

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-258

LEON ADDERLY,

Appellant,

-vs-

STATE OF FLORIDA,

Appellee.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

This cause is before the Court on petition for discretionary review. The parties will be referred to as they stood in the trial court. The trial court denied the State's motion in limine, which sought (pursuant to the rape shield law, Section 794.022, Florida Statutes) to exclude evidence of the alleged victim's prior sexual activity with her boyfriend. The District Court granted certiorari to quash the trial court's ruling.

SUMMARY OF ARGUMENT

This case presents a classic credibility contest between defendant and S.D., his stepdaughter -- there are no other witnesses, and there is no physical evidence. The exclusion of evidence of S.D.'s admitted sexual relationship with her boyfriend, where defendant contends it gave S.D. a motive to lie and to make up a false allegation against the defendant, would effectively preclude defendant from challenging S.D.'s testimony and from contending that she had a reason to fabricate a false charge. The exclusion of that evidence would thus deprive defendant of his right to confront and cross-examine the only witness against him and to present a defense. The rape shield law is a rule of relevance, and cannot be applied in a criminal case to exclude relevant evidence essential to

the presentation of a defense.

The District Court therefore erred in ruling that the trial court's refusal to exclude the evidence of S.D.'s sexual relationship with her boyfriend was a departure from the essential requirements of law, warranting the issuance of certiorari. The District Court's ruling should be reversed.

ARGUMENT

I

THE DISTRICT COURT ERRED IN HOLDING THAT THE TRIAL COURT WAS REQUIRED TO EXCLUDE EVIDENCE OF THE ALLEGED VICTIM'S SEXUAL ACTIVITY WITH HER BOYFRIEND WHERE THE DEFENDANT CONTENDED THAT IT GAVE HER A MOTIVE TO LIE ABOUT THE ALLEGED SEXUAL BATTERY

The State's argument proceeds on the assumption that the State is entitled to exclude admissible evidence that the defendant may offer unless defense counsel articulates a valid argument for the admissibility of the evidence. The State's argument further assumes that the State is entitled to exclude admissible evidence upon motion in limine prior to trial unless defense counsel in opposition to the motion articulates a valid argument for the admissibility of the evidence.

Here, on the motion in limine, the trial court articulated a valid argument for the admissibility of evidence that the alleged victim had a motive to lie. The trial court was not required to exclude the evidence on the State's motion in limine because it articulated the argument before defense counsel did, and better than defense counsel did. The trial court's ruling denying the State's motion in limine does not require that the evidence be admitted at trial if, at trial, the defense does not contend that the alleged victim had a motive to lie.

Contrary to the State's assumption, the trial court should deny a motion in limine to exclude evidence where there is any theory upon which the evidence would be admissible at trial, unless the theory of the proponent expressly excludes reliance upon the theory that would make the evidence admissible. Here the trial court promptly perceived that the evidence sought to be excluded was relevant to the alleged victim's motive to lie. Defense counsel did not disavow the trial court's theory, but merely argued additional grounds. The trial court did not rule that the evidence was admissible, but its refusal to rule in limine that the evidence would be inadmissible at trial under any circumstance was plainly proper.

CONCLUSION

The order appealed from should be reversed, the trial court's ruling should be reinstated, and the matter should be remanded for trial.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copies of the foregoing, and the attached Appendix, were mailed to Frank J. Ingrassia, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, 110 S.E. 6th Street, Fort Lauderdale, FL 33301 and the Honorable Cecilia Altonoga, Circuit Judge, Richard E. Gerstein Justice Building, 1351 Northwest 12th Street, Miami, Florida 33125, on December 23, 2002.

ROY A. HEIMLICH
Assistant Public Defender

CERTIFICATE OF COMPLIANCE

I hereby certify that the type font in this brief is Courier New 12 point, except that the headings are set in Times New Roman 14 point.

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