IN THE SUPREME COURT OF FLORIDA

DERINDA EDWARDS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO: 73,286

RESPONDENT'S ANSWER BRIEF ON THE MERITS

Respectfully submitted,

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PRELIMINARY STATEMENT

Petitioner was the defendant, and respondent was the prosecution, in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida. Pet tioner was the Appellant and respondent was the Appellee, in the District Court of Appeal, Fourth District.

In the brief, the parties will be referred to as they appear before this Court.

The following symbol will be used:

"R" Record on Appeal

STATEMENT OF THE CASE AND FACTS

Respondent agrees with petitioner's statement of the case and facts, with the following additions and clarifications.

James Jackson testified that at approximately 8:20 p.m. on the night of the stabbing, petitioner entered the Godfather Bar and sat on a stool next to him (R 12-13). She was upset and crying (R 14). She talked to Mr. Jackson for approximately fifteen minutes (R 15). She was talking about Mann Latimore and the victim and about what she was going to do to the victim (R 15-16). She then pulled a large kitchen knife from her pocket (R 16, 18). She indicated that she was going to hurt the victim (R 16). When she pulled out the knife she stated "see what I got for the mother fuckers. I'm going to fuck them up" (R 18). Mr. Jackson believed petitioner was serious (R 18).

The victim was working for Mr. Latimore on the date of the attack (R 56). She had an affair with Mr. Latimore earlier in that year: but their relationship had "cooled off" and they were now just friends (R 58-59). The victim was satisfied with the present status of their relationship and was dating an old boyfriend (R 58-59). Petitioner had also had an affair with Mr. Latimore off and on for six years (R 305). She believed that Mr. Latimore and the victim were still lovers (R 305-06). Petitioner was fired from her job by Mr. Latimore the morning of the stabbing (R 305).

The victim and Mr. Latimore live within three houses of each other (R 65). On the day of the incident, Mr. Latimore brought some eyedrops over to the victim's residence (R 66). Elizabeth Coffee was present during Mr. Latimore's thirty to forty-five minute visit (R 65-67). While Mr. Latimore was there petitioner called three or four times, asking what the victim had told Mr. Latimore (R 67). The victim did not understand what petitioner was talking about (R 68). At one point petitioner asked to speak with Mr. Latimore (R 69). The victim did not want to be a part of it and told Mr. Latimore to leave (R 69).

Later in the evening the victim went down the street to find her son (R 70). On her way back home, petitioner confronted her and stated, "Sandra, why did you tell Tot [Mr. Latimore]?" (R 72, 141) Petitioner then pulled a long kitchen knife out of the back of her pants (R 72). The victim picked up a white strip (R 75), (apparently a section of plastic pipe (R 199, 205)) and knocked the knife out of petitioner's hand (R 76). Petitioner then ran towards the victim and the two began fistfighting (R 76). Petitioner then picked up the knife and cut the victim on the hand and face (R 76). Petitioner said, "stay out of mine" (R 77). The victim then ran home (R 77). The victim did not have any reason to feel petitioner was her enemy prior to the stabbing (R 79).

Elizabeth Coffee testified that she saw the victim when she went down the street to get her son (R 174). The victim did not have anything in her hands (R 174).

When Deputy McDonald located petitioner, there was blood on her pocketbook. She was laughing (R 196).

Deputy McDonald testified that he located petitioner one-half mile from the scene of the incident (R 245). McDonald stated that she put her hands together and made a gesture in explaining what had happened during the altercation. McDonald made the same gesture for the jury (R 249).

Mrs. Latimore testified that on the night of the stabbing she dropped petitioner off at Godfather's bar (R 295). She was presently friends with petitioner (R 297).

Petitioner testified that she went to Godfather's on the night of the incident (R 311). Mr. Jackson was present (R 311). (She later stated Mr. Jackson was not present (R 329). She got a knife to cut some chicken she had in her purse (R 311).

As the victim approached the scene of the incident petitioner said, "Why you told Tot [Mr. Latimore] about my business?" (R 314). Petitioner stated that she had previously been convicted of the felony of grand theft (R 316).

SUMMARY OF THE ARGUMENT

POINT I

The trial court correctly ruled that the evidence of the victim's drug use was inadmissible since there was no showing that it had any affect on her at the time of the attack or at the time of trial.

POINT II

When defense counsel made a tactical decision to examine a witness about possible bias against petitioner, respondent was entitled to explore the basis for that alleged bias on redirect.

POINT III

The extent of the victim's injuries were brought out well before any objection was made to further evidence on the subject. Accordingly, any alleged error was harmless.

ARGUMENT

POINT I

THE FOURTH DISTRICT DID NOT ERR IN EXCLUDING PROPOSED DEFENSE EXAMINATION OF THE VICTIM ON HER DRUG USE.

Petitioner does not contend that Eldridge v. State, 27 Fla. 162, 9 So. 448 (1981) and Nelson v. State, 99 Fla. 1032, 128 So. 1 (Fla. 1930) are no longer good law. Rather, she argues that those cases are distinguishable because they "dealt with discrete or occasional instances of drug use, rather than the habitual use and addiction involved in the instant case". (initial brief p. 12). However, a reading of these cases reveals that their holdings are not limited to "discrete" or "occasional" use. In Eldridge, there was testimony indicating that the witness in question "used morphine to excess" and that "[h]e was always; almost incessently" using morphine. Id. at 453. When the witness was asked if he habitually used morphine, he responded: "Only when I have a headache". Id. at 453. There was also medical testimony presented stating that the excessive use of morphine always blunts the mental faculty of the user. Id. at 453. This court held that it was error for testimony of the use of drugs to be admitted. It did not state that only "occasional use" or "discrete use" testimony was prohibited, rather it stated:

> In section 418, 1 Whart. Ev., it is said. "The use of opium cannot be introduced to impair credit, unless it be shown that the witness was under the influence of opium when examined, or when the litigated event occurred." In the case of McDowell v. Preston, 26 Ga. 528, it was held that in order to discredit or weaken the testimony of a witness it is not enough to show that the witness was in the habit of using opiates. The proof must go further, and establish either that the mind of the witness was impaired generally by the use of it, or at least under the influence of the opiate at the time the testimony was taken. (Emphasis added)

Similarly, in Nelson, this court stated, "The use of opium cannot be introduced to impair credit, unless the witness was under the influence of opium when examined, or when the litigated event occurred." Id. at 3. In the present case, the victim testified during a proffer that she had not used drugs from June of 1986 to sometime in December of 1986 R 89-90, 96). The witness had used drugs "off and on" for twenty years (R 91-92) but had completely abstained from use for periods of five years and two and one-half years (R 91). It was not established how long or how heavily she had been using when she completely quit in June of 1986. She did not experience symptoms of withdrawal (R 96). She had no problem with drugs or alcohol in the month of November, 1986 (R 96). The victim stated that she had used drugs again in mid-December after she was stabbed because she had pain, problems sleeping and was

suffering emotionally from being stabbed. (R 99). Again, it was not established what frequency and quantity of drugs were involved. She had taken the prescription drug Bromocryptine one week before testifying, but was not presently on any drug. (R 95). Defense counsel conceded that he had no idea of the long-term effect of drug use (R 81) and that it may not have any effect on some people (R 108). The trial judge stated that it would be improper to "speculate" (R 101) on what effect her prior drug use may have on her, unless defense counsel would present some medical testimony (R 101), as the jury has no idea how long drugs have an effect on one's body (R 93). The trial judge ruled the evidence irrelevant unless petitioner could demonstrate the drugs had some effect on the victim's ability to remember (R 101, 106). The trial judge stated that he would allow questioning as to whether the victim had taken drugs within two days prior to the attack (R **106).**

The ruling of the trial court correctly followed (if not exceeded) the holdings of Eldridge and Nelson. If evidence of past drug use was admitted the jury would be left to pure speculation as to what effect the victim's prior drug use had on her testimony. Petitioner was given an opportunity to present medical evidence, but failed to do *so.* **As** stated by the Fourth District in Edwards v. State, **530** So.2d **936,** 937 (Fla. 4th DCA 1988):

> The jury is the ultimate fact finder and in performing that role makes determinations

> as to the credibility of each witness that takes the stand. When testimony about a witness' past use or misuse of drugs is introduced to discredit the memory and perception of that witness without the benefit of expert medical or psychiatric explanation concerning the effect of drug use on memory and perception, the jury is permitted to draw uninformed and uneducated medical conclusions which they as lay persons are clearly unqualified to do. Indeed, there does not even appear to be consensus in the medical community about the long-term effects of drug use. We therefore decline to extend the scope of cross-examination in this area and hold that the trial court did not err in excluding this testimony.

To the extent that the first district line of cases are read to conflict with Edwards, they are also in conflict with Nelson and Eldridge.

Arguably, Morrell v. State, **335** So.2d **836** (Fla. 1st DCA 1976), is not in direct conflict with Edwards as the majority opinion indicates that when the witness testified she was presently on methadone. Id. at **838**. However, the first district goes on to state:

> Although Morrell did not conclusively proffer proof that the prosecutrix was under the influence of drugs when the event occurred, or when she was on the stand to the extent that her mental faculties were impaired, it is evident that her drug addiction was a subject that was relevant to the facts charged.

As noted by the dissent, the holding is contrary to the holding in Nelson and Eldridge. Id. at 838-40. The first district effectively acknowledged this in Cruz v. State, 437 So.2d 692, 694 (Fla. 1st DCA 1983) when it stated:

> Florida jurisprudence has long sanctioned the admissibility of evidence disclosing that the witness took drugs either at the time he was testifying, or at the time of the occurrence of facts about which he had testified, for the purpose of impeaching his credibility. Eldridge v. State, 27 Fla. 162, 9 *So.* 448 (1891); Nelson v. State, 99 Fla. 1032, 128 So. 1 (1930). Our court has gone further, by permitting evidence of the witness's drug-taking at times other than during the occurrence of the offense. Morrell v. State, 335 So.2d 836 (Fla. 1st DCA 1976)...(emphasis added)

This is directly contrary to Eldridge which stated:

> The proof must go further, and establish either that the mind of the witness was impaired generally by the use of it, or at least under the influence of the opiate at the time the testimony was taken. The testimony here offered by the state falls short of this test, and should have been excluded. There was no testimony to show that the witness Smith was under the influence of morphine either at the trial or at the time of the event about which he testified; nor is it shown that his mind was impaired generally by the use of morphine. 9 *So.* at 453.

~~See also~~ Ehrhardt, Florida Evidence 8608.6 (2d ed. 1984) pp. 325 ("Although one Florida decision permitted the introduction of such evidence to attack the credibility of a witness when that witness was crucial to the prosecution's case [citing Morrel], the better view is that evidence of drug addiction or taking drugs at times other than the event or trial is admissible only if it can be shown to be relevant to the witnesses' ability to observe, remember and recount [citing Eldridge]" (footnotes omitted); Erhardt, Florida Evidence, 8608.6 (2d ed. 1988 Supp.) p. 118, n.14(criticizing Cruz and Duncan v. State, 450 So.2d 242 (Fla. 1st DCA 1984); and McCormick, Evidence (3d ed. 1988) p. 106 ("In respect to both addictions [alcohol and drugs] the excluding courts seem to have the better of the arguments. It can scarcely be considered that there is enough scientific agreement to warrant judicial notice that addictions in and of itself usually effects credibility. Certainly it is pregnant with prejudice." (footnotes omitted)).

Petitioner cites a number of Illinois cases for the proposition that "[t]he question of whether a witness is a narcotics addict is an important consideration in passing upon his credibility and that the testimony of a narcotics addict is subject to suspicion." (initial brief p. 15). In addition to the fact that the above authorities indicate the fallacy of such a position, to the extent petitioner is attempting to argue that addicts are inherently untruthful (as opposed to less able to accurately recall because of their condition), this was not her

position at trial (R 80). See Steinhorst v. State, 412 So.2d 332, 338 (Fla. 1982) (specific theory behind reason for cross-examination not argued at trial will not be considered on appeal).

Further, the cases cited by petitioner are largely distinguishable. Although the victim in this case did state that "you are never cured", (in the same sense that an alcoholic who has not taken a drink for 10 years is never cured), she had not been taking drugs for approximately six months at the time of the attack and was not taking them at the time of trial. She was not an addict at these times in the sense that she was not taking drugs. The Illinois Supreme Court cases cited largely involve cases where the court found error in not allowing evidence that a witness was an "active" addict. See People v. Strother, 53 Ill. 2d 95, 290 N.E.2d 201, 202-203 (Ill. 1972) (error not to allow examination of witness' arm outside of jury's presence to determine if he was still an addict); People v. Perez, 92 Ill. App. 2d 366, 235 N.E. 2d 335, 337 (Ill. 1968) (district court case-where there was medical testimony that the witness was suffering from narcotics withdrawal the day after the incident and that he was a former addict, it was error not to allow an examination of his arm to see if he were still an addict); People v. Lewis, 25 Ill. 2d 396, 185 N.E. 2d 168, 169 (Ill. 1962) (Where witness testified on direct that he was a narcotics addict up to a month before the incident, it was error not to allow examination of his arm); People v. Bazemore, 25 Ill. 2d 74, 182

N.E. 2d 649, 650-51 (Ill. 1962) (Evidence insufficient to convict where it consisted solely of unsubstantiated testimony by informant (who was taking two shots a day at the time of the sale) that he had sold defendant drugs), and People v. Crump, 5 Ill. 2d 251, 125 N.E. 2d 615, 621 (1955) (jury entitled to know whether witness "was or had been a drug addict or had used narcotics on the day of the alleged crime...").

The trial court in this case properly kept this information from the jury. To do otherwise would be to allow uninformed speculation. It cannot be said that the judge abused his broad discretion. See Booker v. State, 514 So.2d 1079, 1085 (Fla. 1987) (defining what constitutes an abuse of discretion); Medina v. State, 466 So.2d 1046, 1050 (Fla. 1985) (scope and control of cross-examination is within trial court's discretion).

Finally, assuming the trial court's ruling can somehow be construed as error, it was certainly harmless. The jury was told that the victim was an adultress, and lived in a drug infested area (R 135). The fact that the victim had been a narcotics addict and had a problem with drugs was brought out on cross-examination (R 121) and emphasized by defense counsel in closing argument (R 402).

POINT II

THE TRIAL COURT PROPERLY ALLOWED THE PROSECUTOR TO CONDUCT RE-DIRECT EXAMINATION OF A WITNESS AS TO MATTERS BROUGHT UP DURING CROSS-EXAMINATION.

Initially, it should be noted that State v. Wilson, 509 So.2d 1281 (Fla. 3d DCA 1987), is clearly not in conflict with the present case so it is not necessary for this Court to address this issue. See e.g. Barket v. State, 356 So.2d 263, 264 (Fla.), cert. denied, 439 U.S. 843, 99 S.Ct. 136, 58 L Ed. 2d 142 (1978). The issue regarding the cross-examination of James Jackson was not decided on grounds of preservation (as in Wilson) but rather on the theory that petitioner opened the door to the State's questioning. Petitioner seems to suggest that she somehow relied on Wilson to her detriment at the time of trial. As a third district case, it had no precedential value. Further, it is highly unlikely that any reliance was placed on Wilson as it was not decided at the time of trial.

Petitioner complains that the trial court erred when it allowed the prosecutor, on redirect examination, to bring out alleged Williams[1] Rule evidence. Respondent maintains, however,

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[1] Williams v. State, 110 So.2d 654 (Fla. 1958), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L. Ed. 2d 86.

that petitioner's argument is totally without merit. This was simply a tactical decision made by defense counsel.

In the case ~~sub~~ judice, petitioner sought to cross-examine witness James Jackson regarding his alleged bias. Petitioner sought to attack Jackson's credibility by showing that he was biased because he blamed petitioner for the shooting death of a close friend. During that episode petitioner had pulled a knife and cut a Mr. Craig in the throat (R 50). She then used Mr. Jackson's friend as cover, which resulted in the friend being shot and killed by Craig (R 23-24, 49). Petitioner wanted this incident to come out to show possible bias, but some how wanted it to be restricted so that the knife was not mentioned. Defense counsel stated that he would have no problem if this encounter had involved his client's use of a gun, but he believed mention of the knife was prejudicial (R 26-27). The trial court ruled that cross-examination of Jackson as to this matter would "open the door" for the State to inquire further on redirect. (R 34-35). The judge stated that he felt that if the subject was brought up, the prosecution should have a right to go into the reason for the alleged bias (R 34). Knowing the trial court's ruling as to this matter, petitioner cross-examined Jackson as to the prior incident to show his possible bias against petitioner. (R 45). On redirect, the State examined Jackson along the line initiated by petitioner. Her use of a knife during that incident was then brought out. (R 48-49).

Petitioner complains that references to her use of a knife in a prior incident constituted Williams Rule evidence, and exceeded the scope of cross-examination. Respondent disagrees. The objective of redirect examination is to explain, correct, or modify the testimony gathered form cross-examination. Jones v. State, 440 So.2d 570, 576 (Fla. 1983); Hinton v. State, 347 So.2d 1079, 1080 (Fla. 3d DCA, cert. denied, 354 So.2d 981 (Fla. 1977). Redirect examination in this regard may even be conducted even though it has a tendency to suggest the commission of a separate crime. Id. Respondent submits that when petitioner brought out her involvement in a prior incident involving a knife during cross-examination, the State was properly allowed to delve into this previously unexplored area on redirect. Jones, Hinton. Read in context, the prosecutor's examination of Jackson, was in response to a line of questioning initiated by petitioner and fell within the bounds of fair reply permissible in this instance. Ferguson v. State, 417 So.2d 639 (Fla. 1982); Helton v. State, 424 So.2d 137 (Fla. 1st DCA 1982), pet. for rev. denied, 433 So.2d 519 (Fla. 1983).

Further, even assuming arguendo, this was collateral crime evidence, as stated by the trial judge and the prosecution, the testimony was relevant to fully demonstrate the reasonableness of Mr. Jackson's opinion that petitioner was responsible for his friend's death. (R 25, 28, 34-35). See Bryan v. State, 533 So.2d 744, 747 (Fla. 1988) cert. denied, ___S. Ct. ___ (U.S. Apr. 17, 1989) (collateral crime evidence is admissible

if relevant for any purpose other than only propensity or bad character). Petitioner was told that an inquiry into this matter would "open the door" to an inquiry by the State. She should not be allowed to cry foul since it was her counsel's initial questioning during cross-examination which led the prosecutor to ask the complained-of questions on redirect. Petitioner cannot initiate alleged error and then seek reversal based on that error. Jackson v. State, 359 So.2d 1190 (Fla. 1978), cert. denied 439 U.S. 1102, 99 S.Ct. 881, 59 L.Ed. 2d 63 (1979); Pope v. State, 441 So.2d 1073 (Fla. 1983); United States v. Trujillo, 714 F.2d 102 (11th Cir. 1983). See also, Medina v. State, 466 So.2d 1046, 1047 (Fla. 1985) (Trial judge correctly cautioned defense counsel that pursuing the stabbing (alleged Williams rule evidence) on cross-examination would open that matter to intensive examination).

In any event, any error would be harmless where it did not affect the verdict. Colwell v. State, 448 So.2d 540 (Fla. 5th DCA 1984); Adan v. State, 453 So.2d 1195 (Fla. 3d DCA 1984); Clark v. State, 378 So.2d 1315 (Fla. 3d DCA 1980).

POINT III

THE TRIAL COURT DID NOT ERR IN ALLOWING TESTIMONY AS TO THE VICTIM'S INJURIES.

Initially, it should be noted that this issue has nothing to do with this Court's conflict jurisdiction and need not be addressed by this Court. See e.g. Barket, 356 So.2d at 264.

Petitioner complains that the trial court committed reversible error when it allowed testimony regarding the victim's injuries. Respondent maintains, however, that petitioner's argument is without merit. Petitioner was charged by information with aggravated battery with a deadly weapon in violation of §784.045, Florida Statutes (1985). (R 451). This crime requires proof of a battery, either a misdemeanor or a felony, and the use of a deadly weapon. Parker v. State, 482 So.2d 576 (Fla. 5th DCA 1986). With this in mind, testimony regarding the victim's injuries were admissible since it was relevant to the offense charged, which necessarily included a battery. McGriff v. State, 417 So.2d 300 (Fla. 3d DCA 1982).

Appellee would also argue that even if it was error for the trial court to allow testimony regarding the victim's injuries, such error would have been harmless.

Prior to petitioner's objection (R 193) there was extensive testimony regarding the victim's injuries. The victim

testified that petitioner cut her hand (R 76). She also testified and showed the jury that "she cut me from here to all the way to here (R 77, 178). She removed her headband to fully display the injuries (R 78). She testified that she had her sister hold a towel over her face and call **"911".** She was taken to the hospital (R 77). Her sister said, "you face cut open." (R 77).

Elizabeth Coffee testified that blood was "all over [the victim's] face and her face was covered all with it. I held it and I still see that right now today." (R 178). She also testified that the victim's finger was bleeding and that she called for medical help (R 178). Deputy Martin Karl Woodside testified that when he arrived at the scene he found the victim "laying on the steps in front of a house bleeding profusely from the mouth and side of her face with another black female administering first aid..." (R 191). Only after trhe presentation of the above evidence, did petitioner object to testimony regarding the victim's injuries (R 193). Accordingly, the additional testimony regarding the injuries was merely cumulative and can only be deemed harmless. Additionally, the testimony, standing alone, does not rise to the level of reversible error. Lee v. State, **444** So.2d 580 (Fla. 5th DCA **1984).**

CONCLUSION

Based on the foregoing argument and authorities, the trial court committed no error.

Respectfully submitted,

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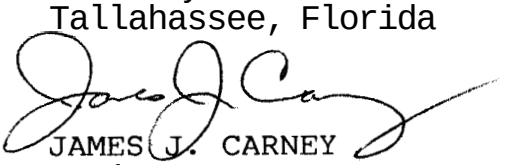

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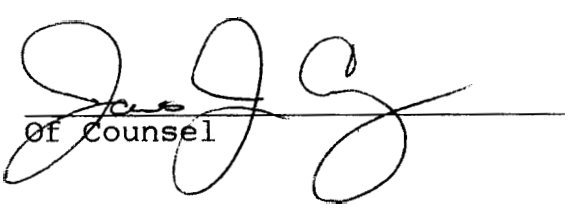
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to Allen J. DeWeese, Assistant Public Defender, 9th Floor, 301 N. Olive Avenue, West Palm Beach, Florida 33401, this 4th day of *May*, 1989.



Of Counsel