

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4276

JAVON MARKEL FRANKLIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Bruce Anderson, Jr., Judge.

January 8, 2020

PER CURIAM.

Appellant, Javon Markel Franklin, appeals his judgment and sentence for possession of a firearm by a convicted felon and raises two issues on appeal. Appellant argues that the trial court erred in admitting into evidence a photograph of a firearm found in the vehicle in which he was driving when he was stopped by law enforcement and in applying the wrong legal standard when evaluating his motion for new trial. For the following reasons, we affirm.

Prior to trial, Appellant filed a motion in limine wherein he urged the trial court to prohibit the State from introducing any evidence relating to or testimony concerning photographs taken of the interior of the vehicle he was driving when it was stopped,

including a photograph of a firearm on top of one of the car's seats. Appellant argued that the photograph would be misleading and confusing for the jury given the fact that the two firearms found in the vehicle were found underneath the car's seats. The trial court denied the motion with the understanding that the State's witnesses would testify to where the firearms were located before any photographs were taken. During trial, the officer who searched Appellant's car repeatedly testified, both on direct and cross-examination, that both firearms were found underneath the car's seats. The officer testified that he did not take photographs of the firearms where they were found because it was against "JSO [Jacksonville Sheriff's Office] policy" to do so. When asked if "this firearm right here" had "simply been placed on the seat after [he] located it," the officer affirmatively responded. When asked by defense counsel on cross-examination whether "[t]his photograph is not accurate to where you saw the firearm at," the officer replied, "No, sir. But it does show the firearm." During their closing arguments, both the prosecutor and defense counsel reiterated that the firearms were found underneath the car's seats.

After the jury found him guilty as charged, Appellant filed a motion for new trial, arguing that the trial court erred in denying his motions in limine and for judgment of acquittal, that the State's evidence did not present a prima facie case of guilt, and that the verdict was contrary to the weight of the evidence and to the law. During the hearing on the motion, defense counsel focused upon the trial court's denial of his motions in limine and for judgment of acquittal. Counsel referred to the other arguments in the motion for new trial by stating, "Motion for New Trial we rely on our arguments made therein." After asking defense counsel about his argument concerning the photograph, the trial court set forth:

And I will based upon my review of the motion for new trial and my memory of the trial itself and the argument previously made at trial with the same issue as well as the arguments made today I will stand by my previous ruling and my reasons for those rulings, and I will deny defendant's motion for new trial. Based upon those previous rulings and my reasons for the same I

stand by those, and I am going to enter an order at this time denying the Motion for New Trial.

When asked if there was anything else they needed to address that day, defense counsel replied, “Nothing from the defense, Your Honor.” The trial court subsequently adjudicated Appellant guilty and sentenced him as a habitual felony offender to five years’ imprisonment with credit for time served. This appeal followed.

Appellant first argues that the trial court erred in allowing into evidence a photograph showing one of the two firearms found in the vehicle at issue on top of the seat. A trial court’s ruling on the admissibility of evidence is reviewed for an abuse of discretion, but its discretion is limited by the evidence code and case law, and its interpretation of those authorities is reviewed *de novo*. *Pitts v. State*, 263 So. 3d 834, 837 (Fla. 1st DCA 2019); *see also Bass v. State*, 147 So. 3d 1033, 1035 (Fla. 1st DCA 2014) (explaining that a trial court’s ruling on a motion in limine is reviewed for an abuse of discretion and “[a] trial court abuses its discretion if its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence” (quoting *Patrick v. State*, 104 So. 3d 1046, 1056 (Fla. 2012)). If the appellant shows that the admission of the evidence was erroneous, the burden shifts to the State to prove that the error was harmless beyond a reasonable doubt. *Dortch v. State*, 63 So. 3d 904, 907 (Fla. 1st DCA 2011).

“Relevant evidence is evidence tending to prove or disprove a material fact,” and “[a]ll relevant evidence is admissible, except as provided by law.” §§ 90.401-90.402, Fla. Stat. (2017). “Relevant evidence is inadmissible 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.” § 90.403, Fla. Stat. (2017). When performing the balancing test to determine if the unfair prejudice outweighs the probative value of the evidence, “the trial court should consider the need for the evidence, the tendency of the evidence to suggest an emotional basis for the verdict, the chain of inference from the evidence necessary to establish the material fact, and the effectiveness of a limiting instruction.” *Wright v. State*, 19 So. 3d 277, 296 (Fla. 2009) (citation and emphasis omitted).

We reject Appellant's argument that the trial court abused its discretion in admitting the photograph of the firearm into evidence. Not only was the photograph relevant to the issue of what Appellant was in possession of, but the jury was repeatedly told, through the testimony of the officer who found the firearms and through the closing argument of both the prosecutor and defense counsel, that both firearms were found under the car's seats. Given such, admission of the photograph at issue was neither misleading nor confusing.

In his second and final issue, Appellant asserts that the trial court erred in applying the wrong standard when evaluating his motion for new trial. Florida Rule of Criminal Procedure 3.600(a)(2) provides that a trial court shall grant a new trial if the verdict is contrary to the law or the weight of the evidence. When a trial court evaluates a motion for new trial that contains a rule 3.600(a)(2) claim, it must consider the weight of the evidence rather than the sufficiency of the evidence. *Palmer v. State*, 196 So. 3d 1289, 1289-90 (Fla. 1st DCA 2016); *see also Jordan v. State*, 244 So. 3d 1178, 1179 (Fla. 1st DCA 2018) (noting that a motion for new trial requires a trial court to evaluate whether a jury's verdict is contrary to the weight of the evidence and to act, in effect, as an additional juror). The sufficiency of the evidence tests to see whether the evidence was legally adequate to permit a verdict while the weight of the evidence tests to see whether a greater amount of credible evidence supports one side over the other. *Geibel v. State*, 817 So. 2d 1042, 1044 (Fla. 2d DCA 2002). Although a trial court is not compelled to use magic words when ruling on a motion for new trial, the ruling should demonstrate that the court applied the proper standard to the motion. *Velloso v. State*, 117 So. 3d 903, 905 (Fla. 4th DCA 2013). While an appellate court generally reviews a trial court's denial of a motion for new trial under the abuse of discretion standard, the issue of whether a trial court employed the proper standard is reviewed de novo. *Jordan*, 244 So. 3d at 1179.

In support of his argument, Appellant relies upon certain cases where trial courts clearly utilized the wrong standard in evaluating a motion for new trial. For instance, in *Fulword v. State*, 29 So. 3d 425, 425-26 (Fla. 5th DCA 2010), the Fifth District agreed with the appellant's argument and the State's concession

that the trial court applied an incorrect legal standard when addressing the appellant's motion for new trial. In denying the motion, the trial court stated in part, "I think clearly the matter of credibility of witnesses is a matter for the jury, as is the issue of intent. It was the . . . jury's job to determine credibility and the jury's job to determine whether or not the State had proved the requisite intent . . ." *Id.*; see also *King v. State*, 183 So. 3d 1071, 1071-72 (Fla. 5th DCA 2015) (reversing the trial court's denial of the motion for new trial and remanding where the trial court stated that "[a]s to the first point, the weight of the evidence . . . the issues boil down to credibility, and those are factual determinations to be made by the jury"); *Velloso*, 117 So. 3d at 905-06 (reversing and remanding for the trial court to reevaluate the appellant's motion for new trial where the trial court explicitly refused to weigh the evidence, stating that it was the jury's role to weigh the credibility of the witnesses and that it was its role to make the determination whether the State met the minimum threshold for the case to go to the jury); *Ferebee v. State*, 967 So. 2d 1071, 1073 (Fla. 2d DCA 2007) (reversing and remanding for the trial court to reevaluate the appellant's motion for new trial where the trial court, in denying the motion, stated that it could not act as a seventh juror and found that there were sufficient facts for the jury to make a determination of guilt).

One of the grounds for Appellant's motion for new trial was that the trial court erred in denying his motion for judgment of acquittal. Given such, it is not surprising that the trial court referred to its previous ruling on that motion in denying Appellant's motion for new trial on that claim. The State is correct that this is not a case where the court's language or order clearly shows that it used the wrong standard. The State also correctly argues that this case is similar to *Moreland v. State*, 253 So. 3d 1245, 1246 (Fla. 1st DCA 2018), where the majority rejected the appellant's argument that the trial court used the wrong standard in denying his motion for new trial. The appellant argued in his motion that the trial court erred in denying his motion for judgment of acquittal and motion for mistrial and that the verdict was contrary to the weight of the evidence and the law. *Id.* At the hearing, the trial court summarily denied the motion for new trial by stating, "The Court will rely on the rulings previously made in this case, and I will deny the motion for new trial at this time." *Id.*

The appellant argued on appeal that the trial court, instead of acting as an additional juror to weigh the evidence, incorrectly applied a sufficiency of the evidence standard. *Id.* In affirming, the majority disagreed, setting forth, “In this instance, the trial court’s ruling included two independent clauses that directly corresponded with the motion’s arguments. . . . The other part of the trial court’s ruling . . . simply denied the new trial motion without any comment.” *Id.* at 1247. The majority concluded that nothing in the order’s language showed that the trial court employed an improper legal standard. *Id.*; *see also Nolan v. State*, 277 So. 3d 1147, 1149 (Fla. 1st DCA 2019) (rejecting the argument that the trial court applied the wrong standard in evaluating the appellant’s motion for new trial while noting that the motion advanced multiple grounds, including that the trial court erred in denying his motion for judgment of acquittal and that the verdict was contrary to the weight of the evidence, and determining that it was clear that the court’s statements that it would stay by its prior rulings were directed at the arguments raised during the hearing and finding that nothing indicated that the trial court applied the wrong standard); *Bell v. State*, 248 So. 3d 208, 210 (Fla. 1st DCA 2018) (“While the judges’ oral rulings only addressed the standard for the sufficiency arguments, it does not follow that the judges applied the sufficiency standard to the weight-of-the-evidence arguments.”).

We find this case to be more in line with *Moreland*, *Nolan*, and *Bell* than with *Baker v. State*, 262 So. 3d 241, 241-42 (Fla. 1st DCA 2018), where we found merit in the appellant’s argument that the trial court applied the wrong standard in ruling on his motion for new trial. After noting that the appellant raised several issues in his motion for new trial, including whether the trial court erred in denying his motions for judgment of acquittal and that the verdicts were contrary to the weight of the evidence, we pointed out that the trial court denied the motion “for the reasons stated on the record, as I outlined during the trial.” *Id.* at 242. We set forth, “Because the trial court denied Baker’s motion for new trial by simply referring back to its rulings during trial, it failed to assess the verdicts in light of the weight and credibility of the evidence, as it was required to do.” *Id.* Importantly, we distinguished both *Moreland* and *Bell* on the basis of the “court’s explicit reference to

its rulings during trial as the sole reason for denying the motion.”
Id. This case is distinguishable from *Baker* for the same reason.

Here, defense counsel argued during the hearing on his motion for new trial that the court erred in denying his motion for judgment of acquittal and motion in limine. As for the arguments that the verdict was contrary to the weight of the evidence and to the law, defense counsel stated in part, “Motion for New Trial we rely on our arguments made within.” After further discussion on the motion in limine issue, the trial court stated in part, “And I will based upon my review of the motion for new trial and my memory of the trial itself and the argument previously made at trial with the same issue as well as the arguments made today I will stand by my previous rulings, and I will deny defendant’s motion for new trial.” This statement shows that the trial court took into consideration not only the grounds raised during the hearing but also the grounds raised in Appellant’s motion, which, as stated, included the weight of the evidence and contrary to law arguments. The court’s reliance upon its previous rulings does not, as Appellant argues, indicate that the court utilized an improper standard in addressing those claims. As such, Appellant is not entitled to reversal as to this issue.

For the foregoing reasons, we affirm Appellant’s judgment and sentence.

AFFIRMED.

LEWIS, WINOKUR, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Kevin Steiger, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Amanda D. Stokes,
Assistant Attorney General, Tallahassee, for Appellee.