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

JONATHAN CANALES,

Appellant,

v. CASE NO. 5D18-3944

STATE OF FLORIDA,

Appellee.
_____/

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

ANSWER BRIEF OF APPELLEE

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STATEMENT OF CASE AND FACTS

Appellant was charged with aggravated battery with a firearm and attempted first-degree murder with a firearm. (R86-87). The State filed a notice of intent to introduce evidence of other crimes, wrongs, or acts. (R88-95). In relevant part, the motion evidenced the State's intent to present evidence or testimony about two prior incidents of violence by Appellant against the victim. At a hearing on the motion, the State presented testimony from the victim, Tiffany Norman. (R274). She testified she and Appellant began dating in 2010 and lived together. (R277-279). After she found out she was pregnant, Appellant became upset, hit the victim, and choked her. (R283). Later, during her pregnancy, the victim was sleeping in the bedroom, and Appellant came in and flipped the bed while the victim slept on it. (R284). The victim was scared and went to the bathroom. (R284). Appellant tried to break the bathroom door down. (R284). When the victim thought Appellant had calmed down, she left the bathroom. (R284). Appellant tried to grab her, the victim fell into the wall, and Appellant proceeded to drag her out of the house by her legs. (R285).

The victim testified that during their relationship, Appellant wanted to know who she was texting and communicating with through Facebook. (R285-287). Appellant wanted to know the victim's Facebook password, and the victim gave it to him. (R302). Appellant

"would always have to be there when [the victim was] talking on the phone, so he could hear everything that [she was] talking about." (R289). If the victim ever wanted to leave their residence, it had to be with Appellant's approval. (R288). Appellant limited the victim's communications with her mother. (R289).

Before the victim gave birth to their son, Appellant told the victim, "I can kill you and nobody would know about it and I can get away with it." (R290). Appellant had a gun with him when he made the statement. (R290). Appellant made this threat frequently. (R290).

On November 15, 2014, Appellant shot the victim. (R291). Prior to shooting her, Appellant said:

> You make it so easy right now for me to be able to kill you in so many ways and I can kill you and nobody would ever know about it and I could bury you in the backyard; your mother wouldn't even know what would happen to you.

(R291). Appellant had also threatened to kill her two days before the shooting. (R291). Their son was two years old when the shooting happened. (R281).

The State argued it was seeking to introduce the afore-mentioned evidence and testimony as it demonstrated premeditation for the attempted murder charge and that this was not a mistake. (R312). It was relevant to rebut Appellant's claim that the victim shot herself and so the jury could understand the dynamic of the

relationship. (R320).

Defense counsel argued the incidents were too remote, there were no police reports regarding the prior incidents, and that the defense's position was that the victim tried to kill herself with the gun. (R322-326). Defense counsel asserted that couples argue all the time, but that fact does not necessarily mean the arguments are relevant. (R326). Counsel argued this was "classic bad-character testimony" and should not be admissible at all. (R327).

In the court's written order, the court ruled that the evidence was relevant and admissible. (R100). The court noted that Appellant's defense was that the victim shot herself and explained the evidence demonstrated an absence of mistake or accident and was relevant to show Appellant's plan, scheme, intent, and motive to shoot the victim. (R100). It also showed Appellant's involvement in the shooting and the deliberate nature of the shooting. (R100). The court also ruled that the probative value of the evidence was not outweighed by its prejudicial effect. (R101). The order noted that the court would provide a limiting instruction to the jury regarding such evidence upon request of either party. (R102).

At trial, Ms. Caccavale, a dispatch employee for the Flagler County Sherriff's Office, testified that on November 15, 2014, she received a 911 call at 10:46 p.m. (T25). The caller was a woman who was yelling for help. (T25). The recorded 911 call was admitted

into evidence and published for the jury. (T26-27). On the recording, after the victim says she needs help, Appellant says "she shot herself in the head . . . she was trying to commit suicide and I wouldn't let her . . . I just came home from work and she was bleeding all over the place" (T28). Then, the victim interjects, "No. That's not what happened." (T28). On the recording, Appellant stated he had come home at 8:30 and the victim was bleeding everywhere. (T29). The victim says, "stop lying." (T29). Appellant then states:

> I'm a disabled war veteran. I didn't [] do anything besides come home from work. And when I come home from work, unlocked the door. I heard a loud pop and I fuckin' – I found my .22 come in – like she had it right up against her head.

(T30). When the dispatcher asks Appellant how old the victim is, Appellant responds, "she was 26 years old." (T36).

Sergeant Weaver responded to the victim's address at 10:49 p.m. (T39). As he approached the residence, he saw the victim sitting on the front steps. (T41). Although it was November, Appellant was wearing only boxer shorts. (T41; 52). The officer's body cam footage from the event was admitted into evidence and published for the jury. (T43-45). On the recording, the officer asks the victim if she is able to speak and then he later notes, "she wrote on the pen and pad that she didn't shoot herself." (T48). The note written by the victim was admitted into evidence.

(T50).

Appellant told officers upon their arrival that the shooting occurred on the mattress, which was located in the living room, and that the victim then went into the bathroom. (T57-58). A CSI testified to photos taken of the bathroom and described the water in the tub as having a "pale pink color to it." (T79). The mattress and some bedding were collected from the scene at a later date. (T107-110). On the day of the crime, it was believed the location of the crime scene in the home was in the living room with the mattress, not the kitchen. (T113).

Anna Cox, a forensic consultant, testified that although there was some blood on the mattress sheet, there was no real pattern or "spatter pattern" on the sheet. (T232). The same was true of the comforter and pillow cases. (T238-239). The mattress itself did not have any large pools of blood on it. (T241). Ms. Cox acknowledged Appellant's statement to police that the shooting happened on or near the mattress in the living room and testified that if the victim had been shot while on the mattress, she would have expected to find more blood than what she actually observed on the mattress. (T243; 296). The mattress itself was infested with bed bugs. (T300). Ms. Cox explained that the presence of the bugs could have caused some of the random blood stains on the bedding she observed. (T300). When bed bugs feed off of a human, they defecate, and "wipe

their little behinds." (T300).

Ms. Cox also believed there was evidence of a clean-up. (T834). The State referenced photographs taken of Appellant's person at the scene of the crime and asked whether Ms. Cox would have expected there to be more blood on his person if he had carried the victim or tended to her wounds as he claimed. (T249). Ms. Cox stated she would have expected to see more blood on his person if he had done so. (T249). Looking at photographs from the scene, Ms. Cox identified what appeared to be a bottle of hydrogen peroxide near the fireplace. (T258). She agreed that if a person were to clean up a crime scene with hydrogen peroxide, it would affect what could be seen with the Hemascein chemical later on. (T259). Ms. Cox opined that if hydrogen peroxide had been used in the kitchen to clean up blood on the vinyl floor, she would not necessarily expect to see pools of blood when later using the Hemascein chemical on the scene. (T260).

Dr. Moradia, a plastic surgeon, testified that he treated the victim after she had been shot. (T332). While reviewing the State's exhibits with the jury, the doctor described the trajectory for the bullet as entering behind the left ear near the hairline, which then traveled forward and upward toward the spinal column, went through the bone, and then deflected upwards towards the front area of the victim's face. (T597-600).

Christopher Rishel, an FDLE analyst, testified that he examined a .22 Long Rifle caliber Mossberg, Model 702 Plinkster, semiautomatic rifle. (T394-397). A .22 caliber bullet is considered one of the smaller caliber bullets. (T394-395). The test-fired bullets from the rifle were compared to the bullet fragments from the victim. (T395). Although the fragments had similar class characteristics with the test-fired bullets, the analyst was unable to say definitively whether the rifle was or was not the weapon used in this case due to the extensive damage to the bullet fragments. (T395-396). The "trigger pull" is the amount of weight or force required in order to pull the trigger and cause the firearm to fire. (T400). This rifle has a four-and-three-quarter pound trigger pull. (T400).

Officer Duenas testified that upon arriving on the scene, he made contact with Appellant, while Officer Weaver made contact with the victim. (T405). Officer Duenas wore his axon body camera during the interaction and, after identifying the video in court, the video was admitted into evidence and published for the jury. (406-409). Appellant stated the gun was his. (T411). Appellant made several statements:

> She's been up and down every – every five fucking weeks . . . I've been just trying to help her and it's [] been honestly, me trying to help her all the way, her doing nothing to help me. . . . we did have a little bit of an argument . . . She was right at the corner of

> the bed and then she walked into the bathroom . . . .22 Beretta, yeah . . . I was just there playing pool. Then I walked into here and she's got a fucking barrel into her mouth, man . . . I walked in, walked into the pool room . . . Then I walked in towards this way to go take a piss. Then as I'm walking in towards the [] lavatory over there, she got the .22 with [] her thumb toe in [] towards the trigger . . . she's on the corner towards the right side. [She's] got her head tilted upwards with the barrel in her – in her neck. . . . we called you immediately, you know. I just told her, you know, they're not going to see this my way . . . to see her with a .22 barrel in her mouth . . . By the way, I just quit smoking and drinking, cigarettes and – and alcohol. Just quit. . . . Yeah, I had me a shot after she shot herself in the head. That's pretty amazing, two-and-a-half weeks straight . . . I had three shots before I walked in here. I walked in to see her. You know, I was going to use the bathroom. I gave her my cellphone and she shot herself. . . . I went to the bathroom [and then] it dawned on me, like, wait, what the fuck just happened, you know? . . . It's been pretty difficult with trying to govern her from not shooting herself in the head and trying to deal with the kids, you know . . . I walked in, you know, and grabbed myself a soda . . . I walked in towards the bathroom to wash my hands and such. Walked in, you know, she's got [] a little ribbon from the .22 to her head . . . she shoots she .22 through her neck on the side or whatever. . . . right here on the corner of the bed. . . . I picked her up and then I could see the blood trails as I carried her towards the bathroom . . .

(T412-454). When asked what he was wearing at the time of the shooting, Appellant stated, "this . . . I didn't change. This is it. . . . No shoes, nothing. Green boxer shorts." (T437).

Detective Glasgow testified that after speaking with Appellant at the residence, he again spoke with Appellant back at the sheriff's office. (T462). The officer identified the recorded interview which was then admitted into evidence and published for the jury. (T462-468). Appellant said the victim was supposed to be his fiancé, but "after the way she was talking today, she didn't want to have nothing to do with me." (T472). Appellant said that he and the victim "don’t ever have arguments normally." (T478). However, on the day of the shooting, the victim was upset at him, so he worked outside most of the day and did not come back inside until about 7:30 p.m. (T475-480). Appellant stated he came in the back door, played some pool for a while, then walked "up front," grabbed a soda, came out of the kitchen, and then saw the victim with the gun. (T481-483). Appellant said he tried to grab the gun from the victim. (T482). When asked if the victim's finger was on the trigger, Appellant said "I guess." (T484). Appellant tried to get the victim to the bathtub because he did not want to mess up the carpet. (T485). Appellant then stated that before moving to the bathtub, the couple started mopping up the blood on the carpet. (T487). However, after 10 to 15 minutes, the victim began to complain. (T487). Appellant then suggested the victim go to the hospital despite his belief that he would take the heat. (T487). The victim was on the bed during this whole time. (T487). After he

took the victim to the bathroom, she kept bleeding, so they called the police immediately. (T488).

Appellant stated the victim had previously tried to kill herself by cutting herself a few years prior. (T491). When asked when was the last time Appellant shot a gun, Appellant first stated it was the day before yesterday, but then stated he had shot a gun the day of the interview. (T492).

Appellant explained that the gun the victim shot herself with was not loaded and that the victim loaded it. (T500-501). Appellant explained he had never seen her load a gun before and that this was remarkable. (T501). Appellant then said she shot herself while he was standing about twelve steps away and he then ran to her and grabbed the gun away. (T505). Appellant said he did not know how she got the phone to call the police, but then remembered that he actually got her the phone. (T507). The detective asked where Appellant and the victim were located when the police arrived and Appellant said he and the victim were in the bathroom. (T508). Appellant said he did not wash off after the shooting. (T509). When the detective asked if Appellant shot the victim, Appellant responded, "If I was to shoot her, she wouldn't be alive." (T566).

When the detective inquired whether it was possible that Appellant had the weapon and accidentally discharged it, Appellant said:

> I really think that, you know, this was an accident, you know. I'm not going to admit or deny and legal intent to incriminate myself. Damn, that was [] hard to say. All right. But that's exactly what I'm saying here . . . It could have happened that way.

(T571).

The victim testified she and Appellant began dating in 2010. (T610). At first their relationship was okay, but then he began going through her phone and text messages. (T614). She could not have a telephone conversation without his presence and she only visited her family with his permission. (T615). Appellant had her Facebook password and would look though her messages. (T616). The State asked if Appellant was ever physically violent with her. (T616). Defense objected based on the previous hearing and requested an instruction. (T616). The court instructed the jury:

> Ladies and gentlemen, you are about to hear testimony regarding other crimes, wrongs, or acts allegedly committed by the defendant, which will be considered by you only as that evidence relates to proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or the absence of mistake or accident. However, the defendant cannot be convicted of a crime, wrong, or act that is not included in the Information in this case.

(T617).

The victim went on to describe an incident where she had just discovered she was pregnant. (T618). During a fight, the victim tried to back away from Appellant who was "in her face." (T618).

She almost lost her balance and fell so she pushed him away. (T618). Appellant proceeded to hit her in her face and choke her. (T618).

Then, when she was about seven months pregnant, she was sleeping in the bedroom. (T619-620). Appellant came into the room and flipped the mattress she was sleeping on, causing her to fall. (T620). She then hid inside the locked bathroom while Appellant tried to get in. (T620). When she thought Appellant had calmed down, she left the bathroom. (T621). Appellant grabbed the victim and began trying to pull her out of the house by her arm. (T621). Appellant banged her into the walls and she tripped and fell. (T621). He then grabbed her by her legs and pulled her out of the house. (T622). Appellant then locked her out of the house. (T622).

The victim went on to describe threats that Appellant had previously made to her. (T623). Again, while she was still pregnant with their son, Appellant told her he could kill her and nobody would know. (T623-624). He said this while holding a gun. (T624). Appellant made this same threat "a lot." (T625). Two days prior to the shooting, Appellant made a similar threat. (T626).

As of the date of the shooting on November 15th, Appellant and the victim had relocated their mattress to the living room so that they could hear if the children woke up or needed anything. (T629). On the day of the shooting, the victim testified that Appellant

seemed aggravated and took her house keys from her. (T633-634). She took her three children to a park near her house. (T633). Upon their return back home, the victim could not get inside because the door was locked. (T635). After she knocked, Appellant came to the door and said, "go away, you don't live here anymore. You left." (T635). After she and the children waited outside for about an hour, he let them inside and then walked away. (T636). She fed the children their dinner and put them to bed. (T636). Afterwards, she fixed her own dinner and sat at the kitchen table while Appellant was in the living room. (T637-639). Although she did not hear him, Appellant had apparently come into the kitchen and was standing right behind her. (T640). He 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." (T640).

The next thing she remembered was a ringing in her ears, she felt like she could not move, and then she fell onto the floor. (T641). She saw a lot of blood on the kitchen floor, was in and out of consciousness, and remembered Appellant picking her up and bringing her into the bathroom. (T642-643). Appellant said, "I'm not going to jail for you," and placed her in the bathtub. (T643-644). While in the tub, the victim repeatedly asked Appellant to call the police. (T644-645). Appellant refused and repeatedly stated that he was not going to jail for this. (T645-

646). Appellant turned off the lights, left the bathroom, and shut the door. (T646). At one point, the victim got the strength to get herself out of the tub. (T647-648). She saw Appellant's phone in the living room and called 911. (T647-648). At the time she called 911, she still did not realize she had been shot. (T654).

The victim explained that during this ordeal, Appellant never tried to apply bandages or towels to her neck or put pressure on her neck to try and help her. (T652). The victim stated she has never fired a gun and does not know how to load one. (T655). She also testified that she did not shoot herself on that date, she did not try to commit suicide, and has never tried or threatened to commit suicide. (T656-658). The person who shot her was Appellant. (T659).

The defense called, Michael Knox, a forensic consultant, who reviewed some of the evidence in this case. Dr. Knox testified that there was a small soot ring without powder particles surrounding the injury. (T761). This meant that the muzzle of the gun was about an inch away from the wound. (T761). When asked for an opinion as to the allegation that Appellant shot the victim in the kitchen, Dr. Knox testified from photograph exhibits and noted there were a lot of "environmental constraints" for firing the gun in the kitchen based on the location of the table and the wall and also the bullet trajectory. (T776-777; 786). The rifle is 37 inches long

and Dr. Knox was unable to give a "solid opinion" about firing the gun in that location because of uncertainties like the exact position of the chair in the kitchen at the time of the shooting. (T786-787).

Dr. Knox opined that the trigger of the gun in this case could have been pulled by a toe. (T779). Dr. Knox opined that although there was no blood spatter on the mattress, that does not mean that the shooting did not occur at the corner of the mattress. (T783). As to whether the evidence supported the victim's version of events, Dr. Knox characterized the evidence as inconclusive. (T785). Dr. Knox testified there was no definitive evidence of a clean-up at the scene, but it could not be excluded as a possibility either. (T806).

During closing argument, when discussing the issue of premeditation, the prosecutor cited the two instances of violence testified to by the victim and the threats that Appellant had made. (T878). During the court's instructions to the jury prior to their deliberation, the court gave the following instruction:

> The evidence which has been admitted to show other crimes, wrongs, or acts, allegedly committed by the defendant will be considered by you only as that evidence relates to proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or the absence of mistake or accident. However, the defendant cannot be convicted for a crime, wrong, or act that is not included in the Information.

(T925).

During deliberation, the jury requested to see the body cam video from Sergeant Weaver depicting his interaction with the victim when he responded to the 911 call. (T943-944). The jury also requested to see the rifle and to allow one of the jurors specifically to handle the rifle. (T944-952). The court noted that none of the other jurors wanted to handle the rifle. (T952). The jury returned a verdict finding Appellant guilty as charged on both counts. (T955-956).

SUMMARY OF THE ARGUMENTS

The trial court properly admitted evidence of Appellant's prior violence, controlling behavior, and threats to the victim. This evidence was relevant and probative to the issues of premeditation, motive, intent, plan, and/or absence of mistake or accident. Furthermore, any error in its admission was harmless.

ARGUMENTS

THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF APPELLANT'S PRIOR BEHAVIOR AND THREATS TO THE VICTIM

In Appellant's sole point on appeal, Appellant argues the trial court erred in admitting the evidence that Appellant had been physically violent on 2 prior occasions with the victim, that he was controlling, and that he repeatedly threatened the victim. Appellant asserts the evidence should have been excluded, or at least limited, because it was unfairly prejudicial, irrelevant, and because it became a feature of the trial. The State respectfully disagrees.

A trial court's ruling on a motion *in limine* is reviewed for an abuse of discretion. Edwards v. State, 39 So. 3d 447 (Fla. 4th DCA 2010). A trial court abuses its discretion if its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Id. A trial court enjoys broad discretion in determining the admissibility of evidence and the relevancy of evidence and/or whether the probative value of evidence is outweighed by the danger of unfair prejudice. See Williamson v. State, 681 So. 2d 688, 696 (Fla. 1996); Valdes v. State, 930 So. 2d 682 (Fla. 3d DCA 2006). According to Florida Statutes, Section 90.403, relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair

prejudice. In Santiago v. State, 70 So. 3d 720 (Fla. 4th DCA 2011), the court explained:

> "In determining the admissibility of collateral crime evidence, the trial court must make two determinations: (1) whether the evidence is relevant or material to some aspect of the offense being tried, and (2) whether the probative value is substantially outweighed by any prejudice." . . . Relevancy is the threshold question. McLean v. State, 934 So. 2d 1248, 1259 (Fla. 2006). As the Florida Supreme Court stated in Williams,[1] "If found to be relevant for any purpose save that of showing bad character or propensity, then [the evidence] should be admitted." Williams, 110 So. 2d at 662. Relevant evidence is defined as evidence that tends to prove or disprove a material fact. See § 90.401, Fla. Stat. (2008).

Id. at 725. Furthermore:

> Even "evidence of other crimes is admissible if it casts light on the character of the act under investigation by showing either motive, intent, absence of mistake, common scheme, identity or a system or general pattern of criminality." Ashley v. State, 265 So. 2d 685, 693 (Fla. 1972). See also 90.404(2)(a), Florida Statutes (1989). Additionally, "[e]vidence from which premeditation may be inferred includes ... previous difficulties between the parties." Sireci v. State, 399 So. 2d 964, 967 (Fla. 1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2257, 72 L.Ed.2d 862 (1982).

Brown v. State, 611 So. 2d 540, 542 (Fla. 3d DCA 1992)

In a case similar to this one, Dennis v. State, 817 So. 2d 741 (Fla. 2002), the defendant was charged with capital murder and

[1] Williams v. State, 110 So. 2d 654 (Fla. 1959).

sentenced to death after he killed his former girlfriend and her date. At trial, the victim's family members testified and recounted incidents where the defendant stalked the victim and made a threat with a gun. Id. at 761-762. The evidence depicted the turbulent and sometimes violent relationship between the defendant and the victim. Id. On appeal, the defendant argued the trial court erred in admitting the evidence because the evidence was not relevant to demonstrate motive or intent, was unfairly prejudicial and only demonstrated propensity. However, in affirming the conviction, the Florida Supreme Court recalled:

> Evidence of "other crimes" is not limited to other crimes with similar facts. So-called similar fact crimes are merely a special application of the general rule that all relevant evidence is admissible unless specifically excluded by a rule of evidence. The requirement that similar fact crimes contain similar facts to the charged crime is based on the requirement to show relevancy. This does not bar the introduction of evidence of other crimes which are factually dissimilar to the charged crime if the evidence of other crimes is relevant. Sexton v. State, 697 So. 2d 833, 836-37 (Fla. 1997) . . . Although certainly prejudicial, the evidence of the nature of Dennis's relationship with the victim was relevant to establish Dennis's motive.

Id. at 762. Indeed, almost all evidence introduced during a criminal prosecution is prejudicial to a defendant – it is only when the unfair prejudice substantially outweighs the probative value of the evidence that the evidence should be excluded. See

Williamson v. State, 681 So. 2d 688, 696 (Fla. 1996).

In this case, Appellant's sole defense was that he did not shoot the victim and that she shot herself in a failed suicide attempt. Thus, the evidence of Appellant's repeated threats, the two prior incidents of violence, and the controlling nature of the relationship was highly relevant and probative of premeditation, motive, intent, preparation, plan, and the absence of a mistake or accident. There was nothing improper about its admission and no unfair prejudice resulted. See e.g., Sexton v. State, 697 So. 2d 833 (Fla. 1997); State v. Wright, 74 So. 3d 503 (Fla. 2d DCA 2011) (error for the trial court to exclude evidence of defendant's prior acts of domestic violence in armed kidnapping case because evidence was relevant to defendant's motive and intent for kidnapping victim and the probative value outweighed any prejudicial effect); Burgal v. State, 740 So. 2d 82 (Fla. 3d DCA 1999) (prior incidents of domestic violence were properly admitted in attempted first-degree murder case because it was relevant to show motive); Brown v. State, 611 So. 2d 540 (Fla. 3d DCA 1992) (testimony that victim and defendant had a rocky relationship, he was jealous, and that he threatened to kill her if he caught her with another man was properly admitted to show motive, intent, and premeditation).

Appellant cites Henry v. State, 574 So. 2d 73 (Fla. 1991), and Steverson v. State, 695 So. 2d 687 (Fla. 1997). However, these

cases are distinguishable. In Henry, while being tried for the murder of his wife, the court allowed extensive evidence that the defendant also murdered the wife's five-year-old son. Id. at 74-75. The child's murder did not show motive, intent, or identity for the wife's murder. Id. at 75. Furthermore, although some evidence of the child's murder may have been admissible because it was part of the same criminal episode and would provide context to the events, the "abundant testimony" regarding the search for the child's body, the details of how he was killed from Appellant's confession, and the medical examiner's photos of the boy were so unfairly prejudicial so as to outweigh the probative value of the evidence. Id.

In Steverson, the defendant was tried for the murder of Bobby Lucas; however, extensive evidence of Appellant's attempted murder of Officer Rall was admitted into evidence. The jury heard "virtually every detail" of the Rall case, including extensive details about the emotional aspect of the shooting, the officer's injuries, his bloodied face, his yelling, the frantic "officer down" response, the hospital treatment, and the time he needed off from work. Id. at 689-690. Although the attempted murder of the officer had some relevancy, there was no justification for the sheer extent of evidence about the matter when the issue to be decided by the jury was whether the defendant murdered Bobby Lucas.

Id. at 690-691.

In the instant case, the evidence of Appellant's threats to the victim, prior violence against the victim, and controlling actions never became a main feature of the trial. See e.g., Pitts v. State, 263 So. 3d 834 (Fla. 1st DCA 2019) (whether evidence becomes a feature of the trial depends on the quantity of the evidence, the quality of the evidence, the extent the evidence is focused on by the State in closing argument, and how the jury was instructed on the use of the collateral crime evidence); Perry v. State, 718 So. 2d 1258 (Fla. 1st DCA 1998) (collateral crime evidence was not a feature of the trial in a case where the court twice gave a cautionary instruction and less than 20% of the testimony related to the collateral acts).

Here, the few brief references or discussions of these prior incidents comprised approximately 18 pages of the transcript, which spanned more than 950 pages in total. The vast majority of the trial focused on the many different versions of events provided by Appellant and the forensic techniques employed to verify the accounts provided by both Appellant and the victim. This was not a case where the evidence was comprised of extensive details relating to a completely different victim ultimately distracting the jury from its main purpose of determining guilt on the crime at issue. It cannot be said that the State spent more time on the evidence of

the collateral crimes than it did on the crimes at issue. The State's reference to the prior incidents during its argument were merely for the purpose of discussing Appellant's intent, motive, and premeditation. There was no suggestion by the State that Appellant had the propensity to commit crimes or that he had a bad character and should be convicted as a result. Thus, admission was neither improper, nor did it amount to a fundamental error based on a violation of due process as Appellant argues.

Appellant's brief additionally asserts that a harmless error analysis applies in this case. In response, the State submits, that even if admission of this evidence was error, its admission was harmless. See e.g., Brock v. State, 676 So. 2d 991 (Fla. 1st DCA 1996) (even if admission of evidence was error, the error was harmless where it did not become a feature of the trial); Steward v. State, 619 So. 2d 394 (Fla. 1st DCA 1993) (after examining the entire record, finding admission harmless where evidence was not a feature of the trial and testimony of three eye-witnesses placed Appellant in the water with his arms around the victim). As previously argued, this evidence was not a main feature of the trial. Rather, the main feature of the trial was Appellant's widely varying account of the events on the date of the shooting and the forensic investigation conducted. Furthermore, the court gave the jury limiting instructions about the evidence during trial and

prior to the jury's deliberation.

Appellant suggests the jury's almost two-hour deliberation and request to see the rifle demonstrates that the jury strongly considered Appellant's theory of events and were ultimately swayed by the admission of Appellant's prior threats, violence, and controlling actions. However, the State disagrees with that assessment. As none of the exhibits presented at trial have been included in the record on appeal, the jury was in a much better position to see the evidence first-hand and consider the totality of the evidence presented in this case. After doing so, the jury properly determined that Appellant committed the crimes as charged. Appellant is not entitled to relief.

CONCLUSION

Based on the arguments and authorities presented herein, Appellee respectfully requests this Honorable Court affirm the judgment and sentence in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief has been furnished via e-service with the Florida E-Filing portal to counsel for Appellant, Assistant Public Defender, Sean Gravel, 444 Seabreeze Blvd, Suite 210, Daytona Beach, FL 32118, at Gravel.Sean@pd7.org and appellate.efile@pd7.org on August 13, 2019.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding:

crimappdab@myfloridalegal.com (primary) and

Deborah.Chance@myfloridalegal.com (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier New as required by Rule 9.210(a)(2).

Respectfully Submitted,

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