

IN THE COUNTY COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
JUDGE NINA ASHENAFI-RICHARDSON

STANDING ORDER ON CLOSING ARGUMENTS IN CRIMINAL CASES

In all cases that come on for Trial before Judge Nina Ashenafi-Richardson, this court hereby orders all counsel to abide by the following restrictions during their closing arguments, absent any order to the contrary by this court:

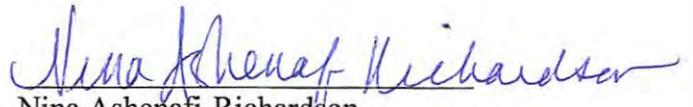
- 1) Counsel shall refrain from expressing personal opinion as to the guilt or innocence of the defendant or the credibility of a witness. *Shrader v. State*, 962 So. 2d 369, 371 (Fla. 4th DCA 2007) (noting that “the law is well settled that expressions of personal belief by a prosecutor are improper.”) (Quoting *State v. Ramos*, 579 So. 2d 360 (Fla. 4th DCA 1991)); *See also*, *Toler v. State*, 95 So. 3d 913, 917-918 (Fla. 1st DCA 2012).
- 2) Counsel shall avoid making arguments that place the jury, or ask the jury to place itself in the place of the victim or defendant (Golden Rule Argument). *Delhall v. State*, 95 So. 3d 134, 169-170 (Fla. 2012) (finding that the prosecutor’s overzealous and unfair advocacy tainted the determination of guilt by “inject[ing] elements of emotion and fear into the jury’s deliberations,” resulting in fundamental error). (Quoting *Garron v. State*, 528 So.2d 353 (Fla. 1988)).
- 3) Counsel shall avoid making arguments that are not based on facts in evidence or reasonable inferences that can be drawn therefrom. *Sairras v. Fla. Dep’t of Corr.*, 496 Fed. Appx. 28, 34 (11th Cir. 2012) (finding that counsel’s comment in closing argument, referring to testimony that had been specifically struck by the court and not admitted into evidence, was improper. “Comments on matters outside the evidence are clearly improper.”) (Quoting *Pope v. Wainwright*, 496 So. 2d 798, 803 (Fla. 1986)). *See also*, *Spencer v. State*, 561 So.2d 248 (Fla. 1994).

- 4) Counsel shall avoid commenting on the other party's failure to call a witness without first showing the court, at sidebar, that the requirements of *Haliburton* are satisfied or do not apply. *Molina v. State*, 71 So. 3d 234, 236 (Fla. 2nd DCA 2011) (finding that "When . . . witnesses are equally available to both parties, no inferences should be drawn or comments made on the failure of either party to call the witness." (Quoting *Haliburton v. State*, 561 So. 2d 248, 250 (Fla. 1990)); *See Jean v. State*, 41 So. 3d 1078, 1080 (Fla. 4th DCA 2010); *Lena v. State*, 901 So. 2d 227, 232-233 (Fla. 3rd DCA 2005).
- 5) Counsel shall avoid using derogatory terms when referring to the defendant, a witness, or opposing counsel and shall not make any disparaging comments about counsel's occupation or performance in court. *Toler v. State*, 95 So. 3d 913, 917-918 (Fla. 1st DCA 2012) (granting appellant's motion for mistrial on the ground that the prosecutor's pejorative and sarcastic comments, including referring to the appellant as a liar, were so invasive and inflammatory as to be prejudicially harmful). *See also*, *Smith v. State*, 28 So. 3d 838, 862 n. 15 (Fla 2009); *Johnnides v. Amoco Oil Co.*, 778 So. 2d 443, 444 (Fla. 3rd DCA 2001); *Walker v. State*, 707 So.2d 300 (Fla. 1997).
- 6) Counsel shall avoid making arguments whose sole purpose is to elicit sympathy from the jury. *Cascanet v. Allen*, 83 So. 3d 759, 764 (Fla. 5th DCA 2011) (finding that counsel for appellee's improper closing arguments, including a successful attempt to "[curry] sympathy from the jury for a favorable verdict" deprived the appellant of a fair trial and warranted reversal.") *See also*, *Urbain v. State*, 714 So.2d 411 (Fla. 1998).
- 7) Counsel shall refrain from commenting on defendant's demeanor in the courtroom, other than on the witness stand. *Jenkins v. State*, 96 So. 3d 1110, 1113 (Fla. 2012). (finding that the prosecutor's comment "invit[ing] the jury to consider the appellant's demeanor off the witness stand" was improper, but insufficient for a mistrial when isolated.) (Quoting *Rodriguez v. State*, 609 So. 2d 493, 501 (Fla. 1992)).

- 8) Counsel shall refrain from commenting on objections made by opposing counsel. *Knight v. State*, 672 So.2d 590, 591 (Fla. 4th DCA 1996)(noting that the “[p]rosecutor impermissibly attacked the credibility of defense counsel for objecting to the state’s introduction of inadmissible evidence during the testimony of the crime scene technician.”)
- 9) Counsel shall refrain from commenting on possible penalties for any charged offense or lesser included offense. *Brandon v. State*, 727 So.2d 1010, 1011 (Fla. 5th DCA 1999) (noting that, “Except in death penalty cases, it is improper to inform the jury of the possible penalties for the defendant’s crime.”) *See also*, *Legette v. State*, 718 So.2d 878 (4th DCA 1998).
- 10) The prosecution shall not make any argument that is “fairly susceptible” of being interpreted as a comment on the defendant’s silence or right to remain silent. *Poole v. State*, 997 So. 2d 382, 390-391, 399 (Fla. 2008) (“[A]ny comment on, or which is fairly susceptible of being interpreted as referring to, a defendant’s failure to testify is error and is strongly discouraged.”) (Quoting *Rodriguez v. State*, 753 So. 2d 29, 37 (Fla. 2000)). *See also*, *Adams v. State*, 830 So. 2d 911, 916 (Fla. 3rd DCA 2002); *Dailey v. State*, 594 So.2d 254 (Fla. 1991).
- 11) The prosecution shall not make any argument that urges the jury to “send a message” to anyone with its verdict or that urges the jury to convict the defendant for the safety of the community. *City of Orlando v. Pineiro*, 66 So. 3d 1064, 1070-1071 (Fla. 5th DCA 2011)(noting that counsel’s closing argument suggesting that a “significant verdict will send a message” was improper, but ultimately finding that review was inappropriate because the issue was not preserved). *See also*, *Bertolotti v. State*, 476 So.2d 130 (Fla. 1985); *Esty v. State*, 642 So.2d 1074 (Fla. 1994).
- 12) The prosecution shall not make any argument that suggests that police officers should be believed simply because they are officers or that they would not jeopardize their

careers by lying in the case. *Davis v. State*, 937 So. 2d 273, 276 (Fla. 4th DCA 2006) (finding that “the cumulative effect of the prosecutor's continuous labeling of the defense witnesses as liars, coupled with the prosecutor's repeated suggestion that the law enforcement officers would not [lie]” and “put his or her career on the line by committing perjury” reached the “critical mass of fundamental error[]”) (Quoting *Sinclair v. State*, 717 So. 2d 99, 100 (Fla. 4th DCA 1998)).

DONE AND ORDERED in Chambers at Leon County, Tallahassee, Florida,
this 30 day of Sept., 2013.


Nina Ashenafi-Richardson
Leon County Court Judge

Copies Furnished To:

Court acknowledges and thanks JA Blanca Delgado-Chavez and law student Melissa Mears for shephardizing and updating case law cited in this Order.