DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

DANIEL JOSEPH GOULD,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-4199

[November 29, 2006]

GROSS, J.

Daniel Gould appeals his convictions for attempted second degree murder of a law enforcement officer and resisting arrest with violence while armed. We affirm and write to address the propriety of the lower court's admission of collateral crime evidence as *Williams* Rule evidence.[1]

Police officers responded to a retirement community in reference to a trespassing call. While officers attempted to place Gould under arrest, he pulled a handgun from his waistband. Several officers tackled Gould to the ground before he could get off a shot. While on the ground, Gould fought the officers, screaming, "I am going to fucking kill you." Gould also yelled, "I want to fucking die, shoot me, shoot me, shoot me." He continued to struggle for three to four minutes. During that time, he kept pulling the gun's trigger and screaming "I'll kill you! I'll kill you! I'll kill you!" Gould fired one shot; after that shot, the gun's slide became inoperable, so despite continuous trigger pulls, the gun would not fire.

At trial, the defense theory was that in handling the gun, Gould intended to kill himself, not to harm the officers at the scene. To disprove this theory, the state introduced evidence involving an arrest that occurred two-and-one-half weeks before the charged incident. At that time, Gould attempted to pull a 12-inch hunting knife on the *same* arresting officer. The trial court ruled the evidence to be admissible because it was relevant to show intent and premeditation.

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[1] *See Williams v. State*, 110 So. 2d 654 (Fla. 1959).

We agree with the trial judge that the evidence of appellant's prior violent behavior directed at the arresting officer was admissible as *Williams* Rule evidence because it was relevant to prove Gould's "intent" to commit the crime of attempted second degree murder of a law enforcement officer, a material issue in the case. *See* § 90.404(2)(a), Fla. Stat. (2005).

The trial court has broad discretion in determining whether evidence of other crimes is relevant, and such a determination will not be disturbed absent an abuse of discretion. *See White v. State*, 817 So. 2d 799, 806 (Fla. 2002). Evidence of other crimes is properly admissible when such evidence tends to disprove a defendant's theory of defense or attempt to explain his intent. *See Miller v. State*, 667 So. 2d 325, 328 (Fla. 1st DCA 1995).

We find no abuse of discretion in the court's admission of other crimes evidence. *See* § 90.404(2)(a). The evidence of the earlier incident was relevant to establish that when Gould drew and fired his gun he was intending not to commit suicide, but to kill a law enforcement officer. *See Simmons v. State*, 790 So. 2d 1177, 1180 (Fla. 3d DCA 2001). The evidence thus served to prove Gould committed the crime charged, not "solely to prove bad character or propensity." *See Cartwright v. State*, 885 So.2d 1010, 1013 (Fla. 4th DCA 2004).

We find no error in the other points raised.

Affirmed.

GUNTHER, J., concurs.
FARMER, J., concurs specially with opinion.

FARMER, J., concurring.

In my opinion, the collateral crime evidence concerning the knife incident two weeks before the events in this case was admissible only to contradict his defense that his conduct with the firearm was part of a suicidal endeavor. But for that defense, I think the evidence was merely being used to show that defendant has a propensity for violence with police officers and was therefore inadmissible.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard I. Wennet, Judge; L.T. Case No. 04-4015CFA02.

Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Daniel P. Hyndman, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.