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WILLIAMS RULE EVIDENCE

RULE: 90.404(2)

This rule is classified as character evidence in the evidence code. It allows similar fact evidence of other crimes, wrongs, or acts when relevant to prove a material fact in issue such as:

1. Proof of motive
2. Opportunity
3. Intent
4. Preparation
5. Plan
6. Knowledge
7. Identity
8. Absence of mistake or accident
9. Other special circumstances as specified in case law

RULE: 90.404(2)(b)

In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

ELEMENTS:

1. No fewer than 10 days before trial, the State shall furnish to the accused a written statement of the acts or offenses it intends to offer at trial. This is usually entitled "Notice of intent to offer similar fact evidence" or "Notice of intent to offer Williams Rule evidence." The notice must describe the acts with the particularity required of an indictment or information.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received.

   After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

COMMENTS:

1. Williams Rule evidence is especially useful in sex offenses against children. Child molesters accumulate many victims over their lifetime and special their abuse for many years. Therefore, it is a good idea to have your detective track down other children who may have been exposed to the suspect over the years. Frequently, a suspected grandfather not only has molested other grandchildren, but also his own children. The courts have traditionally been more liberal in allowing Williams Rule evidence on these cases. See Heuring v. State, 513 So.2d 122 (Fla. 1987).

2. The rule specifies that evidence used for impeachment or rebuttal does not have to be included in a notice. It is a good practice, however, not to try to ambush the defense with this technique. The law states that the State must list rebuttal witnesses in discovery if the witnesses may be reasonably anticipated to be needed. Lucas v. State, 376 So.2d 1149 (Fla. 1979) Consequently, you may win the argument on the notice requirement, but lose your witnesses on the anticipated rebuttal objection. Judges will always feel more comfortable allowing the evidence if the notice has been filed. Find out from other ASA's how your judge handles these situations.

3. Weigh your Williams Rule evidence carefully. More of our cases are reversed on this issue than any other.

4. Since the Williams Rule is one of admissibility, the burden is on the Defendant to raise an objection to show that the evidence should be excluded. Once the Defendant raises his objection, the burden shifts to the State to show relevancy and to show that the evidence is not being offered to show propensity to commit crimes.

5. Be careful not to make the Williams Rule evidence the feature of the trial. It may be reversed.

6. Read section 404.18 in Ehrhardt's Florida Evidence book. It has an in depth discussion on the admissibility of other sex offenses in the familial context.

7. Defense counsel may also utilize Williams Rule evidence. This is referred to as "Reverse Williams Rule Evidence." see Rivera v. State, 561 So.2d 536 (Fla. 1990). It does not appear, however, that the defense is required to the follow the same 10 day notice provision as required by the State.

8. It is important to realize that Williams Rule evidence is not admissible simply because it is similar to the facts of the instant case. The grounds by

which it is offered must be relevant and pertinent to the instant case. For example, the appellate court will not allow the evidence on the grounds that it establishes identity if the only issue in trial is consent.

9. In the line of cases allowing Williams Rule evidence to corroborate the testimony of a child, it is important for there to be a special need to corroborate the child's testimony. This exception was established because the courts recognized the special problems inherent in proving these cases. There is rarely any corroborating evidence for the state to offer. Therefore, if the state has ample corroborating evidence, the appellate courts frown on allowing the admission of this evidence under this exception.

CASES

There are two distinct lines of cases in the area of sexual abuse. Cases involving adult victims follow the general case law as it relates to other crimes. Court decisions in cases involving children have developed a significantly broader interpretation of Rule 90.404 (2). The courts have long recognized the unique difficulties in prosecuting cases in which the only evidence consists of the word of a child. For this reason, they have a shown a gradual pattern expanding the scope of allowable evidence. This trend has culminated with the Heuring v. State decision which allows Williams Rule evidence to be admitted to corroborate the testimony of a child. In reading the decisions it should be noted if the rationale of the court was post-Heuring or pre-Heuring. The following cases will be organized in the following priority:

1. Cases involving children followed by adults followed by miscellaneous.
2. District Court of Appeals.
3. Date of decision from most recent decision.

SEXUAL ABUSE CASES

CHILD VICTIMS

Supreme Court:

Saffor v. State, 660 So.2d 668 (Fla. 1995):

> Evidence of defendant's prior attempted lewd assault of his niece was not sufficiently similar to charged offense to be admissible where ages and genders of the two children were different and acts took place during different time frames, at different locations, and at different times of day. Although fact that collateral sex crime and charged offense both occur in familial context constitutes significant similarity for purposes of Williams rule, there must be some additional showing of similarity in order for the collateral sex crime evidence to be admissible.
>
> Discussion: This case reverses a case previously listed in this outline. The Supreme Court takes the middle ground on this issue. The court specifically rejects the contention that the familial situation alone provides all the similarity necessary for the admissibility of Williams Rule evidence. The Court also does not impose the same stringent similarity requirements necessary for cases outside the familial context. Instead, the court adopts a "relaxed" similarity requirement: "We hold instead that when the collateral sex crime and the charged offense both occur in the familial context, this constitutes a significant similarity for purposes of the Williams rule, but that these facts, standing alone, are

insufficient to authorize admission of the collateral sex crime evidence. There must be some additional showing of similarity in order for the collateral sex crime evidence to be admissible."

State v. Rawls, 649 So.2d 1350 (Fla. 1994):

Evidence of prior similar offenses was admissible to corroborate child victim's testimony even though offense did not occur within familial or custodial setting where evidence was strikingly similar to victim's testimony, and victim's credibility was at issue.

Familial relationship must be one in which there is recognizable bond of trust with defendant. Consanguinity and affinity are strong indicia of familial relationship but are not necessary. Defendant and victim need not reside in the same home, and familial relationship may exist where individual legitimately exercises parental-type authority over child or maintains custody of child on a regular basis.

Sexual battery did not occur within familial or custodial setting and, therefore, similar fact evidence could not be used to corroborate minor victim's testimony, although defendant lived in victim's home, where defendant was not related to victim by blood or marriage, defendant was boarder in victim's home, defendant did not exercise any custodial or supervisory authority over victim, and there was no evidence that victim looked upon defendant as member of the family.

Similar fact evidence was admissible to prove opportunity and plan and its probative value outweighed potential for undue prejudice where defendant gained access to all his victims in same manner. After gaining access, defendant molested male youths of approximately same age in their homes while no one else was present, and the defendant instructed all of his victims not to tell anyone what had occurred.

Discussion: This case was decided on a motion for rehearing. This opinion revises the court's previous opinion. The Supreme Court gives an excellent review of Florida case law as it relates to "Familial or custodial authority." The Court rules that "Where an individual legitimately exercises parental -type authority over a child or maintains custody of a child on a regular basis, a familial relationship may exist for purposes of the admissibility of collateral crimes evidence under Heuring. The Court then rules that the facts of the instant case do not qualify as familial or custodial authority, but do qualify as strikingly similar. The Court then follows the lead of Charles Ehrhardt and rules that testimony can be used to corroborate the testimony of child victims even when they do not fall under familial or custodial authority heading.

Schwab v. State, 636 So.2d 3 (Fla. 1994):

In sexual battery and murder prosecution, testimony from three boys aged eleven to fifteen was relevant to show identity, motive and opportunity among other things. All

were short, had blond hair, all weighed less than one hundred pounds. Schwab ingratiated himself with the family of one of the witnesses, as he did with the instant victim, and attempted to befriend the others before offering them rides. He held each at knifepoint and admittedly cut the instant victim's clothes off with a knife.

Discussion: This case was decided on principles common to all cases. There was no unique analysis by virtue of the victim being a child. The Court also addresses the "feature of the trial" issue.

Feller v. State: 637 So.2d 911 (Fla. 1994):

In cases involving sexual battery within familial situation, evidence of other sexual batteries on another family member can be admitted to corroborate testimony of victim that defendant committed sexual abuse upon victim; however, the charged and collateral offenses must share some unique characteristic or combination of characteristics which sets them apart from other offenses.

Discussion: The charged offense involved allegations of several incidents of penile and digital penetration of the vagina while the child was unclothed inside the family dwelling. The collateral offense involved a single episode of touching on outside of the child's clothing while she sat on the defendant's knee as they were fishing.

Duckett v. State, 568 So.2d 891 (Fla. 1990):

Testimony of petite 19 and 18 year old women concerning police officer's "passes" at them made while he was in patrol car, on duty, and in uniform was admissible similar fact evidence in prosecution of officer for sexual battery and first degree murder of 11 year old girl, relevant to establishing officer's mode of operation, identity, and common plan.

Testimony of 17 year old woman that she had voluntarily met police officer at remote area while he was on patrol and performed oral sex on him was not sufficiently similar to facts in prosecution of officer for sexual battery and first degree murder of 11 year old girl to be admissible but admission of testimony was harmless.

Beasley v. State, 518 So.2d 917 (Fla. 1988):

Testimony of victim's sister that defendant had committed lewd and lascivious assault upon her was admissible in prosecution for attempted sexual battery and lewd and lascivious assault to establish that defendant had opportunity to perform illegal acts on victim, who was defendant's stepdaughter.

Heuring v. State, 513 So.2d 122 (Fla. 1987):

Evidence that the defendant charged with sexual battery of his stepdaughter had sexually battered his own daughter 20 years earlier was admissible in that the opportunity to sexually batter young children in a familial setting occurs only generationally and evidence was relevant to corroborate the victim's testimony.

Discussion: This case involved a situation in which the defendant was accused of sexually molesting his step daughter between the ages of 7 and 12. The State offered Williams Rule evidence that the suspect sexually battered his daughter when she was between the ages of 7 and 15. The Williams Rule evidence involved acts that had occurred approximately 20 years before the charged offense. The court first addressed the issue of remoteness in time. In holding that a 20 year span did not require exclusion of the evidence, the court stressed that the opportunity to sexually young children in the familial setting often occurs only generationally. The suspect had battered the children only when the opportunity arose. The court does not address the issue of what its ruling would be if the defendant had encountered several other opportunities yet failed to act upon them.

In holding that the similar fact evidence is relevant simply to corroborate the victim's testimony, the court noted the special problems encountered in cases involving sexual battery committed within the familial context. The court noted that the victim is typically the sole witness and corroborative evidence is scant. Credibility becomes the focal issue in the case. Although many courts have tried to stretch the similar fact evidence as to be relevant for modus operandi, common scheme or plan etc...the Heuring court feels that the better approach is simply to treat it as corroborating the victim's testimony. Understanding the rationale of this ruling will assist greatly in arguing it to the court as it applies to your case.

Coler v. State, 418 So.2d 238 (Fla. 1982):

In prosecution in which defendant was convicted of three counts of rape of a child under 11 years and one count of sexual battery of a child 11 years or younger, State's introduction of testimony from the children, over objection, of examples of defendant's deviant sexual behavior not relating to the four counts charged served only to prove defendant's bad character and was obviously prejudicial depriving him of a fair trial.

State of mind is not a material fact in a sexual battery charge, nor is intent an issue.

Discussion: The children were allowed to testify that Coler had the children watch from the doorway as he fondled a woman, that he told them that they or neighborhood children could use his bed for sexual intercourse, that he told one of his sons to have sex with three women he brought home, and that on a visit to Michigan he made the children eat a cucumber which, just prior thereto, he had inserted into the daughter's rectum.

1st DCA:

Easterly v. State, 34 Fla. L. Weekly D2414 (Fla. 1st DCA 2009):

> Probative value of evidence of other acts of sexual abuse defendant perpetrated against victim outweighed potential prejudicial effect; evidence was highly relevant due to defendant's defense that he did not know he had molested victim, all acts were similar because they occurred against same victim in familial setting while victim was asleep or attempting to go to sleep, and acts showed absence of mistake and plan, particularly because State adduced evidence that defendant never molested victim's sister, even though he claimed to have been unaware of his actions.

State v. Wood, 732 So.2d 402 (Fla. 1st DCA 1999):

> "Strikingly similar" standard of relevance generally applied to admission of similar fact evidence was not applicable in prosecution for sexual battery on children less than 12 years of age, where both charged and collateral offenses allegedly occurred in familial context.
>
> In cases charging sexual offenses against child victims, when collateral sex crime and charged offense both occur in familial context, strict similarity in nature of the offenses and circumstances surrounding their commission which would be required in cases occurring outside familial context is relaxed; while there must be some showing of similarity in addition to fact that both offense charged and collateral crime occurred in familial context, showing of "striking similarity" is not required.
>
> Discussion: The specific facts of the case are not discussed.

Griffith v. State, 723 So.2d 860 (Fla. 1st DCA 1998):

> Reversible error to admit evidence of crimes involving two girls who were each assaulted in different ways, neither of which involved the same type of assault that defendant allegedly committed against male victim in instant case. The collateral crimes involved digital penetration, masturbation, and fondling; whereas, the crime charged in the instant case was anal penetration. Additionally, the eight year old girl was molested outdoors while in the instant case, the victim testified that they were in his home.
>
> Collateral crime evidence was not only dissimilar, but did not tend to prove motive, opportunity, intent preparation, plan, knowledge, identity, or any material fact at issue.

Ritchie v. State, 720 So.2d 261 (Fla. 1st DCA 1998):

Familial context coupled with additional similarities of identical time frame, location, gender, and acts alleged to have been committed, sufficient to permit admission of evidence of acts committed against another child.

Discussion: As noted above, this finding was insufficient. The similarities which went into the Williams rule ruling were that both victims were sons of the appellant, living with him at the time of the alleged abuse, and each episode of alleged abuse occurred in the appellant's home. Additionally, the time periods during which the abuse allegedly occurred are identical, although the sexual acts perpetrated upon the four year old in this case were not identical to those involving the twelve year old Williams rule witness. In both instances, the fondling of the victims' genitalia by the appellant was a prelude to the sexual act.

Morrow v. State, 717 So.2d 937 (Fla. 1st DCA 1998):

Issue of erroneous admission of evidence of two collateral offenses not preserved for appellate review by objection when evidence was introduced at trial. Error to admit evidence of other collateral crimes where record reflects more differences than similarities between collateral crimes and charged offense, and where collateral offenses prove no more than defendant's propensity to commit offenses of the same general type.

Discussion: The court ruled that the facts of this case did not justify the relaxed standard used in familial situations, therefore, strict similarity requirements are needed. The victim in the case was sleeping at her godmother's house when thunder and lightening caused her to retreat to the bed of her godmother and the suspect. She later woke up to find the suspect fondling her vagina. Other witness testified that when they were children, the suspect lured them into his home under false pretenses and then fondled them. The court noted that the similar fact witnesses were all very similar to each, but not to the victim. The major points of difference were the fact that the similar fact witnesses were not in a familial situation; they were lured into the house as opposed to being there in the familial context; and they were molested when no one was around as opposed to the victim, whose godmother was in the bed with them.

Graves v. State, 704 So.2d 147 (Fla. 1st DCA 1997):

Evidence of digital penetration, including victim's testimony and demonstration performed by victim before jury, sufficient to support conviction.

Evidence sufficient to support second count of sexual battery charging injury to sexual organs of six-year-old victim during attempt to commit sexual battery. Prosecution sufficiently charged offense of injury to sexual organs during attempt to commit sexual battery.

Trial court properly admitted testimony of victim's mother concerning consensual acts of sex between herself and defendant, where testimony was relevant to show that defendant uses his fingers during sex and leaves scratches, was consistent with physical evidence and victim's testimony and did not suggest that defendant should be convicted merely because he committed a prior bad act or crime.

Trial court's instruction to jury that "union is an alternative penetration and means coming into contact with" was erroneous, because sexual battery by use of implement other that sexual organ of another requires penetration.

Barton v. State, 704 So.2d 569 (Fla. 1st DCA 1997):

Error to admit evidence of collateral crime against another child where that child testified that defendant fondled her chest, that defendant was her regular baby-sitter, and had been her house every day for nearly two years where victim in present case had no personal relationship with defendant. The two offenses were not sufficiently similar to meet test of admissibility in non-familial case where one involved digital vaginal penetration and the other involved fondling of the breast area.

Carter v. State, 687 So.2d 327 (Fla. 1st DCA 1997):

Error to admit testimony, in prosecution for lewd and lascivious assault upon a child less than sixteen years of age, that defendant had commented, "If you're old enough to bleed, you're old enough to breed," where statement was offered solely to show that defendant was sort of person who would molest a 13-year-old girl.

Discussion: The defendant had made this statement to the victim's aunt shortly before the incident. The defendant and the aunt had been discussing the issue of sex and young girls, but were not speaking about this specific victim. The prosecutor argued at a suppression hearing that the statement showed the defendant "was willing to commit this kind of crime, and that's exactly what he did just a short time after he made the statement." The court ruled that this statement shows that the State offered the statement solely to show that appellant is the sort of person who would molest a 13-year-old girl. It was thus, inadmissible character evidence. In a footnote, the court noted that this is not *Williams Rule* evidence, because "The statement here is one of belief, and does not involve past behavior, in the form of other crimes, wrongs or acts."

Rowland v. State, 680 So.2d 502 (Fla. 1st DCA 1996):

In capital sexual battery/indecent assault case, trial court properly allowed two great nieces of defendant to testify about similar sexual assaults committed upon them 35 and 42 years before.

Trial court did not err in allowing the testimony of a nurse and "child crisis" expert that the victim was calm and cooperative and that "she related the story easily, but that is generally how victims of sexual abuse victims (sic) are. Because the child protection team worker makes them feel comfortable and they have told the story before." This was not an improper comment on the victims credibility.

Discussion: The victim was a six year old child who was being baby-sat by the defendant's granddaughter when the assaults took place. The appellate court recognized sufficient similarities to admit the evidence. All of the alleged acts involved events that occurred when the victims were visitors at the home where the defendant lived. All of the victims were of the same gender. All of the victims were about the same age at the time of the alleged acts. The types of physical acts alleged to have occurred were quite similar.

Two interesting observations can be noted in this case. First, it does not appear that the victim was related to the defendant. Second, 42 years may be a record for digging out similar fact evidence in sex cases.

Paul v. State, 660 So.2d 752 (Fla. 1st DCA 1995):

Testimony by another minor concerning gifts and attention she received from defendant approximately four years earlier was not sufficiently similar to charged offenses to be admissible and was relevant solely to prove bad character or propensity.

Discussion: The suspect ingratiated himself to two separate girls by writing love notes and sending flowers etc.... One girl claimed she was hugged and kissed, while the other girl said the defendant performed sexual acts on her. The defendant was a volunteer at one girl's school and the maintenance for the other girl's mother. The court ruled the two cases were not sufficiently similar and that Heuring did not apply because there was no familiar or custodial authority.

Gray v. State, 640 So.2d 186 (Fla. 1st DCA 1994):

In prosecution for sexual battery upon a child, testimony from two classmates of the victim met the "strikingly similar" requirement and shared with the charged offenses some unique combination of characteristics which set it apart from other offenses. All three alleged victims were 10 year old boys at the time of the abuse, went to the same school and were in the emotionally handicap class taught by the defendant. All were abused in the same school year, and each alleged that some of the abuse occurred at the school. All alleged that the defendant used his position as teacher to isolate them from other students so that he could fondle them, have them fondle him or have them perform oral sex on him. The testimony was admissible to establish plan, scheme and opportunity.

Rawls v. State, 624 So.2d 757 (Fla. 1st DCA 1993):

> In prosecution for sexual battery on person under 12, collateral crime evidence of similar conduct involving three other boys was admissible; charged offense and collateral offenses were strikingly similar in that defendant befriended boys' mothers, arranged to move into their homes, paid rent, bought groceries and was generous to all family members, and then, in same manner, sexually molested male youths of approximately the same age in their homes while no others were present and instructed them not to tell anyone what had occurred.
>
> Admission of collateral crime evidence of similar conduct involving three other boys was not unduly prejudicial; it was defense counsel's own trial tactics of calling numerous witnesses to impeach credibility of collateral crime witnesses which emphasized the evidence.
>
> Trial judge improperly modified standard instruction to include corroboration of victim's testimony as proper use of collateral crime evidence. Without evidence that offense arose within familial or custodial setting, collateral crime evidence could not be used for victim corroboration.
>
> Discussion: This case can be used to counteract a defense argument that your Williams Rule evidence was a feature of the trial. If the defense chooses to spend a lot of time impeaching your witnesses, he cannot argue that this extended attention to the witnesses made it a feature of the trial. Be careful on these situations not to go overboard on proving your Williams Rule facts, or it may become the feature. This case also serves as a warning not to extend the Heuring decision to facts that did not occur in a familial or custodial setting. This case has subsequently been addressed twice by the Florida Supreme Court. (*see above)*

Adkins v. State, 605 So.2d 915 (Fla. 1st DCA 1992):

> Testimony of defendant's young female family members regarding defendant's sexual abuse of them was properly admitted in trial of defendant for sexual battery of his stepson; testimony was sufficiently similar to be admissible, even though victims were of different genders and further, testimony of female children was relevant to corroborate testimony of male victim of charged offenses, whose credibility was paramount issue.

Turtle v. State, 600 So.2d 1214 (Fla. 1st DCA 1992):

> In prosecution for sexual battery on boy less than 12 years of age and lewd and lascivious assault on the same child, state should not have been permitted to present collateral crime evidence about defendant's sexual assault of another child of similar age and name and to argue extensively about that episode during closing argument, and the collateral

transaction evidence became such **a feature of trial** that defendant was unduly prejudiced and deprived of his right to a fair trial.

Discussion: The similarities shown between the two incidents were that the defendant befriended both boys, gave both boys gifts, allegedly molested both boys, and then told them not to tell anyone about the incidents. The appellate court did not even reach a conclusion as to whether the similar fact evidence was admissible, because the prosecutor's focus on this evidence was so pervasive as to deny the defendant a right to a file trial. More than half of the testimony addressed the similar fact witness and the prosecutor focused on it in opening and closing. The appellate court noted that it was at times difficult to discern which victim was the focus of the trial. A lesson to be learned here is not to get too excited with the defendant's past conduct and try to focus on the current conduct. The jury will usually get the point by a brief reference to the similar fact evidence.

The opinion cites the following cases for the same proposition: Travers v. State, 578 So.2d 793 (Fla. 1st DCA), (evidence of appellant's collateral offenses against the victim's older sister clearly became a feature of the trial, both with respect to the quantum of evidence presented and the arguments, including an opening statement of the prosecutor telling the jury that the evidence will show that the case deals with two young children, and constituted error; but this excessive use of the "other crime" evidence was held not to be fundamental error where excessive presentation of that evidence was attributable for the most part to trial tactics and efforts by defense counsel); Thomas v. State, 599 So.2d 158 (Fla. 1st DCA 1991) (where evidence of appellant's sexual battery of another child 12 years previously was a significant part of the state's case against appellant and was inadmissible as similar fact evidence, the error in admitting that evidence could not be considered harmless); State v. Lee, 531 So.2d 133, 137-38 (Fla.1988) (defendant was entitled to a new trial, even though there was sufficient properly admitted evidence to support a jury verdict of guilty, where improper collateral crime evidence was given undue emphasis by the state, in opening and closing argument, and was made the focal point of the trial).

Thomas v. State, 599 So.2d 158 (Fla. 1st DCA 1992):

In prosecution for sexual battery of child, admission of evidence of defendant's conviction 12 years earlier for statutory rape of 13 year old female was reversible error; evidence was not admissible to show opportunity as defendant admitted he was present at time and place alleged, evidence did not show plan or scheme of unique criminal conduct and only reasonable inference to be drawn from other crime evidence was defendant's propensity to commit offense, which is improper purpose.

Discussion: This case stands for the proposition that the ruling in Heuring is not as broad as you may have thought. Even though the suspect was the father of the victim's step-sister in the pending case and the uncle of the victim in the Williams Rule case, the court

felt that the relationships were not close enough to apply the Heuring rationale. This was in spite of the fact that the defendant drove both victims to isolated places while they trustingly accompanied him. He had sex with one of them on the ground outside the car and one in the front seat of the car. The court stressed that there was no blood relationship in either and that the defendant did not live in the same house with either. The court ruled that the evidence did not prove a disputed material fact.

Flanagan v. State, 586 So.2d 1085 (Fla. 1st DCA 1991):

Evidence of incident of sexual abuse committed by defendant on then 11 year old girl was relevant to prove motive or intent, a material fact in issue in defendant's trial for sexual battery of his mentally retarded nine year old daughter and as similar fact evidence showing unique characteristic or combination of characteristics.

Discussion: The Williams Rule evidence is only a minor issue in this case. Other issues discussed at length are: 1) admission of physician's testimony as to identity of child's sexual abuser, 2) presence of video tape containing child's testimony in jury room during deliberations, and 3) limited expert testimony regarding general characteristics of child sex abuse offenders and home environments in which child sexual abuse frequently occurs. The court ruled favorable for the State on all issues.

Maddry v. State, 585 So.2d 359 (Fla. 1st DCA 1991):

Defense counsel who argued in trial court against admission of evidence that defendant engaged in sexual activity with 17 year old illegitimate daughter on ground it had not been shown that defendant was biological father of alleged daughter or that conduct was against the law was precluded on appeal from arguing that alleged activity was not relevant to any material issue and not similar to defendant's alleged sexual activity with 13 year old daughter or corroborative testimony of younger daughter.

Discussion: This case is basically for appellate rights of defendant, but it goes to show that it is important to know the law.

Wilkerson v. State, 583 So.2d 428 (Fla. 1st DCA 1991):

Testimony of victim's sibling about prior incident in which she awoke to find defendant unfastening her pajama bottoms was admissible similar fact evidence in prosecution for lewd and lascivious acts on a child under age 16 based on incident in which defendant allegedly awakened his daughter by rubbing his hand on her private parts.

Travers v. State, 578 So.2d 793 (Fla. 1st DCA 1991):

Other bad acts or Williams evidence is admissible to show pattern of criminality in child sexual abuse cases.

Discussion: Although the court gave a detailed account of the facts of the case at the beginning of the opinion, it does not incorporate them very well into its legal decision. The decision contains a lengthy discussion on whether the evidence was the feature of the child. The case also points out that the list in 90.404(2)(a) is not exhaustive, but only illustrative.

Grant v. State, 577 So.2d 625 (Fla. 1st DCA 1991):

There was sufficient similarity between charged offense and offense offered in rebuttal to permit its introduction to corroborate child victim's testimony; both incidents involved sexual batteries on children, consisting of defendant's oral contact with the sexual organs of a young step-grandchild in his workshop, even though the victims were not of the same sex and the batteries occurred ten years apart.

In prosecution of defendant for sexual battery on his step-grandchild, defendant was properly prevented from inquiring of his natural grandson as to whether he had ever been molested by defendant.

Sampson v. State, 541 So.2d 733 (Fla. 1st DCA 1989):

Evidence of defendant's prior similar acts with stepdaughter, one victim, was relevant to intent, motive, and absence of mistake and was admissible in prosecution for sexual battery upon child under age of 12 and lewd and lascivious assault upon child under age of 16; defendant explained presence in bedroom with stepdaughter and other victim by describing innocent intent and motive and mistaken assumption by his wife.

Smith v. State: 538 So.2d 66 (Fla. 1st DCA 1989):

Victim's testimony proving prior sexual acts by defendant upon victim, his adopted daughter, was admissible in prosecution for sexual battery upon a child and lewd, lascivious, or indecent acts on a child to show a pattern of conduct.

Discussion: This case also addresses the issues of probative value versus prejudice and prior consistent statements.

Calloway v. State, 520 So.2d 665 (Fla. 1st DCA 1988):

Evidence of sexual battery defendant's abuse of two other girls who were roughly the same age as the victim was admissible where victim was the defendant's stepdaughter, there was little corroborative evidence, and credibility of victim was focal issue in the case. Rigidity with which similarity requirement is applied in cases wherein collateral crimes are introduced to prove facts such as identity of perpetrator was not necessary in case where evidence was relevant only to corroborate victim's testimony.

Abiles v. State, 506 So.2d 1150 (Fla. 1st DCA 1987):

> Testimony by defendant's stepdaughter that, 12 years previously, when stepdaughter was 11 years old, defendant had pulled down stepdaughter's pants and told her that he wanted to see if she was still a virgin and that defendant had, on another occasion, asked her to remove her clothes was irrelevant, in prosecution for sexual battery of defendant's niece, where no evidence was presented that defendant had ever fondled or engaged in sex acts with stepdaughter similar to acts defendant allegedly engaged in with niece.

Coleman v. State, 484 So.2d 624 (Fla. 1st DCA 1986):

> Evidence of collateral crimes was admissible, in prosecution for sexual battery of child, because such collateral crimes were sufficiently similar to crime charged and were relevant to the case at hand.
>
> Discussion: The defendant was charged with penetrating a nine year old child's mouth with his penis. The Williams rule evidence included sexual acts against the defendant's two step daughters and his son. The three other children testified that the defendant ordered them to perform oral sex on him. Also of interest in this case is the court's ruling that the sexual battery statute "is not intended to be read from the perspective of either the accused or the victim, but is intended to be read from the standpoint of either one performing a sexual act upon the other." This ruling was in response to the defendant's argument that the charged acts did not constitute sexual battery because the child's sexual organ was not involved.

Gibbs v. State, 394 So.2d 231 (Fla. 1st DCA 1981):

> Existence of defendant's lustful attitude towards his stepdaughter, proven by prior sexual assaults, made it more likely or probable that defendant possessed a similar state of mind toward his stepdaughter on date of alleged offense of lewd, lascivious or indecent assault or act upon or in the presence of a child, and such was relevancy beyond mere propensity.
>
> Discussion: The defendant was charged with a sexual offense upon his daughter on July 28, 1981. The child testified that the defendant had done the same thing on fifteen occasions going back to 1976 and that when she reported this, her mother got mad.

Cotita v. State, 381 So.2d 1146 (Fla. 1st DCA 1980):

> In prosecution for committing a lewd or lascivious act on his five year old daughter, evidence of prior illicit sex acts with victim and other neighborhood children was relevant to defendant's alibi defense and to establish a pattern of criminality.

Knox v. State, 361 So.2d 799 (Fla. 1st DCA 1978):

In prosecution for handling, fondling, or making an assault upon defendant's stepdaughter, a child under age of 14 years, in a lewd, lascivious and indecent manner, admission of testimony regarding incident which allegedly occurred on night after offense for which defendant was being tried and admission of defendant's statement about his ongoing relations with his stepdaughter violated Williams rule and constituted reversible error, since evidence was not relevant to prove defendant's intent, motive, absence of mistake, modus operandi, or any other element of crime charged and since its only relevance was to show defendants propensity to commit the crime.

Discussion: This case had two unique problems. First, the court ruled that the Williams Rule evidence was the "feature of the trial." Secondly, the State supplied a statement of particulars which ruled out the second incident. Third, this case was decided prior to Heuring. It should be noted that the Cotita decision overruled this case to the extent that it is inconsistent with that decision.

Owens v. State, 361 So.2d 224 (Fla. 1st DCA 1978):

Trial court in prosecution for lewd and lascivious fondling of child did not abuse its discretion in admitting defendant's stepdaughter's testimony about separate, similar incident of fondling which occurred six days before offense charged and in allowing defendant's wife, stepdaughter's natural mother, to give corroborating testimony where evidence of prior incident and conversation between wife an stepdaughter about prior incident on night of charged offense was relevant to show reason for confrontation between defendant and wife producing his furious conduct including charged fondling which was in part retribution against stepdaughter and where it would have been impossible to fully reveal events precipitating charged offense without reference to conversation between wife and stepdaughter.

Banks v. State, 298 So.2d 543 (Fla. 1st DCA 1974):

In prosecution for fondling male under age of 14 years in lewd, lascivious and indecent manner, eliciting of testimony, which was to effect that accused had enticed 14 year old boy into permitting accused to commit homosexual acts and which was used for singular purpose of proving bad character of accused and his propensity to commit homosexual act was reversible error.

Discussion: The first paragraph of this opinion reads "Once again we have before us a record where the state, in the name of 'Williams', went for the over-kill." This can serve as a message not to overuse Williams Rule testimony. The case at bar presented a situation where the prosecutor had a strong case, but clearly brought in the evidence to show bad character.

2nd DCA:

Fesh v. State, 2D19-4087, 2021 WL 4447044, at *1 (Fla. 2d DCA Sept. 29, 2021)

> Defendant was charged with various sexual acts committed upon his stepdaughter. The state introduced testimony from the defendant's natural daughter that she once walked in on her father sexually abusing the victim and the victim cried out for her to help. The natural daughter said this incident happened four years before the dates charged in the information. Although the state filed a Williams Rule on based on other facts, the described incident was not included. On appeal, the state argued that the witness must have been mistaken on the issue of time and that the incident she saw was actually direct evidence of the crimes charged in the information. The state also argued it was inextricably intertwined evidence. The appellate court rejected the state's arguments and reversed the case because the state did not follow the Williams Rule procedures for that specific act.

Baez-Ortiz v. State, 2020 WL 3816108, (Fla.App. 2 Dist., 2020)

> The defendant was convicted of molesting a kindergarten student at the school he worked as a custodian. She said he rubbed her leg up towards her thigh and under her skirt. The state offered Williams Rule testimony concerning other inappropriate behavior at the school. The school principal testified that the defendant had a habit of giving kids hugs and eating at their tables during lunch. The principal recently instructed him to stop this behavior. The appellate court ruled that the Williams Rule evidence was not sufficiently similar to be admissible and was not inextricably intertwined.

Cooper v. State, 35 Fla. L. Weekly D2618 (Fla. 2d DCA 2010):

> No reasonable possibility existed that inadmissible evidence of uncharged sexual conduct between defendant and the victim contributed to the guilty verdict on two counts of lewd molestation and four counts of sexual battery on a person in familial custody, and thus trial court's erroneous admission of the evidence was harmless; admissible evidence of defendant's guilt, including victim's testimony that defendant had engaged in at least one act of each type charged and defendant's taped statement admitting to such acts, was extremely strong, and the inadmissible evidence was not made a theme of any part of State's case.

Kulling v. State, 27 Fla. L. Weekly D2012 (Fla. 2d DCA 2002):

Evidence that defendant had twice before masturbated outside in front of adult women in his neighborhood improperly admitted in case involving charge that defendant masturbated in presence of child where prior acts did not contain characteristics that were so unusual as to point to defendant as perpetrator of charged offense or to constitute ``fingerprint'' evidence.

Similar crime evidence was not admissible simply because it involves same type of offense or was committed in same locale.

Morman v. State, 27 Fla. L. Weekly D433 (Fla. 2d DCA 2002):

Degree of consanguinity between victim and defendant, a distant cousin, was too remote to be of any moment, defendant was not exercising custodial authority over victim, and record evidence did not demonstrate a recognizable bond of trust between the two, who had just met for the first time earlier in the week preceding incidents at issue. Relaxed standard for admissibility of similar fact evidence did not apply.

The similar fact evidence was admissible even without the relaxed standard of admissibility

Farrill v. State, 759 So.2d 696 (Fla. 2d DCA 2000):

Error to admit evidence of collateral sexual battery where charged offense was committed in familial or custodial setting but collateral offense was not, and where charges in collateral offenses were not strikingly similar, and did not possess unique characteristics to distinguish them from other sexual batteries on children.

Discussion: The court notes that when determining whether the charges in collateral offenses are strikingly similar, it is appropriate to compare and contrast the victims, the alleged acts of abuse, the events, and factors affecting reliability-in that order-to determine if the similarity standards have been met. The victim in the charged case was sixteen when she testified about acts that occurred eight to ten years earlier. The victim described how on multiple occasions the suspect would come into her room in the middle of the night and remove her clothes and lick her vagina. On some of these occasions he removed his own clothes. The suspect was determined to be in familial or custodial authority with this victim because he is a close family friend and would frequently supervise and baby-sit the victim. The collateral victim was seventeen when she testified about an incident that occurred when she was nine. This suspect was not in a position of familial or custodial authority to this victim. The victim said that she went over to the Suspect's house and heard the term virgin being used, and when she said she did not know what a virgin was, the suspect took her to a convenience store and bought her an adult magazine and showed her the pictures therein. When the victim asked the suspect why the women in the picture had hair on their vagina and she did not, the suspect had her take her clothes off and then spread her legs and licked her vagina. The appellate

court noted that the only significant common factor in this case was the fact that both victims were in the same age range at the time of the offense and both offense occurred in approximately the same period of time. All the other factors in the case were more different than more similar.

Palaczolo v. State, 754 So.2d 731 (Fla. 2d DCA 2000):

Where defense raised theory that any sexual battery against victim was committed by victim's father and that children mistakenly identified defendant as assailant due to psychological transference, court erred in refusing to admit evidence that father was suspected sex offender.

Court erroneously excluded reverse Williams Rule evidence on basis that it was insufficiently similar to defendant's alleged conduct. Relevant question was not whether father's conduct was similar to what State alleged defendant did in non-familial contacts, but, rather, whether father's conduct was similar to possible crime occurring while children were at father's home.

Although test to determine threshold issue of relevancy to Williams Rule evidence and reverse Williams Rule evidence is essentially the same, trial court has less discretion in deciding whether to exclude defendant's reverse Williams Rule evidence than in deciding whether to admit State's Williams Rule evidence.

Discussion: The issue in this case is whether the trial court erred in excluding reverse Williams Rule evidence. Two years prior to the commission of the charged offense, the natural father of the victim digitally penetrated the victim's twelve year old baby-sitter while she was lying on a couch. He then made her touch his penis. The court ruled that there were insufficient similarities between what happened to the baby-sitter and what the accused was charged with doing in this case. The appellate court ruled, however, that the correct analysis would have compared the incident with the babysitter with the conduct the defense is alleging the natural father may have done with this victim.

Hutchens v. State, 730 So.2d 825 (Fla. 2d DCA 1999):

No error in admitting evidence that defendant continued sexual conduct after victim's twelfth birthday and DNA evidence indicating that defendant had fathered child that victim gave birth to when she was thirteen. Collateral evidence was sufficiently similar and was admissible to corroborate victim's testimony.

Corpus v. State, 718 So.2d 1266 (Fla. 2d DCA 1998):

Error to admit evidence of similar acts where only similarity between charged offense and collateral offense was that both offenses involved sexual misconduct with male children.

Discussion: The main case involved a 10-year-old boy who slept at a neighbor's home when he awoke to the suspect fondling him. The Williams rule case involved a 10-year-old boy who was befriended by the suspect, taken to an isolated place and fondled by the suspect.

Sullivan v. State, 713 So.2d 1023 (Fla. 2d DCA 1998):

Error to admit similar fact evidence where circumstances of similar fact evidence were not uniquely characteristic of the facts of the charged criminal conduct. Incidents were dissimilar in location of conduct, use of pornographic films in one circumstance but not in the other, masturbation by youth in one incident but not in the other, and mutual contemporaneous masturbation in one incident but not in the other.

Discussion: The 12-year-old victim met the suspect through church activities. While the victim was in the church bathroom urinal, the suspect approached the urinal next to him and masturbated in his presence. The child walked away without any physical contact. The similar fact witness was a 15-year-old boy who also befriended the suspect through church activities. The suspect brought the 15-year-old boy to his apartment where he played pornographic films, offered him alcoholic beverages, and masturbated "simultaneously and then, by himself and vice versa." The court noted that they could not apply the relaxed standard which applies to situations in a familial or custodial authority because that type of relationship did not exist. The court also noted that the similar fact evidence "must be *not only strikingly similar*, but must also possess some *unique characteristic or combination of characteristics which set it apart from other offenses*."

Gutierrez v. State, 705 So.2d 660 (Fla. 2d DCA 1998):

Trial court erred in restricting defendant's cross-examination of *Williams* rule witness at mid-trial admissibility hearing in that the trial court is obligated to make a complete and careful review of these prior circumstances in order to make an informed determination of whether the collateral crime is sufficiently similar to the charged offense to be admissible.

When the State seeks to introduce Williams rule or collateral crime evidence, the defendant should have the same right to question the alleged collateral victim about the circumstances surrounding the collateral crime as he would have in questioning the alleged victim in a crime for which he stands accused.

Collateral victim's testimony should not have been admitted where record reflects many more differences than similarities between two offenses, including that collateral crime took place in non-familial setting.

Discussion: The defendant was charged with charged with handling and fondling his 9 year old step-daughter by touching her on the vagina under her clothing as she lay sleeping on the floor of his mother's home. The collateral victim testified that ten years prior to the incident giving rise to the charges in this case, the defendant had touched her in her crotch area on the outside of her clothing. She was 13 years old at the time and the defendant was her 23 year old neighbor. These and other dissimilarities made the evidence inadmissible.

Thomas v. State, 660 So.2d 762 (Fla. 2d DCA 1995):

Error to admit testimony concerning collateral offense where allegations were not established by clear and convincing evidence and collateral offense shared no unique characteristics with charged offense.

Moore v. State, 659 So.2d 414 (Fla. 2d DCA 1995):

Evidence that defendant had on approximately eleven prior occasions engaged in conduct with his granddaughter involving digital penetration while granddaughter was at defendant's home was properly admitted in prosecution of defendant for single act of capital sexual battery by digital penetration of granddaughter's vagina. Evidence of defendant's sexual misconduct with his own daughters when they were children over thirty years prior to trial was improperly admitted in that there were insufficient additional similarities to satisfy test for admissibility.

Discussion: This case is the offspring of the recent Florida Supreme Court case Saffor v. State, 660 So.2d 668 (Fla. 1995). Although all similar fact evidence occurred within the familial setting, there were insufficient additional similarities to satisfy the tests for admissibility. The court in this case adopted methodical approach to weighing similarities. This method is somewhat more complex than the sentencing guidelines. Please read the original case to see how the court constructed a table to weigh the similarities. The method is too involved to thoroughly discuss in this summary. It will be interesting to see if the Florida Supreme Court has a chance to review this one!

Audano v. State, 641 So.2d 1356 (Fla. 2d DCA 1994):

Reversible error to permit state to introduce evidence of uncharged accusations against defendant which were made eight years earlier by twelve or thirteen year old neighbor and her girlfriend where those collateral accusations were not established by clear and convincing evidence.

Discussion: This case involves a 13 year old girl having voluntary sex with a 41 year old man. The state introduced evidence from two girls who had claimed to be molested eight years previously. No charges were ever filed on the old case and it appears that the girls were poor witnesses. The court also ruled that "The charged offenses here of penile and

digital penetration, oral vaginal stimulation and vaginal fondling are clearly dissimilar to the collateral offenses of peeking in a shower, ripping open an existing hole in a child's jeans or fondling while his wife read 'dirty' stories." The primary lesson from this case is that if you intend to use Williams Rule testimony, you had better be able to substantiate the collateral offenses offered.

State v. Jenkins, 624 So.2d 354 (Fla. 2d DCA 1993):

Similar fact evidence that defendant had been adjudicated guilty of handling and fondling victim a few years earlier was relevant to issue of victim's credibility and was admissible in prosecution for sexual battery related offenses involving female victim under 16 years of age where there were no eyewitnesses to incidents.

State v. Paille, 601 So.2d 1321 (Fla. 2d DCA 1992):

In prosecution for two counts of sexual battery upon person less than 12 years of age by person under 18 years of age, involving incidents of oral union with defendant's sex organ and vaginal union or penetration with his sex organ, victim's description of other incidents involving kissing and digital penetration apparently preceding charged offenses, was admissible similar acts evidence; that evidence was relevant to prove that defendant planned and intended to lure victim into sexual activity over time.

Error from admission of similar fact evidence in spite of state's failure to give notice of its intent to offer that evidence was harmless, absent actual prejudice or unfair surprise to defendant; defense counsel took victim's deposition ten months prior to trial at which she testified to similar notice of the incidents, and defense counsel also indicated at pretrial hearing that possibility existed that victim would testify to similar acts.

Discussion: This case apparently stands for the proposition that the kissing and fondling of a child that precedes the charged offenses is admissible as Williams Rule, but a notice is technically required to have them admitted. If no notice is filed a harmless error analysis will be used on appeal. If the defense knew of these acts through police reports or deposition, the error may be harmless in that no prejudice is shown.

McClain v. State, 516 So.2d 53 (Fla. 2d DCA 1987):

Inadmissible statement of alleged sexual battery victim, during direct examination and in presence of jury, that defendant had probably done same thing to his five year old stepdaughter, provided reasonable probability that statement affected jury, and thus warranted new trial, where evidence concerning crime was solely based on victims testimony, and jury's verdict was necessarily based upon their belief of victim's testimony, over defendant's.

Discussion: This case involves allegations that the defendant sexually battered his fourteen year old baby-sitter. The baby-sitter indicated on direct that she thought the defendant probably did the same thing to his own step-children. The court first noted that this could not even be reviewed under the Williams Rule standard because they were mere allegations with no proof. Secondly, the court noted that the harmless error doctrine could have been applied but for the lack of evidence in this particular case.

Potts v. State, 427 So.2d 822 (Fla. 2d DCA 1983):

In prosecution for lewd and lascivious assault on child, evidence of defendant's similar sexual acts with victim's sister and defendant's two younger sisters, two such acts occurring some 12 and 18 years previously, was admissible to establish pattern of conduct similar to conduct in crime for which he was charged, as defendants use of his custodial or familial authority to commit sexual impositions upon young girls had "level of uniqueness" sufficient to qualify as similar fact evidence.

Discussion: This pre-Heuring case discusses how and why the normal standards need to be relaxed in cases involving sexual abuse on children. The court stretches the more traditional Williams Rule standards to achieve the result that Heuring did by adding a new standard.

Hodge v. State, 419 So.2d 346 (Fla. 2d DCA 1982):

In prosecution for sexual battery of defendant's stepdaughter, testimony of defendant's natural daughter that defendant had committed sexual battery upon her was relevant on issue of lack of consent and was properly admitted.

Although occurring eight years previously in Ohio, defendant's use of his familial authority to forcibly commit sexual battery upon a second young female member of his family provided sufficient "identifiable points of similarity" and "level of uniqueness" as to qualify as similar fact evidence admissible in prosecution for sexual battery against stepdaughter.

Discussion: This is a somewhat confusing case and probably should not be used to establish your position. The court does not state the ages of the victims. It appears that they are young, but consent is evidently an issue in the case. If your case is charged with an offense where consent is no defense, this case will not help you. This is also a pre-Heuring decision and therefore, did not consider the "corroboration" issue.

Clingan v. State, 317 So.2d 863 (Fla. 2d DCA 1975):

Previous homosexual encounter between defendant and intoxicated adult merely showed bad character of defendant and his propensity to commit homosexual act and was so

dissimilar to charge that defendant approached twelve year old child, lured him to secluded area, suggested homosexual acts, and twice grabbed child's leg before he got away, that evidence of prior offense did not tend to prove motive, intent, absence of mistake, identity or common scheme or design, and thus admission of testimony concerning prior offense in prosecution for commission of lewd and lascivious act constituted reversible error.

3rd DCA:

Corner v. State, 29 Fla. L. Weekly D290 (Fla. 3rd DCA 2004):

Where defendant transported victim in his vehicle to a remote location where he locked the doors and raped the victim, defendant's actions in confining and transporting the victim were not merely inherent and incidental to the nature of the sexual battery, and constituted an independent basis for the kidnapping charge apart from the sexual battery.

Where defendant was charged with sexual battery of a minor girl, court did not err in admitting evidence of prior similar rapes of other minor girls. Collateral crime evidence was admissible to disprove the defense of consent and to show that defendant was engaged in a common scheme, plan, or preparation to take sexual license with minor girls.

Discussion: In each of the cases, the defendant lured the victim into his car under false pretenses and then sexually assaulted them. See the case for a good discussion as to the similarity and relevance of the facts.

Bierer v. State, 582 So.2d 1230 (Fla. 3d DCA 1991):

Defendant's exercise of parental type supervision of a neighborhood child on a daily basis at his home constituted care within a broad familial context such that evidence of sex offenses allegedly committed by defendant on neighborhood friend of his stepdaughters would have been admissible in separate trial for sex offenses committed on defendant's stepdaughters.

Euline v. State, 577 So.2d 598 (Fla. 3d DCA 1991):

Evidence that, a few weeks after defendant allegedly engaged in digital vaginal and anal penetration of a 12 year old friend of his daughter, he engaged in improper conduct by having the daughter rub her uncovered genital area against his back was not sufficiently similar to the first offense, with which defendant was charged to be admissible as other crimes evidence.

Montgomery v. State, 564 So.2d 604 (Fla. 3d DCA 1990):

In prosecution for sexual abuse of child under twelve years of age, evidence that defendant had sexually assaulted victim's sister was admissible to corroborate victim's testimony at trial, where defendant was stepfather of both victim and victim's sister, and sexual assaults against both children occurred within familial context.

Lazarowicz v. State, 561 So.2d 392 (Fla. 3d DCA 1990):

In prosecution for sexual battery of a child by a person in a position of familial authority, victim's testimony as to prior similar sexual acts committed against her by her father was admissible to show both existence of particular relationship between the two and the fact that crime charged was not an isolated incident.

In prosecution for sexual battery of a child by a child by a person in a position of familial authority, testimony as to uncharged acts of physical violence by defendant upon victim and her sisters was relevant to prove defendant's familial authority over victim and to explain her behavior during entire time period. The acts were relevant to put the entire relationship between the victim and her father into perspective and to explain why she did not report her father's activities to anyone.

Snowden v. State, 537 So.2d 1383 (Fla. 3rd DCA 1989):

In prosecution for sexual battery of a four year old girl and a six month old boy, admission of evidence which tended to show that defendant had also molested another five year old boy and another six year old girl did not deny defendant fair trial. The jury was appropriately and repeatedly instructed on proper use of evidence, similar fact evidence was used by State simply to show identity of defendant and to rebut defense contention that four year old victim was lying, substantial portion of similar fact evidence was adduced by defendant himself, and similar fact evidence did not become feature of trial.

Discussion: This case involves a scenario seen frequently in this area. The defendant was the husband of the victims baby-sitter. While the wife was out of the house, the defendant would do his thing. This case contains excellent language on the issue of whether the collateral evidence is the feature of the trial. The case is also a good example of how to salvage a case where the victim falls apart at trial.

Pieczynski v. State, 516 So.2d 1048 (Fla. 3rd DCA 1987):

Defendant's statement, made when a friend found him sexually molesting the friend's three year old son, that defendant had the same problem with his own daughter, was not admissible in prosecution of defendant for capital sexual battery upon a minor less than 12 years of age. The State offered no corroborating evidence that defendant had ever sexually abused his daughter, and State failed to prove that such a crime, if committed, would be relevant to question of motive, opportunity, identity, knowledge, intent or

common plan, so statement regarding daughter should have been excluded as irrelevant. However, the defendant's statement that he was sorry and could not help himself, was admissible.

Maisto v. State, 427 So.2d 1120 (Fla. 3d DCA 1983):

Collateral act evidence demonstrating similarities between charged sex crime and collateral act, including facts that minor involved in collateral act was, like victim in charged crime, a girl under age of 13, that both girls had identified perpetrator as a white middle aged male and had later identified him by photographs, both were asked to help located black poodle, both were paid to help in search, both were accosted in mall of same shopping center, charged offense and collateral act occurred within period of less than two months, and both girls were asked to urinate by perpetrator, was admissible in prosecution for charged crime as demonstrating sufficiently unique modus operandi.

Discussion: The court put a great deal of emphasis on the fact that each girl was requested to urinate. This was an indication to the court of a "ritual." It appears that when the defendant does an act that is ritualistic, the courts are likely to let the evidence be admitted.

Sias v. State, 416 So.2d 1213 (Fla. 3d DCA 1982):

Although fact that homosexual battery on 14 year old complainant and homosexual attack on 11 year old five days previously occurred in isolated areas of a park and involved similar act was insufficient to warrant admission of evidence of the prior attack on identification issue, evidence of the prior attack was admissible where on each occasion perpetrator was accompanied by the same individual and put a piece of clothing over victim's head and removed it only after completion of the sex act as it appeared that placing clothing over victim's head was done less to conceal identity than as a ritual connected to the acts.

Discussion: This case also represents other valuable points of law. 1) State is not held responsible for making Williams Rule feature of trial when it is defense counsel who belabors the evidence through cross examination. 2) Police officer's testimony that defendant had told officer that he was a homosexual was not relevant on the ground that only one who was a homosexual would commit homosexual battery. 3) Even though irrelevant evidence of defendant's homosexual preference was admitted, it was harmless error when defendant's alibi witness testified he had a homosexual relationship with defendant.

4th DCA:

Tripoli v. State, --- So.3d ----, 2010 WL 5346445 (Fla.App. 4 Dist.)

Eight year old girl alleged that her school reading tutor put his hand down her pants and digitally penetrated her. State called another teacher that testified that defendant would inappropriately sit close to other students during tutor sessions and rub their backs and legs with his hand.

In reversing the conviction, the court held "We find that, beyond its tendency to show that Tripoli had a propensity to molest children or that it was in his character to do so, Gooch's testimony was not probative of Tripoli's guilt or innocence of the charges of sexual battery or lewd and lascivious conduct against K.H."

Strohm v. State, 33 Fla. L. Weekly D1645 (Fla. 4th DCA 2008):

Defendant's prior conviction for rape was dissimilar and remote in time from the charged offense of capital sexual battery against his eight-year-old daughter and, thus, should not have been admitted into evidence as collateral crime evidence at his trial on the capital sexual battery charge; rape occurred 17 years before the alleged battery, rape involved a 12-year-old victim who did not know defendant, and rape involved a one-time vaginal penetration of the victim, as opposed to another form of sexual abuse over a several-month period, as was alleged in sexual battery case.

Macias v. State, 32 Fla. L. Weekly D1528 (Fla. 4th DCA 2007):

Charged and collateral offenses were strikingly similar and shared some unique characteristics, as element for admission of collateral offense as *Williams* other-act evidence, in prosecution for sexual battery by a person of control or authority; victim of charged offense and alleged victim of collateral offense were participants in county adult drug court program for which defendant was program supervisor, victims were close in age and appearance, and defendant had similar conversations with victims, telling them that if they "took care of him" or did "what he needed [them] to do," he would help them in drug court.

Sutherland v. State, 32 Fla. L. Weekly D42 (Fla. 4th DCA 2006):

Photographs of defendant having sexual relations with his former step-daughter taken when step-daughter was at least 19 years old, with testimony by step-daughter that the photographs depicted the same type of sex that happened between defendant and step-daughter when she was under 12, and defendant's admission that he taught step-daughter everything she knew about sex, were admissible as similar acts evidence in trial for sexual battery on a child under 12 by a perpetrator 18 or older, where focus of step-daughter's testimony related to acts occurring before she was 12.

Sutherland v. State, 28 Fla. L. Weekly D1387 (Fla. 4th DCA 2003):

New trial required on charges that defendant committed sexual battery on his stepdaughter when she was under age twelve where state presented extensive evidence regarding sexual relations between defendant and victim after victim passed age 12, most of which occurred after victim reached age of majority and most of which was not sufficiently similar to testimony of victim as to what happened while she was under twelve, and this evidence became feature of trial.

Discussion: The defendant was charged with sexual battery on a child less than 12 years of age for sexual acts he committed many years earlier. The victim was an adult at the time of the trial. The State introduced evidence of the sexual affair after the victim's twelfth birthday and into adulthood. Numerous witnesses were called by the State to corroborate the fact that she was still having sex with him in her late teens and early adulthood. The court ruled that the later sex acts were generally relevant, but the State simply put too much emphasis on them and they became the feature of the trial.

Valderrama v. State, 27 Fla. L. Weekly D943 (Fla. 4th DCA 2002):

Inadvertent testimony from child victim referring to additional, uncharged, and previously undisclosed acts of sexual intercourse not basis for mistrial under circumstances.

Gutherez v. State, 27 Fla. L. Weekly D258 (Fla. 4th DCA 2002)

Trial court's finding that sexual battery of five-year-old who lived with her mother in the same home as defendant's girlfriend was strikingly similar to prior offenses committed against girlfriend's daughter was supported by record.

Pattern of sexual abuse of victim and of girlfriend's daughter shared several unique characteristics, in that both victims were girls of approximately the same age, incidents occurred in the home when mothers were not present, both girls were subjected to anal intercourse, incidents took place in or around a home bedroom, defendant lived in home with victims and seized opportunity to commit crimes when he was left alone to supervise them, and defendant used his position of authority to order children to assist him in committing the crimes.

Discussion: Because the court ruled that the incidents were strikingly similar, it did not address the issue of whether the relationship of the offender to the child was "familial."

Cadet v. State, 27 Fla. L. Weekly D357 (Fla. 4th DCA 2002):

No abuse of discretion in allowing victim's sister to testify that defendant had made lewd sexual advances toward her.

Charged offense and collateral offense were sufficiently similar in that both victims were young and vulnerable daughters of defendant's close friend; defendant's trusted, nearly familial relationship with victims' father provided him with opportunity to gain access to, and time alone with, victims; and on relatively rare instances when defendant found himself alone with the girls, defendant made lewd sexual advances and told them not to tell, using candy and gifts as tools of bribery.

Discussion: It important to note that the court ruled that the evidence is inadmissible even if the relationship was not familial.

Pastor v. State, 26 Fla. L. Weekly D2045 (Fla. 4th DCA 2001):

Trial court abused its discretion in admitting evidence of abuse of victim's brother as similar fact evidence.

Where victim and brother were not same age or gender and duration, time, and location of abuse differed, there were not enough similarities between incidents for collateral crime evidence to be admissible.

Comments defendant made to each child not sufficient to overcome differences.

Error not harmless where case depended on credibility of victim.

Discussion: The 27 year old victim testified that her father began molesting her when she was five years old. The defendant would give her a bath and say he had to check to make sure "everything was growing okay." When she was about 10 years old, the defendant touched her breasts and put his fingers insider her vagina, while she pretended to be asleep. He also began to use his tongue and mouth to lick her vagina. The victim's brother, who was twenty four years old at the time of trial, testified that on one occasion when he was eleven years old, during a camping trip, he recalled the defendant touched and licked his genitalia. He was in bed in the tent and the defendant came in, touched his penis and told him he was "checking him out." The court ruled that there were simply insufficient similarities to admit the testimony.

It should be noted that this case has limited relevance in light of the July 1, 2001 enactment of the new law regarding the admissibility of Williams rule evidence in child molestation cases.

Smith v. State, 25 Fla. L. Weekly D2660 (Fla. 4th DCA 2000):

Collateral bad acts involving sexual misconduct with defendant's natural daughters several years prior to charged offense were not sufficiently similar to be admissible, notwithstanding that both prior offenses and instant offense arose in familial setting.

Incident at issue arose in familial setting where defendant acted as de facto grandfather to victim.

Discussion: Grandmother's boyfriend frequently helped baby-sit the 8-year-old victim. He served as a grandfather figure to the victim. The victim testified that when the grandmother was away from the house, the defendant would put his hand underneath her pants and rub her vagina while the two were in his bedroom. This happened at least ten times. The state offered evidence that the defendant molested his own daughters many years earlier. One daughter testified that when she was six, the defendant played strip poker with her and then rubbed her vagina with his penis. On another occasion, when she was fifteen, her father watched her and a friend taking a shower and suggested they touch each other. Later that day, she awoke to find her father on top of her simulating intercourse. The defendant's other daughter testified that when she was in the second grade, the defendant fondled her at night in her bedroom and they had engaged in mutual fondling which progressed to sexual intercourse.

Abbate v. State, 745 So.2d 409 (Fla. 4th DCA 1999):

Error to admit evidence of other crimes to corroborate credibility of complaining witness where there were no familial contacts present in the case.

Defendant erroneously convicted of violation of subsection 800.04 relating to simulated sexual intercourse where Information did not charge violation of that subsection. The defendant was convicted of a crime which was not charged, resulting in fundamental error.

Thompson v. State, 743 So.2d 607 (Fla. 4th DCA 1999):

Defendant's prior sexual abuse of his stepdaughter while she was between the ages of six and eleven was sufficiently similar to charged offense, which involved defendant's abuse of his young daughter, to be admissible.

In addition to familial setting, defendant's approach is similar, the abuse occurred in victims' homes, and victims were told that their mother would hate them if they told her about the incidents. The conduct began with kissing and fondling and escalated to oral sex.

Fact that stepdaughter ultimately refused to acquiesce to oral sex and reported the abuse, thus cutting off defendant's offer to escalate the abuse, does not render collateral evidence in evidence inadmissible.

Shipman v. State, 668 So.2d 313 (Fla. 4th DCA 1996):

Defendant's prior assault of twelve year old girl fourteen years earlier shared sufficient unique characteristics with instant crime to be admissible. In addition to custodial or familial context, similarities included the type of offenses committed; age and gender of victims; relationship of victims to defendant; fact that victims lived apart from their mothers for most of their lives before defendant began residing with their mother; defendant's preoccupation with victims' alleged interest in boys and punishing each of the victims for that interest; defendant's concern with victims' level of sexual experience; victims' awareness that defendant had guns in the house; and the presence of a gun in both the charged and collateral offenses.

Discussion: This opinion contains a "Similarity Chart" created by the court. Please look at this chart so you can see how the Fourth DCA organizes facts in a *Williams* Rule analysis.

Roberts v. State, 662 So.2d 1308 (Fla. 4th DCA 1995):

Where defendant admitted that he pushed aside victim's swimsuit and fondled her with his hand as he was throwing victim into air in open air hotel swimming pool with numerous people present, but denied penetrating victim, evidence of collateral offense in which defendant allegedly fondled another child while child was in defendant's apartment was not relevant to prove material fact in issue and was improperly admitted.

Prior offense, which occurred in privacy of house with only defendant and child present, was not sufficiently similar to charged offense to be admissible.

Discussion: The primary point of this case is that similar fact evidence must be relevant to a disputed issue in the case. The defendant admitted that he fondled the girl, but denied that he penetrated her. Therefore, the only relevant issues was penetration. Since the similar fact case only involved fondling, it could not be used to assist in proving penetration in the current case.

Lewis v. State, 20 Fla. L. Weekly D541 (Fla. 4th DCA March 1, 1995):

Prior incident occurring several months earlier in a different state in which defendant allegedly asked a young girl for directions, mumbled "five dollars," and asked girl if she would like to make some money was not sufficiently similar to charged offense in which defendant allegedly masturbated while seated in car. Fact that charged offense and prior incident both involved girls of approximately the same age, a man asking for directions,

and a man asking girls if they wanted to make five dollars not so unique as to render evidence of prior incident admissible.

Discussion: This case was tried before Judge Speiser. The primary importance of this decision involves the issue of identity. The court makes it clear that when identity is the issue, they will require rigid compliance with the rule that " there must be identifiable points of similarity showing such a unique combination of characteristics that it leads to a conclusion that only the accused would have committed both crimes. The court also took great pains to point out the weaknesses in the identification testimony of the state's witnesses. As is usually the case, the weaker the facts of your case, the more likely you will be reversed on appeal.

Vandiver v. State, 578 So.2d 1145 (Fla. 4th DCA 1991):

Admission of similar fact evidence in prosecution for interference with custody and familial sexual battery constituted reversible error where defendant's son and daughter were eyewitnesses to sexual act corroborating testimony of victim.

Discussion: The court points out that the Heuring decision justifies relaxing the standard rules because "the victim is typically the sole eye witness and corroborative evidence is scant." There were two eye witnesses in this case. Be careful not to overuse Williams Rule evidence.

Woodfin v. State, 553 So.2d 1355 (Fla. 4th DCA 1989):

Testimony by defendant's natural daughter, who was 20 years old, that during very early childhood defendant had sexually abused her, was admissible in prosecution of defendant for sexual battery of five and ten years old alleged victims, as prior similar acts, despite defendant's contentions that various acts were dissimilar and uncharged acts were too remote time wise.

Espey v. State, 407 So.2d 300 (Fla. 4th DCA 1981):

In proceeding in which defendant was convicted of sexual battery on his seven year old granddaughter, evidence in regard to collateral crimes, which generally began with beguiling affection, fondling, viewing of pornographic materials and home nude photography followed by defendant's sexual batteries on his male and female children and grandchildren, which would begin when victims were about seven years of age and would cease after puberty and which concluded with threats of knifings and beatings if victims revealed the offenses, was relevant and admissible.

Jones v. State, 398 So.2d 987 (Fla. 4th DCA 1981):

Evidence of two similar sexual incidents involving defendant and other children was admissible in prosecution of defendant for involuntary sexual battery on a child under 11 years of age where there were obvious and marked similarities between the three sexual episodes, despite certain differences.

Discussion: The similarities listed by the court were "close similarity in victims, locale, sex act and a similar parental or custodial relationship between the accused and the victims." The actual facts were not thoroughly discussed.

5th DCA:

Burke v. State, 27 Fla. L. Weekly DD2613 (5th DCA 2002):

No error in admission of evidence of prior offense where facts of offenses were sufficiently similar, and difference in offenses was but a difference in opportunity.

Collateral offense evidence was admissible to rebut defendant's testimony and to show his intent, plan, scheme, absence of mistake, and modus operandi.

Although prior offense occurred twenty-two years prior to current offense, it was not rendered inadmissible by remoteness where victim and detective testified to facts in the prior case, and their memories were clear and cohesive.

No merit to claim that court erred in admitting videotaped interview between child victim and detective because it was cumulative of child's testimony at trial.

Discussion: The defendant was convicted for committing a lewd assault upon a child. The victim testified that when she came out of a park bathroom, the defendant called out to her and then grabbed her from behind and fondled her. She was able to get away and run. The defendant claimed that he was urinating between some dumpsters and when the child saw him, she freaked out and started screaming rape. The State was allowed to call a similar fact witness from a case where the defendant was convicted of similar conduct 22 years earlier. The appellate court noted the following points of similarity between the two offenses: (1) prior to committing both offenses, Burke had had family problems; (2) Burke had been drinking beer immediately prior to the time of both offenses; (3) at the time of the crimes, the child victims were approximately the same age; (4) both children were in a public place (a park and a baseball complex) when approached by Burke; (5) both were children alone; (6) both children were upset at having been separated from their families, and were looking for them; (7) Burke offered to help both children look for their families; (8) Burke attempted to get both children into secluded areas; and (9) Burke grabbed both children and put his hand over their mouth during the offenses. The court noted only one difference in the two cases; in the 1979 offense Burke unzipped his pants and touched and licked the victim's vagina. However in the instant case, Burke did no

more than grab the victim from behind and put his hand over her mouth, allegedly touching her genital area.

Newell v. State, 25 Fla. L. Weekly D2765 (Fla. 5th DCA 2000):

No error in permitting victim to testify that she saw defendant naked from waist down on occasion prior to charged assault when made relevant by defendant's defense.

Discussion: This issue was not addressed as Williams rule, but it logically falls into this section of the manual.

Foraker v. State, 731 So.2d 110 (Fla. 5th DCA 1999):

Evidence of defendant's behavior with victim friend of defendant's daughter and another friend of daughter was sufficiently similar to rise to higher standard necessary to admit evidence in nonfamilial setting, in prosecution for committing lewd act on child, even if, arguendo, friends were not strictly in legitimate custodial relationship with defendant; friends testified that defendant fondled them during overnight visits, that defendant took them to tourist attractions, and that defendant bought them gifts.

Fact that State filed "no information" on charge of lewd assault on friend of defendant's daughter was not admissible to show defendant's innocence, in prosecution for committing lewd act on child in connection with fondling of another friend of daughter.

State v. Griffen, 694 So.2d 122 (Fla. 5th DCA 1997):

Trial court properly excluded evidence of sexual batteries previously committed on one minor where acts were committed in familial relationship but there was little similarity between those acts and charged crime. Trial court erred in excluding evidence of sexual batteries previously committed on another minor where the acts were committed in familial relationship and where there were significant similarities between those acts and charged crime in that victims were barely teenagers, oral sex was involved, and defendant promised to teach victims sexually with the goal that they might be able to make money for themselves and defendant.

Familial relationship existed between defendant and child where child's mother permitted child to temporarily reside in defendant's household and implicitly granted parental-type authority to defendant.

Discussion: This is a fairly well-written case which is a good reference for this subject.

Kearney v. State, 689 So.2d 1310 (Fla. 5th DCA 1997):

Trial court improperly admitted collateral offense evidence where the collateral offense evidence differed in several ways from the charged offense. The collateral offense evidence was that defendant had consensual sexual relationship that included intercourse, and that girl was alert and aware when sexual activity took place. The charged offense was that defendant fondled alleged victim's vaginal area, without having intercourse, while she was asleep or pretending to be asleep. Evidence would be inadmissible, even in familial context.

Farrell v. State, 682 So.2d 204 (Fla. 5th DCA 1996):

In prosecution for lewd and lascivious assault upon child under 16, trial court erred in admitting testimony from the child that defendant said he had been in prison for molesting another child.

Although defendant's alleged statement to the child that he was previously imprisoned for fondling another child may have been relevant to explain why the child feared defendant and why he delayed reporting the fondling to his mother, the statement should not have been admitted because its probative value was outweighed by unfair prejudice.

Although the evidence may have been relevant to prove defendant's state of mind, probative value was outweighed by inflammatory nature of the evidence and unfair prejudice.

Prior conviction on similar charge was not admissible to rebut defendant's claim that touching of boy's genitals was inadvertent result of horseplay.

Discussion: The district court stated that instead of admitting the similar crime evidence, the court should have allowed the victim to testify only that the defendant stated he had been in prison, without mentioning the nature of the charge. This would have been equally effective in explaining the victim's fear of the defendant and his reluctance to report him.

This opinion cites several authorities for the proposition that evidence of other crimes is often so intimately intertwined in a crime that it cannot be separated out, but must be admitted to show the context of the crime.

Peterson v. State, 650 So.2d 223 (Fla. 5th DCA 1995):

Videotaped evidence was improperly used to show defendant's bad character and propensity to victimize young boys and should have been redacted before being shown to jury.

Discussion: The defendant exposed his penis to three boys. Their testimony was admitted by virtue of a videotaped interview with a counselor. During this videotape, the

boys talked about the defendant's sex life and other possible boys he molested. The lesson here is to carefully edit any videotapes shown to the jury.

O'Brien v. State, 633 So. 2d 96 (Fla. 5th DCA 1994):

In prosecution of defendant for alleged sexual battery of children arising from incidents at day care center, testimony of other alleged victims was not admissible as evidence of other crime, wrongs or acts; defendant offered alibi defense, and whether other children were molested during time they were left unattended with defendant was of little probative value as to issue of whether defendant had the opportunity.

Discussion: The 5th DCA makes it clear that they have no sympathy for the State or its victims in these situations. The defendant in this case was the brother of a girl who offered baby-sitting services for neighborhood children. He molested four different girls in a similar fashion. Although acknowledging that the facts were similar, the 5th DCA ruled that its probative value did not outweigh its unfair prejudice. The court goes so far as to make a seemingly sarcastic remark in reference to the Florida Supreme Court: "The supreme court in Heuring did announce a more liberal standard of admissibility (a greater willingness to risk a wrongful conviction) in cases involving sexual assaults allegedly committed in a familial context. Although the logic for this distinction is somewhat difficult to understand, the effect of Heuring is not." This case is likely to be cited frequently by the defense, but there are several ways to distinguish it for most of its likely uses.

Padgett v. State, 551 So.2d 1259 (Fla. 5th DCA 1989):

In prosecution of father for sexual abuse of minor daughter, testimony of stepson as to father's prior sexual assault on him was admissible to corroborate victim's testimony.

Testimony of minor daughter as to prior similar sexual acts committed against her by father was admissible in prosecution of father for sexual abuse of daughter to show both existence of particular relationship between two and fact that charged crime was not isolated incident.

Discussion: This case is helpful for situations in which a defendant has repeatedly sexually battered a victim and you have only filed a few counts. It allows you to get around a propensity argument and establish relevance. If a judge does not allow us to charge "on one or more occasions", we can charge isolated incidents and use this case to discuss the entire string of episodes. It should be noted, however that this case was certified to the Florida Supreme Court.

Anderson v. State, 549 So.2d 807 (Fla. 5th DCA 1989):

Testimony of defendant's sister that defendant had sexually abused her 18 years before trial was admissible in prosecution for sexual battery of defendant's step-daughter to corroborate victim's testimony.

Paquette v. State, 528 So.2d 995 (Fla. 5th DCA 1988):

Evidence that defendant had previously exposed himself to other neighborhood children was inadmissible in prosecution for lewd assaults on defendant's daughters where there was no issue in case as to identity of defendant as perpetrator, not any admission by him that, while he did acts of which he was accused, he did them by accident or mistake or innocently good intention or purpose.

Stevens v. State, 521 So.2d 362 (Fla. 5th DCA 1988):

Case affirmed on the authority of Heuring v. State, 521 So.2d 362 (Fla. 5th DCA 1988).

Discussion: In the concurring opinion, the court discusses the boundaries of the Heuring decision. It is noted that the Supreme Court relaxed the strict standard of similarity required for admissibility under Williams when the offenses were committed within a familial context. The latter context supplies the uniqueness or "fingerprint" characteristic necessary for sufficient similarity under the Williams rule. In child molestation cases wherein there is no familial or custodial situation, prior instances of sexual abuse of children would still be inadmissible absent a unique similarity between crimes.

ADULT VICTIMS

Supreme Court:

Randall v. State, 760 So.2d 892 (Fla. 2000):

Where murder victims were two prostitutes who had been choked to death, court did not err in admitting testimony of defendant's former wife and defendant's girl friend that defendant had choked them during sexual activity. Such evidence was sufficiently similar and relevant to be admitted as evidence of defendant's identification as perpetrator of murders.

Discussion: This case might be helpful if you encounter a sexual battery case where the suspect gets sexual gratification from choking women during sex. The court felt that this type of behavior is rather unique and therefore might be admissible to prove identity. It should be noted that the court observed that if identity was not an issue, the evidence may not have been relevant.

Chandler v. State, 702 So.2d 186 (Fla. 1997):

No abuse of discretion in admitting testimony concerning defendant's rape of another woman several weeks prior to charged offenses. Prior rape and charged offenses were sufficiently similar in that all offenses involved chance encounters in public places with young female tourists to whom defendant offered assistance; almost immediate offers of cruises on defendant's boat; the use of the same blue and white boat for all crimes; a warm, non-threatening demeanor that convinced victims to accompany defendant on boat within twenty-four hours of meeting him; sexual motive; use or threatened use of duct tape; crimes occurring in large bodies of water under cover of darkness; murder committed or threatened; and commission of crimes within brief time frame. Trial court properly found evidence relevant to establish defendant's identity as victims' killer; to show defendant's plan, scheme, intent and motive to lure women tourists aboard boat for sunset cruise in order to commit violent act; and to establish opportunity.

Willaims v. State, 621 So.2d 413 (Fla. 1993):

Similar fact evidence concerning defendant's sexual assaults on women other than complainant was relevant in prosecution for sexual battery to rebut defendant's defense that complainant had consensual sex with him in exchange for drugs, and potential for undue prejudice was outweighed by probative value of evidence in showing common plan or scheme to seek out and isolate victims likely not to complain or to complain unsuccessfully because of circumstances surrounding assaults and because of victims' involvement with drugs.

Discussion: This case is also discussed in the 3d DCA opinion. This case was brought before the Supreme Court because it had an apparent conflict with Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981) and Helton v. State, 365 So.2d 1101 (Fla. 5th DCA 1979). Those cases ruled that consent was unique to each case and therefore, not admissible for Williams Rule evidence. The Supreme Court upheld those decisions, but ruled that consent is a proper issue under the appropriate circumstances. The Court notes that otherwise relevant evidence may be excluded under section 90.403 if its probative value is substantially outweighed by undue prejudice.

Hoeffert v. State, 617 So.2d 1046 (Fla. 1993):

Similar fact testimony of four of defendant's prior choking victims was admissible in his prosecution for causing victim's death by asphyxiation since such testimony was relevant to issue of motive and to counter defendant's contention that absence of visible trauma negated asphyxiation as cause of death; three of the victims testified that defendant choked them while raping them and that he derived sexual gratification from the choking, all of the victims testified that defendant initially grabbed them in some type of arm lock around the neck, and two of the victims passed out when this neck restraint was applied, yet neither suffered visible neck injuries as result.

Discussion: This case was prosecuted as a homicide. Sexual battery was not filed because by the time the body was found, it was too decomposed. The case is included here to assist with cases with similar fact patterns where the victims do not die.

Rivera v. State, 561 So.2d 536 (Fla. 1990):

Evidence of sexual assault of another victim was properly admitted in trial of defendant for first degree murder as similarities between two crimes established sufficiently unique pattern of criminal activity to justify admission of collateral crime evidence on disputed, material issue of identity; numerous similarities existed between crimes including age, race and stature of victims, and method of abduction.

Discussion: The similarities between the two offenses were very close. On the other hand, the court ruled that "Reverse Williams Rule" could be admissible for the defendant. The defendant, however must show a distinct similarity just like the state, and in this case it was not allowed.

Thompson v. State, 494 So.2d 203 (Fla. 1986):

Collateral crime evidence, which consisted of sexual battery and kidnapping, which was committed when defendant was having domestic difficulties, which occurred near church parking lot, and which did not involve bodily harm or beating, was not sufficiently similar to murder, which involved bad beating without evidence of sexual abuse, which occurred when defendant was having domestic difficulties, but which occurred near same parking lot, and, therefore, was inadmissible in guilt phase of murder prosecution.

Wright v. State, 473 So.2d 1277 (Fla. 1985):

Evidence that defendant had previously burglarized victim's house, and, in so doing, had utilized identical point of entry used on date of victim's murder was admissible in murder prosecution, since it was legally relevant to show identity and to show that defendant knew that point of entry was available.

Drake v. State, 400 So.2d 1217 (Fla. 1981):

Fact that defendant tied victims' hands behind back in previous rape incidents proved only propensity and bad character and therefore was not relevant in prosecution for murder.

Discussion: This is a murder case, but the Williams Rule evidence dealt with sexual battery cases. The state was trying to prove the identity of the murderer by showing his mode of operating.

Ruffin v. State, 397 So.2d 277 (Fla. 1981):

Evidence, in prosecution of defendant for murder in the first degree and sexual battery of victim, of other crimes committed by defendant collateral to those charged, including killing of deputy sheriff, beside whose body weapon which killed victim was discovered, and subsequent high speed chase of defendant and accomplice in victim's car, was relevant to the material issue of identity, in that it linked defendant to the victim's automobile, explained where the murder weapon was located, and how defendant was apprehended; therefore, testimony of such collateral crimes was properly admitted into evidence.

Alford v. State, 307 So.2d 433 (Fla. 1975):

In prosecution for rape and murder, testimony concerning defendant's unsuccessful attempt to commit homosexual act shortly before commission of act charged was admissible to establish state of mind and motive.

Discussion: The State argued that the defendant's unfulfilled desire to have sexual relations with another man led to the abduction of the victim and the sexual assault upon her. It should also be noted that the evidence was also admissible to rebut an alibi defense.

Roseman v. State, 293 So.2d 64 (Fla. 1974):

Admission of testimony in rape prosecution concerning items of jewelry taken in home where alleged rape occurred was not error where no material objection was made as to identification of such items and evidence laid foundation for expert testimony as to knowledge of right and wrong.

Dean v. State, 277 So.2d 13 (Fla. 1973):

In prosecution for rape, court properly admitted testimony of four previous victims of defendant where all four testified that, just as shown by testimony of victim in case at bar, defendant had gotten them into his car by trick, had started to approach them and, upon rejection, had pulled gun and fondled them before raping them.

Williams v. State, 247 So.2d 425 (Fla. 1971):

In prosecution for rape, where state sought to establish defendant's presence by drawing upon evidence connected with unrelated murder committed by defendant shortly after he left rape victim's home and such evidence and testimony properly established defendant's presence with pistol in the neighborhood at approximate time of rape linking him with descriptions given by rape victim and establishing a connection in time between his

fingerprints and palm print and his entry into victim's house, connecting the events at trial was proper.

Discussion: This rape case was also used in the murder trial as Williams Rule evidence. That case is cited as Williams v. State, 249 So.2d 743 (Fla. 2d DCA 1971). It was affirmed also.

Williams v. State, 110 So.2d 654 (Fla. 1959):

Relevant evidence will not be excluded merely because it relates to similar facts which point to the commission of a separate crime. The test of admissibility is relevancy and the test of inadmissibility is lack of relevancy.

If evidence relating to similar facts, which point to the commission of a separate crime, is found to be relevant for any purpose save that of showing bad character or propensity then it should be admitted.

Discussion: This is the Florida Supreme Court case that established the rule which was later codified in the Rules Evidence 90.404(2). This case involved a sexual battery in which the suspect claimed that he was in the back seat of the victim's car because he inadvertently believed it was his brother's car and he was just trying to sleep. The State offered evidence that six weeks prior to this incident, a young girl had found the defendant on the floor in the back of her car parked in the same parking area. When the defendant was arrested he stated to police that he had crawled into that car to take a nap under the mistaken belief that it was his brother's car. The court ruled that these facts were properly admitted to establish a plan, scheme or design to meet the defendant's anticipated defense of consent, to identify defendant, and to demonstrate a plan or pattern followed by the defendant in committing the type of crime charged in the indictment. It should be noted that the court made its ruling based on the principles of the rule of admissibility as contrasted to the rule of exclusion. The court stresses the basic principle that all relevant evidence is presumed admissible.

1st DCA:

Jakubowski v. State, 2019 WL 7342226 (Fla.App. 1 Dist., 2019)

Sexual battery victim testified defendant came to her front door and inquired about furniture left on the street. She answered him and then went back into the house. When she turned around, he was standing inside the house. He forced her to the bedroom and sexually battered her. Williams Rule witness testified the defendant knocked on front door and said he was looking for someone. She went to tend to her child and when she turned around he was in her home. He fondled her, but then left the home. Court ruled the similar fact evidence was admissible as a common plan or scheme.

Moss v. State, 2015 WL 3986146 (Fla. Dist. Ct. App. July 1, 2015)

Collateral crime evidence, consisting of a simple battery against different victim that defendant stopped when victim pushed him away, was not similar enough to distinct crime against victim in prosecution for sexual battery and burglary of an occupied dwelling as to provide sufficient basis to show absence of mistake in any belief defendant may have held that victim consented to sexual intercourse, and thus was inadmissible; while simple battery was of sexual nature, it was substantially less severe than two sexual batteries detailed in victim's testimony, defendant acquiesced to simple battery victim's protest and left her apartment, but, after sexual battery victim protested, defendant threw her over his shoulder, carried her to bedroom, locked door, and sexually battered her.

Jones v. State, 754 So.2d 792 (Fla. 1st DCA 2000):

Testimony from witness who said that defendant kidnapped her the day after alleged rape and robbery and that the witness saw the rape victim's ATM card in defendant's possession did very little to establish that defendant had committed charged offenses, and was highly prejudicial to defendant.

Discussion: The appellate court noted that the questioned evidence slightly bolstered the state's proof of identify and it connected the appellant to the victim through the ATM card, but the state had no shortage of evidence that already established these two issues and the evidence of his bad character was highly prejudicial to the appellate.

Johnson v. State, 717 So.2d 1057 (Fla. 1st DCA 1998):

No error in admitting evidence of other similar crimes committed by defendant where such crimes shared multiple distinguishing characteristics with crime for which defendant was being tried.

Discussion: The court noted, "Each of the crimes took place within a period of 32 days. Each took place between 8:30 and noon. Each abduction involved the use of a small, dark, semi-automatic gun. In each case, Johnson approached a young woman who was unaccompanied in a public place, and in the same neighborhood of Jacksonville. To accomplish the rapes, he took each victim to the same apartment complex. In each case Johnson did nothing to hide his face prior to the act, but at the moment of the rape, made threats in order to prevent the victim from looking at him during the commission. In each case, where Johnson touched property of the victims, he covered his hands with clothing. Each case involved a threat of violence, and in each case Johnson initially stated that his intent was to rob the victims of money or property. The factors taken as a whole demonstrate a unique pattern of crime commission that were relevant for the jury's consideration on the question of identity."

Thompson v. State, 615 So.2d 737 (Fla. 1st DCA 1993):

Fact that perpetrator in both rape and subsequent bank robbery wore gloves did not constitute unusual or unique fact required in order to admit such prejudicial other crimes evidence in rape trial.

Discussion: The defendant had been convicted of robbing a bank while wearing gloves. The state argued that the robbery conviction was relevant to show that the defendant planned the rape.

Spivey v. State, 533 So.2d 306 (Fla. 1st DCA 1988):

Evidence of defendant's exposure of sexual organs to one victim and exposure of sexual organs and attempted sexual battery of another victim would be admissible other crimes evidence in any separate trial; offenses were committed in same part of city within two and one-half hours; and victims were both white females of approximately same age and were both alone. It is proper to charge them in single indictment and tried together.

Lee v. State, 508 So.2d 1300 (Fla. 1st DCA 1987):

Testimony concerning defendant's participation in bank robbery should not have been admitted in prosecution for kidnapping and sexual assault, notwithstanding that car taken by defendant in abducting victim was subsequently found in city in which bank robbery occurred and notwithstanding that gun was used in both abduction and sexual assault and subsequent bank robbery; there was no evidence connecting stolen car to bank robbery, and there was no evidence that gun used in two crimes was the same.

Helton v. State, 365 So.2d 1101 (Fla. 1st DCA 1979):

Issue of consent in a sexual battery prosecution is unique to individual, and lack of consent of one person is not proof of consent of another.

Discussion: The victim claimed she was abducted, taken to a wooded area, beaten and raped. She was able to escape by running naked onto the highway. At trial, another woman testified that she knew the defendant and he had asked her for a ride home from work. He directed her to a wooded area and then grabbed the keys out of the car and told her that he was going to rape her. They struggled and got into a fight. He was never able to overcome her resistance and she eventually flagged down a passing car to escape. He was convicted of simple battery on that case. This case was addressed by the Florida Supreme Court in Williams v. State, 621 So.2d 413 (Fla. 1993). The Supreme Court approved of the result in Helton, but ruled that consent can be the basis for Williams Rule evidence in the appropriate circumstances.

Mims v. State, 241 So.2d 715 (Fla. 1st DCA 1970):

> Testimony of witness that on same date of charged offense and approximately thirty minutes earlier, defendant got out of two-tone bronze automobile and attempted to open witness' locked door on driver's side of her vehicle and motioned with gun for her to get out but that she was frightened and sped away was admissible in prosecution for rape committed by defendant who, according to victim, drove bronze automobile with black top.
>
> Discussion: In the charged offense, the defendant approached the victim at a stop light and told her he was a deputy sheriff and that she had a tail light. He followed her home and when she got out of her car he forced her at gunpoint into his car and took her to a wooded area and raped her.

2nd DCA:

State v. Richman, 28 Fla. L. Weekly D2821 (Fla. 2d DCA 2003)

> Trial court erred in ruling that Williams rule evidence was inadmissible where doctor was charged with sexually abusing multiple patients under similar circumstances.
>
> Discussion: The court weighed the similarities and dissimilarities between the various victims and noted the following:
>
> > In the instant case, the pervasive material similarities between the circumstances and conduct giving rise to the instant charges and those described by collateral crime witnesses J.H., G.J., and I.L. are uncanny. The current and collateral crime victims were, of course, female patients of Dr. Richman. All were referred to him for the same or similar maladies or combinations of illnesses such as fibromyalgia, arthritis, lupus, and/or migraines. All were seeking treatment for joint pain, with the exception of victim D.B., who complained of cluster headaches. All were on either their first or second afternoon office visit at the same Lee County location. In each instance, Dr. Richman treated the victim in his examining room, without a nurse present. Each incident arose under the guise of examination and treatment, where Dr. Richman would at some point begin examining and otherwise touching a part of the victim's anatomy that was completely unrelated to her medical complaint. Thus, in each instance, the visit would begin normally and ultimately end in some form of sexual molestation. While the nature and degree of sexual abuse varied from victim to victim, any dissimilarities seemed to result from the level of incapacity of a victim to resist or the sheer aggressiveness of a victim in rejecting Dr. Richman.

Hebel v. State, 765 So.2d 143 (Fla. 2d DCA 2000):

Error to admit similar fact evidence that defendant had slapped the victim (his spouse) in the face with the back of his hand approximately a month before alleged sexual battery. Prior incident was not admissible to prove:

- defendant's state of mind because defendant's state of mind is not an issue in sexual battery case,
- identity of defendant where proffered defense was that no one assaulted victim with a flashlight,
- the context in which ultimate crime occurred where there was no pattern of continuous events.

Where victim testified that she bled vaginally for one or two weeks following incident, court erred in refusing to permit examination of medical records of physician who had examined victim after incident without articulating basis.

State v. Colley, 744 So.2d 1172 (Fla. 2d DCA 1999):

None of the reasons given by the State for introduction of Williams Rule evidence were disputed factual issues relevant to specific elements of the offenses for which the defendant was being tried, therefore, admission of the Williams Rule evidence in this indecent assault case was improper.

Even if the State's reasons for introducing the Williams Rule evidence were relevant to specific elements of the offenses with which the defendant was charged, the Williams Rule evidence did not bear a striking similarity to the facts of the charged offenses, nor did it share any characteristic with the charged offenses that set them apart from other offenses.

Discussion: Defendant was charged with Indecent Assault, showing a minor obscene material and contributing to the dependency of a minor. During the trial, the State offered testimony from five separate Williams Rule witnesses who stated that 15-20 years earlier the Suspect had done similar things to them. In short, the Suspect gave alcohol and cigarettes to middle school girls and ended up touching them in some fashion. The opinion gives significant details about the similarities and dissimilarities among all of the various victims. The court concluded that the presence of cigarettes and alcohol in glass decanters and the fact that all six girls were young teenagers were the only significant similarities. The case should be read carefully in order to weigh all of the similarities versus dissimilarities.

Arrington v. State, 700 So.2d 777 (Fla. 2d DCA 1997):

Error to permit state to call defendant's wife, after defense rested, to testify concerning defendant's attempts on six occasions to force wife to engage in unlubricated anal intercourse. Testimony constituted improper collateral impeachment used to contradict answers provided during state's cross-examination of defendant. Testimony was also introduced to perform function of William's rule testimony although wife's testimony involved sexual misconduct that was too dissimilar to allow its admission.

Gould v. State, 558 So.2d 481 (Fla. 2d DCA 1990):

Evidence that defendant had forced live-in girlfriend into another room, bound her, threatened her life, cut off her hair, and hit her was relevant in kidnapping prosecution to show specific intent when, 11 months later, defendant forced girlfriend into bathroom, threatened her, beat her, and committed sexual batteries, but evidence of prior incident was not admissible to show pattern of criminality. Although sexual battery did not occur in prior incident, both incidents involved binding of girlfriend, threats, cutting of her hair, and beatings while child was asleep in home; and in both cases defendant calmly went to sleep after the attack. Similar fact evidence relevant to prove material fact other than identity need not meet rigid similarity requirement applied when collateral crimes are used to prove identity.

Discussion: This case also stands for the following propositions: 1)bound victim who communicates unwillingness to sexual battery is not "physically helpless" within meaning of statute, and 2) movement of victim from bedroom to bathroom and confinement of her in bathroom supported kidnapping conviction. This case was reversed on other grounds in Gould v. State, 577 So.2d 302 (Fla. 1991).

Walker v. State, 544 So.2d 1075 (Fla. 2d DCA 1989):

In prosecution for sexual battery with slight force, trial court properly admitted statement made by defendant to victim during attack that he had recently been released from prison; statement was part of integral facts of case, and was also relevant to prove identity of perpetrator.

Robinson v. State, 522 So.2d 869 (Fla. 2d DCA 1987):

Evidence from another sexual assault was not admissible in prosecution for burglary and sexual battery; although crimes were committed within same year, within same geographical location, at same time of night, and on elderly victims, modus operandi differed significantly.

Discussion: The modus operandi was actually pretty similar. This case shows how similar the facts in this type of situation need to be. It should be noted that the state was trying to establish identity. This case was later vacated. see Shepards citations.

Wicker v. State, 445 So.2d 581 (Fla. 2d DCA 1984):

> Collateral crime evidence was properly admitted against defendant charged with sexual battery, where there were numerous similarities between offense charged, in which victim was raped in early morning hours and perpetrator covered victim's head and told her to count to 100 or she would be killed, and the collateral crimes rendering the collateral crime evidence unique, unusual and relevant to crime charged.

White v. State, 407 So.2d 247 (Fla. 2d DCA 1981):

> Similarities between rape cases, that assailant in both crimes admonished victims not to scream or make any noise, eyes of both victims were taped and then wrapped with material torn from sheet or curtain, both victims were tied up, both victims were raped, assailant spoke in strange voice to disguise his real voice and in each crime assailant told each victim about himself, although story varied on two occasions at issue, were similarities apt to appear in any rape cases and fell short of furnishing basis for inference that defendant was attacker in second rape incident; therefore, admission of alleged other crime was reversible error.
>
> Discussion: The court notes that where identity of a defendant is a material issue, evidence of collateral crime is not admissible unless there is more than mere general similarity between the two crimes. The victim in this case was 76, the Williams rule victim was 15. The second victim was not robbed and encountered the defendant under completely different circumstances.

Lane v. State, 324 So.2d 124 (Fla. 2d DCA 1975):

> Evidence of similar crime, which was admissible by virtue of fact that circumstances and manner of commission of offense were uniquely similar to crime charged, was not barred, under doctrine of collateral estoppel, but subsequent determination that defendant was not guilty of prior offense where, at time when similar crime evidence was introduced, issue whether defendant had actually committed prior offense had not been litigated.

Sweet v. State, 313 So.2d 130 (Fla. 2d DCA 1975):

> Evidence concerning defendant's involvement in a prior rape which took place several days before the one for which he was on trial showed a sufficient similarity in modus operandi as to be relevant for purpose of tending to prove identity of defendant as perpetrator of rape for which he was being tried.

Braen v. State, 302 So.2d 485 (Fla. 2d DCA 1974):

Admission, in aggravated assault prosecution of defendant for forcing female victim to submit to copulation per anus, of testimony of seventeen year old boy who three years prior had been forced by defendant to submit to copulation per anus, sought to be sustained on theory that it was relevant to issue of identification in that it tended to show a modus operandi, was reversible error where the sole similarity in the two offenses was the copulation per anus itself.

Duncan v. State, 291 So.2d 241 (Fla. 2d DCA 1974):

Evidence of other similar offenses committed by defendant charged with committing a sexual assault upon his thirteen year old adopted daughter by fondling her in a certain lewd and lascivious manner was not admissible to show a continuing course of conduct, a plan or scheme, or a modus operandi.

Discussion: The court makes clear that neither a "continuing course of conduct," a "plan or scheme" nor a "modus operandi" is an end in and of itself which may be proved in a criminal case. They must be relevant to one of the essential or material issues framed within the charge instantly being tried. The admission of the evidence in this case was harmless, however, because the defendant claimed he was impotent and therefore opened the door for this evidence on rebuttal.

Mason v. State, 286 So.2d 17 (Fla. 2d DCA 1973):

It was reversible error to admit in prosecution for assault to commit rape a newspaper clipping, found in defendant's wallet, stating that defendant had been acquitted in Pennsylvania of assaulting a fifteen year old girl, since newspaper clipping was not a part of res gestae and had no relevance or material bearing on the essential aspects of crime for which he was being tried.

Fivecoat v. State, 244 So.2d 188 (Fla. So.2d 1971):

Where prosecutrix testified that defendant raped her after picking her up in an automobile and threatening her with gun, and, after proffer of testimony of fifteen year old girl, judge admonished jury that testimony of girl as to alleged prior rape of her allegedly by defendant was to be considered only on issues of identity and intent, girl's testimony that one who raped her answered description of defendant and that same modus operandi was used was properly admitted to show common scheme or design and to aid in proving identity and was therefore relevant and properly admitted.

Harris v. State, 183 So.2d 291 (Fla. 2d DCA 1966):

Alleged victim's testimony that defendant accused of a crime against nature had told clergyman in victim's presence that defendant was a homosexual and had slept with twenty members of clergyman's church, and clergyman's testimony that defendant had

told clergyman that defendant was homosexual and had had relations with many prominent men was inadmissible in that testimony lacked relevancy and its sole purpose was to show bad character and propensity, and this testimony severely prejudiced defendant in that he was convicted not solely on acts charged in indictment but also for being a homosexual and having committed numerous homosexual acts, for which he was not being tried.

3rd DCA:

Vural v. State, 717 So.2d 65 (Fla. 3rd DCA 1998):

Williams Rule evidence of defendant's activities with other women properly admitted to show motive, common scheme and design.

Mitchell v. State, 695 So.2d 810 (Fla. 3rd DCA 1997):

Trial court properly excluded evidence concerning victim's prior sexual relationship with defendant's brother where defense proffer was insufficient to establish pattern of conduct or behavior on part of victim that was so similar to conduct or behavior in instant case that it was relevant to issue of consent.

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

Testimony by victim of sexual battery and attempted second degree murder that she and defendant had rocky relationship, problems existed with defendant's jealousy, and that defendant had threatened to kill victim if he caught victim with another man was relevant to motive, intent, and premeditation and , thus, evidence of these other wrongs was admissible.

Discussion: This ruling was based more on the homicide aspect of the case than on the sexual battery, but its rationale can be applied to many of our cases where there is a violent episode and the defendant claims consent. The court also ruled that the State could impeach the defendant on cross examination with an ex parte injunction against domestic violence with no prior notice. This court ruled this way because it was offered to impeach credibility.

Abreu v. State, 610 So.2d 564 (Fla. 3d DCA 1992):

Trial court could admit evidence of defendant's prior acts of violence against victim to counter defendant's argument that victim had provoked him and that attacks which led to criminal charges were isolated incidents.

Williams v. State, 592 So.2d 350 (Fla. 3d DCA 1992):

Collateral crime evidence was properly admitted on issue of common scheme or plan and to rebut defendant's defense of consent in prosecution for sexual battery, after defendant claimed that sexual intercourse had been consensual.

Discussion: This case presents a very common factual scenario. The defendant engaged the victim in a discussion about where to purchase crack cocaine. He then struck her in the head, grabbed her around the neck and put a sharp object to her throat. He then took her to a secluded place, threw her to the ground, took her cocaine and raped her. The suspect claimed the sex was consensual. The state offered testimony of two other women who had identical experiences with the defendant. This case was affirmed in Williams v. State, 621 So.2d 413 (Fla. 1993). See this case for a more detailed discussion of these issues.

Diaz v. State, 409 So.2d 68 (Fla. 3rd DCA 1982):

In prosecution for sexual battery, trial court did not abuse its discretion in concluding that there were no unique or distinct features common to eight offenses with which defendant was charged and allegedly similar offense occurring when defendant was in jail such that evidence of offense occurring while defendant was in jail was admissible and that defendant's noninvolvement in later offense was irrelevant to only pertinent issue, whether he was guilty of those for which he was being tried.

Discussion: The court concludes that the "points of similarity were both meager and commonplace. They consisted of the facts that the subsequent incident occurred in the same general Bird Road area and involved an approach to a woman by a man wielding a pistol who had physical characteristics and an accent very roughly equivalent to those described by some of the victims of the instant crimes." The court then noted that "the incident took place more than eight months after the last of the crimes involved in the trial."

Coney v. State, 193 So.2d 57 (Fla. 3d DCA 1966):

Testimony to the effect that defendant, charged with raping woman after using his automobile to block automobile in which victim was driving, had attempted to accost another woman on a highway in a similar manner nine months later was admissible to demonstrate a plan, scheme, design, or criminal course of defendant to accost women driving alone at night.

Discussion: This is a good case for the proposition that Williams Rule evidence does not have to refer to a "prior bad act." The evidence in this case occurred nine months subsequent to the case on trial.

4th DCA:

Beaussicot v. State, 2012 WL 3711432 (Fla.App. 4 Dist.)

Evidence that defendant sexually battered second victim approximately one week after he committed the acts that formed the basis of the sexual battery prosecution at issue was not admissible as collateral crimes evidence; the victims were not strikingly similar, as one victim was a prostitute and the other was not, defendant employed a different method of approaching each victim and luring them into his van, and defendant robbed one victim but did not rob the other victim.

To minimize the risk of a wrongful conviction, the similar fact evidence must meet a strict standard of relevance; the charged and collateral offenses must be not only strikingly similar, but they must also share some unique characteristic or combination of characteristics which sets them apart from other offenses.

Title v. State, 25 Fla. L. Weekly D2665 (Fla. 4th DCA 2000):

Reversible error to admit evidence of sexual battery crimes committed more than ten years earlier in foreign state where circumstances of the prior sexual batteries bore little similarity to attack on victim in instant case, and only function of evidence was to prove defendant's propensity to commit crimes charged.

Discussion: The victim was talking on a pay phone at a gas station trying to get a ride to work when the defendant overheard her conversation and offered her a ride in his truck. Instead of taking her to work, he pulled off the road, put a knife to her throat, hog-tied her and raped her. He then threw her out of the truck with nothing on but a mover's blanket and drove off. The state introduced two similar fact witnesses who had been raped in Minnesota ten years earlier. The first witnessed testified that she was leaving a bar when the defendant asked her for a ride home. When she refused, he punched her in the face and drove her to an abandoned house. He hit her several times, ripped her pants off, touched her vaginal area over her clothes, and tried to kiss her while holding her down. When an approaching car scared him, he drove to another road and tried to rape her. He eventually gave up his pursuit and drove off. The second witness testified that when she was 15 years old, the defendant offered to drive her home from the house where she was baby-sitting. Instead of driving her home, he drove her to a corn field and raped her. The appellate court said the only similarity in these cases was the fact that all of the cases involved vehicles and that was not enough.

Geldreich v. State, 763 So.2d 1114 (Fla. 4th DCA 1999):

Where defendant was separately tried for sexual battery of one victim and attempted sexual battery of another victim on the following day, evidence of each offense was properly admitted in trial for the other offense.

Collateral evidence was properly shown to show a common plan or design to create circumstances that would give the appearance of consent by the victims.

No error in denial of motion for judgment of acquittal on charge of attempted sexual battery where evidence showed both intent to commit offense and acts in furtherance of commission of offense.

Discussion: On New Year's Eve of 1997, the 30 year old suspect was introduced to a blonde woman in her late 40's. He spoke to her a while at a bar and eventually talked her into going back to his apartment. Once in the apartment, he offered her cocaine which she refused. He then tried to have sex with her and when she refused, he beat her. After she reported the offense the defendant told the police that it was ridiculous to think that a good looking 30 year old man would rape a woman in her late 40's. The next evening, the defendant went to another bar in the same area and was introduced to another blond woman in her 40's. He was able to talk her into going into the parking lot. Once in the parking lot, he tried to talk her into going to his apartment which she refused. He also offered her cocaine which she refused. He then physically abused her and started ripping off her clothing in the parking lot. The bar doorman responded to her screams and the suspect ran away. When the police contacted the suspect about the second assault, he stated that he and the victim had too much to drink and they were just playing around in the parking lot and that when the doorman called out she panicked and said she was raped. The appellate court ruled that the collateral evidence in this case was used to show a common plan or a design to create circumstances that would give the appearance of consent by the victim. The court noted eight (8) points of similarity between these two cases which was compelling to show a common plan or scheme. The court held that a jury could conclude that the defendant's common scheme was to pick up older women at bars, and try to get them to accompany him to his apartment for purpose of sexual intercourse. Meeting them at bars was important to the scheme, because he could claim that the victims were drunk and consented to his advances. The court also ruled that evidence of the woman who was actually sexually battered was relevant in the attempted sexual battery trial to show the defendant's intent to sexually assault that victim. The similarities between the two incidents were sufficient to prove the defendant's intent in grabbing the attempt victim and assaulting her.

Smith v. State, 743 So.2d 141 (Fla. 4th DCA 1999):

Error to admit evidence of other similar crimes where defendant was not identified in connection with those crimes.

No error in admission of evidence of similar incident in which defendant was identified for both the crime charged and in a similar incident involved early morning burglaries, sexual assaults or attempted sexual assaults on sleeping women whom the intruder knew who were alone, intruder placing his hand over the victim's mouth, and threatens to harm other occupants if the victim did not cooperate.

Shapiro v. State, 696 So.2d 1321 (Fla. 4th DCA 1997): *Judge Cohn*

No abuse of discretion in trial court's admission of prior act testimony where defendant's common scheme, plan or design was to sexually exploit patients while purporting to help them improve self-esteem and feel good about themselves.

Similar fact evidence may be admitted as relevant even if it is not uniquely similar.

Prior incident of alleged sexual misconduct was admissible as *Williams* rule evidence where, in both instances, the victims were married but separated, neither victim sought sexual counseling, but rather defendant initiated conversations about sex, and both victims were complimented and then digitally penetrated by defendant in his office during a therapy session.

Statute prohibiting sexual misconduct by a psychotherapist not unconstitutionally overbroad.

Discussion: The therapist counseled the victim patient for low self-esteem in an effort to help her avoid gaining weight. He told her he wanted to prepare her for future sexual relationships and suggested that her self-esteem would be improved by masturbation. He then convinced her to masturbate in front of him and then he digitally penetrated her. He told her he did this only because he wanted what was best for her. A similar fact witness testified about a similar incident that happened to her 20 years previously.

Leverett v. State, 696 So.2d 519 (Fla. 4th DCA 1997): *Judge Futch*

Court erred in permitting introduction of evidence of prior sexual battery to which defendant pled guilty when identity was not at issue, and state was using collateral crime to show defendant's bad character or propensity, which is not permitted.

Discussion: The defendant was accused of sexually battering a woman he met at a bar. The woman had been using cocaine since the evening before until her supply ran out. The defendant invited her to his house to get some more cocaine from his sister. After the exchange, the defendant forced the victim to have sex with him. The similar fact witness had met the defendant at a bonfire 14 years previously. She was given Quaaludes against her will by the defendant and a co-defendant. The victim was taken to the defendant's house against her will. The case reveals other detailed facts that distinguish the two accounts, but the final conclusion is that the two cases had no relevance but for propensity.

Bell v. State, 659 So.2d 1278 (Fla. 4th DCA 1995): (Judge Kaplan)

Similarities between charged offenses and burglary, robbery, and sexual battery of different victim were general similarities common to large number of crimes and were not of such unusual nature as to point to defendant as perpetrator of charged offenses, particularly in view of dissimilarities in manner in which sexual assaults were committed and attitude of assailant toward each victim.

Discussion: Judge Kaplan found that there were 23 points of similarity between the two crimes. Among these were the fact that both perpetrators used gloves, both broke into the home by removing windows, both tied up their victims' hands behind their backs, both ransacked portions of the home and stole jewelry and both sexually assaulted their victims. The court ruled that these facts are very common place in South Florida and are consequently not of such a unique nature as to be admissible on the issue of identification. The court cautioned that you should not just count points of similarity, but should also look at points of dissimilarity.

Vaughn v. State, 604 So.2d 1272 (Fla. 4th DCA 1992):

In prosecution for armed sexual battery and armed burglary, it was error to admit, for purpose of identity, evidence of previous sexual battery committed by defendant notwithstanding some general similarities between the two crimes.

Discussion: The victim was a sixty year old woman who was raped at knifepoint after the defendant broke into her home. The lady would not identify the suspect at trial, so the State offered evidence of the rape of a prostitute who said she had been raped at knifepoint in the same area by the suspect.

Ratushinak v. State, 517 So.2d 749 (Fla. 4th DCA 1987):

Testimony regarding defendant's arrest for unrelated crime and his subsequent release from jail was relevant to issue of identity of defendant as sexual battery perpetrator, and was thus admissible. Sexual battery took place during early morning hour when lighting conditions were less than ideal for proper viewing of assailant, victim testified that during sexual assault, assailant stated to her that "he was on the run" and that "he had escaped from jail." Police officer who investigated both armed sexual battery and armed burglary incidents testified that upon being handcuffed, defendant stated that "he had just bee released from jail," and testimony of officer that defendant was released from jail on particular date was relevant to identify defendant as assailant.

Henry v. State, 356 So.2d 61 (Fla. 4th DCA 1978):

In prosecution for sexual battery and false imprisonment, testimony that second young woman was raped about three weeks after offenses for which defendant was being tried was improperly admitted where only similarity between the two incidents was that two

women were on different occasions raped by man with whom they made contact at or near particular club.

Henry v. State, 224 So.2d 364 (Fla. 4th DCA 1969):

It is well settled that relevant evidence of similar crimes committed within a reasonable space in time are admissible to show an intent, motive or pattern of criminality.

Discussion: This case is does not address the facts in enough detail to assist you in your preparation.

5th DCA:

Bruce v. State, 44 So.3d 1225 (Fla. 5th DCA 2010)

Similar-fact evidence regarding defendant's sexual advances toward parishioner, who attended church at which defendant was deacon, was relevant to corroborate victim's testimony and rebut defendant's claim of fabrication, and thus evidence was admissible in prosecution for sexual battery; defendant knew victim and parishioner from church and knew both were single and lived alone, defendant first befriended the women by performing handyman services and commiserating with each about the hardship of caring for a loved one with disabilities, and while performing handyman services, defendant not only made sexual advances but fondled the breasts of each.

When offering similar-fact evidence to establish a common scheme or plan to corroborate the victim's testimony against a claim of fabrication, the similarity between the charged crime and prior act is critical; as similarity decreases, the evidence's relevancy will diminish, and it will be more likely that the unfair prejudicial value will substantially outweigh any probative value.

Because the line between corroboration of a victim's testimony against a claim of fabrication and a defendant's propensity can be thin, the admission of similar-fact evidence to corroborate victim's testimony, as would aid in establishing common scheme or plan, should be rare.

Cardona v. State, 28 Fla. L. Weekly D74a (5th DCA 2002):

The defendant approached a female on the Rollins campus and asked directions. When she got close to his car, he grabbed her arm and masturbated in front of her. A similar fact witness testified that months earlier the defendant approached her on campus and asked directions. He then made sexually suggestive statements and masturbated in her presence. The similar fact evidence was properly admitted.

Irons v. State, 26 Fla. L. Weekly D2008 (Fla. 5th DCA 2001):

Evidence of sexual battery and attempted sexual battery of another victim was properly admitted where those crimes were sufficiently similar to charged offense to be relevant and admissible and to show common *modus operandi.*

> "Although there are some differences between the two crimes, the actions by Irons in both are sufficiently similar to be relevant and admissible and to show a common *modus operandi*. The two assaults occurred within six weeks of each other. In both cases, the assaults took place at the Contemporary Resort Hotel where Irons worked. Thus he was familiar with the surroundings. In both cases, Irons was wearing his Disney uniform and/or name tag or identified himself as a Disney worker, thus giving him credibility. In both cases, Irons engaged in small talk with his victims in an attempt to put them at ease. In both cases, Irons attempted to isolate and did isolate the victims in rather secluded or nonpublic portions of the hotel. In both cases, Irons took his victims into an empty men's room, forced them into a stall and locked the stall door behind them. In both cases, Irons simply left his victims in the restroom and walked away.
>
> Further, the evidence of the assault on the prior woman is relevant to rebut Iron's defense of consent by showing he had a common plan or scheme to befriend and then isolate his victims. Thus the evidence was properly admitted."

Jones v. State, 714 So.2d 665 (Fla. 5th DCA 1998):

Error to allow state to introduce evidence of collateral crime committed nine years earlier where identity was not an issue, similarities between collateral crime and present offense were not so unique as to establish common plan or scheme, and evidence was introduced in attempt to show defendant's propensity to commit sexual battery.

Boroughs v. State, 684 So.2d 274 (Fla. 5th DCA 1996):

Testimony concerning abusive nature of defendant's relationship with victim, including defendant's prior bad acts, was relevant to prove sexual battery victim's lack of consent and to explain why victim did not immediately call police.

Discussion: The state filed an appropriate *Williams* rule notice in this case. The evidence submitted showed that the suspect verbally and physically abused the victim. He also stalked her while she was at work, made her go on his newspaper route in the middle of the night, prevented her from having friends, and became enraged if she spoke to other people. He threatened to kill her if she tried to leave him or is she called the police. The appellate court noted that although sexual battery is a general intent crime, it requires that the sexual act be committed without the consent of the victim. The statutory definition

> of "consent" includes the phrase "does not include coerced submission." The victim's lack of consent to the sexual act is an element of the offense which must be proven. As such, the entire pattern of behavior, or relationship between the parties becomes relevant to determine if "coerced submission" to the act existed, or whether the act occurred as a result of the victim's consent.

Jackson v. State, 538 So.2d 533 (Fla. 5th DCA 1989):

> Testimony by alleged victim of uncharged rape 13 and one half months prior to charged sexual batteries that defendant had offered to give her ride, had driven her into rural area, had sped up car to prevent escape, and then beat up and raped victim was relevant and admissible to show modus operandi, or plan, or scheme; charged sexual batteries also involved defendant having given ride to someone he knew, speeding up to prevent escape, and beating up and raping victim.
>
> Officer's testimony that when he investigated previous uncharged rape that defendant had said that he had paid alleged victim $25 for having sex with him was relevant and admissible to rebut defendant's claim that he had paid alleged victim of charged sexual batteries $20 to have sex with him.

Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981):

> Where ultimate issue in sexual battery prosecution was consent of victim, admission of evidence concerning circumstances leading to the accused's sexual acts with another woman three years earlier was prejudicial as it had no relevancy to whether or not the prosecutrix consented.
>
> Discussion: The suspect was accused of coming to the victim's home for a date type situation. He eventually forced her to have sex. He admitted the sex, but claimed it was consensual. The State offered evidence that three years earlier the defendant was at his home kissing a date when he got out of control and forced her into intercourse. The court implies that had identity been an issue it may have been admissible, but consent is unique to each particular case and is not appropriate for Williams Rule. The Florida Supreme Court later addressed this case in Williams v. State, 621 So.2d 413 (Fla. 1993). The court upheld the Hodges decision, but disapproved of the implication that consent in not an appropriate issue for Williams Rule evidence.

PHYSICAL ABUSE CASES

Cardona v. State, 2020 WL 216272 (Fla.App. 3 Dist., 2020)

> *It is well-settled law, and Cardona does not contest, that battered child syndrome testimony is admissible, if relevant, to refute a claim of accidental death.*

This Court has repeatedly "held that in a child abuse case, reference to prior injuries to the child should be permitted to establish intent and absence of mistake or accident."

Lowery v. State, 2019 WL 2528787, (Fla.App. 1 Dist., 2019)

Young child died from blunt trauma to the head and possible shaken baby syndrome while in daycare. Defense expert argued child had a vein abnormality that increased the chance of excessive bleeding with a minor head trauma. Defendant argued that State's circumstantial case did not rebut his reasonable hypothesis of innocence. Appellate court noted that the State's experts all disagreed with the defense expert on these points and the defendant made some comments that could be construed as consciousness of guilt. Court was correct in not granting a motion to dismiss.

A Williams Rule witness testified that the defendant used to grab the child by the ankles and drop him head first onto the couch. Defendant objected, claiming since her defense was that she did not do it, the prior acts were not relevant to rebut absence of mistake, etc… The court ruled that since the type of acts described by the Williams Rule witness could have resulted in the current injury, they were admissible. See the opinion for an extensive discussion on this issue.

Kirkland-Williams v. State, 2017 WL 5013015 (Fla.App. 2 Dist., 2017)

Evidence of incident in which defendant struck victim's sister on a previous occasion was admissible, pursuant to *Williams v. State*, in first-degree felony murder while engaged in aggravated child abuse prosecution; there were similarities between the incident involving victim and sibling, where both victims were toddlers entrusted to defendant's care at the time of the respective incidents, both victims were struck repeatedly, and suffered similar injuries, thus the evidence was admissible to prove absence of accident, intent, identity, and opportunity

Probative value of evidence of incident in which defendant struck victim's sister on a previous occasion was not outweighed by the danger of unfair prejudice in felony-murder prosecution; the presentation of the *Williams v. State* rule evidence at trial was limited to establishing an intentional act and to rebut defendant's pretrial statements that victim's injuries were accidental, and court properly instructed the jury on the proper use of the evidence before the eyewitness's testimony and during the final charge.

Moore v. State, 37 Fla. L. Weekly D117 (Fla. 4th DCA 2012):

Trial court did not abuse its discretion in admitting evidence of the two prior burn incidents in prosecution of defendant for first-degree murder and aggravated child abuse; defendant's anticipated defense to the charges that he abused and ultimately murdered his

son was that the injuries were accidental, and because defendant was the only person present when the victim sustained burn injuries on two prior incidents, there was no need for factual similarity between the prior burn injuries and the type of abuse which ultimately cost the victim his life, and there was a connection between defendant and the collateral acts and the explanation he offered for the burns was for the jury to weigh.

Vice v. State, 35 Fla. L. Weekly D1273 (Fla. 1st DCA 1273):

The trial court abused its discretion when it admitted collateral crime evidence that defendant had previously shaken a baby to establish intent and the absence of mistake, in prosecution for aggravated child abuse; the child who was shaken six years earlier did not need medical treatment, and thus the incidents were not substantially similar.

Henrion v. State, 30 Fla. L. Weekly D554 (Fla. 2d DCA 2005):

Abuse of discretion to permit state to introduce Williams rule evidence or prior injuries to an infant in defendant's care where state failed to prove by clear and convincing evidence that defendant was the party responsible for the infant's injuries.

Discussion: The defendant testified that he was carrying his infant child as he was leading a family dog outside by the collar. He tripped and fell on the baby. The infant was taken to the hospital where the doctors found acute rib fractures as well as healed rib fractures and a healed skull fracture. State experts testified the injuries were not accidental. The state offered *Williams* rule evidence from an incident occurring 9 years earlier. The defendant was watching someone else's infant child when it was discovered that the child had bruising to his ribs. Since three people had access to the child in that case, it was never proven who caused the injuries. Since it could not be proven by clear and convincing evidence that the defendant caused the injuries to the child in the old case, its admission was erroneous and prejudicial. The court noted that mere suspicion was insufficient to admit *Williams* rule evidence.

Barber v. State, 26 Fla. L. Weekly D436 (Fla. 5th DCA 2001):

Collateral crime and charged offense were sufficiently similar in that both victims were four-month-old infants entrusted to the same defendant daycare worker in the same room of the same daycare center, both had almost identical symptoms of injury after being cared for by defendant on the first occasion and their health improved after being removed from her care, both victims experienced similar and more serious symptoms upon being returned to defendant for daycare at the same location, both victims received injuries within same time period and were diagnosed as having Shaken Baby Syndrome, and witnesses testified that defendant became frustrated while taking care of infants that demanded attention and placed defendant in the same room with both victims with no other adult being present.

Although evidence of collateral crime was allowed to show identity, in actuality, it also was evidence of opportunity, intent, absence of mistake, and a common plan or scheme.

State was not required to present clear and convincing evidence that a former offense was actually committed by defendant prior to introducing Williams rule evidence. State is only required to give notice of intent to rely on Williams rule evidence pursuant to section 90.404(2)(b).

Discussion: This case discussed the viability of proving a case by circumstantial evidence and the use of similar fact evidence.

Salamanca v. State, 745 So.2d 502 (Fla. 3rd DCA 1999):

Defendant was charged with aggravated child abuse by using a stun gun on his biological son. The court properly introduced Williams Rule testimony of another child upon whom a stun gun was used because it was relevant towards the suspect's motive and intent.

Evans v. State, 693 So.2d 1096 (Fla. 3rd DCA 1997):

Incident in which defendant nearly drowned victim, either recklessly or intentionally, two months prior to victim's death, and prior beatings of victim occurring over the course of year preceding death not too remote in time to be relevant.

In a case charging the accused with physical abuse of a child, where the state seeks to present evidence of prior physical abuse committed by defendant upon the same child for the purpose of proving intent and/or absence of mistake or accident, there is no need for factual similarity between the charged offense and the prior abusive conduct beyond the existence of physical abuse in all instances.

Discussion: This is an extremely useful case which should be read carefully. The decision really opens the door to admitting various acts of abuse by the defendant toward the victim. The opinion is well written and extensively examines the case law on this subject. The decision will be particularly useful in those cases where the defendant claims the child was harmed accidentally.

State v. Everette, 532 So.2d 1124 (Fla. 3d DCA 1988):

Evidence regarding child abuse victim's prior injuries, and defendant's conflicting statements as to how those injuries occurred was admissible in prosecution for child abuse resulting in infant's death.

Discussion: The court makes the broad statement that "We believe in a child abuse case that reference to prior injuries to the child should be permitted, particularly when compared to the appropriateness of similar evidence in sexual child abuse cases.

Herbert v. State, 526 So.2d 709 (Fla. 4th DCA 1988):

> Admission of evidence as to prior **battery** inflicted on child by defendant charged with aggravated child abuse by malicious punishment was reversible error where facts of charged incident were undisputed at trial, with only question being whether defendant had gone "too far" in punishing child on occasion of charged offense; prejudicial effect of evidence of prior incident outweighed any probative value and evidence of defendant's guilt was not overwhelming.

ADMISSIBILITY OF DEPOSITION TESTIMONY AT HEARING

Simmons v. State, 257 So.3d 1121, 1127–28 (Fla.App. 1 Dist., 2018)

> *Thus, because the State gave sufficient notice of the similar-fact evidence, and the hearsay evidence was admissible in the pretrial Williams rule hearing, and testimony from the similar-fact witness was subject to cross examination, the trial court did not err in allowing the State to use the deposition testimony at the hearing. See Barber, 781 So.2d at 427.*
>
> *Were we to hold otherwise, each victim in the charged offenses would be required to appear and testify three times–once at a pretrial deposition, again at the pretrial similar-fact hearing, and finally at trial. *1128 Such is not required under either the statute or the relevant case law. The collateral-crime witnesses testified at the pretrial hearing and were cross examined by defense counsel on how these incidents compared to what was known of the charged offenses. Furthermore, the witnesses to the charged offense were cross examined at their depositions and at trial. In addition, the trial court continued to assess the admissibility of the similar-fact evidence at trial, asking if defense counsel had "any rebuttal as it relates to that argument about additional crimes." Thus, Appellant was not prejudiced by the trial court's decision to allow the use of deposition testimony during the pretrial hearing.*

CHILD MOLESTATION CASES 90.404(2)(B)

Ivey v. State, 2023 WL 8249579 (Fla.App. 1 Dist., 2023)

> This excerpt provides a good discussion on the standard for introducing similar fact evidence in child sex cases and applying the facts to that standard.

> *The trial court must consider all relevant factors in determining the relevance of collateral act crimes. McLean, 934 So. 2d at 1262 (providing that the trial court should at a minimum evaluate "(1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances"). In this case, the trial court allowed the victim's siblings to testify that Ivey also touched them sexually. The alleged abuse took place in Ivey's home, while he was serving as one of the siblings' caregivers, during the same period as the victim's abuse. All three siblings were close in age and the same gender. Together, the siblings' testimonies showcased a pattern of sexual abuse in the home. Based on these similarities, the evidence's probative value is not substantially outweighed by the danger of unfair prejudice.*

The court also ruled the evidence was not a feature of the trial.

Youngblood v. State, 2022 WL 10876777 (Fla.App. 1 Dist., 2022)

The appellate court upheld the admission of similar fact evidence in a child molestation case. In the brief opinion, the court noted:

> *Witnesses testified at a pretrial hearing that when they were young girls between the ages of 6 to 8 years old, Appellant abused them much like his sexual battery of the 6-year-old female victim of the charged offense. "[T]he similarity of the prior acts to the act charged regarding the location of where the act occurred, the age and gender of the victims, and the manner in which the acts were committed" are all considerations under McLean. 934 So. 2d at 1262–63.*

The court also ruled the evidence was not a feature of the trial:

> *The prior bad act witnesses' testimony was short. The prior acts were only briefly mentioned by the State in opening and closing statements to the jury, and the jury was repeatedly instructed as to the proper use of the collateral crimes evidence.*

Burgess v. State, 2021 WL 3012329 (Fla.App. 1 Dist., 2021)

Facts: The fourth grade victim testified the suspect performed various sex upon her. The victim testified at trial and the court allowed child hearsay testimony from the detective who interviewed her. The court also allowed Williams Rule testimony from a 2006 case where the suspect performed similar sexual acts on a 20-year-old mentally ill woman.

Williams Rule: First, the appellate court ruled the State proved the collateral crime by clear and convincing evidence. The court then noted, *"Collateral-crime evidence may be introduced to corroborate the victim's testimony by showing that the defendant has a propensity for committing "sexual offenses" as defined in* section 90.404(2)(c) 2.*"*

In ruling that the probative value outweighed the prejudice, the court noted,

> *Here, the trial court listed, and the record supports, at least seven similarities between the prior act and the act charged, including: (1) Appellant used both his hands and his penis when he touched and penetrated both victims; (2) both victims told Appellant to stop; (3) Appellant did not wear a condom in either incident; (4) both incidents took place in a residence belonging to a woman with whom Appellant was in a relationship; (5) Appellant took advantage of the absence of other adults; and (6) Appellant exploited the immaturity of both victims.*

The court also ruled the facts of the two cases were similar in their means of access. Specifically, the court noted,

> In this case, the acts are similar in their means of access. In the collateral crime, Appellant used his relationship with L.R.'s caretaker to take advantage of L.R.'s vulnerability. Appellant also took advantage of a time when no other adults were present to inappropriately touch L.R. and sexually batter her. Similarly, in the present case, Appellant used his relationship with the victim's caretaker to gain access to the vulnerable victim. Appellant took advantage of a time when other adults in the residence were unavailable to sexually batter the victim. Thus, the collateral crime and the charged crime are sufficiently similar both as a whole and in their means of access.

Finally, in ruling the collateral crime evidence did not become the feature of the trial, the court stated,

> Here, although the State presented six witnesses to testify about the collateral-crime evidence, each witness's testimony was relatively short and did not "transcend[ ] the bounds of relevancy" or develop into an assault on Appellant's character. *See Peterson,* 2 So. 3d at 155 (quoting *Conde,* 860 So. 2d at 945). Additionally, the State only briefly mentioned the collateral-crime evidence during its opening and closing statements, and the State reminded the jury that the purpose of such evidence was to corroborate the victim's account. The trial court also properly instructed the jury on the use of collateral-crime evidence both before the State's introduction of the evidence and during jury instructions.

The victim testified her father molested her when she would stay at his home. Her two sisters testified as Williams Rule witnesses that the father molested them during their visits as well. The defense argued that the similar facts witnesses did not involve substantially similar acts. In affirming the conviction, the court stated,

> *The trial court found that the testimony of A.D. and B.D. was proven by clear and convincing evidence. Appellant focuses on the dissimilarities of the evidence in arguing that the evidence was more prejudicial than probative, but " 'similar' does not mean 'exactly the same.' " See Stewart, 147 So. 3d at 124 (quoting Adkins v. State, 605 So. 2d 915, 919 (Fla. 1st DCA 1992)). Here, the victims were biological children of Appellant, and all the acts happened while they were asleep in Appellant's bed. All three victims testified that Appellant touched their vaginas. That the acts against the victim also involved penile penetration is not dispositive. See id. (quoting Adkins, 605 So. 2d at 919). A.D. and the victim were close in age, and the incidents happened during the same time period. And although B.D. alleged an act further removed in time to the acts charged, the trial court noted that the lack of frequency was another similarity. The crimes occurred infrequently over a long time period, in part because the daughters did not have consistent contact with Appellant. Thus, the trial court correctly considered all the factors in determining that the evidence was admissible.*

Pridemore v. State, 2020 WL 4496072, at *6 (Fla.App. 4 Dist., 2020)

The 12-year-old victim wrote a suicide note explaining how the defendant sexually battered her repeatedly between the ages of 7 and 11. The defendant had been dating her mother. Her stepmother found the note and contacted authorities. The State introduced Williams Rule testimony from another prepubescent girl who testified that the defendant had been dating her mother a few years earlier. She said he snuck into her room one night, pulled down her pants and touched her vagina with his finger. The appellate court said the evidence was properly admitted.

> *We conclude that there was no abuse of discretion in the trial court's admission in evidence of the incident involving the prior victim under section 90.404(2)(b). See Zerbe v. State, 944 So. 2d 1189, 1193 (Fla. 4th DCA 2006) (a trial judge's ruling on the admissibility of collateral act evidence will not be disturbed absent an abuse of discretion). Pridemore's acts with the two prepubescent victims were close in time and sequential, demonstrating an escalating level of criminality. The means of access was identical—Pridemore obtained dating relationships with single mothers with young daughters. He exploited his "familial" relationship to find time alone with*

> *the girls and assault them in their mothers' respective bedrooms. The collateral act was not too remote in time—Pridemore commenced a relationship with the victim's mother soon after his relationship with the prior victim's mother ended. Nor was the collateral crime more serious than the charged crime, so that its introduction into evidence did not unfairly prejudice the defendant.*

The court provides a good summary of the law. Similarity requirements are necessary to ensure the evidence is relevant and that the probative value is not outweighed by prejudice. The court notes that when analyzing similarities between offenses under this scenario, the similarity of "means of access" is typically given more weight than the similarity of the actual sexual acts. So, even though one case involved repeated sexual intercourse and the other case involved a single act of manual touching, the fact that the defendant dated the mothers of both victims and took advantage of his position was sufficient.

The court also ruled the suicide note was admissible under the child hearsay rule.

> *The trial court found that the suicide note was "spontaneous" and "specific," and that there was no improper influence or motive to fabricate, since the note "was something the child wrote on her own and hid from her stepmother, intending it to be a suicide note referencing Mr. Pridemore's molestation of her." The court determined that the circumstances surrounding the note "absolutely indicate[d] its reliability." Although the second version of the note was written after her stepmother's discovery, the victim explained that she wrote down the allegations against Pridemore "because she had to get it out." She said she believed that no one was going to look at the journal in her room, because it looked like a regular notebook. The victim's testimony at trial satisfies the requirement of section 90.803(23)(a)2.a. A factual basis in the record supports the trial court's ruling.*

Newman v. State, 2020 WL 3957849 (Fla.App. 1 Dist., 2020)

Defendant was convicted of lewd molestation for molesting his 8-year-old adopted daughter during a trip to Florida. While staying in a motel room with his daughter and son, he told her to sleep in the bed with him while the brother took the other bed. She awoke during the night as the suspect was rubbing her vagina with his hand and saying, "sexy." The same thing happened the following night and on the third night he had her touch his penis. The state introduced Williams Rule evidence concerning an incident that happened about five years earlier. The victim's sister, who was 12-years-old at the time of her incident, testified the suspect came into her room at night while everyone was sleeping and instructed her on how to use a vibrator. She was not doing it right, so he penetrated her vagina with his fingers. He did this on a few occasions and then stopped.

Defense argued that the dissimilarities in the case caused the prejudice to outweigh the probative value of the evidence. The appellate court addressed this issue as follows:

> *Competent, substantial evidence supports the trial court's finding that there was sufficient similarity between the charged and collateral acts. Specifically, both children were prepubescent girls at the time of the molestation; Appellant was the adoptive father of both girls and they considered him their dad; he molested both girls at night, while other family members were sleeping in close proximity; he touched the girls' vaginas with his fingers; and the molestation of each girl was repeated over the course of a few days and then never again. The record indicates that the acts occurred within a year or so of each other. Although there were some dissimilarities between the acts with regard to the precise age of the children and the location and manner of the molestations, common sense and the case law discussed above indicate that such dissimilarities can be expected in these types of cases and every detail need not be identical. In fact, as we discussed above, in cases such as this, where the acts occurred in a familial context, the similarity requirement is relaxed.*

State v. Hall, 2020 WL 1313722, (Fla. Dist. Ct. App. Mar. 20, 2020)

The defendant was charged with lewd molestation for fondling a 6-year-old girl who was not related to him. The State sought to introduce the testimony of an 8-year-old girl he fondled three years earlier. The trial court denied the motion and noted that since the cases were not committed in the familial context, a stricter degree of similarity was required. The appellate court granted certiorari and ruled the trial court applied the wrong law. The 2001 amendment to the statute nullified much of the case law that existed prior to that date. The appellate court expressed the relevant law as follows:

> *But that order of things changed in 2001, when section 90.404(2)(b) was amended. As amended, the statute provides that in child molestation cases, "evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant." The supreme court construed the amended statute in McLean and explained that it "broadly provides that evidence of the defendant's commission of other acts of child molestation is admissible regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity." 934 So. 2d at 1259 (emphasis added). The supreme court went on to hold that the amended statute abrogated the case law applying the strict and relaxed similarity standards applicable to Williams rule evidence in child molestation cases. Id. As the court stated, the lynchpin to the admissibility of Williams rule evidence in child sexual molestation cases after the amendment—whether within or outside the familial context—is its relevance, not*

its strict, substantial, or relaxed similarity to the crime being tried. See id.; see also Corson v. State, 9 So. 3d 765, 766 (Fla. 2d DCA 2009) ("[R]elevancy is the threshold question of whether testimony proffered under section 90.404(2)(b)(1) is admissible.").

State v. Lincoln, 2019 WL 4656091 (Fla.App. 2 Dist., 2019)

Statute governing admissibility of evidence of prior child molestation stated that admissibility was not governed by whether collateral molestation offenses shared similarities with charged offense, and thus, in prosecution for lewd molestation and child abuse, trial court's exclusion of evidence of defendant's prior molestation based on lack of "significant common features" was improper.

After evidence of a defendant's prior acts of child molestation is admitted, if requested, the court must give the jury a cautionary instruction regarding the collateral crime evidence both at the time it is admitted and in the final jury charge.

In determining whether to admit evidence of a defendant's prior acts of child molestation, the court should determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice by considering (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed, (2) the closeness in time of the prior acts to the act charged, (3) the frequency of the prior acts, and (4) the presence or lack of intervening circumstances; the court may also consider other factors depending upon the particular circumstances of the case.

In determining whether to admit evidence of a defendant's prior acts of child molestation, the court must find that the state proved the existence of the collateral acts by clear and convincing evidence.

Cooley v. State, 2019 WL 2261365 (Fla.App. 1 Dist., 2019)

Probative value of collateral-crime evidence regarding prior molestation in another state was not substantially outweighed by danger of unfair prejudice in prosecution for lewd and lascivious molestation of a child under 12 and lewd and lascivious molestation of a child between 12 and 16, where the collateral-crime evidence and the charged conduct were similar and involved the same victim.

Stubbs v. State, 2019 WL 1646175 (Fla.App. 4 Dist., 2019)

In unlawful sexual activity with a minor prosecution, alleged acts described by witness constituted child molestation for purposes of statute governing admission of other crimes, wrongs, or acts evidence in prosecutions involving child molestation, where witness

testified that defendant was a trusted religious advisor to her and her family, that she was 16 years old, and that defendant took her to his house and had sex with her while she lay there looking up, and crying until defendant was done

The two-step process when a trial court confronts an other crimes, wrongs, or acts issue in child molestation prosecutions is that the court first must find that the state proved the other molestations by clear and convincing evidence, next, the court must assess whether the probative value of the other molestations is substantially outweighed by the danger of unfair prejudice. Fla. Stat. Ann. § 90.404(2)(b).The two-step process when a trial court confronts an other crimes, wrongs, or acts issue in child molestation prosecutions is that the court first must find that the state proved the other molestations by clear and convincing evidence, next, the court must assess whether the probative value of the other molestations is substantially outweighed by the danger of unfair prejudice. Fla. Stat. Ann. § 90.404(2)(b).

Clear and convincing evidence established the collateral crimes of two other victims of child molestation by defendant, as required to admit such collateral crimes evidence in unlawful sexual activity with a minor prosecution; evidence showed that all the girls were between the ages of 16-19, that girls were members of defendant's church, that defendant had a relationship of trust with each girl, that defendant expressed that his conduct was justified through religious teaching or sexual education, that defendant held a position of religious authority in each girl's life and each girl believed that the defendant's actions were sanctioned by God, that defendant used his position in the church to gain access to the girls alone and to gain their acquiescence, and that defendant had union with or penetrated the vagina of each girl.

State v. Knowles, 2019 WL 1086841 (Fla.App. 5 Dist., 2019)

Trial court's decision to preclude evidence that defendant, charged with sexual battery and lewd or lascivious molestation on child less than 12 years of age, had committed other crimes, wrongs, or acts of child molestation, was warranted, where court demonstrated in written order that it understood and applied proper standard for determining admissibility of collateral crime evidence.
This decision does not really address the specific facts at issue, but makes the point that the trial court has a lot of discretion in his rulings and they will not be disturbed unless, "Under the abuse of discretion standard, discretion is abused when no reasonable person would take the view taken by the trial court."

Taylor v. State, 2018 WL 4649110, (Fla.App. 5 Dist., 2018)

Defendant was charged with lewd molestation for fondling 11-year-old stepdaughter's breast. State introduced similar fact evidence that the defendant had previously pinned

the victim's 12-year-old sister to the bed and penetrated her vagina with his penis. The court ruled that the increased severity of the similar fact evidence made it more prejudicial than probative. The acts were simply too different to be relevant.

Cotton v. State, No. 3D13-2784, 2015 WL 5023063 (Fla. Dist. Ct. App. Aug. 26, 2015)

Trial court abused its discretion, in allowing defendant's adult daughters to testify about prior sexual batteries allegedly committed by defendant, in prosecution for lewd or lascivious conduct on his minor stepdaughter; unlike the properly-admitted prior lewd or lascivious acts, the sexual batteries were not similar to the charged offenses in their manner or circumstances, and the testimony was graphic and detailed and its prejudicial impact both substantial and real.

Stewart v. State, 2014 WL 4114339 (Fla.App. 1 Dist.)

Evidence of defendant's prior molestation of his stepdaughters was admissible during prosecution for sexual battery involving defendant's daughter; the victims were all underage females when the acts occurred, the acts occurred in the family home while the defendant was in a custodial or familial role the acts primarily occurred, and when the victims were vulnerable, either sleeping or under the effects of anesthesia.

Fincher v. State, 2014 WL 940662 (Fla.App. 4 Dist.):

In determining whether collateral crime evidence should be admitted in a prosecution for child molestation, the trial court must determine whether the prior, collateral acts were proven by clear and convincing evidence, and must also ensure that the prejudicial effect substantially outweighs the probative value of the collateral crimes evidence.

When the trial court in a child molestation prosecution assesses whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice, a trial court must evaluate: (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances.

In determining whether collateral crime evidence should be admitted in a prosecution for child molestation, the degree of similarity necessary between crimes is determined based on the purpose for which the crime is introduced; in cases where the purported relevancy of the collateral crime evidence is the identity of the defendant, there must be identifiable points of similarity between the collateral act and charged crime that have some special

character or be so unusual as to point to the defendant, while if the evidence is introduced to establish absence of mistake or accident, the requirement is substantial similarity.

Evidence of prior incidents in which defendant had touched children inappropriately was properly admitted in prosecution for child molestation, where incidents were substantially similar to charged incident and were relevant to issue of whether charged touching was mistaken or intentional, and defendant's identity was not at issue.

McCullum v. State, 2013 WL 2395079 (Fla. 1st DCA 2013)

Here, the State accused Appellant of molesting a nine-year-old girl by touching and rubbing the child's vaginal area over her clothes. The collateral acts occurred three years before, involved Appellant's 15–year–old niece, began with Appellant touching the girl's breasts on one occasion, and culminated later with sexual *intercourse. Although the victims' ages were* different, *and the previous acts included intercourse, the trial court found Appellant's prior acts sufficiently similar to the charged acts as to opportunity and plan. Specifically, in addition to involving acts of molestation, in both cases, the victims were visiting Appellant in his home. In both cases, he committed the acts while others were present in the house. And in both cases, the precursor to the acts was Appellant either suggesting or permitting the victims to use his computer, which was not located in a common area of the house. In light of these similarities, the trial court did not abuse its discretion in admitting the evidence of prior molestation.*

State v. Sandoval, 38 Fla. L. Weekly D292 (Fla. 4th DCA 2013):

The trial court's improper application of the "inextricably intertwined" evidence definition when determining whether to admit other acts of child molestation during prosecution for sex crimes involving children resulted in a miscarriage of justice, and thus remand was required; on remand the trial court was required to consider the State proved the other molestations by clear and convincing evidence, whether the evidence of other acts would confuse or mislead the jurors by distracting them from the central issues of the trial, and whether the evidence would be needlessly cumulative of other evidence bearing on the victim's credibility.

Discussion: This case provides a good discussion on the standards to use when evidence of prior molestation is offered as similar fact evidence.

Coleman v. State, 37 Fla. L. Weekly D2437 (Fla. 4th DCA 2012):

Testimony of witness, that defendant had sexually assaulted her, was admissible, under rule governing admission of other crimes, wrongs, or acts of child molestation, at trial of defendant on charges of lewd and lascivious battery on a person 12 years of age or older but less than 16 years of age, since prior acts were similar to charged offenses; witness had been a child at time of prior acts, both witness and victim had been in a relationship with defendant before the alleged crimes or acts, and both witness and victim had been in the company of mutual friends immediately before the alleged crimes or acts.

State v. Tameris, 36 Fla. L. Weekly D384 (Fla. 5th DCA 2011):

Victim's testimony from second case in which defendant was charged with unlawful sexual activity with a minor was relevant in first case in which defendant faced the same charge, and vice versa, and thus admissible as similar fact evidence.

The trial court ruled that since the charged offense was not one of "child molestation" the evidence could not be used to corroborate the victim's testimony. The appellate court disagreed.

Delatorre v. State, 35 Fla. L. Weekly D1807 (Fla. 3d DCA 2010)

Probative value of evidence that defendant sexually assaulted his younger sister twenty years earlier was relevant and was not substantially outweighed by danger of unfair prejudice in prosecution for sexual battery and attempted sexual battery.

Pulcini v. State, 35 Fla. L. Weekly D1620 (Fla. 4th DCA 2010):

Extraneous offense or collateral crimes evidence, also known as *Williams* rule evidence, consisting of testimony of another alleged victim was not sufficiently similar to facts alleged in instant prosecution for unlawful sexual activity with a minor, and thus, the evidence was not admissible; *Williams* rule witness was twelve years old at the time of the alleged conduct, whereas victim in instant prosecution was sixteen years old, and while *Williams* rule witness had taken care of horses on defendant's property and babysat defendant's children, victim in instant prosecution was a frequent guest at defendant's home because she was dating defendant's nephew.

Admission of collateral crimes or *Williams* rule evidence absent sufficient points of similarity between the collateral act and the charged crime of unlawful sexual activity with a minor was not harmless error; State's case boiled down to the credibility of the victim, whose testimony was contradicted by two defense witnesses, and uncorroborated by any physical evidence, and State highlighted the *Williams* rule evidence in closing argument.

LaValley v. State, 34 Fla. L. Weekly D2597 (Fla. 5th DCA 2009):

> Relevancy remains the threshold consideration for the admission of similar fact evidence in child molestation cases despite statute broadening the admissibility of such evidence, and even relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice.
>
> *Williams* rule evidence of defendant's prior molestation of his biological daughter was sufficiently similar to the allegations at defendant's trial on charges he molested and committed sexual battery against his adopted daughter as to be admissible, even though the incidents occurred years apart; fondling of breasts was involved in both incidents, both victims were female and approximately the same age when the molestation occurred, both molestations occurred in a familial context, and the gap in time appeared to be largely a function of opportunity.

Grier v. State, 35 Fla. L. Weekly D12 (Fla. 4th DCA 2009)

> Extraneous offense or collateral crimes evidence that included testimony of other alleged victims of sexual abuse or molestation offenses was admissible as proof of motive, opportunity, intent, knowledge, or absence of mistake; many points of similarity between the charged act and collateral acts existed, and the variance in the extent of defendant's sexual contact with collateral witnesses and victim did not render the collateral witness testimony irrelevant.
>
> Similar fact evidence relevant to prove a material fact other than identity does not need to meet the rigid similarity requirement applied when such evidence is used to prove identity.
>
> Probative value of extraneous offense or collateral crimes evidence that included testimony of witnesses who were other alleged victims of sexual abuse or molestation offenses was not substantially outweighed by danger of unfair prejudice, where victim's testimony was more extensive than that of the three witnesses, State made few references to the collateral witnesses in closing argument, and trial court gave cautionary instructions throughout the trial to prevent collateral witness testimony from becoming a feature of the trial.
>
> Collateral crime evidence becomes an impermissible feature where collateral act evidence overwhelms evidence of the charged crime and becomes an impermissible attack on the defendant's character or propensity to commit crimes.

Leland v. State, 34 Fla. L. Weekly D700 (2d DCA 2009):

Defendant was charged with lewd molestation against his 12 year old stepdaughter for massaging her legs, lifting her t-shirt and kissing her upper thigh. The state introduced Williams Rule testimony from the victim's 17-year-old sister that Leland entered her bedroom, closed the door, sat on her bed, and began rubbing her back, ear, and legs. He also played with her hair. The appellate court ruled that admission of the testimony was in error because the act committed on the 17 year old sister did not meet the definition of "child molestation" under 90.404(2)(b) because it was not a sex offense and furthermore, the victim was not "16 years of age or younger.

Fike v. State, Fla. L. Weekly D (5th DCA 2009)

"In the instant case, we conclude that the charged offense of sexual battery of Fike's daughter and the collateral offense of sexual battery on R.S.J. were not sufficiently similar to render the collateral offense admissible. While M.S.F. is female, R.S.J. is male. Further, whereas R.S.J.'s alleged abuse occurred multiple times when he was between three and seven years old, M.S.F. was eleven at the time of the one incident. Additionally, unlike this case, which occurred when Fike was alone with M.S.F. in a hotel room, there were other children at the home when R.S.J.'s alleged abuse occurred. Lastly, the evidence indicated that the sexual abuse in this case occurred in a hotel bed, while R.S.J. testified that the acts against him occurred in the bathroom at his home. Apart from the fact that the sexual acts occurred in the familial context, there is simply no similarity between the two offenses."

In so holding, the court outlined the factors to consider when admitting Williams Rule in familial context in sexual offenses:

> "In assessing whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice, the trial court should evaluate: (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charge; (3) the frequency of the prior act; and (4) the presence or lack of intervening circumstances. This list is not exclusive. The trial courts should also consider other factors unique to the case.
>
> Factors other than the potential for unfair prejudice are also pertinent in a section 90.403 analysis. The trial court must determine whether the evidence of the prior acts will confuse or mislead jurors by distracting them from the central issues of the trial. Also necessary is an assessment whether the evidence is needlessly cumulative of other evidence bearing on the victim's credibility, the purpose for which this evidence may be introduced. Further, in accord with our precedent, the trial court must guard against allowing the collateral-crime testimony to become a feature of the trial. Finally, if requested, the trial court shall give an appropriate

cautionary instruction both at the time the evidence is presented and in its final charge to the jury."

Donton v. State, 34 Fla. L. Weekly D114 (Fla. 1st DCA 2009):

Admission of prior child molestation of three year old female did not warrant mistrial in prosecution for crime involving penile union with, or penetration of, anus of male teenager; defendant engaged in non-consensual sex with one very young victim and another victim whose mental status rendered him child-like and unable to take care of and protect himself, in both prior incident and charged incident, defendant did not expect to be caught having sex with victims, in prior act and charged act, defendant acted with authoritative familiarity over both victims, whom he already knew and exploited when given opportunity to be alone with them, and ample precautions were taken to avoid emphasizing collateral crime evidence.

Where the collateral evidence involves a sexual battery committed upon a child, and the perpetrator is a family member or close family friend or someone else in a "familial relationship" or setting with the victim, a relaxed standard of admissibility of the collateral-crime evidence applies.

Woodard v. State, 33 Fla. L. Weekly D899 (Fla. 1st DCA 2008):

Vague testimony of witness regarding an incident described only as a "sexual assault" committed on her by defendant seventeen years before the charged crimes was erroneously admitted. There was insufficient showing that offense was sufficiently similar to the charged offenses.

Discussion: This case was decided under section 90.404(2)(b). The court applies the standard set by the Florida Supreme Court in McLean v. State, 934 So.2d 1248 (Fla. 2006) in evaluating the admissibility of such evidence. It appears that the appellate courts do not agree with the legislature's intent on passing this law, so they are going to chip away at it until it becomes meaningless.

Foreman v. State, 32 Fla. L. Weekly D1946 (Fla. 2d DCA 2007):

Under the statute providing that evidence of a defendant's commission of other acts of child molestation is admissible at a trial for a crime related to child molestation and may be considered for its bearing on any matter to which it is relevant, the similarity of the prior act and the charged offense remains part of a trial court's analysis in determining whether to admit the evidence in two ways; first, the less similar the prior acts, the less relevant they are to the charged crime, and therefore the less likely they will be admissible, and second, the less similar the prior acts, the more likely that the probative

value of this evidence will be substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

Evidence that defendant had previously touched child victim on clothed vaginal area between her legs did not constitute an act of child molestation and, thus, was inadmissible at trial for capital sexual battery under statute allowing evidence of a defendant's commission of other acts of child molestation in certain circumstances; evidence was insufficient for a fact finder to determine whether defendant's touching was intentional or inadvertent, lingering or brief, or salacious or accidental.

Probative value of evidence that defendant had previously touched child victim on clothed vaginal area between her legs was substantially outweighed by danger of unfair prejudice at trial for capital sexual battery; prior act and charged acts were substantially different, in that charged acts involved union, penetration, or both between defendant and victim in a bedroom with defendant and victim unclothed from waist down, while prior act allegedly occurred in a common room with other children present.

In assessing whether the probative value of evidence of prior acts of child molestation is substantially outweighed by the danger of unfair prejudice in a case in which a defendant is charged with a crime related to child molestation, a trial court should evaluate (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed, (2) the closeness in time of the prior acts to the act charged, (3) the frequency of the prior acts, and (4) the presence or lack of intervening circumstances.

Evidence that defendant had previously touched child victim on clothed vaginal area between her legs was irrelevant at trial for capital sexual battery; evidence of prior act, which substantially differed from charged acts, shed not a scintilla of light of defendant's motive, opportunity, intent, preparation, plan, or knowledge, and because defendant denied that events ever took place, no issues were raised as to identity, mistake, or accident.

Mendez v. State, 31 Fla. L. Weekly D1793 (Fla. 5th DCA 2007):

State offered clear and convincing evidence of prior incident of child molestation by defendant, so as to support admission of evidence of the incident as collateral crime evidence, in trial for sexual battery on a victim less than 12 years of age, and lewd and lascivious molestation; although prior victim could not identify defendant, he was able to identify his unique hat and stated that defendant always wore the hat and was the only person in remote location with such a hat, and another witness observed defendant leaving bunkhouse of camp on night in question and remain gone for unusually long period of time, and defendant's explanation was not credible.

Probative value of collateral crime evidence involving prior incident of child molestation by defendant outweighed danger of unfair prejudice, in trial for sexual battery on a victim less than 12 years of age, and lewd and lascivious molestation; defendant had a similar relationship with both victims, he gained employment that gave him access to young victims, he was a counselor to each and had custodial authority over them at the time of the offenses, the incidents were only two to three years apart, and both occurred in the victims' abodes.

Discussion: The court gave a concise summary of the procedures to consider when determining the admissibility of evidence pursuant to 90.404(2)(b):

> *In McLean, our high court confronted a challenge to this statute on due process grounds. In upholding the constitutionality of the statute, the court adopted several standards to ensure that the use of this type of evidence does not infringe upon the due process rights of an accused. First, the court required that the evidence of the collateral crime be proven by clear and convincing evidence. Second, the court required that the trial court balance the probative value of the evidence against the danger of unfair prejudice, pursuant to section 90.403, Florida Statutes. Third, the court cautioned that the collateral crime evidence must not become a "feature" of the trial. Finally, the court required that, upon request, the jury be instructed as to the limited purpose for which the evidence may be considered.*

Triplett v. State, 32 Fla. L. Weekly D438 (Fla. 5th DCA 2007):

Evidence of prior acts of child molestation committed by defendant was relevant to establishing intent, plan, and absence of mistake or accident in prosecution for lewd and lascivious molestation of a minor less than twelve years of age.

Probative value of evidence of prior acts of child molestation committed by defendant was not substantially outweighed by danger of unfair prejudice in prosecution for lewd and lascivious molestation of a minor less than twelve years of age; prior acts shared numerous similarities with the charged offense, the prior acts did not become a feature of the trial, and trial court instructed the jury appropriately on the limited purpose for the admission of similar fact evidence.

Discussion: This case does not include enough facts to be particularly helpful.

McLean v. State, 934 So.2d 1248 (Fla. 2006):

Evidence that is admissible under statute stating that in criminal case in which defendant is charged with crime involving child molestation, evidence of defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant, can still be excluded if its probative

value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

Collateral crime evidence violates a defendant's right to due process if it is so prejudicial that it denies the defendant a fair trial.

Before considering whether to allow evidence of prior acts of child molestation to be presented to the jury in case in which defendant is charged with child molestation, the trial court must find that the prior acts were proved by clear and convincing evidence.

In assessing whether the probative value of evidence of prior acts of child molestation is substantially outweighed by the danger of unfair prejudice in case in which defendant is charged with child molestation, the trial court should evaluate: (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances.

Trial court must determine whether evidence of prior acts of child molestation will confuse or mislead jurors by distracting them from the central issues of the trial in case in which defendant is charged with child molestation.

Statute stating that in criminal case in which defendant is charged with crime involving child molestation, evidence of defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant, does not violate due process when applied in a case in which the identity of the defendant is not an issue and the provision is used to admit evidence to corroborate the alleged victim's testimony.

Arroliga v. State, 31 Fla. L. Weekly D1377 (Fla. 3rd DCA 2006):

Evidence that defendant charged with lewd and lascivious assault on a child under the age of 16 committed similar offenses against other children was admissible at defendant's trial; evidence was probative because it corroborated victim's testimony, and evidence did not distract jury from central issue of whether defendant molested victim.

Insko v. State, 29 Fla. L. Weekly D1963 (Fla. 2d DCA 2004):

Where defendant was charged with soliciting oral sex from a boy under 16, evidence that defendant had solicited oral sex from another boy was admissible because it tended to suggest that defendant committed the crime charged, and its probative value was not outweighed by its prejudicial effect.

Trial court abused discretion in admitting additional evidence that defendant had been masturbating during the solicitation of the other boy because such evidence simply exposed defendant's bad character, and its prejudicial effect outweighed its minimal probative value.

Discussion: This case was decided under 90.404(2)(b)(1).

McClean v. State, 28 Fla. L. Weekly D2075 (Fla. 2003):

No error in ruling 9-year-old boy competent to testify.

F.S. 90.404(2)(b) dealing with Williams Rule in child molestation cases is constitutional, at least in a case not involving an issue of identity.

The legislature was attempting to alter or overrule the application of existing case law and to simplify the rules of admissibility in child molestations cases when it enacted section 90.404(2)(b).

90.404(2)(b) does not violate ex post facto.

Discussion: The Williams rule evidence was not very similar to the charged crime and the charged crime had very little corroborating evidence. This opinion reflect how both the trial court and the appellate court struggled to come to grips with the application of this new rule. In essence the court interprets the new rule to relax the similarity requirements in cases that don't involve identity. The court must continue to act as a gatekeeper, however, by weighing the prejudice against the probative value of the evidence.

Ortiz v. State, 29 Fla. L. Weekly D1000 (Fla. 4th DCA 2004):

Statute permitting evidence of other crimes, wrongs, or acts of child molestation where defendant is charged with child molestation is constitutional in cases such as one at issue where identity of perpetrator is not an issue.

Application of statute to offense occurring prior to its adoption does not violate ex post facto clause because it is procedural change.

Discussion: This case provides a good discussion of the meaning of section 90.404(2)(b). The court notes that the rule's primary significance is that it relaxes the similarity requirements of traditional Williams Rule evidence.

CLEAR AND CONVINCING EVIDENCE STANDARD

When similar fact evidence is offered at trial, there must be a certain amount of proof that the prior event actually occurred. The clear and convincing evidence standard is used for this purpose.

Stubbs v. State, 2019 WL 1646175 (Fla.App. 4 Dist., 2019)

In unlawful sexual activity with a minor prosecution, alleged acts described by witness constituted child molestation for purposes of statute governing admission of other crimes, wrongs, or acts evidence in prosecutions involving child molestation, where witness testified that defendant was a trusted religious advisor to her and her family, that she was 16 years old, and that defendant took her to his house and had sex with her while she lay there looking up, and crying until defendant was done

The two-step process when a trial court confronts an other crimes, wrongs, or acts issue in child molestation prosecutions is that the court first must find that the state proved the other molestations by clear and convincing evidence, next, the court must assess whether the probative value of the other molestations is substantially outweighed by the danger of unfair prejudice. Fla. Stat. Ann. § 90.404(2)(b).The two-step process when a trial court confronts an other crimes, wrongs, or acts issue in child molestation prosecutions is that the court first must find that the state proved the other molestations by clear and convincing evidence, next, the court must assess whether the probative value of the other molestations is substantially outweighed by the danger of unfair prejudice. Fla. Stat. Ann. § 90.404(2)(b).
Clear and convincing evidence established the collateral crimes of two other victims of child molestation by defendant, as required to admit such collateral crimes evidence in unlawful sexual activity with a minor prosecution; evidence showed that all the girls were between the ages of 16-19, that girls were members of defendant's church, that defendant had a relationship of trust with each girl, that defendant expressed that his conduct was justified through religious teaching or sexual education, that defendant held a position of religious authority in each girl's life and each girl believed that the defendant's actions were sanctioned by God, that defendant used his position in the church to gain access to the girls alone and to gain their acquiescence, and that defendant had union with or penetrated the vagina of each girl

Wood v. State, 2018 WL 1096062, (Fla.App. 1 Dist., 2018)

Case reversed where court failed to make a finding that similar fact victims in child sexual abuse prosecution were proven by clear and convincing evidence.

Harrelson v. State, 146 So.3d 171 (Fla. 1st DCA 2014)

In prosecution of defendant for lewd, lascivious or indecent assault on a child under 16 years of age, trial court erred in failing to find clear and convincing evidence of the

collateral crime, namely that defendant committed similar acts on the same victim in another county, before admitting this collateral crime evidence at trial.

Hernandez v. State, 34 Fla. L. Weekly D (Fla. 4th DCA 2009):

Trial court analysis of the admissibility of *Williams* collateral crimes evidence in a "light most favorable to the State" was erroneous as a matter of law and warranted remand for a new trial, in prosecution for lewd and lascivious molestation; viewing the evidence in a light most favorable to the state precluded defendant from receiving fair review of the evidence.

To meet the clear and convincing standard, the evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

Allsfield v. State, 34 Fla. L. Weekly D1381 (Fla. 4th DCA 2009):

State failed to prove, by clear and convincing evidence, that prior alleged sexual battery involving another victim was actually committed, as prerequisite to establishing its materiality for purpose of securing its admission to establish defendant's intent to commit alleged sexual battery that formed basis of current charge against him, where this other alleged victim had made inconsistent statements as to whether she woke up to find defendant on top of her or only sleeping beside her, and police had found other victim's accusations to be unfounded and closed case without arresting defendant.

Zerbe v. State, 32 Fla. L. Weekly D8 (Fla. 4th DCA 2006):

Error in admission of collateral act evidence of incident with five-year-old in prosecution for lewd and lascivious molestation and child abuse was harmful; evidence concerning five-year-old was in conflict, evidence did not tend to prove or disprove any fact concerning molestation charge, there was no need to lay out sequence of events giving rise to charged crime after testimony concerning molestation charge had been elicited earlier, acts were not sufficiently similar, events took place five-and-a-half months apart with collateral act occurring subsequent to charged crime, mandated cautionary instruction was improper, and while correcting error from day before, second instruction again called attention to collateral act evidence.

In assessing whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice, the trial court should evaluate: (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the

frequency of the prior acts; (4) the presence or lack of intervening circumstances; and (5) other factors unique to the case.

Discussion: The victim was an 11-year-old student of a karate instructor. He instructed her how to urinate while stranding and touched her genitals in the process. He later repeatedly encouraged her to go to the bathroom, which is the source of the child abuse charge. The similar act evidence concerned a 5-year-old student who was observed with her pants down by her grandmother while in the suspect's presence.

Bryant v. State, 26 Fla. L. Weekly D1199 (Fla. 2d DCA 2000):

Facts: The defendant was charged with showing the 14-year-old victim obscene pictures on his computer and then sexually molesting her. On direct examination, the State introduced images from the computer generated on the day of the offense. On rebuttal, the State introduced other obscene images found on the defendant's computer that were never shown to the victim and were generated weeks before the alleged assault. The defense objected to the introduction of the images on rebuttal.

Holding: The trial court improperly admitted the images shown on rebuttal. First, there was no evidence offered to show that the defendant placed these images on the hard drive, thus, there was not clear and convincing evidence that the defendant committed the *Williams* Rule crime. Second, the images introduced in the case in chief were very different than those in the rebuttal. The initial images showed undressed adolescent and pre-adolescent girls, but the rebuttal evidence contained numerous images of sexual activity. Third, the rebuttal evidence was highly prejudicial and its probative value was outweighed by the prejudice.

Smith v. State, 743 So.2d 141 (Fla. 4th DCA 1999):

Error to admit evidence of other similar crimes where defendant was not identified in connection with those crimes.

No error in admission of evidence of similar incident in which defendant was identified for both the crime charged and in a similar incident involved early morning burglaries, sexual assaults or attempted sexual assaults on sleeping women whom the intruder knew who were alone, intruder placing his hand over the victim's mouth, and threatens to harm other occupants if the victim did not cooperate.

Audano v. State, 641 So.2d 1356 (Fla. 2d DCA 1994):

Reversible error to permit state to introduce evidence of uncharged accusations against defendant which were made eight years earlier by twelve or thirteen year old neighbor

and her girlfriend where those collateral accusations were not established by clear and convincing evidence.

Discussion: This case involves a 13 year old girl having voluntary sex with a 41 year old man. The state introduced evidence from two girls who had claimed to be molested eight years previously. No charges were ever filed on the old case and it appears that the girls were poor witnesses. The court also ruled that "The charged offenses here of penile and digital penetration, oral vaginal stimulation and vaginal fondling are clearly dissimilar to the collateral offenses of peeking in a shower, ripping open an existing hole in a child's jeans or fondling while his wife read 'dirty' stories." The primary lesson from this case is that if you intend to use Williams Rule testimony, you had better be able to substantiate the collateral offenses offered.

COLLATERAL ESTOPPEL

Robinson v. State, 32 Fla. L. Weekly D1245 (Fla. 5th DCA 2007):

> Introduction of DNA evidence linking defendant to sexual battery at defendant's trial for solicitation to kidnap and kill the sexual battery victim, a trial which occurred after defendant had been acquitted of the sexual battery, did not violate double jeopardy clause.
>
> "The *Ashe* rule forbids the admission in a subsequent trial of evidence of an acquitted collateral crime only when the prior verdict clearly decided in the defendant's favor *the issue for which admission is sought." Id.* (emphasis added). The issue for which admission of the DNA evidence was sought in the trial below was Robinson's motive to arrange for the kidnapping and murder of the young girl.[FN3] That issue was obviously not submitted to the jury in Robinson's sexual battery trial, and was therefore clearly not decided by the prior jury's verdict."
>
> Discussion: It should be noted that the original sexual battery trial was decided before the DNA testing had been completed.

Cook v. State, 30 Fla. L. Weekly D2195 (Fla. 2d DCA 2005):

> Prior determination in administrative disciplinary proceedings before Education Practices Commission (EPC), that defendant, then an elementary school principal, had not engaged in sexual conduct with minor was not entitled to preclusive effect under collateral estoppel doctrine in criminal proceedings nearly twenty years later in which similar fact evidence was adduced through same individual about same conduct; there was lack of mutuality of parties, and nature of the proceedings was dissimilar, so that it could not be said that accusations had been fully and fairly litigated in the prior proceeding.

COLLATERAL CRIME OCCURRED AFTER CHARGED CRIME

Miles v. State, 2022 WL 17335761 (Fla.App. 1 Dist., 2022)

> The fact that a collateral crime occurred *after* the charged offense does not render evidence of the collateral crime inadmissible.

CONSENT: EVIDENCE OFFERED TO REBUT DEFENSE

McWatters v. State, 35 Fla. L. Weekly S169 (Fla. 2010):

> Evidence of a pattern of sexual batteries can be relevant to the issue of lack of consent.
>
> "The Bradley sexual battery conviction is also supported by the evidence of a pattern of sexual batteries. While this Court has held that lack of consent may not be found based on evidence of collateral sexual batteries alone, evidence of a pattern of sexual batteries can be relevant to the issue of lack of consent."

Conley v. State, 29 Fla. L. Weekly D2701 (Fla. 5th DCA 2004):

> Collateral-crimes evidence that defendant on separate occasions caused two young females to enter his vehicle and performed sexual acts was admissible in trial for kidnapping and sex offenses to show whether defendant's sexual acts with victim were consensual, given defendant's claim that they were and his argument that his possession of victim's pager and telephone numbers tended to corroborate that claim; similar methods of operation in collateral crimes and in victim's case, including defendant's use of vehicle in initial encounters, tended to rebut claim.

Corner v. State, 29 Fla. L. Weekly D290 (Fla. 3rd DCA 2004):

> Where defendant transported victim in his vehicle to a remote location where he locked the doors and raped the victim, defendant's actions in confining and transporting the victim were not merely inherent and incidental to the nature of the sexual battery, and constituted an independent basis for the kidnapping charge apart from the sexual battery.
>
> Where defendant was charged with sexual battery of a minor girl, court did not err in admitting evidence of prior similar rapes of other minor girls. Collateral crime evidence was admissible to disprove the defense of consent and to show that defendant was engaged in a common scheme, plan, or preparation to take sexual license with minor girls.
>
> Discussion: In each of the cases, the defendant lured the victim into his car under false pretenses and then sexually assaulted them. See the case for a good discussion as to the similarity and relevance of the facts.

Houston v. State, 28 Fla. L. Weekly D1972 (Fla. 5th DCA 2003):

> Where defendant was charged with having coerced sex with a homeless woman he met at a bus station, and the defense was that the encounter we consensual, court did not err in admitting evidence of defendant's coerced sexual encounters with two other homeless women.
>
> Evidence of prior sexual batteries on other homeless women was relevant to rebut the defense of consent by demonstrating that the defendant had a common plan or scheme to perpetrate the crime, and the points of commonality reflect a unique pattern of crime commission by defendant.
>
> Court erred in ordering that defendant receive MPA if ever released from prison pursuant to section 794.0235 without appointing a medical expert to determine whether defendant is an appropriate candidate for the treatment and without specifying the duration of the treatment.
>
> Discussion: In reference to points of similarity, the court noted, "In the present case the victims were all heavy-set middle aged, transient, white females with brown hair. They were alone when approached by Houston, and were attacked within a ten-block area in downtown Orlando. Houston isolated each woman either with a promise of a shortcut or a place not to be bothered by the police. The acts forced on each woman were similar in method and coerced by threats, and in each instance he claimed the consent of the woman." The court further notes that evidence relevant to prove a material fact other than identity need not meet the rigid similarity requirement applied when such evidence is used to prove identity.

Irons v. State, 26 Fla. L. Weekly D2008 (Fla. 5th DCA 2001):

> Evidence of sexual battery and attempted sexual battery of another victim was properly admitted where those crimes were sufficiently similar to charged offense to be relevant and admissible and to show common *modus operandi.*
>
> > "Although there are some differences between the two crimes, the actions by Irons in both are sufficiently similar to be relevant and admissible and to show a common *modus operandi*. The two assaults occurred within six weeks of each other. In both cases, the assaults took place at the Contemporary Resort Hotel where Irons worked. Thus he was familiar with the surroundings. In both cases, Irons was wearing his Disney uniform and/or name tag or identified himself as a Disney worker, thus giving him credibility. In both cases, Irons engaged in small talk with his victims in an attempt to put them at ease. In both cases, Irons attempted to

> isolate and did isolate the victims in rather secluded or nonpublic portions of the hotel. In both cases, Irons took his victims into an empty men's room, forced them into a stall and locked the stall door behind them. In both cases, Irons simply left his victims in the restroom and walked away.
>
> Further, the evidence of the assault on the prior woman is relevant to rebut Iron's defense of consent by showing he had a common plan or scheme to befriend and then isolate his victims. Thus the evidence was properly admitted."

Geldreich v. State, 763 So.2d 1114 (Fla. 4th DCA 1999):

> Where defendant was separately tried for sexual battery of one victim and attempted sexual battery of another victim on the following day, evidence of each offense was properly admitted in trial for the other offense.
>
> Collateral evidence was properly shown to show a common plan or design to create circumstances that would give the appearance of consent by the victims.
>
> No error in denial of motion for judgment of acquittal on charge of attempted sexual battery where evidence showed both intent to commit offense and acts in furtherance of commission of offense.
>
> Discussion: On New Year's Eve of 1997, the 30 year old suspect was introduced to a blond woman in her late 40's. He spoke to her a while at a bar and eventually talked her into going back to his apartment. Once in the apartment, he offered her cocaine which she refused. He then tried to have sex with her and when she refused, he beat her. After she reported the offense the defendant told the police that it was ridiculous to think that a good looking 30 year old man would rape a woman in her late 40's. The next evening, the defendant went to another bar in the same area and was introduced to another blond woman in her 40's. He was able to talk her into going into the parking lot. Once in the parking lot, he tried to talk her into going to his apartment which she refused. He also offered her cocaine which she refused. He then physically abused her and started ripping off her clothing in the parking lot. The bar doorman responded to her screams and the suspect ran away. When the police contacted the suspect about the second assault, he stated that he and the victim had too much to drink and they were just playing around in the parking lot and that when the doorman called out she panicked and said she was raped. The appellate court ruled that the collateral evidence in this case was used to show a common plan or a design to create circumstances that would give the appearance of consent by the victim. The court noted eight (8) points of similarity between these two cases which was compelling to show a common plan or scheme. The court held that a jury could conclude that the defendant's common scheme was to pick up older women at bars, and try to get them to accompany him to his apartment for purpose of sexual intercourse. Meeting them at bars was important to the scheme, because he could claim

that the victims were drunk and consented to his advances. The court also ruled that evidence of the woman who was actually sexually battered was relevant in the attempted sexual battery trial to show the defendant's intent to sexually assault that victim. The similarities between the two incidents were sufficient to prove the defendant's intent in grabbing the attempt victim and assaulting her.

Boroughs v. State, 684 So.2d 274 (Fla. 5th DCA 1996):

Testimony concerning abusive nature of defendant's relationship with victim, including defendant's prior bad acts, was relevant to prove sexual battery victim's lack of consent and to explain why victim did not immediately call police.

Discussion: The state filed an appropriate *Williams* rule notice in this case. The evidence submitted showed that the suspect verbally and physically abused the victim. He also stalked her while she was at work, made her go on his newspaper route in the middle of the night, prevented her from having friends, and became enraged if she spoke to other people. He threatened to kill her if she tried to leave him or is she called the police. The appellate court noted that although sexual battery is a general intent crime, it requires that the sexual act be committed without the consent of the victim. The statutory definition of "consent" includes the phrase "does not include coerced submission." The victim's lack of consent to the sexual act is an element of the offense which must be proven. As such, the entire pattern of behavior, or relationship between the parties becomes relevant to determine if "coerced submission" to the act existed, or whether the act occurred as a result of the victim's consent.

Willaims v. State, 621 So.2d 413 (Fla. 1993):

Similar fact evidence concerning defendant's sexual assaults on women other than complainant was relevant in prosecution for sexual battery to rebut defendant's defense that complainant had consensual sex with him in exchange for drugs, and potential for undue prejudice was outweighed by probative value of evidence in showing common plan or scheme to seek out and isolate victims likely not to complain or to complain unsuccessfully because of circumstances surrounding assaults and because of victims' involvement with drugs.

Discussion: This case is also discussed in the 3d DCA opinion. This case was brought before the Supreme Court because it had an apparent conflict with Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981) and Helton v. State, 365 So.2d 1101 (Fla. 5th DCA 1979). Those cases ruled that consent was unique to each case and therefore, not admissible for Williams Rule evidence. The Supreme Court upheld those decisions, but ruled that consent is a proper issue under the appropriate circumstances. The Court notes that otherwise relevant evidence may be excluded under section 90.403 if its probative value is substantially outweighed by undue prejudice.

Williams v. State, 592 So.2d 350 (Fla. 3d DCA 1992):

> Collateral crime evidence was properly admitted on issue of common scheme or plan and to rebut defendant's defense of consent in prosecution for sexual battery, after defendant claimed that sexual intercourse had been consensual.
>
> Discussion: This case presents a very common factual scenario. The defendant engaged the victim in a discussion about where to purchase crack cocaine. He then struck her in the head, grabbed her around the neck and put a sharp object to her throat. He then took her to a secluded place, threw her to the ground, took her cocaine and raped her. The suspect claimed the sex was consensual. The state offered testimony of two other women who had identical experiences with the defendant. This case was affirmed in Williams v. State, 621 So.2d 413 (Fla. 1993). See this case for a more detailed discussion of these issues.

Jackson v. State, 538 So.2d 533 (Fla. 5th DCA 1989):

> Testimony by alleged victim of uncharged rape 13 and one half months prior to charged sexual batteries that defendant had offered to give her ride, had driven her into rural area, had sped up car to prevent escape, and then beat up and raped victim was relevant and admissible to show modus operandi, or plan, or scheme; charged sexual batteries also involved defendant having given ride to someone he knew, speeding up to prevent escape, and beating up and raping victim.
>
> Officer's testimony that when he investigated previous uncharged rape that defendant had said that he had paid alleged victim $25 for having sex with him was relevant and admissible to rebut defendant's claim that he had paid alleged victim of charged sexual batteries $20 to have sex with him.

Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981):

> Where ultimate issue in sexual battery prosecution was consent of victim, admission of evidence concerning circumstances leading to the accused's sexual acts with another woman three years earlier was prejudicial as it had no relevancy to whether or not the prosecutrix consented.
>
> Discussion: The suspect was accused of coming to the victim's home for a date type situation. He eventually forced her to have sex. He admitted the sex, but claimed it was consensual. The State offered evidence that three years earlier the defendant was at his home kissing a date when he got out of control and forced her into intercourse. The court implies that had identity been an issue it may have been admissible, but consent is unique to each particular case and is not appropriate for Williams Rule. The Florida Supreme Court later addressed this case in Williams v. State, 621 So.2d 413 (Fla. 1993). The court

upheld the Hodges decision, but disapproved of the implication that consent in not an appropriate issue for Williams Rule evidence.

Helton v. State, 365 So.2d 1101 (Fla. 1st DCA 1979):

Issue of consent in a sexual battery prosecution is unique to individual, and lack of consent of one person is not proof of consent of another.

Discussion: The victim claimed she was abducted, taken to a wooded area, beaten and raped. She was able to escape by running naked onto the highway. At trial, another woman testified that she knew the defendant and he had asked her for a ride home from work. He directed her to a wooded area and then grabbed the keys out of the car and told her that he was going to rape her. They struggled and got into a fight. He was never able to overcome her resistance and she eventually flagged down a passing car to escape. He was convicted of simple battery on that case. This case was addressed by the Florida Supreme Court in Williams v. State, 621 So.2d 413 (Fla. 1993). The Supreme Court approved of the result in Helton, but ruled that consent can be the basis for Williams Rule evidence in the appropriate circumstances.

EFFECT OF ACQUITTALS AND NO INFORMATIONS ON ADMISSIBILITY

Foraker v. State, 731 So.2d 110 (Fla. 5th DCA 1999):

Fact that State filed "no information" on charge of lewd assault on friend of defendant's daughter was not admissible to show defendant's innocence, in prosecution for committing lewd act on child in connection with fondling of another friend of daughter.

Jaggers v. State, 588 So.2d 613 (Fla. 2d DCA 1991):

In prosecution of defendant for sexual battery of his niece, testimony of defendant's daughter and stepdaughter as to defendant's digital penetration of them on the same occasion was not admissible where District Court of Appeals, following prior trial, had directed that defendant be acquitted as to the charges involving the daughter and stepdaughter on the ground of total lack of reliable evidence to support the element of penetration.

Discussion: The court ruled that the children could still testify in the new trial, but they could not mention the fact that they were "penetrated." This court also ruled that the State provided sufficient notice for Williams Rule evidence by directing defense counsel to transcripts from prior trial.

Lane v. State, 324 So.2d 124 (Fla. 2d DCA 1975):

Evidence of similar crime, which was admissible by virtue of fact that circumstances and manner of commission of offense were uniquely similar to crime charged, was not barred, under doctrine of collateral estoppel, but subsequent determination that defendant was not guilty of prior offense where, at time when similar crime evidence was introduced, issue whether defendant had actually committed prior offense had not been litigated.

FEATURE OF TRIAL ISSUES

Ivey v. State, 2023 WL 8249579 (Fla.App. 1 Dist., 2023)

This excerpt provides a good discussion on the standard for introducing similar fact evidence in child sex cases and applying the facts to that standard.

> *The trial court must consider all relevant factors in determining the relevance of collateral act crimes. McLean, 934 So. 2d at 1262 (providing that the trial court should at a minimum evaluate "(1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances"). In this case, the trial court allowed the victim's siblings to testify that Ivey also touched them sexually. The alleged abuse took place in Ivey's home, while he was serving as one of the siblings' caregivers, during the same period as the victim's abuse. All three siblings were close in age and the same gender. Together, the siblings' testimonies showcased a pattern of sexual abuse in the home. Based on these similarities, the evidence's probative value is not substantially outweighed by the danger of unfair prejudice.*

The court also ruled the evidence was not a feature of the trial.

Youngblood v. State, 2022 WL 10876777 (Fla.App. 1 Dist., 2022)

The appellate court upheld the admission of similar fact evidence in a child molestation case. In the brief opinion, the court noted:

> *Witnesses testified at a pretrial hearing that when they were young girls between the ages of 6 to 8 years old, Appellant abused them much like*

> *his sexual battery of the 6-year-old female victim of the charged offense. "[T]he similarity of the prior acts to the act charged regarding the location of where the act occurred, the age and gender of the victims, and the manner in which the acts were committed" are all considerations under McLean. 934 So. 2d at 1262–63.*

The court also ruled the evidence was not a feature of the trial:

> *The prior bad act witnesses' testimony was short. The prior acts were only briefly mentioned by the State in opening and closing statements to the jury, and the jury was repeatedly instructed as to the proper use of the collateral crimes evidence.*

Burgess v. State, 2021 WL 3012329 (Fla.App. 1 Dist., 2021)

Facts: The fourth grade victim testified the suspect performed various sex upon her. The victim testified at trial and the court allowed child hearsay testimony from the detective who interviewed her. The court also allowed Williams Rule testimony from a 2006 case where the suspect performed similar sexual acts on a 20-year-old mentally ill woman.

Williams Rule: First, the appellate court ruled the State proved the collateral crime by clear and convincing evidence. The court then noted, *"Collateral-crime evidence may be introduced to corroborate the victim's testimony by showing that the defendant has a propensity for committing "sexual offenses" as defined in* section 90.404(2)(c) 2.*"*

Finally, in ruling the collateral crime evidence did not become the feature of the trial, the court stated,

> Here, although the State presented six witnesses to testify about the collateral-crime evidence, each witness's testimony was relatively short and did not "transcend[ ] the bounds of relevancy" or develop into an assault on Appellant's character. *See Peterson,* 2 So. 3d at 155 (quoting *Conde,* 860 So. 2d at 945). Additionally, the State only briefly mentioned the collateral-crime evidence during its opening and closing statements, and the State reminded the jury that the purpose of such evidence was to corroborate the victim's account. The trial court also properly instructed the jury on the use of collateral-crime evidence both before the State's introduction of the evidence and during jury instructions.

Corson v. State, 9 So.3d 765 (Fla.App. 2 Dist.,2009)

The State improperly made Williams Rule evidence the feature of the trial in a case in which the child victim was fondled and the similar fact witness was fondled and

penetrated. The State commented extensively on the similar fact testimony and called a physician as a witness to sexual trauma. The charged victim did not have any corroboration in her case. The court concluded, "The collateral crimes evidence became a focal point of the trial and involved acts more serious than the offenses for which Mr. Corson stood trial."

Seavey v. State, 8 So.3d 1175 (Fla.App. 2 Dist.,2009)

In ruling that Williams Rule evidence was admissible, the court stated,

> "In this case, the collateral crimes evidence established that Seavey chose young boys who were vulnerable and that he earned their trust by pursuing their interests. Seavey molested the boys on one occasion in the privacy of his home when no one else was present. All three victims were pre- or early teen boys. While the collateral crimes occurred sixteen and twenty-five years before the charged crime, the lapse of time between the crimes is not in itself determinative of whether the evidence is relevant. Accordingly, the trial court did not abuse its discretion in determining that the collateral crimes evidence was relevant and that its probative value outweighed any danger of unfair prejudice."

In ruling that the Williams Rule evidence was reversible for becoming a feature of the trial, the court stated,

> "In this case, the victims' testimony regarding the collateral crimes evidence itself was relatively brief. However, the victims' testimony was more detailed than the testimony of the charged victim, and the collateral crimes involved much more serious criminal offenses than the charged crime. More important, the State improperly emphasized the collateral crimes during opening statement and closing argument….The State spent seven out of twelve pages of its opening statement detailing the collateral crimes. The State's references to the collateral crimes in closing argument were less detailed than in its opening statement, but the State spent ten pages using the collateral crimes to classify Seavey as a predator who finds young boys' weaknesses, grooms them, and then sexually assaults them. Instead of using the collateral crimes evidence to argue that Seavey committed the charged crime as alleged by the victim, the State used the evidence to argue that Seavey committed the charged crime because he was a sexual predator."

Jones v. State, 32 Fla. L. Weekly D63 (Fla. 5th DCA 2006):

Trial court's error in failing to prevent collateral crime evidence from becoming the feature of trial for lewd and lascivious molestation of a minor required reversal of defendant's convictions; collateral crime evidence was evidence that defendant had allegedly committed other sexual acts on the same victim in another county, prosecutor

devoted more time on the collateral crime evidence than on the charged crimes, the collateral crime evidence related to more serious acts, and victim's testimony regarding the uncharged collateral crimes was far more detailed and specific.

Sutherland v. State, 28 Fla. L. Weekly D1387 (Fla. 4th DCA 2003):

New trial required on charges that defendant committed sexual battery on his stepdaughter when she was under age twelve where state presented extensive evidence regarding sexual relations between defendant and victim after victim passed age 12, most of which occurred after victim reached age of majority and most of which was not sufficiently similar to testimony of victim as to what happened while she was under twelve, and this evidence became feature of trial.

Discussion: The defendant was charged with sexual battery on a child less than 12 years of age for sexual acts he committed many years earlier. The victim was an adult at the time of the trial. The State introduced evidence of the sexual affair after the victim's twelfth birthday and into adulthood. Numerous witnesses were called by the State to corroborate the fact that she was still having sex with him in her late teens and early adulthood. The court ruled that the later sex acts were generally relevant, but the State simply put too much emphasis on them and they became the feature of the trial.

Perry v. State, 718 So.2d 1258 (Fla. 1st DCA 1998):

Prosecutor did not make evidence of collateral uncharged offenses a feature of trial by single reference to such evidence in closing argument.

Discussion: Three similar fact witnesses testified to corroborate one charged victim.

Snowden v. State, 537 So.2d 1383 (Fla. 3rd DCA 1989):

In prosecution for sexual battery of a four year old girl and a six month old boy, admission of evidence which tended to show that defendant had also molested another five year old boy and another six year old girl did not deny defendant fair trial. The jury was appropriately and repeatedly instructed on proper use of evidence, similar fact evidence was used by State simply to show identity of defendant and to rebut defense contention that four year old victim was lying, substantial portion of similar fact evidence was adduced by defendant himself, and similar fact evidence did not become feature of trial.

Discussion: This case involves a scenario seen frequently in this area. The defendant was the husband of the victims baby-sitter. While the wife was out of the house, the defendant would do his thing. This case contains excellent language on the issue of whether the collateral evidence is the feature of the trial. The case is also a good example of how to salvage a case where the victim falls apart at trial.

Sias v. State, 416 So.2d 1213 (Fla. 3d DCA 1982):

Although fact that homosexual battery on 14 year old complainant and homosexual attack on 11 year old five days previously occurred in isolated areas of a park and involved similar act was insufficient to warrant admission of evidence of the prior attack on identification issue, evidence of the prior attack was admissible where on each occasion perpetrator was accompanied by the same individual and put a piece of clothing over victim's head and removed it only after completion of the sex act as it appeared that placing clothing over victim's head was done less to conceal identity than as a ritual connected to the acts.

Discussion: This case also represents other valuable points of law. **1) State is not held responsible for making Williams Rule feature of trial when it is defense counsel who belabors the evidence through cross examination.** 2) Police officer's testimony that defendant had told officer that he was a homosexual was not relevant on the ground that only one who was a homosexual would commit homosexual battery. 3) Even though irrelevant evidence of defendant's homosexual preference was admitted, it was harmless error when defendant's alibi witness testified he had a homosexual relationship with defendant.

IMPEACHMENT AND REBUTTAL

Barnes v. State, 477 So.2d 6 (Fla. 2d DCA 1985):

In prosecution for sexual battery on child, cross examination of defendant concerning allegedly sexual advances defendant made toward defendant's former sister-in-law was properly admitted as impeachment of defendant's prior testimony of direct examination.

Discussion: The defense objected to the evidence as improper Williams Rule evidence. The court indicated that it was not Williams Rule, but proper impeachment. The defendant testified that if he exposed himself to the victim, it was an accident. He portrayed himself as a modest person who would rush to cover himself when the child entered the room. The court found that his testimony opened the door to other evidence.

INSEPARABLE CRIME EVIDENCE

Prush v. State, 2021 WL 5405305 (Fla.App. 5 Dist., 2021)

Additionally, we find no error—let alone fundamental error—in the admission of the uncharged sexual acts committed by Prush against A.H., because that evidence was inextricably intertwined with the underlying charges. See McGee v. State, 19 So. 3d 1074,

1078–79 (Fla. 4th DCA 2009) (finding uncharged acts of oral and attempted anal sex inextricably intertwined with charged offenses of vaginal sex where uncharged acts were "necessary to adequately describe the events leading up to the charged crimes."); see also Dorsett v. State, 944 So. 2d 1207, 1213 (Fla. 3d DCA 2006) (noting that evidence is inextricably intertwined if it is necessary to "establish the entire context out of which the charged crime(s) arose" (citing Hunter v. State, 660 So. 2d 244, 251 (Fla. 1995))). When uncharged sexual acts are inseparable from the context of the charged offenses, that evidence is admissible as relevant under section 90.402, Florida Statutes (2019). See Griffin v. State, 639 So. 2d 966, 968 (Fla. 1994).

McMillian v. State, 2020 WL 6706932 (Fla.App. 1 Dist., 2020)

The State nolle prossed several sexual battery/child counts just before trial. The defense filed a motion in limine to exclude testimony about those counts and the State agreed. The defense then objected when the victim described continual sexual abuse in the relevant time periods. The court first provided a good discussion regarding the standards for allowing a victim to testify to ongoing abuse in a single account:

> *In the specific context of sexual abuse, when a child victim cannot specify the dates on which the abuse occurred, it is permissible for the State to charge in a single count that a specific type of sexual abuse occurred on multiple occasions during a range of dates. See Geiser v. State, 83 So. 3d 834, 835–36 (Fla. 4th DCA 2011); Whittingham v. State, 974 So. 2d 616, 618–19 (Fla. 4th DCA 2008). In allowing this approach, the supreme court attempted to reconcile "two conflicting public policy concerns": (1) "the strong interest in eliminating the sexual abuse of children through vigorous enforcement of child-abuse laws ... recogniz[ing] that young children often are unable to remember the specific dates on which they were abused"; and (2) "the strong interest of defendants in being apprised of the charges against them such that they can prepare an adequate defense." Dell'Orfano v. State, 616 So. 2d 33, 35 (Fla. 1993). In turn, when an information charges a sex crime against a minor that occurs over a "lengthy" period of time, a trial court must dismiss the information, "on a proper motion," unless the State can "show clearly and convincingly that it has exhausted all reasonable means of narrowing the time frames further." Id. If the State does make such a showing, "the burden then shifts to the defendant to show that the defense more likely than not will be prejudiced by the lengthy time frame." Id.*

The court then noted that the testimony about the continuing abuse was "inseparable from and inextricably intertwined with the crime charged," so it was not *Williams* rule evidence.

Woolman v. State, 2020 WL 1280817 (Fla. Dist. Ct. App. Mar. 18, 2020)

Defendant was convicted of engaging in oral sex with victim between 12 and 16 years of age while in position of familial or custodial authority. During trial, State introduced a controlled phone call between the victim and the suspect wherein he admitted to engaging in sexual intercourse with her after she turned 16 years of age. In ruling that the similar fact evidence was inadmissible, the court stated,

> *Here, whatever minimal probative value Woolman's admissions to engaging in sex with the victim after the dates charged in the information may be is far exceeded by its prejudicial effect. The overwhelming majority of the recorded call addressed only the collateral acts of sex with the victim after she had turned sixteen; very little of the call was relevant to the charged crimes. And Woolman's admissions to a sexual relationship with the victim after the dates charged is precisely the type of evidence that has "an undue tendency to suggest decision on an improper basis," that "inflames the jury or appeals improperly to the jury's emotions," and that should have been excluded…*
>
> *Not only do we conclude that the discussion of sex after the victim had turned sixteen was unfairly prejudicial, but we also conclude that the discussion was not inextricably intertwined with the charged crimes. Evidence of "later sexual conduct was unnecessary to describe the charged acts, provide an intelligent account of the charged crimes, establish the context of the charged offenses, or describe the events leading up to the offenses."*

Discussion: Since the statute charged covers victims up to 18 years of age, it is not clear why the defendant was charged only for acts before the victim's 16th birthday. It is also unclear why he was not charged for the one crime he admitted to during the controlled call. It could have been a strategic decision by the state in order to have an option of a lesser included offense of lewd battery if the familial/custodial element didn't fly. It is also possible that the admitted sex act was in another jurisdiction.

Ansley v. State, 2019 WL 3850589 (Fla.App. 1 Dist., 2019)

Evidence of uncharged crimes to which victim testified was inextricably intertwined with evidence of charged crimes; victim testified about uncharged sexual battery and multiple, uncharged batteries and aggravated assaults committed by defendant, and those additional crimes were interwoven with charged crimes and painted accurate account of events surrounding charged crimes.

Evidence of uncharged crimes to which victim testified established element of defendant's kidnapping charge, and therefore the evidence was admissible; to prove crime

of kidnapping, the State had to prove that defendant kidnapped victim by confining or imprisoning her with intent to inflict bodily harm upon or to terrorize her, and all evidence derived from victim's testimony aided the State in proving that defendant inflicted bodily harm upon or terrorized victim.

Collateral crimes evidence is inextricably intertwined with evidence of the charged crimes if the evidence is necessary to (1) adequately describe the deed; (2) provide an intelligent account of the crime(s) charged; (3) establish the entire context out of which the charged crime(s) arose; or (4) adequately describe the events leading up to the charged crime(s).

Geiser v. State, 36 Fla. L. Weekly D2689 (Fla. 4th DCA 2011):

Uncharged crimes evidence was properly admitted in prosecution on eight counts of sexual battery, where victim's testimony regarding such crimes was inextricably intertwined with charged criminal acts, victim's credibility was not at issue due to defendant's admissions, and state did not heavily rely upon incidents that were not charged in information during its case in chief or in its closing argument; challenged testimony was necessary to adequately describe how defendant came to know victim and manner in which he fostered relationship leading up to acts for which he was charged, which occurred over five-year period.

Sabine v. State, 2011 WL 1565454 (Fla. 2d DCA 2011):

Defendant was charged with 20 sexual offenses he committed upon his granddaughter between the ages of 11 and 15. The State filed a motion to introduce inextricably intertwined evidence concerning a lewd act committed upon the child when she was 8 years of age and various sexual acts committed upon the child after she turned 16.

Appellate court ruled, "No explanation of prior or subsequent conduct was necessary for the jury to understand the evidence of the twenty discrete acts charged in the information." The court further ruled that the notice provided by the State was insufficient to allow introduction of these acts as Williams Rule evidence.

Downs v. State, 35 Fla. L. Weekly D1465 (Fla. 5th DCA 2010):

A 23-year-old witness testified that when she was 7-years-old, the defendant came into her room and digitally penetrated her. This act was the basis for the only charge in the case. She then testified, over objection, that 2 years later he entered the shower with her on multiple occasions and fondled her. The State did not provide a Williams Rule notice, but argued the incidents in the shower were inextricably intertwined with the charged offense. The appellate court rejected this argument and said that this testimony was

clearly not inextricably intertwined evidence and that the State should have provided a Williams Rule notice.

McGee v. State, 34 Fla. L. Weekly D2056 (Fla. 4th DCA 2009):

Evidence of defendant's performance of oral sex and anal sex on victim was inextricably intertwined with the charged crime of unlawful sexual activity with a minor, specifically vaginal sex, and was thus not *Williams* rule evidence of collateral crimes; the acts of oral and anal sex were necessary to adequately describe the events leading up to the charged crime.

Wightman v. State, 33 Fla. L. Weekly D1166 (Fla. 2d DCA 2008):

Multiple uncharged acts of sexual battery upon a child victim were not relevant as inextricably intertwined evidence.

Evidence was not admissible as evidence of crimes or acts of child molestation under section 90.404(2)(b)(1), because defendant was not given pretrial notice of intent to use such evidence.

Nunez v. State, 32 Fla. L. Weekly D1540 (Fla. 4th DCA 2007):

Evidence that defendant offered cocaine to 14-year-old victim was admissible as inextricably intertwined with charged crime of lewd or lascivious molestation, where victim testified that defendant knocked on apartment door and made his way past her inside apartment after she opened it, defendant offered cocaine to victim, victim refused, defendant asked victim if she wanted to have sex with him, victim refused, and defendant chased her into bedroom, pushed her on bed, and committed sexual touching.

Shively v. State, 752 So.2d 84 (Fla. 5th DCA 2000):

No error in admission of testimony of witness who saw defendant french kissing victim where incident led to victim's disclosure to her mother and stepfather that she had been sexually molested by the defendant.

Evidence necessary to describe the manner in which a criminal offense took place or how it came to light is generally admissible as relevant evidence even though it might otherwise be objected to as prior bad act evidence.

No error in admission of testimony of victim's brother that he saw defendant naked in the presence of the victim.

Evidence was not rendered inadmissible because of fact that defense was not given prior notice of state's intent to introduce evidence, or incident was known to defense counsel before trial and could have been subject to a motion in limine.

Erickson v. State, 565 So.2d 328 (Fla. 4th DCA 1990):

Testimony of parent and his nine year old daughter as to observations of acts of sexual molestation committed by defendant on another little girl at Parents Without Partners picnic was admissible as **inseparable crime evidence**, and not collateral crime evidence where act was inseparably linked in time and circumstances to evidence of defendant's act upon ten year old victim, both acts being similar in manner and occurring in course of same day at same picnic, and thus, State was not required to provide defendant with notice of intent to offer evidence.

State need not comply with statutory ten day notice provision, required prior to admission of collateral crime evidence, as prerequisite to offering inseparable crime evidence.

Walker v. State, 544 So.2d 1075 (Fla. 2d DCA 1989):

In prosecution for sexual battery with slight force, trial court properly admitted statement made by defendant to victim during attack that he had recently been released from prison; statement was part of integral facts of case, and was also relevant to prove identity of perpetrator.

ISOLATED INCIDENT: EVIDENCE OFFERED TO SHOW IT WAS NOT

Elmer v. State, 37 Fla. L. Weekly D2393 (Fla. 2d DCA 2012):

Evidence of a defendant's continued sexual abuse of the same victim after the victim turned twelve years old may be admitted as similar fact evidence in prosecution for capital sexual battery on a child less than twelve years old.

Rolle v. State, 37 Fla. L. Weekly D1920 (Fla. 2d DCA 2012)

Trial court abused its discretion in allowing the victim to testify about uncharged collateral acts that were not necessary to prove or explain the charged offense.

It is only when it is impossible to give a complete or intelligent account of the charged crime without reference to uncharged crimes that evidence of those uncharged crimes is admissible.

Discussion: During the lewd or lascivious molestation trial, the victim testified that her uncle had previously molested her in a different jurisdiction. The appellate court said the other similar acts were not necessary and overturned the conviction.

Kimbrel v. State, 764 So.2d 893 (Fla. 4th DCA 2000):

Victim's testimony concerning prior incidents of sexual encounters with stepfather, which occurred while victim's mother was away from the home, was admissible to show opportunity, preparation and plan.

Evidence of prior similar acts against the same victim, notwithstanding that it may be self-corroborating, is admissible in that it shows intent, preparation, plan, relationship between the victim and the offender, and the existence of lustful state of mind toward the victim.

Discussion: The appellate court noted that similar fact evidence involving the same victim is not admissible under the Heuring rationale (to corroborate the victim's testimony by virtue of familial context), but is admissible if it has independent relevance. The decision in this case turned on the fact that the stepfather always sent mother away to the store prior to luring the victim into the bedroom for sex. This evidence did not corroborate the victim's testimony, but showed a plan or scheme.

Padgett v. State, 551 So.2d 1259 (Fla. 5th DCA 1989):

In prosecution of father for sexual abuse of minor daughter, testimony of stepson as to father's prior sexual assault on him was admissible to corroborate victim's testimony.

Testimony of minor daughter as to prior similar sexual acts committed against her by father was admissible in prosecution of father for sexual abuse of daughter to show both existence of particular relationship between two and fact that charged crime was not isolated incident.

Discussion: This case is helpful for situations in which a defendant has repeatedly sexually battered a victim and you have only filed a few counts. It allows you to get around a propensity argument and establish relevance. If a judge does not allow us to charge "on one or more occasions", we can charge isolated incidents and use this case to discuss the entire string of episodes. It should be noted, however that this case was certified to the Florida Supreme Court.

JURY INSTRUCTIONS

Lopez v. State, 2015 WL 2089068 (Fla.App. 4 Dist.)

During lewd molestation trial, court read improper Williams Rule instruction to jury that allowed them to consider testimony of other victim for improper purposes:

> *This time, however, the trial court read a modified instruction, provided by the State, allowing the jury to consider the second girl's testimony for "showing the pattern of conduct with this child victim, proof of motive, opportunity, intent, absence of mistake or accident,* ***propensity, and/or lustful state of mind****." This second, modified instruction was an incorrect statement of the law and, as such, erroneous.*

This error was aggravated by the fact that the ASA repeatedly referred to the defendant as a "child molester." "Describing a criminal defendant with such a loaded term encourages the jury to presuppose guilt. The use of such language is therefore unduly prejudicial and should be avoided."

NOTICE REQUIREMENTS

Nunez v. State, 2013 WL 1222940 (Fla.App. 3 Dist.)

Jury should not have been allowed to view entire unredacted recording of interview of victim, including evidence of additional uncharged incidents involving the defendant and victim, in prosecution for sexual battery on a person less than 12 years old and one count of lewd and lascivious molestation on a person less than 12 years old; unredacted recording constituted evidence of collateral crimes neither charged in the information nor properly noticed and determined to be admissible pursuant to rule governing admission of other crimes, wrongs or acts.

Sending a videotaped interview of a child victim to the jury room is error.

Shively v. State, 752 So.2d 84 (Fla. 5th DCA 2000):

No error in admission of testimony of witness who saw defendant french kissing victim where incident led to victim's disclosure to her mother and stepfather that she had been sexually molested by the defendant.

Evidence necessary to describe the manner in which a criminal offense took place or how it came to light is generally admissible as relevant evidence even though it might otherwise be objected to as prior bad act evidence.

No error in admission of testimony of victim's brother that he saw defendant naked in the presence of the victim.

Evidence was not rendered inadmissible because of fact that defense was not given prior notice of state's intent to introduce evidence, or incident was known to defense counsel before trial and could have been subject to a motion in limine.

Jaggers v. State, 588 So.2d 613 (Fla. 2d DCA 1991):

In prosecution of defendant for sexual battery of his niece, testimony of defendant's daughter and stepdaughter as to defendant's digital penetration of them on the same occasion was not admissible where District Court of Appeals, following prior trial, had directed that defendant be acquitted as to the charges involving the daughter and stepdaughter on the ground of total lack of reliable evidence to support the element of penetration.

Discussion: The court ruled that the children could still testify in the new trial, but they could not mention the fact that they were "penetrated." **This court also ruled that the State provided sufficient notice for Williams Rule evidence by directing defense counsel to transcripts from prior trial.**

Erickson v. State, 565 So.2d 328 (Fla. 4th DCA 1990):

Testimony of parent and his nine year old daughter as to observations of acts of sexual molestation committed by defendant on another little girl at Parents Without Partners picnic was admissible as inseparable crime evidence, and not collateral crime evidence where act was inseparably linked in time and circumstances to evidence of defendant's act upon ten year old victim, both acts being similar in manner and occurring in course of same day at same picnic, and thus, State was not required to provide defendant with **notice of intent to offer evidence**.

State need not comply with statutory **ten day notice** provision, required prior to admission of collateral crime evidence, as prerequisite to offering inseparable crime evidence.

Lucas v. State, 376 So.2d 1149 (Fla. 1979):

The rule requiring a prosecutor to disclose to defense counsel the names and addresses of all people known to prosecutor to have information which may be relevant to crimes charged and to any defense with respect thereto includes disclosure of rebuttal witnesses.(3.220) Failure to list such a witness does not automatically entitle a defendant to have the unlisted witness excluded as a matter of right. The test is whether the defendant is prejudiced thereby, and it lies within the broad discretion of the trial judge to determine such fact after making an adequate inquiry into the surrounding circumstances.

Discussion: The significance of this case is that the State should not try to ambush the defense with Williams Rule evidence on rebuttal. Even though the rule specifically states that a 10 day notice is not required for rebuttal evidence, the evidence can still be excluded under this case. If the issue comes up, a Richardson hearing should be held. The State will likely not fare well in this hearing in that it will be difficult to convince the judge that the omission was inadvertent when you have the witnesses present in court on short notice.

POSSESSION OF PORNOGRAPHIC MATERIAL

Henson v. State, 2021 WL 5504222 (Fla.App. 1 Dist., 2021)

Defendant was charged with sexually abusing her daughter and providing her with obscene material. The State showed the jury child pornography to the jury and the defense objected that it was not appropriate Williams Rule. The court ruled that the child pornography corroborated the child's testimony about being shown obscene material and did not have to be introduced via Williams Rule.

Baldino v. State, 225 So.3d 257 (Fla.App. 4 Dist., 2017)

Defendant was prejudiced by introduction of 124 uncharged images of child pornography in prosecution for possession of child pornography; in his defense, defendant attempted to show that the computer on which the images were found was a family computer which could be accessed by anyone in the house, and introduction of an additional 124 images from that computer together with two images of him may have influenced jury to conclude that the 100 images charged in the information were also possessed by defendant.

State did not attempt to use similar fact evidence as a basis for admission. They relied on inextricably intertwined theory.

Scott v. State, 2017 WL 514370 (Fla. 4th DCA 2017):

Defendant was charged with possessing child pornography on a thumb drive. The State also introduced evidence found on the thumb drive that showed the defendant placing a video camera to secretly record young girls undressing etc… The court ruled that this was proper Williams Rule evidence relevant to establishing defendant's identity.

Shermer v. State, 34 Fla. L. Weekly D1696 (Fla. 4th DCA 2009):

> Evidence of pornographic toys, books, and videos found in defendant's house was admissible in prosecution for sexual battery on a minor and lewd and lascivious conduct to rebut defendant's claim that during the five-year period before his arrest, he had no interest in sex and had difficulty getting an erection, thereby implying that he would not have engaged in sexual activities with the victim; evidence of pornography and sexual objects would tend to show that defendant's direct testimony was, at best, misleading.
>
> Pornography and sexual objects found in defendant's house could not be admitted at trial in prosecution for sexual battery on a minor and lewd and lascivious conduct to show that defendant acted in accordance with a particular character trait.

Burnett v. State, 33 Fla. L. Weekly D219 (2d DCA 2008):

> Defendant was charged with soliciting young boys to engage in lewd acts while being videotaped. The police locate the videotape in the same location as numerous computer disks containing hundreds of child pornography images. All counts were filed in one information. After conviction, the defendant alleged ineffective assistance of counsel based upon the fact that his attorney did not move to sever the lewd conduct counts from the child pornography counts.
>
> In remanding the case for an evidentiary hearing, the court noted that the facts presented should have resulted in a severance of the counts.
>
> The court also noted that the possession of child pornography images and the videotape depicting the boys were not similar enough to be admissible as Williams Rule evidence.

Bryant v. State, 787 So.2d 904 (Fla. 2d DCA 2000):

> Facts: The defendant was charged with showing the 14-year-old victim obscene pictures on his computer and then sexually molesting her. On direct examination, the State introduced images from the computer generated on the day of the offense. On rebuttal, the State introduced other obscene images found on the defendant's computer that were never shown to the victim and were generated weeks before the alleged assault. The defense objected to the introduction of the images on rebuttal.
>
> Holding: The trial court improperly admitted the images shown on rebuttal. First, there was no evidence offered to show that the defendant placed these images on the hard drive, thus, there was not clear and convincing evidence that the defendant committed the *Williams* Rule crime. Second, the images introduced in the case in chief were very different than those in the rebuttal. The initial images showed undressed adolescent and pre-adolescent girls, but the rebuttal evidence contained numerous images of sexual

activity. Third, the rebuttal evidence was highly prejudicial and its probative value was outweighed by the prejudice.

Killian v. State, 730 So.2d 360 (Fla. 2d DCA 1999):

Paperback books with racy titles and covers depicting sexual activity, although found in defendant's home pursuant to valid search warrant, were not admissible in prosecution for capital sexual battery, handling and fondling a child, and use of a child in a sexual performance; defendant's state of mind was not at issue, books were not relevant to any issue before court, and books were inadmissible to prove defendant acted in conformity with particular character trait.

State of mind is not a material fact in a sexual battery case and intent is not an issue.

Lewd assault is not a specific intent crime.

State of mind is not material fact in sexual battery case.

Discussion: The nine-year-old victim alleged that her uncle took nude photos of her and committed sexual acts upon her. Pursuant to a search warrant, the police found five "dirty" books in the suspect's home. Although these books did not contain photographs, the titles were quite revealing: *Teens for Older Men, Satisfaction Through Incest, Making Great-Grand-Daughter, As Young As They Cum, and Incest Is Best.* The state argued that his interest in such books was relevant to his state of mind, but the court ruled the state of mind was not an issue.

PRIOR BAD ACTS TO EXPLAIN VICTIM'S BEHAVIOR

Hayes v. State, 2019 WL 3047124 (Fla.App. 3 Dist., 2019)

Probative value of collateral-crime evidence regarding prior sexual batteries, in which victim testified that during sexual battery by force defendant told her he had sexually battered six other women and he did not want to kill victim, was not substantially outweighed by danger of unfair prejudice in prosecution for sexual battery with physical force, kidnapping, aggravated battery, and theft; defendant's threat to kill victim was relevant to explain why she felt coerced into submission and complied with defendant's commands, defendant's DNA was linked to that found on victim's body, victim's statements about uncharged crimes were mentioned once in course of four-day trial, and statements were never objected to or argued about. Fla. Stat. Ann. § 90.403.

Torres-Matmoros v. State, 35 Fla. L. Weekly D763 (Fla. 3d DCA 2010):

Probative value of extraneous offense or collateral crimes evidence describing defendant's treatment of victim both before and after the alleged sexual assault at issue was not substantially outweighed by danger of undue prejudice, in prosecution for sexual battery and false imprisonment, as testimony was relevant to show the extent of defendant's disdain for victim, and the level of control defendant exercised over victim, factors that could explain victim's failure to report the attack for an extended period of time.

Valdes v. State, 31 Fla. L. Weekly D925 (Fla. 3rd DCA 2006):

Testimony concerning domestic violence in home was relevant to explain why victims failed to disclose sexual abuse for approximately five years; defendant intimidated victims by threatening that if they disclosed abuse, they would breakup family, their mother would be single parent, their little sister would grow up without father, and they would be poor, he also threatened to destroy home, which was made plausible by instances in which he set fire to their mother's bathing suits and ripped up landscaping following arguments, and testimony, including that from former wife, regarding domestic violence, was relevant to put entire relationship between defendant and victims into perspective.

Bell v. State, 798 So.2d 47 (Fla. 4th DCA 2001):

Evidence of defendant's physical abuse of victim's mother was relevant to explain why the victim had not earlier reported the sexual abuse and to refute defendant's implication that mother induced victim to conjure up story of abuse as matter of revenge.

Discussion: It is important to put this holding in perspective. The court points out that the prior abuse of the mother is relevant primarily because the defense introduced by the defendant made the beatings relevant. By arguing that the 8-year-old girl never reported the abuse earlier because it never really happened and is only now reporting it to help her mother obtain revenge against the defendant on an unrelated matter, the beatings became relevant. You must be careful when you use this case to introduce such evidence because the defense may not proffer a defense that makes it relevant.

Moora v. State, 742 So.2d 815 (Fla. 5th DCA 1999):

Evidence that defendant hit victim's mother and put victim's head through a headboard was properly admitted to show why victim had not reported sexual abuse earlier and why victim was afraid of defendant.

Claim that evidence was inadmissible because State did not give notice of intent to use similar fact evidence was waived where claim was not argued at trial court.

Gallegos v. State, 695 So.2d 1273 (Fla. 5th DCA 1997):

Allegations that defendant wrote letters to victim, prevented victim from seeing boys or having friends to house, treated victim badly, and had victim give him back and foot massages was not evidence of bad character or other crimes in sexual battery familial or custodial authority case.

Fact that defendant was abusive and had firearms in house not offered to show other crime, but was relevant to show relationship between the parties as it related to specific act alleged in information.

In prosecution for lewd and lascivious assault upon child under 16, trial court erred in admitting testimony from the child that defendant said he had been in prison for molesting another child.

Although defendant's alleged statement to the child that he was previously imprisoned for fondling another child may have been relevant to explain why the child feared defendant and why he delayed reporting the fondling to his mother, the statement should not have been admitted because its probative value was outweighed by unfair prejudice.

Although the evidence may have been relevant to prove defendant's state of mind, probative value was outweighed by inflammatory nature of the evidence and unfair prejudice.

Prior conviction on similar charge was not admissible to rebut defendant's claim that touching of boy's genitals was inadvertent result of horseplay.

Discussion: The district court stated that instead of admitting the similar crime evidence, the court should have allowed the victim to testify only that the defendant stated he had been in prison, without mentioning the nature of the charge. This would have been equally effective in explaining the victim's fear of the defendant and his reluctance to report him.

This opinion cites several authorities for the proposition that evidence of other crimes is often so intimately intertwined in a crime that it cannot be separated out, but must be admitted to show the context of the crime.

Abreu v. State, 610 So.2d 564 (Fla. 3d DCA 1992):

Trial court could admit evidence of defendant's prior acts of violence against victim to counter defendant's argument that victim had provoked him and that attacks which led to criminal charges were isolated incidents.

Lazarowicz v. State, 561 So.2d 392 (Fla. 3d DCA 1990):

In prosecution for sexual battery of a child by a person in a position of familial authority, victim's testimony as to prior similar sexual acts committed against her by her father was admissible to show both existence of particular relationship between the two and the fact that crime charged was not an isolated incident.

In prosecution for sexual battery of a child by a child by a person in a position of familial authority, testimony as to uncharged acts of physical violence by defendant upon victim and her sisters was relevant to prove defendant's familial authority over victim and to explain her behavior during entire time period. The acts were relevant to put the entire relationship between the victim and her father into perspective and to explain why she did not report her father's activities to anyone.

REVERSE WILLIAMS RULE

Bankston v. State, 2021 WL 5915068 (Fla.App. 4 Dist., 2021)

The defendant argued that the victim tried to get his family to pay her money in order to drop charges in the case. He then tried to argue that the victim previously married an incompetent 85-year-old man for the purpose of financially exploiting him. The trial court correctly ruled the reverse Williams Rule evidence was irrelevant and inadmissible. It was not similar enough to the current case and was only being used to establish bad character. Section 90.404(2)(a) says, "Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, *but it is inadmissible when the evidence is relevant solely to prove bad character or propensity*."

Kitchings v. State., 2020 WL 698264 (Fla. 4th DCA Feb. 12, 2020)

Uber driver was charged with sexually battering one of his passengers. She testified he forced her to perform oral sex in the car and then followed her into her apartment and forced her to engage in sex again. Defense tried to introduce reverse Williams Rule evidence concerning a sexual assault allegation she made several months earlier in New York. In that case the victim met a man on a sugar daddy website and then claimed he beat and sexually battered her in a hotel room. Defense implied she may have been setting up law suits in both situations. The court ruled that the facts were insufficiently

similar to be relevant as a common plan or scheme. The case was reversed on other grounds.

The court improperly allowed the jury to listen to the victim's entire investigative statement. The court explains why it is not relevant to rebut recent fabrication.

Edwards v. State, 28 Fla. L. Weekly D2120 (Fla. 3d DCA 2003)

Trial court erred in refusing to admit reverse *Williams* rule evidence of similar crimes committed while defendant was incarcerated awaiting trial on robbery and carjacking charge.

Such evidence was relevant and probative to establish innocence.

Reverse *Williams* rule evidence has a lower potential for prejudice to the state than standard *Williams* rule evidence has to the defendant, thus the trial court has less discretion to exclude reverse *Williams* rule evidence.

Palaczolo v. State, 754 So.2d 731 (Fla. 2d DCA 2000):

Where defense raised theory that any sexual battery against victim was committed by victim's father and that children mistakenly identified defendant as assailant due to psychological transference, court erred in refusing to admit evidence that father was suspected sex offender.

Court erroneously excluded reverse Williams Rule evidence on basis that it was insufficiently similar to defendant's alleged conduct. Relevant question was not whether father's conduct was similar to what State alleged defendant did in non-familial contacts, but, rather, whether father's conduct was similar to possible crime occurring while children were at father's home.

Although test to determine threshold issue of relevancy to Williams Rule evidence and reverse Williams Rule evidence is essentially the same, trial court has less discretion in deciding whether to exclude defendant's reverse Williams Rule evidence than in deciding whether to admit State's Williams Rule evidence.

Discussion: The issue in this case is whether the trial court erred in excluding reverse Williams Rule evidence. Two years prior to the commission of the charged offense, the natural father of the victim digitally penetrated the victim's twelve year old baby-sitter while she was lying on a couch. He then made her touch his penis. The court ruled that there were insufficient similarities between what happened to the baby-sitter and what the accused was charged with doing in this case. The appellate court ruled, however, that the

correct analysis would have compared the incident with the babysitter with the conduct the defense is alleging the natural father may have done with this victim.

Washington v. State, 737 So.2d 1208 (Fla. 1st DCA 1999):

Where evidence indicated that eleven-month-old victim died as a result of shaking and battering, and that defendant and victim's mother were the only persons who had opportunity to inflict the injuries on victim, trial court reversibly erred in restricting cross-examination of victim's mother and excluding evidence relevant to her motive and credibility when she testified for prosecution.

It is not necessary that matters tending to show bias, prejudice, or improper motive be within scope of direct for such questioning to be proper cross-examination.

Error to exclude proper testimony of witnesses who had seen mother abuse victim and who had heard mother say that she did not intend to kill her baby where such testimony was inconsistent with mother's testimony at trial.

Error to exclude reverse Williams Rule evidence

Discussion: This very lengthy opinion is quite interesting and helpful. A very detailed account of the facts of the case is included in the text, but in summary, it is a shaken baby case in which there were only two possible suspects. The 19 year old mother lived with her 16 year old boyfriend, the defendant. The victim's mother and the defendant were the only two people who had custody of the child during the relevant time period. The Suspect gave a statement indicating the 11 month old child fell off its sliding board, thus causing his injuries. He indicated he did not see the victim's mother do anything to harm the child. The victim's mother also indicated she did not see the Suspect doing anything to harm the child. The State presented a very exhaustive case outlining numerous circumstantial pieces of evidence which pointed towards the Suspect's guilt. Several medical experts gave detailed testimony regarding the opinion that this child died as a result of shaken baby syndrome and/or trauma. The Appellate Court ruled that the circumstantial case was sufficient to survive a motion for judgment of acquittal. A good review of the law regarding circumstantial evidence is contained in this opinion. On the other hand, this case points out the dangers of using one of the two possible suspects as a state witness. The trial court prohibited the defense from cross-examining the victim's mother on several points. The trial court also prohibited the defense introducing evidence about the mother's prior violent behavior towards the child. The Appellate Court basically ruled that since the victim's mother was a critical witness in the case and that she was one of the two possible suspects in the case, the defense should not have been restricted in its ability to impeach her credibility, bias, and motive. As a matter of fact, the proffered evidence from defense witnesses show that on numerous prior occasions witnesses had seen the victim's mother pick up and violently shake the child because the child would not stop crying. Under the circumstantial nature of this case, that evidence

should definitely not have been excluded. Since most of our shaken baby cases are circumstantial and involve a limited number of custodians of the child during the relevant time periods, this case should be quite helpful.

Rivera v. State, 561 So.2d 536 (Fla. 1990):

Evidence of sexual assault of another victim was properly admitted in trial of defendant for first degree murder as similarities between two crimes established sufficiently unique pattern of criminal activity to justify admission of collateral crime evidence on disputed, material issue of identity; numerous similarities existed between crimes including age, race and stature of victims, and method of abduction.

Discussion: The similarities between the two offenses were very close. On the other hand, the court ruled that "Reverse Williams Rule" could be admissible for the defendant. The defendant, however must show a distinct similarity just like the state, and in this case it was not allowed.

RULING ON MOTION BEFORE TRIAL

State v. White, 2014 WL 4988397 (Fla.App. 4 Dist.):

Writ of prohibition was warranted for judge who, without taking any evidence or argument, ordered defendant, who was charged with lewd or lascivious molestation of a person less than 12 by a person 18 years of age or older, which was a life-felony, released on his own recognizance in an apparent reaction to the state's decision to nolle pros and then re-file the charges against the defendant after the court declined to rule before trial on state's motion to introduce at trial similar fact evidence which another child alleged against the defendant, and denied state's motion to disqualify judge.

Circuit court judge's announced policy not to hear before trial motions for admission of prior bad act evidence was a denial of State's due process rights; the State would have no right of appeal if the defendant was acquitted.

SELF-CORROBORATING EVIDENCE

Castro v. State, 26 Fla. L. Weekly D345 (Fla. 4th DCA 2001): *on motion for rehearing*

"Self-corroborating Williams rule evidence has frequently been admitted to show other aspects of the crime such as intent, preparation, plan, relationship between the victim and the offender, and the existence of a lustful state of mind toward the victim. See Kimbrell v. State, 764 So.2d 893, 893-94 (Fla. 4th DCA 2000)…Indeed, in Smith v. State, 538 So.2d 66,67 (Fla. 1st DCA 1989), the court stated that 'evidence that deals only with

similar sex against the victim in the case being tried is far less subject to objection than evidence of similar acts against other victims.'" *Dictum.*

Discussion: The issue in this case was actually whether the objection was preserved for appellate review, but the above dictum by the court is valuable as a reference.

SENTENCING-USE OF WILLIAMS RULE EVIDENCE AT SENTENCING

Cabriano v. State, 2017 WL 625487 (Fla.App. 4 Dist., 2017):

Williams Rule evidence admitted during the guilt phase of the trial could be considered at sentencing.

SEXUAL OFFENSE CASES – 90.404(2)(c)

Reyna v. State, 2020 WL 5033311, at *5 (Fla.App. 4 Dist., 2020)

Defendant was charged with three counts of sexual battery. The victim worked with the defendant's wife and the three of them became friends. They frequently socialized with each other and the victim would sleep at their home if they had been drinking. On the night in question, the victim had a significant amount of alcohol and slept on the family couch. During the night she had flashbacks of the defendant performing digital penetration, oral sex and penile penetration. The State offered a Williams Rule witness who testified she was socializing with the defendant while drinking at a public bar. While the two of them were sitting on a bench in an isolated area behind the bar, he began kissing her and shoved his hand up her skirt, touching her vagina.

The appellate court addressed whether the two cases were sufficiently similar for the similar fact evidence to be admissible. The court noted,

> *The law requires greater similarity under 90.404(2)(c) than in child molestation cases because the adult cases can involve defenses—identification and consent—that are not present in crimes against children. Evidence can be more nuanced in adult cases and subject to different interpretations.*

Specifically, the court weight the factors concerning similarity as follows:

> *In this case, there are some similarities between the charged crimes and the collateral conduct; both cases involved the consumption of alcohol on Clematis Street and an accuser who socialized with the Reynas. However, these similarities*

are outweighed by the differences between the two crimes, so there is no clear pattern of sexual misconduct:

• The victim was a close friend of the Reynas who regularly slept over at their home; the Williams rule witness was a casual acquaintance who socialized occasionally with the Reynas.

• The charged crimes occurred on a couch in a private living room; the collateral act occurred on a public bench in an alley.

• The victim had a work relationship with the Reynas; the Williams rule witness had no such work relationship.

• The charged crimes were three sexual batteries that occurred over an extended period of time, with the attack occurring as the victim hovered between consciousness and sleep; the Williams rule witness was very much awake during the collateral act, a sudden groping of her genital area.[2]

• There was a gap of over four years between the two incidents.

Mann v. State, 2019 WL 4850136 (Fla.App. 4 Dist., 2019)

In prosecution for sexual battery and kidnapping, evidence that defendant had kidnapped and raped another woman three weeks prior to alleged offenses was admissible; although crimes may have had some factual differences, crimes both involved sexual offenses.

Even if it could be said that the crimes were not sufficiently similar to be introduced under section 90.404(2)(a), Florida Statutes (2014), the requirements for admission under section 90.404(2)(c) were satisfied.

Whisby v. State, 2018 WL 6615177, at *4 (Fla.App. 1 Dist., 2018)

Court properly introduced similar fact evidence in sexual battery case even though he ruled on the wrong subsection. His ruling was affirmed on the Tipsy Coachman doctrine.

Discussion: The case provides a good discussion on the difference between the three different sections of 90.404(2). Subsection (2)(a) is the standard Williams rule section. It requires greater similarity between crimes and specifically states, “but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.” Section (2)(b) applies to child molestation cases and adds the language “and may be considered for its bearing on any matter to which it is relevant.” This section leaves out phrase excluding propensity evidence. The court reasons that propensity is a valid basis for introducing

such evidence. Subsection 2(c) applies to sexual offenses in general. It uses the same standard as 2(b). In this case, two separate women were abducted at gunpoint and driven to an isolated location for sex. The trial court ruled the similar fact case was admissible based on (2)(a), but the appellate court applied the easier standard of (2)(c) to justify sustaining the conviction.