

CASE LAW

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Update

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DCTLA Demonstrative Evidence Addendum

In support of the DCTLA's August meeting with **Judge Friedman** on demonstrative evidence, here are some of the more significant cases. This is not intended to be an exhaustive list.

General Principles

Landrum v. State

79 Fla. 189, 84 So. 535 (Fla. 1920)

There was no error in allowing a witness to draw a diagram to illustrate or explain his testimony. The diagram did not go to the jury as independent evidence, but was only used to explain the testimony of the witness.

"A map, diagram or picture, whether made by the hand of man or by photography, verified as a correct representation of physical objects about which testimony is offered, and which [does] not contain thereon indications of matters and things in question before the jury, and not a part of the physical objects when the map, diagram or picture was made, [is] admissible in evidence for the use of witnesses in explaining their evidence, and to enable the jury to better understand the case."

First Federal Savings & Loan Ass'n of Miami v. Wylie

46 So.2d 396 (Fla. 1950)

The trial court did not abuse its discretion in admitting into evidence "certain medical charts of the human body, and a skeleton of the arm of a body," to assist an expert witness to demonstrate to the jury the nature of the plaintiff's injury and its incapacitating effect.

Brown v. State

550 So.2d 527 (Fla. 1st DCA 1989)

Demonstrative exhibits to aid the jury's understanding may be used when they are relevant to the issues in the case, but only if the exhibits constitute an accurate and reasonable reproduction of the object involved. The determination as to whether to allow the use of a demonstrative exhibit is within the trial court's discretion.

Here, the trial court did not abuse its discretion in allowing the prosecutor to use a knife and Styrofoam head as demonstrative exhibits during the victim's testimony and closing argument. The prosecutor, during closing argument, repeatedly inserted a demonstrative knife into a Styrofoam representation of the victim's head, on which the victim's wounds were marked, and asked the jury to "compare the diverse insertions when addressing appellant's intent." The record did not show any inaccuracy of the prosecutor's replication of the stabs, or that he used excessive force or was in any way inconsistent with the evidence of the victim's multiple stab wounds. The court found "no fundamental error or undue prejudice," in light of the inadequacy of the record, the court's instruction that the attorneys' arguments are not evidence, and the jury's decision to acquit the defendant on the attempted murder charge and convict the defendant only of the lesser included offense of aggravated battery.

Medina v. State

748 So.2d 360 (Fla. 4th DCA 2000)

During cross examination of a prosecution witness, the witness drew a map of the locations about which he testified. The defense did not intend to offer any evidence, because he wanted to maintain his right to the concluding argument under Fla. R. Crim. P. 3.250. The trial court ruled that the drawings were defense exhibits, and refused to allow the defendant to refer to them in closing argument, without giving up the right to the final argument. The appellate court said this was error. "Usually demonstrative evidence is not admitted as an exhibit and taken to the jury room." However, demonstrative evidence is subject to relevance and prejudice analysis under §90.403.

Reenactment

State v. Duncan

894 So.2d 817 (Fla. 2005)

It was within the trial court's discretion to allow the prosecution to use a dummy as a demonstrative aid during one eyewitness's testimony. The witness played the role of the defendant, and the dummy played the role of the victim. The record did not describe the appearance of the dummy. The defendant did not claim the reenactment was inaccurate, but objected that it was repetitive and inflammatory, and that its prejudicial impact outweighed its probative value under §90.403.

The court distinguished *Cave v. State*, 660 So.2d 705 (Fla. 1995), and *Taylor v. State*, 640 So.2d 1127 (Fla. 1st DCA 1994), on the basis that the demonstrative exhibits in those cases were not relevant to the issue before the jury and were likely to evoke emotional reactions. In *Cave*, the court found the use of a video reenactment during sentencing was irrelevant, cumulative and unduly prejudicial; the defendant's guilt already had been determined. In *Taylor*, the only issue for the jury was the defendant's sanity. The prosecutor used a woman of the same size and general features to play the victim in a reenactment, and also allowed the medical examiner to use clay heads to describe the wounds that caused the death. The court held this was error where there was no dispute about the cause of death or the number of wounds, and the female appearance of the clay heads, and the appearance of the stand-in, were designed to evoke an emotional response.

Similarity to the Real Thing

Alston v. Shiver

105 So.2d 785 (Fla. 1958)

An axe handle that was three feet long was not a close enough reproduction of the alleged weapon used by the defendant to beat the plaintiff. The testimony showed that the plaintiff was beaten with an axe handle about two feet long. The purpose of demonstrative evidence is to enable the jury or the court to see, and thereby better understand, the issue involved. Demonstrative evidence must be relevant to the issues in the case. Therefore, it must first be shown either to be the object in issue, in substantially the same condition as at the pertinent time, or such a reasonably exact reproduction or replica of the object involved that the jury viewing it will see substantially the same object as the original.

Charts

Ratner v. Arrington

111 So.2d 82 (Fla. 3d DCA 1959)

It is within the trial court's discretion to allow the use of a blackboard or chart during counsel's argument. This case explains the distinction between a chart that is used in evidence and one used for argument only. A chart that is in evidence may be exhibited throughout the relevant portion of the trial. A chart used purely to illustrate an argument should be shown to the jury only during the argument. It should refer only to matters in evidence and reasonable inferences from the evidence.

Drawing Can't Be Compelled

Udkoff v. Hiatt

676 So.2d 522 (Fla. 2d DCA 1996)

The trial court could not order the defendant to draw a diagram of the accident scene during her deposition. The rules do not impose a duty upon a party to draw at a deposition. "Although a witness may choose to draw something to help explain his or her testimony, a trial court is without any authority to compel the deponent to create a drawing."

Day in the Life Video

Protective Cas. Ins. Co. v. Killane

447 So.2d 316 (Fla. 4th DCA 1984)

The trial court did not abuse its discretion in allowing admission of the plaintiff's day in the life video. Among other things, the video showed the plaintiff's doll collection and her house decorated for Christmas. However, it did not linger on them.

Power Point

Milson v. State

832 So.2d 897 (Fla. 3d DCA 2002)

The trial court did not abuse its discretion in allowing the state to use a Power Point presentation in closing argument to illustrate the verdict form. The use of a demonstrative exhibit is within the trial court's discretion, so long as the exhibit is "an accurate and reasonable reproduction of the object involved."

Computer Animation

Pierce v. State

718 So.2d 806 (Fla. 4th DCA 1997)

The trial court did not abuse its discretion in allowing the jury to see a computer-generated reconstruction animation of the automobile crash, as an illustration of a detective's opinion of how the accident occurred. Because it was admitted solely as a demonstrative aid, "we do not now decide the standards applicable to computer animations introduced as substantive evidence." The demonstrative exhibit was not subject to *Frye* analysis. But see *General Motors Corp. v. Porritt*, 891 So.2d 1056 (Fla. 2d DCA 2004) (videotape of experiment used to show how seatbelt could unlatch when struck was subject to *Frye* analysis).

In order to admit a computer animation as a demonstrative exhibit illustrating an expert's opinion, the proponent must establish: (1) the opinion evidence must be helpful to the fact finder; (2) the witness must be qualified as an expert; (3) the opinion must be applied to evidence offered at trial; (4) the prejudicial impact must not outweigh the probative value; (5) the facts or data on which the expert relied in forming the opinion expressed by the computer animation must be of a type reasonably relied upon by experts in the subject area; and (6) the computer animation must be a fair and accurate depiction of what it purports to be.