and a true and correct copy has been delivered by mail to Mr. Jonathan Edwin Canales, Northwest Florida Reception Center, 4455 Same Mitchell Drive, Chipley, Florida, 32428 on this 19th day of June, 2019.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is proportionally spaced Times New Roman, 14pt.

/s/ Sean Kevin Gravel
SEAN KEVIN GRAVEL
ASSISTANT PUBLIC DEFENDER