

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

SERGIO CASTILLO,  
Appellant,

APPELLATE DIVISION (CRIMINAL)  
CASE NO.: 05-83AC A02  
L.T. NO.: 05-25669MM A02

vs.

STATE OF FLORIDA,  
Appellee.

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Opinion filed:

11/3/06

Appeal from the County Court in and for Palm Beach County,  
Sheree D. Cunningham, Judge.

For Appellant, Elisabeth Porter, Esq., Assistant Public Defender

For Appellee, Michelle Zieba, Esq.

We REVERSE and REMAND for new trial because of the trial court's exclusion of evidence relevant and material to the defense asserted during trial.

At trial, defense counsel sought to introduce evidence of two prior specific occasions where the victim slapped Appellant's daughter and the Appellant knew of those instances. Such testimony was relevant to the asserted defense that he "went after" the victim when she moved towards his daughter in an apparent effort to strike her. The victim's prior acts should have been permitted as evidence of the reasonable apprehension or state of mind of the accused.

Although not reversed for the following, we do caution that the Florida appellate courts have taken a hard stance on improper prosecutorial comment. Ruiz v. State, 743 So. 2d 1, 9 (Fla. 1999); Thornton v. State, 852 So. 2d 911, 915 (Fla. 3d DCA 2003).

In the instant case, the prosecutor made reference to attempts by defense counsel to confuse the jury: “if they can’t convince you, they’ll try to confuse you. And that’s exactly what they’ve done. They’ve tried to confuse you...and they want to confuse you because they can’t convince you.”

We caution that personal opinions as to the justness of the cause and attacks on defense counsel may be considered impermissible. See D’Ambrosia v. State, 736 So. 2d 44, 48 (Fla. 5th DCA 1999); Thornton, 852 So. 2d at 913.

Accordingly, the judgment is REVERSED and the cause is REMANDED for further proceedings.

MARX and BERGER, JJ., concur.