IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL):AC
CASE NO.: 502018AP000021AXXXMB
L.T. NO.: 502017MM007757AXXXMB

ROUDY EMMANUEL REMY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: JUN 21 2019

Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.

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PER CURIAM.

Appellant, Roudy Emmanuel Remy, appeals his conviction for one count of "Battery (Domestic)" following a jury trial. Appellant raises several issues on appeal, however, we write only to address Appellant's arguments that the trial court erred by: (1) prohibiting defense counsel from fully exploring the victim's bias and motivation to lie; and (2) convicting Appellant of the non-existent crime of "Battery (Domestic)." We agree and reverse on both grounds.

Appellant was charged by Information with "Battery (Domestic)" in violation of sections 784.03(1) and 741.283, Florida Statutes (2016), following an altercation with O.H., his girlfriend at the time. Appellant and O.H. lived with another woman, S.D., and the nature of the relationships was disputed. The State contended that O.H. and Appellant were in an exclusive relationship and that S.D. was just a roommate, but Appellant maintained that he, O.H., and S.D. were involved in a three-way open relationship. At the time of trial, Appellant and O.H. were no longer together, and Appellant was exclusively dating S.D., who was then pregnant with Appellant's child. The evidence presented at trial consisted of the competing testimonies of O.H. and S.D. To that end, O.H. testified that on the night in question, Appellant spit on her and punched her in the face following a verbal altercation. According to S.D., however, O.H. injured her face after tripping over a bicycle.

During its cross-examination of S.D, Appellant attempted to ask S.D. about the nature of her relationship with O.H. and Appellant. After the State objected based on relevance grounds, defense counsel argued that the testimony was relevant because it would impeach the O.H.'s testimony and "also it goes towards the victim's motive and why she might be making some stuff up." Defense counsel continued to explain that O.H. was the one who originally initiated the open relationship, and that O.H. was jealous of possible plans by S.D. and Appellant to move out together. The trial court ruled that such questioning was beyond the scope of direct and that the defense would have to call S.D. in its own case-in-chief.

Appellant then called S.D. as a defense witness and, during its direct examination of S.D. again asked S.D. about the nature of her relationship with O.H. and Appellant. The State again objected based on relevancy grounds and the court sustained the State's objection. Despite this posture, during its cross-examination of S.D., the State repeatedly questioned S.D. about the nature

of her relationship with both Appellant and O.H. However, when Appellant's counsel sought to question S.D. on redirect, the trial court again sustained the State's relevance objection.

The jury ultimately found Appellant guilty of "Battery (Domestic)" as charged in the Information. The judgment and Order of probation also list Appellant's crime as "Battery (Domestic)." This appeal follows.

I.

Appellant first argues that the trial court abused its discretion by repeatedly preventing Appellant's attempts to elicit information about O.H.'s bias and motivation to lie. Specifically, Appellant complains that the trial court improperly sustained the State's objections when defense counsel tried to elicit testimony from S.D. detailing the open relationship. Appellant argues that the trial court's alleged improper limitation of defense counsel's examinations was compounded by the fact that the State was permitted to extensively cross-examine S.D. about the plausibility of the open three-way relationship.

We review a trial court's ruling on the admission of evidence for abuse of discretion. While a trial court enjoys broad discretion in governing the admissibility of evidence, its discretion is limited by the rules of evidence. *Roussonicolos v. State*, 59 So. 3d 238, 240 (Fla. 4th DCA 2011) (citing *Hudson v. State,* 992 So.2d 96, 107 (Fla.2008)). "Any evidence that tends to support the defendant's theory of defense is admissible, and it is error to exclude it." *S.D. v. State*, 916 So. 2d 962, 964 (Fla. 4th DCA 2005). Similarly, "[a] trial court reversibly errs by prohibiting cross-examination when the facts sought to be elicited are germane to that witness's testimony and plausibly relevant to the theory of defense." *Salas v. State*, 972 So. 2d 941, 956 (Fla. 5th DCA 2007). "The trial court does not have the discretion to exclude questions which touch upon interest, motive, or animus." *Purcell v. State*, 735 So. 2d 579, 580 (Fla. 4th DCA 1999). "The right to

expose an improper motive for the testimony of a witness, especially as here a critical state witness, is therefore an essential ingredient in the right to trial by jury." *Id.* "Included in the types of matters that demonstrate bias are prejudice, interest in the outcome of a case, and any motivation for a witness to testify untruthfully." *Jones v. State*, 678 So. 2d 890, 892 (Fla. 4th DCA 1996). "Parties should be afforded wide latitude in showing the nature and extent of a witness's bias." *Perez v. State*, 691 So. 2d 1190, 1192 (Fla. 4th DCA 1997).

Having reviewed the record below, we hold that the trial court abused its discretion by limiting defense counsel's inquiry in this manner. Appellant's theory of defense was that O.H. fabricated the battery because she was jealous of S.D. and Appellant's increasingly exclusive relationship. By asking S.D. about the nature of her relationship with O.H. and Appellant, defense counsel was trying to develop the testimony that it was O.H. who initiated the relationship and that she had the motive to lie because she was jealous of how close S.D. and Appellant were becoming. Because O.H. testified that she was never in such a relationship, the testimony defense counsel was trying to admit would also have served to attack O.H.'s credibility. Additionally, even if the court's relevancy determinations were correct, by questioning S.D. on the plausibility of her relationship with O.H. during cross-examination, the State opened the door or Appellant to "fill in the gaps." *Overton v. State*, 801 So. 2d 877, 900-01 (Fla. 2001). Accordingly, we hold that the trial court abused its discretion by sustaining the State's objections and prohibiting defense counsel from exploring O.H.'s motivation to lie.

We further hold that the error was not harmless. Under the harmless-error test, the burden is on the State to prove that there is no reasonable possibility that the error complained of contributed to the verdict. *See State v. DiGuillo*, 491 So. 2d 1129, 1138-39 (Fla. 1986). The State contends that defense counsel was given "wide latitude" when questioning S.D. on direct and re-

direct, and the standard jury instruction about assessing credibility cured any error. However, the instant case comes down, almost entirely, to the competing credibility of the witnesses. The line of questioning that the defense was precluded from asking likely would have added credibility to Appellant's claim that O.H. fabricated the story. Moreover, during closing arguments, the State was permitted to argue these issues, attacking Appellant's theory of defense. Because prohibiting that line of questioning reasonably could have affected the verdict, we hold that the error here was not harmless, and that Appellant is entitled to a new trial.

II.

Appellant also argues that the trial court erred by sentencing him for the non-existent offense of "Battery (Domestic)." "[I]t is a denial of due process for a person to be convicted of a non-existent crime." *Freeman v. State*, 679 So. 2d 364, 364 (Fla. 4th DCA 1996). "A conviction for a non-existent crime is fundamental error that can be raised at any time." *Moore v. State*, 924 So. 2d 840, 841 (Fla. 4th DCA 2006).

Under authority of *Crockett v. State*, 91 So. 3d 872, 872 (Fla. 2d DCA 2012), we recently held that there is no crime in the State of Florida by the name of "Battery (Domestic)," and it was thus error for the trial court to list that non-existent offense on the judgment and sentencing orders. *Narinesingh v. State*, 502017AP000118AXXXMB, *5–6 (Fla. 15th Cir. Ct. Apr. 22, 2019). In accordance with our holding in *Narinesingh*, we reach the same conclusion in this case.

Accordingly, we **REVERSE** Appellant's conviction and sentence and **REMAND** this case for a new trial. As in *Narinesingh*, we note that if, after a new trial, Appellant is again convicted of Battery, his judgment of conviction and sentencing orders should reflect the charge of Battery rather than "Battery (Domestic)," or some other variation thereof.

CARACUZZO, KELLEY, and BELL, JJ., concur.

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Opinion/Decision filed: JUN 21 2019

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Debra Moses Stephens

Appealed: February 8, 2018

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DATE OF PANEL: DECEMBER 17, 2018

PANEL JUDGES: CARACUZZO, KELLEY, BELL

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
Caracuzzo 6/18/19		
DATE: J.	J.	J.
[signature]		
DATE: 6/19/19 J.	J.	J.
[signature]		
DATE: 6/24/19 J.	J.	J.