

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed November 28, 2007.
Not final until disposition of timely filed motion for rehearing.

No. 3D06-875
Lower Tribunal No. 03-10401

Juan M. Gonzalez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Peter Adrien,
Judge.

Bennett H. Brummer, Public Defender, and Robert Kalter, Assistant Public
Defender, for appellant.

Bill McCollum, Attorney General, and Maria T. Armas, Assistant Attorney
General, for appellee.

Before GERSTEN, C.J., and GREEN, J., and SCHWARTZ, Senior Judge.

PER CURIAM.

On the record before us, we cannot conclude that the trial court erred in its determination that the State's witness was unavailable to testify in person at trial, as defined in Florida Rule of Criminal Procedure 3.190(j)(6), due to her advanced age and illness. Thus, the court did not abuse its discretion when it admitted this witness's perpetuated deposition testimony. See DiBattisto v. State, 480 So. 2d 169 (Fla. 3d DCA 1985). Accordingly, we affirm the appellant's conviction and sentence for first-degree murder with a firearm.

Affirmed.