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Evidence

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Evidence: 1994 Survey of Florida Law

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TABLE OF CONTENTS

I. INTRODUCTION

This year's accumulation of evidentiary cases demonstrates some of the same similarities as in previous years. Criminal evidentiary cases outnumbered civil evidentiary cases almost two to one. Relevance and hearsay issues alone outnumbered all other evidentiary issues. However, with the exception of a few cases, there were a scant number of noteworthy cases. Additionally, few legislative changes in the Florida Evidence Code[1] occurred during this survey period.[2]

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1. FLA. STAT. ch. 90 (1993).

2. Some interesting developments occurred in the last survey period. However, they are not discussed in full here. Some of the legislative changes in the Florida Evidence Code during the last survey period included: providing interpreters for deaf jurors, changing the provisions authorizing the use of closed circuit television and videotaped testimony of child witnesses, and allowing a limited exemption from the Sunshine Act for a governmental agency to consult with the agency's attorney to discuss pending litigation.

II. RELEVANCE

A. *Character Evidence*

The use of character evidence is probably one of the most widely used, yet misunderstood, sections in the Florida Evidence Code.[3] In criminal cases, the use of similar fact evidence[4] to prove other crimes, wrongs, or acts continues to be the leading area for appellate decisions. Although this area is a powerful tool for the prosecution of criminal defendants, its improper usage during trial almost invariably leads to reversed convictions.

During the survey period, numerous similar fact cases—commonly known as *Williams* rule[5] cases by criminal law practitioners—reached the appellate courts. Very few broke any new ground in this area. However, one case does merit discussion. In *Williams v. State*,[6] the Florida Supreme Court settled an apparent conflict on the issue of whether similar fact evidence is admissible to rebut a defense of consent in a sexual battery case. The prevailing case law indicates that consent is unique to the individual, and therefore, cannot be proven by evidence of other sexual encounters because the lack of consent of one person is not proof of the lack of consent of another.[7]

In *Williams*, the defendant was convicted of sexual battery, kidnapping, robbery, and possession of cocaine.[8] At trial, the state presented the testimony of two women who stated that the defendant had attacked them under similar circumstances.[9] The defendant objected that the testimony was intended to prove his bad character and propensity to assault women and was, therefore, inadmissible.[10]

The attack on the victim and the attack on the two other women all occurred in the same general area in Miami. The defendant had engaged all

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3. FLA. STAT. § 90.404 (1993).

4. *Id.* § 90.404(2).

5. Williams v. State, 110 So. 2d 654 (Fla.), *cert. denied*, 361 U.S. 847 (1959) (effectively codified as FLA. STAT. § 90.404(2)(a) (1993)). The supreme court held that similar fact evidence is admissible if it is relevant for the purpose of demonstrating something other than character or propensity. *Id.* at 663.

6. 621 So. 2d 413 (Fla. 1993). Coincidentally, the name "Williams" in the case sub judice is the same as the famous case wherein the term "*Williams* rule" originated.

7. *See* Hodges v. State, 403 So. 2d 1375, 1378-79 (Fla. 5th Dist. Ct. App. 1981), *review denied*, 413 So. 2d 877 (Fla. 1982); Helton v. State, 365 So. 2d 1101 (Fla. 1st Dist. Ct. App.), *cert. denied*, 373 So. 2d 461 (Fla. 1979).

8. *Williams*, 621 So. 2d at 413-14.

9. *Id.* at 414.

10. *Id.*

three women in casual conversation regarding purchasing cocaine or having sex for drugs.[11] With each woman, the defendant followed the same pattern. The defendant grabbed them with a tight choke hold from behind and took them to a secluded spot. There, while holding the women by the neck, he masturbated with one hand prior to raping them. After having sexual intercourse with the women, he told them not to complain or he would kill them. He then calmly walked away.[12]

The defendant was apprehended soon after the attack on the victim in this case. The defendant told the police that he had helped the victim purchase cocaine and had sex with her in exchange for the drugs. The defendant explained that the victim became angry when he refused to give her the drugs.[13]

In analyzing the use of similar fact evidence, the Florida Supreme Court stated:

> Evidence of other crimes or acts may be admissible if, because of its similarity to the charged crime, it is relevant to prove a material fact in issue. But it may also be admissible, even if not similar, if it is probative of a material fact in issue. Although similarity is not a requirement for admission of other crime evidence, when the fact to be proven is, for example, identity or common plan or scheme [sic] it is generally the similarity between the charged offense and the other crime or act that gives the evidence probative value. Thus, evidence of other crimes, whether factually similar or dissimilar to the charged crime, is admissible if the evidence is relevant to prove a matter of consequence other than bad character or propensity.[14]

In the present case, the supreme court concluded that the testimony of the prior victims was relevant to rebut the defendant's defense that the present victim had consensual sex with the defendant in exchange for drugs. The similar fact evidence rebutted the defendant's defense by demonstrating "a common plan or scheme to seek out and isolate victims likely not to complain or to complain unsuccessfully because of the circumstances surrounding the assaults and the victims [sic] involvement with drugs."[15]

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11. *Id.*

12. *Id.* One of the witnesses stated that she lost consciousness for a moment after the defendant had grabbed her by the throat. She woke up to find her pants pulled down as the defendant was confronted by another man. *Williams*, 621 So. 2d at 414.

13. *Id.*

14. *Id.* (citations omitted).

15. *Id.* at 417.

Since this testimony was relevant to a material fact in issue and its probative value clearly outweighed any undue prejudice, its admission was permissible.[16]

B. *Payment of Medical and Similar Expenses*

In one of the few cases to arise under section 90.409 of the *Florida Statutes*, the First District Court of Appeal examined whether offers of payment for medical or hospital bills apply to criminal cases. In *Johnson v. State*,[17] the defendant arrived at the victim's home in search of several men. The defendant spotted one of the men, pulled a gun, and gave chase. During this episode, the victim exited the home and ran outside. As the defendant fired at a parked car, the bullet ricocheted and struck the victim, an eleven-year-old boy.[18] The defendant was charged with possession of a firearm by a convicted felon.[19] Prior to trial, the defense attempted to exclude testimony by the victim's mother that the defendant had visited the victim and offered to pay his medical bills. The trial court denied the objection and the testimony was received into evidence.[20]

The district court recognized this case as one of first impression since section 90.409 of the *Florida Statutes* had never been applied to a criminal case to exclude an offer to pay medical bills. The district court looked to the Law Revision Council Notes for guidance. The council notes for section 90.409 state that the California Evidence Code has a similar provision which Florida law has followed.[21] The issue of whether California's analogous provision is applicable in criminal cases was squarely addressed in the California case of *People v. Muniz*.[22] The court in *Muniz* indicated that California's evidence code, like Florida's, only speaks to "liability." The code does not mention *criminal* liability.[23]

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16. *Id.* The supreme court reiterated its adherence to the findings of the district courts in *Hodges* and *Helton*. It stated that because consent is unique to the individual, evidence that the victim of an unrelated assault did not consent cannot serve as evidence of nonconsent by the victim of the charged offense. However, the supreme court did not agree that similar fact evidence is never relevant to the issue of consent, and disapproved *Hodges* and *Helton* to the extent that they are read in that context. *Williams*, 621 So. 2d at 415-16.

17. 625 So. 2d 1297 (Fla. 1st Dist. Ct. App. 1993).

18. *Id.* at 1298.

19. The record does not indicate why the defendant was not charged with numerous other criminal counts.

20. *Johnson*, 625 So. 2d at 1298.

21. FLA. STAT. ANN. § 90.409 Law Revision Council Notes—1976 (West 1988).

22. 262 Cal. Rptr. 743 (4th Ct. App. 1989).

23. *See id.* at 746.

Additionally, the council notes indicate that the policy considerations underlying section 90.408 of the Florida Evidence Code are the same for section 90.409.[24] Furthermore, the exclusion of compromises or offers to compromise under section 90.408 is based upon two grounds:

> (1) The evidence is irrelevant, since "such an offer does not ordinarily proceed from and imply a belief that the adversary's claim is well founded, but rather that the further prosecution of the claim, whether well founded or not, would in any event cause such an annoyance as is preferably avoided by the payment of the sum offered. (2) The public policy of this state favors amicable settlement of disputes and the avoidance of litigation."[25]

In criminal cases, the decision to prosecute rests with the state, not the victim. Therefore, neither of the rationales stated in the council notes apply. Accordingly, the district court found that the provisions of section 90.409 should be confined to civil cases only and have no application in criminal cases.[26]

III. EXPERT TESTIMONY

A. *Scientific Evidence*

In *Flanagan v. State*,[27] the Florida Supreme Court adhered to the *Frye*[28] standard in determining the admissibility of sexual offender profiles.[29] In *Flanagan*, the defendant was convicted of sexual battery on

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24. FLA. STAT. ANN. § 90.409 Law Revision Council Notes—1976 (West 1988). This section concerns compromises and offers to compromise.

25. *Johnson*, 625 So. 2d at 1299 (quoting FLA. STAT. ANN. § 90.408 Law Revision Council Notes—1976 (West 1988) (citations omitted)).

26. *Id.*

27. 625 So. 2d 827 (Fla. 1993).

28. Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). Under *Frye*, in order to introduce expert testimony regarding a scientific principle, the principle "must be sufficiently established to have gained general acceptance in the particular field in which it belongs." *Id.* at 1014.

29. The Florida Supreme Court specifically adhered to the *Frye* standard as the appropriate test for the admissibility of scientific opinions. The Florida Supreme Court explicitly rejected the United States Supreme Court's holding in Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993), where the Supreme Court construed Rule 702 of the Federal Rules of Evidence as superseding the *Frye* test. *Flanagan*, 625 So. 2d at 829 n.2; *see also* Stokes v. State, 548 So. 2d 188 (Fla. 1989) (rejecting the balancing test of section 90.403 of the *Florida Statutes* for determining the admissibility of scientific evidence

his nine-year-old daughter. At trial, a psychologist for the prosecution testified regarding both the common characteristics of the home environment where child sexual abuse occurs and the characteristics of sexual abusers.[30] The psychologist also examined the nine-year-old girl. The First District Court of Appeal, sitting en banc, affirmed the conviction but certified questions to the supreme court regarding whether a child sexual offender profile is admissible at trial.[31] The Florida Supreme Court examined the academic literature and case law regarding sexual offender profiles and found that these profiles are not generally accepted in the scientific community and do not meet the *Frye* test for admissibility.[32] Therefore, under Florida law, sexual offender profiles are inadmissible.

The First District Court of Appeal had also concluded that even if the sexual offender profile did not meet the *Frye* test, it was admissible as background information.[33] The supreme court found this position to be untenable and stated that "[i]f the evidence was not admitted as substantive evidence of guilt, then it was irrelevant."[34] However, evidence regarding an expert's credentials or background evidence regarding relevant tests which the expert conducted is still admissible.[35] In this case, the expert's entire testimony regarding the offender profile had been considered background information by the district court.[36] This was error, albeit harmless, and beyond the scope of generally admissible background information.[37]

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and explicitly adopting the *Frye* test).

30. *Flanagan*, 625 So. 2d at 829. However, evidence of the characteristics of a child abuser violates rule 90.404(1) which excludes character evidence when it is used to show that the defendant acted in conformity with this character trait on a certain occasion. FLA. STAT. § 90.404(1) (1993).

31. Flanagan v. State, 586 So. 2d 1085, 1124-25 (Fla. 1st Dist. Ct. App. 1991) (en banc), *aff'd in part*, 625 So. 2d 827 (Fla. 1993).

32. *Flanagan*, 625 So. 2d at 829. The prosecution did not demonstrate that the profile was accepted in the scientific community. The prosecution merely elicited testimony that this type of information is generally relied on by people working in the field of child sexual abuse to determine what households may be at risk. The prosecution's own expert testified that the profile could not be used to prove or disprove that a person is a child abuser. *Id.*

33. *Flanagan*, 586 So. 2d at 1100.

34. *Flanagan*, 625 So. 2d at 829.

35. *Id.*

36. *Id.*

37. The Florida Supreme Court upheld the conviction because the evidence of guilt was overwhelming and the admission of the sexual offender profile was harmless error based on the brevity and lack of emphasis placed on this testimony by the prosecution. *Id.* at 827.

B. *Testimony by Experts*

Expert testimony has been utilized in almost every aspect of trial testimony. The gamut of testimony runs from expert opinions on valuation of real property[38] to expert opinions on grief and bereavement.[39] During the survey period, the Third District Court of Appeal halted the plethora of expert opinions and ruled that the grief endured by a family over the loss of a loved one is within the common understanding of the jury.[40] Therefore, expert opinions on grief and bereavement are unnecessary.

In *Key v. Angrand*,[41] the plaintiff utilized an expert to explain the plaintiff's grief and bereavement over the loss of a loved one. The district court found that the expert was properly qualified to render an expert opinion, having a doctorate in sociology and extensive additional education in the area of grief and bereavement.[42] The Florida Evidence Code specifically states that specialized knowledge may be utilized when it will assist the trier of fact in understanding the evidence or in determining a fact in issue.[43] However, the expert testimony must concern subjects which are beyond the common understanding of average persons. In this case, the district court found that the grief felt at the loss of a loved one is not beyond the common understanding of the jury. Therefore, the district court concluded that the expert could add nothing more than what was already in evidence by the family members and their close friends.

Additionally, expert testimony cannot be used if there is a danger of unfair prejudice outweighing its probative value.[44] The added cumulative effect of expert testimony on an area that is easily perceived by the jury from other lay witnesses tends to give this testimony undue weight. In essence, the expert testimony bolsters and magnifies the lay witness's

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38. City of Gainesville v. Foster, 625 So. 2d 126 (Fla. 1st Dist. Ct. App. 1993).

39. Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322 (Fla. 4th Dist. Ct. App.), *appeal dismissed*, 589 So. 2d 291 (Fla. 1991).

40. Key v. Angrand, 630 So. 2d 646, 650 (Fla. 3d Dist. Ct. App. 1994).

41. *Id.* at 649-50. It just so happens that the expert utilized in *Key* for grief and bereavement was the same expert used in *Holiday Inns*, which was decided by the Fourth District Court of Appeal. *Compare Key*, 630 So. 2d at 650 (excluding expert testimony on the matter of survivor's grief) *with Holiday Inns*, 576 So. 2d at 336 (allowing use of expert witness's testimony on the subject of survivor's grief and bereavement).

42. Additionally, the expert had coauthored five books on the subject and numerous articles and papers.

43. FLA. STAT. § 90.702 (1993).

44. *See* La Villarena, Inc. v. Acosta, 597 So. 2d 336, 339 (Fla. 3d Dist. Ct. App. 1992); *see also* FLA. STAT. § 90.403 (1993).

testimony in a very emotionally charged area. The chance of a prejudicial effect is much greater when the expert lends his credentials to an already emotional subject. Therefore, the district court disallowed the use of expert testimony to explain survivor grief to members of a jury and expressed direct conflict with the Fourth District's holding in *Holiday Inns*, which allows the use of such testimony.

IV. HEARSAY

A. *Statements for Purposes of Medical Diagnosis or Treatment*

During the survey period, the Florida Supreme Court explicitly rejected a liberal interpretation of section 90.803(4)[45] which would allow testimony by a sexually abused child as to the identity of her abuser.[46] This expansion of section 90.803(4) would have used the liberal interpretation of the Federal Rules of Evidence as interpreted in the case of *United States v. Renville*.[47]

In *State v. Jones*,[48] the defendant was convicted of sexual battery on a child less than twelve years old.[49] The child testified that the defendant had sex with her when she was eight years old. Additionally, the testimony of a doctor was admitted in evidence which indicated that the child had told the doctor that the defendant had sexual relations with her.[50] The district court of appeal reversed the conviction, finding the doctor's testimony inadmissible under section 90.803(4) as a statement for medical diagnosis or treatment.[51] However, the district court of appeal certified conflict with *Flanagan v. State*,[52] which used a line of federal cases construing the medical diagnosis exception in the Federal Rules of Evidence.[53] This line of federal cases holds that statements of identity by child victims of sexual

45. FLA. STAT. § 90.803(4) (1993).

46. *See* State v. Jones, 625 So. 2d 821, 824-25 (Fla. 1993).

47. 779 F.2d 430, 439 (8th Cir. 1985) (holding that child abuse victim's statements to physician identifying her stepfather as the perpetrator were admissible under the medical records exception to hearsay rule).

48. 625 So. 2d 821 (Fla. 1993).

49. *Id.* at 821.

50. *Id.* at 822.

51. Jones v. State, 600 So. 2d 1138 (Fla. 5th Dist. Ct. App. 1992), *aff'd*, 625 So. 2d 821 (Fla. 1993).

52. 586 So. 2d 1085 (Fla. 1st Dist. Ct. App. 1991) (en banc); *see* discussion *supra* part III.A.

53. *Jones*, 600 So. 2d at 1140.

abuse to medical personnel can be pertinent to diagnosis and are admissible under this exception.[54]

The Florida Supreme Court rejected the liberal interpretation used by the federal courts regarding statements made for medical diagnosis or treatment.[55] This rejection was based in part on Florida's adoption of section 90.803(23), the Child Victim Hearsay Exception, which employs procedural safeguards in the admittance of child victim hearsay.[56] The Florida Supreme Court joined those few jurisdictions that have rejected an expansion of the medical treatment and diagnosis exception,[57] finding the rationale which underlies the exception unworkable.[58] The reliability and trustworthiness of statements under this exception should not be distorted by expanding its rationale to include the identity of an abuser when that information, in reality, is not reasonably pertinent to treatment or diagnosis.

B. *Business Records*

An important issue regarding the business records exception was decided by the Florida Supreme Court during the survey period. In *Love v. Garcia*,[59] the Florida Supreme Court held that medical records are admissible under section 90.803(6) of the Florida Evidence Code, through

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54. The leading federal case in this area is United States v. Renville, 779 F.2d 430 (8th Cir. 1985). In *Renville*, the trial court permitted a physician to testify regarding statements by an eleven-year-old child identifying her stepfather as her abuser. In examining whether the child's statements were reasonably pertinent to diagnosis or treatment, the court stated: "[F]irst, the declarant's motive in making the statement must be consistent with the purposes of promoting treatment; and second, the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis." *Id.* at 436. However, in cases involving statements by child abuse victims, the *Renville* court stated that the general restraints regarding identity should not apply, and stated:

> We believe that a statement by a child abuse victim that the abuser is a member of the victim's immediate household presents a sufficiently different case from that envisaged by the drafters of rule 803(4) that it should not fall under the general rule. Statements by a child abuse victim to a physician during an examination that the abuser is a member of the victim's immediate household *are* reasonably pertinent to treatment.

Id.

55. *Jones*, 625 So. 2d at 824-25.

56. *Id.*

57. *See, e.g.*, Cassidy v. State, 536 A.2d 666 (Md. Ct. Spec. App.), *cert. denied*, 541 A.2d 965 (Md. 1988).

58. *Jones*, 625 So. 2d at 825.

59. 634 So. 2d 158 (Fla. 1994).

a records custodian, unless the opponent satisfies the burden of showing the untrustworthy nature of the evidence.[60]

On April 3, 1986, Ms. Garcia was struck by a passing motorist while trying to cross an intersection.[61] At trial, the defense attempted to enter into evidence the results of Ms. Garcia's two blood alcohol tests as business records.[62] The plaintiff filed a motion in limine to exclude the results based on: 1) the defendant's failure to list witnesses who could testify how the tests were performed; 2) a lack of information regarding the type of test conducted; 3) an absence of information regarding who took the samples; and 4) a lack of evidence demonstrating that the samples were the plaintiff's.[63] The trial court agreed with the plaintiff and excluded the medical reports regarding the plaintiff's blood alcohol level.[64]

Based on a fifty percent comparative negligence finding, the jury's two million dollar verdict in favor of the plaintiff was reduced to one million

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60. *Id.* at 160 (interpreting FLA. STAT. § 90.803(6) (1993)).

61. *Id.* at 159.

62. *Id.* The first test indicated a blood alcohol level of .23, almost three times the legal limit of .08 allowed in Florida drunk driving cases. This test was analyzed by SmithKline, an outside laboratory. The second test, taken several hours later, was analyzed by the hospital and demonstrated a blood alcohol level of .14. *Id.* at 159 n.1.

63. *Love*, 634 So. 2d at 159. The third and fourth grounds essentially address the proper chain of custody for the blood test. However, this issue is a red herring. Chain of custody issues frequently arise in criminal cases and have been settled by the Florida Supreme Court. An absence of testimony regarding the chain of custody will not exclude relevant evidence unless there is an indication of probable tampering. Peek v. State, 395 So. 2d 492 (Fla. 1981), *cert. denied*, 451 U.S. 964 (1981); Beck v. State, 405 So. 2d 1365 (Fla. 4th Dist. Ct. App. 1981); Frederiksen v. State, 312 So. 2d 217 (Fla. 3d Dist. Ct. App. 1975). These decisions are equally applicable to civil cases. In any event, the purpose of section 90.803(6) is to allow a party to introduce relevant records at trial without having to produce all the persons who had a part in preparing the records. *See* Southern Bakeries v. Florida Unemployment Appeals Comm'n, 545 So. 2d 898, 902 (Fla. 2d Dist. Ct. App. 1989). Laying an elaborate chain of custody would defeat the purpose of the rule.

64. *Love*, 634 So. 2d at 159. It is sometimes hard to believe that the fundamental precept of a trial is a search for the *truth*. The purpose of an evidence code is to guide the trial court in excluding unreliable or untrustworthy evidence from the finder of fact. What could be more enlightening than *two* blood tests from two different laboratories showing that the plaintiff's faculties may have been impaired? It would seem that alcohol in a person's bloodstream at the time of an accident would be relevant and probative on at least two grounds: 1) the issue of comparative negligence and 2) the ability of the intoxicated person to accurately relate the events occurring during the period of intoxication. *See* Edwards v. State, 548 So. 2d 656 (Fla. 1989) (allowing the testimony regarding the use of intoxicating substances if it is relevant to the time of the incident, the time of testimony, or the ability of the witness to observe, remember, or recount).

dollars.[65] The defendant appealed the jury verdict and the Fourth District Court of Appeal reversed, finding the blood tests admissible. However, the appellate court, sitting en banc, withdrew this decision and affirmed the trial court's exclusion of the blood tests.[66]

The Florida Supreme Court subsequently quashed the district court's en banc ruling and held that medical records are admissible under the business records exception of section 90.803(6) if a proper predicate has been laid.[67] Once the proper predicate is laid under section 90.803(6), the burden shifts to the party opposing the introduction of the records to prove untrustworthiness of the records. If the opposing party cannot carry this burden, the records are allowed in evidence as business records. The trustworthiness of the medical record is presumed if the predicate for the business record is properly met.[68]

The supreme court noted that trustworthiness is based on the general acceptance of the test in the medical field, and the fact that the test is relied upon in the scientific field involved.[69] Since the entire rationale behind the business records exception is based on "the reliability of business records supplied by systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them,"[70] untrustworthy business records should be the exception rather than the norm.

The district court's en banc opinion misconstrued the trustworthiness aspect of the business records exception by basing its decision on whether the health care providers, administering the tests to the plaintiff in this particular case, relied on these specific blood tests. The supreme court noted that "[a]ctual reliance on the test in each course of treatment is not required."[71] The trustworthiness of the test is based on its general acceptance in the medical field and the fact that the test is relied on in the general scientific community involved. Blood tests are routinely used and

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65. *Love*, 634 So. 2d at 159.

66. Love v. Garcia, 611 So. 2d 1270, 1277 (Fla. 4th Dist. Ct. App. 1992) (en banc), *quashed by* 634 So. 2d 158 (Fla. 1994).

67. *Love*, 634 So. 2d at 159.

68. It goes without saying that if the parties agree that no records custodian is needed for any business or medical record then the record should be admitted. Once the trustworthiness of the records has been stipulated to, the predicate is presumed. Therefore, if the parties stipulate that a records custodian is not necessary, then the records are admissible as business records. Phillips v. Ficarra, 618 So. 2d 312, 314 (Fla. 4th Dist. Ct. App. 1993).

69. *Love*, 634 So. 2d at 160.

70. FLA. STAT. ANN. § 90.803(6) Law Revision Council Notes—1976 (West 1988).

71. *Love*, 634 So. 2d at 160.

relied on by hospitals in the normal course of business. Therefore, medical records containing blood test results should be admissible even if the blood tests are not relied on in that particular case.

V. CONCLUSION

Although this year's evidentiary cases were few in number, the Florida Supreme Court resolved at least some of the more troublesome evidentiary issues. However, more evidentiary cases will need to be resolved by the Florida Supreme Court in the coming year. As always, criminal cases involving similar fact evidence will keep the supreme court's attention. Additionally, the conflict in the district courts of appeal, regarding expert testimony on grief and bereavement in personal injury cases, is sure to merit the supreme court's attention in the upcoming year.