KARATE IN THE COURTS

By

John Darin

Test for Shodan

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INTRODUCTION

The following is a study in Appellate Court decisions from Florida in which a party's knowledge of karate was deemed to be a significant factor in the court's ruling. Because the American Court system is divided into two parts; the criminal law and the civil law, the following Appellate decisions are separated for discussion in the same manner. In the criminal law, the Statutes define inappropriate behavior and certain elements essential to the offense must be proven in order for the prosecution to convict the accused. For example, to establish solicitation for prostitution, the prosecutor must establish an offered sexual act, consideration (usually money) and a place for the act to take place. If even one of the elements of a crime is not proven, then the jury must acquit the defendant. The "beyond a reasonable doubt" standard used by the jury in a criminal case is different than the standard used by juries in civil cases involving suits for money damages. In a civil case the initiating party, the Plaintiff, need only prove his case by a "preponderance of the evidence"; tipping the scales of justice more than 50% in the Plaintiff's favor.

After the lawyers have presented the jury with opening arguments, have presented witnesses to testify in support of their theories of the case and closing arguments have been made, the Judges in both criminal and civil cases give the jury instructions as to either the elements of the crime in the criminal case which the jury must be convinced of beyond a reasonable doubt, or the legal theory

which would justify an award of damages in the civil suit. Trial court decisions on both the civil side and the criminal side of the law are so numerous that usually the decisions are not published. On the other hand, if a case is appealed because one side believes the Trial Judge or jury erred, then the resulting Appellate decisions are usually made available through reporter services so other Judges and lawyers not involved in that case will be aware of the manner in which the Court of Appeals and the Supreme Court will treat such issues. The cases you are about to read are from reported Appellate decisions.

CIVIL SUITS

In Florida there are standard Civil Jury Instructions. If the parent of a child injured while sparring at the dojo sues the instructor for negligence, a standard jury instruction on negligence would be read to the jury after the attorneys and witnesses have informed the jury of their theories in the case, and the jury had heard the witnesses' recollections of the facts. Likewise, if a student is injured doing basic warm-up exercises which he feels the instructor was negligent to suggest because the latter holds himself out as one educated in physical training, the negligence standard would be read to the jury. The Judges are allowed to modify these standard instructions if the case calls for it, but by and large these instructions are read as you see them:

> 4.1 Negligence.
>
> Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a

reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

Comment

1. No inference of negligence from mere fact of accident. The committee recommends that no charge be given to the effect that "negligence may not be inferred from the mere happening of an accident alone." Such a charge is argumentative and negative.

2. Unavoidable accident. The committed recommends that no charge be given on the subject of "unavoidable accident," this being a more appropriate subject for argument by counsel.

3. Presumption of reasonable care. The committee recommends that no charge be given to the effect that one is presumed to have exercised reasonable care for his own safety or the safety of others.

CIVIL CASES

In East West Karate Association, Inc. v. Riquelme, 638 So.2d 604 (Fla. 4th DCA 1994) a karate association appealed a verdict entered in favor of an injured student. The karate student brought a negligence action against the association after the student suffered a ruptured spleen during a supervised sparring session with a fellow student. The Court of Appeal held that (1) the Trial Court erred in not submitting the name of the fellow student who administered the kick on the jury form (2) the student's medical bills were properly admitted into evidence and (3) the question as to whether the student appreciated risk of injury involved in supervised sparring was for the jury.

In May of 1990 Riquelme participated in a voluntary, supervised sparring session. Riquelme was paired with another new karate student, James Gipe.

The two students sparred several times that evening and in their final match Riquelme was injured when Gipe delivered a kick to the left side of Riquelme's back just above the kidney. Riquelme suffered a ruptured spleen and underwent an emergency spleenectomy. Jury trial commenced and Riquelme took a voluntary dismissal with regard to the claim against James Gipe. The jury returned a verdict in favor of Riquelme against the Karate Association in the amount of $27,107.08.

On appeal, the East West Karate Association maintained that the Trial Court erred in not submitting James Gibe's name on the jury verdict form because he was as least partially to blame for the injuries. The Court of Appeals agreed. While Riquelme was allowed to drop James Gipe from the case, perhaps because he was not collectible, neither should East West have been the only potentially guilty party to be named on the verdict form. The jury should have been permitted to assign a percentage of negligence as to East West and to James Gipe, apportioning liability against each participant in the accident which injured the Plaintiff. The Court held that the issue was controlled by the Florida Supreme Court's decision in Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). In that case the Supreme Court reasoned that, "clearly the only means of determining a party's percentage of faulty is to compare that party's percentage of fault to all the other entities who contributed to the accident, regardless of whether they have been or could have been joined as Defendants. Thus, a Defendant is only required to pay non-economic damages in an amount proportionate to his or her percentage of fault."

However, East West also argued on appeal that the Trial Court erred in failing to grant its Motion for a Directed Verdict because no reasonable jury could find that Riquelme did not subjectively appreciate the risk. The Court disagreed and felt that whether or not Riquelme assumed the risk would be a matter for the jury to decide.

In Brown v. Bridges, 327 So.2d 874 (Fla. DCA 1976) a karate student brought an action to recover against her instructor and others for injuries she sustained in a karate class. The student alleged in her complaint that Defendant Brown was not a qualified karate instructor, that he had failed to properly demonstrate a particular karate maneuver referred to as a "block and take-down" and further that this particular maneuver involved an unacceptable degree of risk for such inexperienced students as Ms. Hall. The Trial Court denied Ms. Hall's Motion to require Sensei Brown to demonstrate the instructional method for filming to be used in evidence. However, when a third party complaint was later filed by the other students against the instructor, the Court permitted a videotaped deposition including a demonstration. Instructor Brown appealed the use of the videotape at the trial and the appeal ensued. The Court of Appeal held that Sensei Brown should be required to illustrate a part of the maneuver, for example, showing how he moved his hands or his feet, on the videotape. This created a picture in time for the record that the attorneys could premise their questions and arguments on. If Sensei Brown only gave a live demonstration at trial, he could alter his movements to help his case and take Ms. Hall's lawyer by surprise.

In Miami Shores Village, Inc. v. Mallicote, 421 So.2d 662 (Fla. 3rd DCA 1982), the Plaintiff, Charles Mallicote, brought suit against the City, Miami Shores Village, to recover for personal injuries. This case involved a judo class rather than a karate class, but the rule of law is the same. The Plaintiff, who was injured during a judo class, claimed that the City supplied inadequate equipment and the defective condition of that equipment was the cause of the Plaintiff's injuries. The jury agreed and entered a verdict against the City. The Appeals Court will usually not disturb the findings of a trial Judge or jury if there is competent and substantial evidence of record to support the decision. However, if there is evidence of record that would have permitted the Judge or jury to reach an opposite conclusion, the Appellate Court will not normally reverse the verdict as long as there is solid evidence of record to support it. In other words, the fact the trial court could have decided the case in a different way will not be the basis for a reversal on appeal as long as there is something supportive of the finding the Judge or the Jury made. However, if the Judge misreads or misinterprets the law, then the Judge may be reversed even if his erroneous decision has factual support in the record of the proceedings. In the Miami Shores Village case, the Court found that the arguments the City's attorney made on appeal; that the jury instructions were improper and the issue of the injured student's assumption of risk should have been submitted to the Jury, were never argued at the Trial level, so they would be barred on the Appellate level. Too little, too late for Miami Shores. The Appellate Court affirmed the Trial court ruling for the Plaintiff and

the City had to pay for the Plaintiff's injuries as a result of their providing inadequate judo equipment.

In Black v. District Board of Trustees of Broward Community College Florida, 491 So.2d 303 (Fla. 4th DCA 1986), a police officer trainee injured during a police academy training exercise brought suit against the City and the Trustees at the Community College at which the training was conducted. While the case did not involve karate, the rule of law set forth in the decision would be applicable to any self-defense classes at a dojo. The Trial Court had entered a verdict in favor of the Defendants and the injured trainee appealed.

The Plaintiff, Luann Black, was participating in a realistic training exercise called a street survival session. Black was to play the role of a "bad guy" in a problem involving the apprehension and search of a stolen vehicle. Black was not among the "suspects" to be apprehended, so she stood along the sidelines. As the exercise progressed, Wilde removed a gun from one of the student suspects, placed it in her belt, and began to search the interior of the "stolen" vehicle. Black, who had not interjected herself into the exercise, stood watching close by. At some point in the exercise, Captain Ed White, the supervisor for the exercise, told Black to take Wilde's weapon if she got the opportunity. About fifteen to twenty minutes into the exercise Wilde moved close to Black, and Black leaned forward to grab the weapon. Wilde apparently sensed that Black was behind her and turned around rapidly, accidentally striking Black in the mouth with her police revolver, causing injuries.

The city asserted as a defense "assumption of risk". Black's attorney filed a Motion to strike the defense, which the Lower Court denied. At trial, counsel for Black again moved to strike the assumption of risk defense, and the Trial Court again denied the motion. The jury returned a verdict finding that Black had assumed the risk of her injury and the Court entered a final judgment in favor of both Defendants. Black then appealed.

In deciding the case, the Court of Appeals reasoned that the leading Florida decisions on "assumption of risk" were Blackburn v. Dorta, 348 So.2d 287 (Fla. 1997) and Kuehner v. Green, 436 So.2d 78 (Fla. 1983). Both Blackburn and Kuehner were Florida Supreme Court decisions so they are binding on both the Lower Courts of Appeal and the Trial Courts. In Blackburn, the Florida Supreme Court had abolished the doctrine of implied assumption of risk as a defense to an action in negligence, holding that the doctrine had been merged into the defense of comparative negligence now used in Florida; if the Plaintiff were 25% at fault and the Defendant were 75% at fault then the Plaintiff would win 75% of the damages with 25% being deducted for the Plaintiff's own comparative negligence. In Kuehner, the Court addressed a question left open in Blackburn; what if the situation involved voluntary participation in contact sports. The Plaintiff in Kuehner was injured by the Defendant while the two were engaged in a karate sparring match. The court held that while the participant in a contact sport does not automatically assume the risk of deliberant injury, the doctrine of expressed assumption of risk would apply where the Plaintiff voluntarily consents to take certain chances. What constitutes express

assumption of risk, according to Kuehner, is a question for the jury. If the jury finds that a Plaintiff appreciated the risk-giving rise to the injury and participated in the face of such danger, the express assumption of risk defense would bar recovery. However, if the jury finds that the Plaintiff did not appreciate the risk, but should reasonably have done so, then assumption of risk is inapplicable and ordinary comparative negligence principles will apply.

The Court then cited similar cases involving the doctrine of express assumption of risk in sporting environments such as the riding of a "mechanical bull", Van Tuin v. Zurich American Insurance Company, 447 So.2d 318 (Fla. 4th DCA 1984); horseback riding with another rider on the saddle, Carvajal v. Alvarez, 462 So.2d 1156 (Fla. 3rd DCA 1984); knowingly diving into shallow water, Robins v. Department of Natural Resources, 468 So.2d 1041 (Fla. 1st DCA 1985); and racing horses professionally, Ashcroft v. Calder Race Course, Inc., 464 So.2d 1250 (Fla. 3rd DCA 1985). Although the Courts in these cases were not always satisfied that the Defendants had met their burden of proof on the assumption of risk defense, in each case the Court rejected the Plaintiffs' contentions that express assumption of risk was inapplicable as a matter of law.

In the Kuehner case, the Court stated at page 79-80:

> If contact sports are to continue to serve a legitimate recreational function in our society, express assumption of risk must remain a viable defense to negligence actions spawned from these athletic endeavors . . . When a participant volunteers to take certain chances, he waives his right to be free from those bodily contacts inherent in the chances taken. Our judicial system must protect those who rely on such a waiver and engage in otherwise prohibited bodily contacts.

In other words, careful application of the assumption of risk defense can be useful in maintaining the vitality of certain activities like sports, in which a certain amount of physical contact is necessary and encouraged. In summary, if the participants in the karate sparring match are behaving reasonably and one party happens to get injured, then it would be presumed the injured party "assumed the risk" and recovery would be denied. On the other hand, if the students are engaged in karate sparring and one student gets frustrated and suddenly grabs a weapon off a wall and begins to use it, the injured student did not "assume the risk" of a weapon being used in kumite but rather expected weaponless sparring. Under such circumstances, the "assumption of risk" defense would not bar recovery in a civil suit.

In Kuehner v. Green, supra, a party injured during karate practice by a sparring partner appealed from a judgment in favor of the sparring partner. The Court of Appeals affirmed the Trial Court decision holding that the injured party was aware of the danger of "leg sweeps" in karate practice and that he voluntarily assumed the risks of injury resulting therefrom, precluding his recovery from the sparring partner. Green had caught Kuehner's right foot in mid-air and swept Kuehner's left leg from under him, causing Kuehner to fall backwards. The jury found that Kuehner did, "know of the existence of the danger complained of, realize and appreciate the possibility of injury as a result of such danger, and, having a reasonable opportunity to avoid it, voluntarily and deliberately exposed himself to the danger complained of." The Court held that express assumption of risk remained an absolute bar to recovery in Florida. The

Court of Appeals reviewed the record and found there was conflicting testimony as to whether "leg sweeps" should be done on concrete floors, as occurred in the case, and whether Kuehner realized Green might "sweep" without catching him. The conflict was resolved against Kuehner by the jury so the Court of Appeals would not interfere with the jury's conclusions because they were supported by evidence of record. The Court noted that the testimony did not suggest Green willfully or deliberately harmed Kuehner, or that the leg sweep was performed in violation of a recognized or formal karate rule designed to protect participants.

CRIMINAL CASES

In Elledge v. Dugger, 823 F.2d 1439 (U.S.C.A. 11th Dist. 1987), a Defendant who had been convicted of murder and sentenced to death petitioned for relief. The Defendant pled ineffective assistance of counsel and abuse of judicial discretion.

Just prior to selecting the jury that would sentence Elledge, the Trial Judge announced that a law enforcement official had informed the Judge of two matters; first, while incarcerated, Elledge had stated that, "Because he had nothing to lose," he intended to assault the courtroom bailiff. Second, while in jail, Elledge had become proficient in karate. Accordingly, the Trial Judge ordered Elledge placed in leg irons for the duration of the sentencing phase, so he couldn't kick or move quickly. The Appellate Court found that there was a troublesome question as to whether the appearance in shackles of a Defendant whom the jury had just convicted of a gruesome crime was so prejudicial that he

was thereby denied his constitutional right to a fair capital sentencing proceeding. On the other hand, arguments could be made that the jury's view of such a shackled convicted murderer would have no effect on the sentencing, or indeed, might benefit the Defendant with sympathy. The court looked to the Supreme Court for guidance and found cases in which the Supreme Court had characterized shackling as a "inherently prejudicial practice". Even though the jury had already convicted the Claimant of a gruesome murder, the court noted that the Supreme Court ruling did not limit its application to the guilt or innocence phase of a trial, so the Court reversed the Lower Court and remanded the case for resentencing. (Noteworthy, the Defendant's statement that he had "nothing to lose" and would attack the bailiff was based upon the fact that Elledge was serving two life sentences plus fifty years for rape and he was facing the death penalty or another life sentence arising out of the case that was appealed.)

In the case of Deveaugh v. State of Florida, 575 So.2d 1373 (Fla. 4th DCA 1991) the Defendant, who claimed to have hit the victim in self-defense, had his conviction reversed because he was entitled to a jury instruction on the justifiable use of non-deadly force in his prosecution for aggravated battery. The Defendant, Peter Deveaugh, was charged with aggravated battery upon Phillip Applequist. The charges arose out of a fistfight that resulted in Applequist having a broken nose and jaw. Applequist was 6'3" tall and weighed 230 pounds. Peter Deveaugh was only described by the Court as a brown belt in karate. (Size doesn't matter if you are a brown belt.) Applequist contended that the Appellant hit him without provocation while Deveaugh maintained that Applequist started

the fight and he was acting in self-defense. Brown belt Devonaugh was convicted and appealed on the basis that the jury should have been given an instruction concerning justifiable use of non-deadly force. The Court had refused to give that instruction and instead used a different standard instruction concerning the justifiable use of deadly force. The Court sentenced the brown belt to one-year probation, restitution and fifty hours of community service. The Court of Appeals felt that the additional jury instruction should have been given and reversed and remanded the case for a new trial.

In a non-Florida Southeastern case, Green v. State, 262 S.E.2d 639 (GA Court of Appeals 1979) the Defendant's husband was visiting in the home of a woman by whom he had fathered a child. Appellant drove up in front of the house and blew the horn. The Defendant pointed a gun at one of the residents of the house and ordered that her husband come out. The husband approached the car in a heated argument took place. During the argument, the husband threatened the Defendant's life and demanded that she leave, but her car would not start so the Defendant got out of the passenger side of the car and began to walk down the street. The Defendant then announced to the neighborhood that her husband was not the father of their son and her husband began running down the street after her. There was conflicting evidence as to whether the Defendant's husband grabbed her or attempted to grab her but failed. The Defendant testified her husband was trained in karate, so she was in fear of her life when she shot and killed her husband. On appeal, the Defendant argued that she was either guilty of intentional murder or not guilty of any crime

because she acted in self-defense. The Defendant did not want to be convicted of voluntary manslaughter, which was the crime she was convicted of. The Court of Appeal found the argument to be meritless. The evidence showed that the Defendant had seriously provoked the decedent and acted in the heat of passion, so the conviction for voluntary manslaughter was justified.

In Power v. State of Florida, 605 So.2d 859 (Fla. 1992) the Florida Supreme court affirmed a jury conviction of first degree murder and the imposition of the death penalty. The arguments made by the Defendant was that the officer serving a warrant on him had failed to "knock and announce" their presence before breaking in. The court held that the alleged "knock and announce" violation was meritless because the police faced additional peril had they first demanded entrance and stated their purpose. The Defendant, Power, had used a gun or knife to rape several females, had committed armed robbery of a deputy, was a black belt in karate, and had a gun.

October 6, 1987, Frank Miller, a friend of the Bare family, arrived at the Bare home with his daughter to pick up twelve year old Angeli Bare for school. Miller honked twice and glanced at the house where he saw a man standing inside the doorway with his back to the street. Miller assumed the man was Angeli's father. The man made a gesture to wait and Miller remained in the car. At 8:55 a.m. Angeli came out of the house and walked to Miller's car. Angeli stopped three feet from the car and appeared very nervous. Angeli told Miller there was a man in the house who wanted to rob her. Angeli refused Miller's repeated requests to get into the car because she was afraid the man would kill

all three of them. Miller told Angeli that he would get help immediately and drove back to his house where he called the Bares at work and 911. Miller then drove back and parked four or five houses away from the Bares' home. The police arrived and searched the home and found nothing. Defendant Powers approached one of the officers searching the area, Welty, pulled a gun on him and ordered him to turn over his gun and radio. That morning authorities found the body of Angeli buried behind her home. The body was lying on its right side, gagged and "hogged-tied" by the wrists and ankles. An autopsy revealed that the victim's left eye was blackened and she had contusions on her neck. The right carotid artery was cut by a stab wound. The autopsy also revealed injuries to the vaginal and anal areas. Ten days after the murder Officer Welty identified a photograph of Robert Power, the Defendant, as the man who robbed him in the field. A swat team executed a search warrant at the residence of Robert Power and found him hiding in the attic. The jury found Power guilty of first-degree murder, sexual battery, kidnapping of a child, armed burglary of a dwelling, and armed robbery. The Court of Appeal affirmed the decision, finding the arresting officers acted prudently in taking the suspect by surprise.

In the case of Dixon v. State of Florida, 603 So.2d 570 (Fla. 5th DCA 1992) the Court held that generally, bare hands are not deadly weapons for purposes of alleging or proving the crime of aggravated battery. This reversed a Trial Court's ruling that depending upon how they were used, fists and hands could be considered deadly weapons. The Court of Appeals held that if the circumstances are such that bare hands inflict deadly force is an issue which should be resolved

by the jury. Although there were some out-of-state authorities for this view that hands and feet could be weapons, none were found in Florida. The Florida Court concluded that it would be contrary to good public policy to define the fists or hands as deadly weapons. The Court looked at the Model Penal Code, Section 210.0(4) that defines "deadly weapon" as:

"Parts of the human body as dangerous weapons, . . . any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or intended to be used is known to be capable of producing death or serious bodily injury."

The Court held that something more than the use of bare hands was intended by this definition otherwise almost every battery would be a "aggravated battery". The Court cited Davis v. State, 565 So.2d 826 (Fla. 5th DCA 1990) in which they held that an indictment, which alleged the Defendant kicked the victim with his foot, failed to charge him with aggravated battery because no "deadly weapon" was alleged to have been used. The Court acknowledge in Davis that had the information alleged the Defendant wore a heavy shoe or boot which could have inflicted deadly force, an aggravated battery charge would have passed legal muster. However, bare hands (like bare feet) are not deadly weapons for purposes of alleging or proving the crime of aggravated battery. The issue of whether the bare hands or feet of a person specially skilled or trained in martial arts to kill or inflict deadly force with them could be deemed "deadly weapons" was reserved for future consideration. But in this case, there was no allegation or proof that Dixon had any such skills or training. Accordingly,

Dixon's conviction for aggravated battery was reversed and the Lower Court was directed to reduce the conviction to simply battery. However, there was a dissenting opinion issued in that case in which the disagreeing Judge stated:

Majority opinion en bank convinces me even more that bare hands can be used as a deadly weapon and thus, dependent upon the use, be classified as a deadly weapon. I quote from that opinion that so convinces:

> "The issue of whether the bare hands or feet of a person specially skilled or trained in martial arts to kill or inflict deadly force with them could be deemed "deadly weapons" is reserved for future consideration. But, in this case there was no allegation or proof that Dixon had any such skills or training."

Of course, when an Appellate Opinion says it does not decide an unraised but related issue, it is usually inviting and implying. I, too, am prepared to say the statute which prescribes the use of a deadly weapon can be violated by a karate chop to the throat, a kick to the heart, the heal of a hand upward to the nose, the fist to the spine and so forth. The skilled or imaginative reader can add to the list. If one uses his hands as a deadly weapon, he has violated the statute; it depends upon on his hands are used.

Just as the criminal courts appear to hold karatekas to a higher standard because of their proficiency and skills, so to will the false braggart holding himself out as one skilled in karate be judged by that standard. In the case of Bacom v. State of Florida, 317 So.2d 148 (Fla. 1975) a convicted defendant, who was partially disabled by arthritis, was hemmed in by a wall to his back and a bar to his side when he was approached by the decedent, who bragged he was a karate expert and invited the defendant outside for a fight without provocation.

The convicted defendant protested that he wanted no fight and asked the decedent to leave him alone. The decedent then left the bar but when the defendant failed to follow him outside, the decedent returned and while removing his glasses, approached the defendant who still had not taken any provocative action. Once attacked, the defendant stabbed the braggart several times with a knife, and the attacker died. The jury found the defendant guilty of manslaughter but the Court of Appeals reversed, finding the killing was in self-defense. If the braggart had not alleged he was a karate expert but was instead just one drunk taking off his glasses to attack the defendant, would the outcome have been the same? Would the defendant have been justified in using a knife to kill an unarmed attacker? Probably not.

Unfortunately, it is the not just the unskilled braggart who can give karate a bad name. Sometimes, despite the self-discipline required to become proficient in karate, even good karatekas go bad. Such was the case of Edsel Griffen. The rule of law has little to do with martial arts but the facts of the case emphasize the need for professionalism in karate instructors and emphasizes the arm's length relationship that must be maintained between sensei and deshi. The record reflects that the victim of the crime in State of Florida v. Griffen, 694 So.2d 122 (Fla. 5th DCA 1997) was the niece of Griffen's current wife. When the niece was twelve and one-half years old sensei Griffen took her into the restroom of his karate studio for the purpose of teaching her how to engage in sex. The niece initially refused to cooperate but when Griffen threatened to kick her out of the house where she was residing with Griffen and his wife, she agreed to

cooperate. After having oral sex with Griffen just once, the niece told a teacher at school and Griffen was charged with the crime. The state sought to introduce similar fact evidence of sexual batteries on two sisters by Griffen. The younger sister was thirteen when her mother allowed her to move in with her older sister, Griffen and his wife for one month. During this time Griffen advised the younger sister that she should have sex with him because of his experience. Sexual relations eventually took place between the younger sister and Griffen, with Griffen often giving specific instructions on how to proceed.

The older sister, at the age of fifteen, had met Griffin when she attended his karate school. When the older sister informed Griffin that she could not afford classes any longer, Griffen told her he was interested in her and wanted a relationship. Thereafter, she moved into the home of Griffen and his wife and two months later was engaging in sex with Griffen. Ultimately, Griffen and the older sister entered into a marriage that lasted nine months. At the trial, the State filed a notice of intent to use as similar fact evidence of Griffen's sexual experiences with the two sisters. Griffen responded with a motion to exclude the evidence. The Trial Court granted the motion and the State appealed. The rule of law enunciated in the case having to do with the inclusion and exclusion of similar sexual activities, though, has nothing to do with karate, per se.

In of Dougan v. State of Florida, 595 So.2d 1 (Fla. 1992), another karate instructor "went bad". Jacob John Dougan, was part of a group that termed itself the "Black Liberation Army" whose sole purpose was to indiscriminately kill white people and thus start a revolution and racial war. Dougan had been well-liked in

school, and achieved the rank of Eagle Scout and recruited his three co-defendants while teaching them karate. There was no evidence at trial that Dougan suffered any racial discrimination not common to all of the Black community. He was well-respected in the Black community where he taught karate and counseled Black youths. The only blemish on Dougan's police record involved a sit-down strike at a lunch counter that refused to serve Blacks. On the evening of June 17, 1974 Dougan and three others set out in a car armed with a pistol and a knife with the intent to kill any white person they came upon. As they drove around Jacksonville, they observed a number of possible victims. They decided the circumstances were not advantageous because they might have been seen by witnesses. At one stop, Dougan wrote out a note which was to be placed on the body on the ultimate victim chosen for death. Eventually, the five men drove towards Jacksonville Beach where they picked up a white hitchhiker named Steven Anthony Orlando. They drove Orlando to a trash dump where they stabbed him repeatedly and threw him to the ground. As the eighteen-year-old begged for his life, Dougan put his foot on Orlando's head and shot him twice. After the murder, Dougan made several tape recordings bragging about the murder which were mailed to the victim's mother as well as to the media. One of the tapes stated:

> The reason Stephen was only shot twice in the head, was because we had a jive pistol. It only shot twice and then it jammed, you can tell it must have been made in America because it wasn't worth a shit. He was stabbed in the back, in the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes.

So what does this have to do with karate? A few things. First, recall the old Greek maxim, "Everything in moderation, nothing in excess". Perhaps Dougan, the Eagle Scout and black belt, was too driven. Perhaps Dougan's sensei thought instruction and self-discipline could tone this compulsive personality down. Wrong. The need for greater introspection and character development by Dougan himself was required to save Orlando's life (and Dougan's). So perhaps the first lesson here is for students; karate-do can strengthen and give agility to the practitioner physically through vigorous training and introspection, but it is up to the student to apply those introspection and self-discipline skills which have been acquired through karate-do to polish one's moral and spiritual life. As Grand Master Nagamine so eloquently put it in his Precepts in the Mastery, "Earnestly cultivate your mind as well as your body and believe in yourself. Karate-do may be referred to as the conflict within yourself, or a life-long marathon which can be won only through self-discipline, hard training and your own creative efforts." There is a lesson here for senseis, too. Senseis have a unique gift to share with the world but as every parent knows, every child is born different with their own unique personality. The lesson for Dougan's sensei and others in similar circumstances is to persevere in spite of an occasional mishap or bad apple. Try and be selective, but carry on. Perhaps the youths Dougan had taught karate to and counseled, other than his co-defendants, had their lives turned around for the better as a result of their training. Each of those youths, in turn, may have helped others, all as a result of the original efforts of Dougan's sensei and his sensei before him.

The public appears to have an impression, as reflected in these Appellate decisions, that those persons who study karate should be considered more dangerous and held to a higher standard of culpability than the public at large. The criminal suspect who has knowledge of karate is considered "armed and dangerous," and not entitled to the usual "knock and notice" constitutional safeguards in search and seizure cases. If a braggart even falsely claims that he has skill in karate, he has given justification to others to arm themselves against him and take his life under circumstances in which the usual bare-fisted brawler would be convicted for voluntary manslaughter. The sensei, as an authority figure like a parent, may have a special duty and obligation to maintain an arm's length relationship with his students, or be held to a higher standard should that be responsibility be breached as in the case of sexual activity with minor students. On the other hand. while the public considers the karate practitioner more dangerous, some of the karateka sentenced in criminal cases have flaunted their expertise in teaching in order to convince juries that they had self-discipline expertise which should have been considered as favorable character traits by the jury in sentencing. In the Dougan case, Dougan's qualification as a karate teacher in the Black community was touted on equal footing with his having attained an Eagle Scout status in the Boy Scouts.

On the civil side of the law, it is ultimately the jury or trial judge's decision as to whether the karate instructor or sparring partner acted reasonably under the circumstances or were negligent. While the jury instructions and cases define and describe what constitutes "assumption of risk" or the standard for

"negligence", in our democratic system of justice these are still matters to be decided by the jury, the ultimate finder of fact. As long as there is "evidence of record" through testimony or exhibits, to support the jury's or Judge's conclusions, the Court of Appeal will not reverse their decision unless there has been a misinterpretation of the law or other gross error. The facts are what the jury or trial judge decide they were.

Kobujutsu

Okinawan ancient weapon art, Kobujutsu, is thought to have developed during those periods in Okinawan history when weapons were banned. All but one of the weapons were originally farm implements. A brief description of the weapons follows along with a discussion of what is considered a weapon under Florida law, forbidden sale and possession of weapons by minors under eighteen years of age, the crime of concealing a weapon and the offense of brandishing a weapon in a threatening manner, commonly known as aggravated assault.

Kobujutsu Weapons

Sai

The sai is the only Kobujutsu weapon which was not a farm implement. An iron weapon shaped much like a short-handled pitchfork, the sai was traditionally used by police in much the same way as European policemen used nightsticks.

Tuifa

The tuifa is thought to have developed from the handle on a grinding wheel. Tuifa refers to two pieces of rectangular wood about a foot and a half long with a grip protruding approximately four inches from one end at a 90 degree angle. Tuifa are a versatile weapon that can be used for blocking or striking and are characterized by a swinging motion that can be developed while loosely grasping one of the protruding handles allowing the weight of the length to take its toll on an opponent.

Nunchaku

Originally used for thrashing, the nunchaku are wooden sticks, usually telescoping octagons, tied together through a hole at the end of each stick by a cord. The centrifugal force resulting from the swinging nunchaku is its distinguishing characteristic.

Bo

The bo is a wooden staff about one inch in diameter at its center but tapered at the ends. A bo is approximately six feet long. The bo was traditionally used for carrying loads. The length of the bo makes it a versatile offensive as well as defensive weapon.

Kama

The kama is a hand sickle which is still used in Okinawa for farming. A pointed and sharpened crescent-shaped blade on a handle approximately a foot long describes the kama. As a weapon, it is effective for piercing and cutting.

Florida Laws Dealing with Weapons

Florida Statute 790.01 makes it a violation of the law to carry a concealed weapon. Many case law exceptions developed under the old 1967 version of the Statute so the current Statute simply refers to "weapons" generically but then makes some specific exceptions for a self-defense chemical spray, non-lethal stun guns or other non-lethal electronic weapons and devices which do not fire darts or projectiles. Sections 1 and 2 of the current Statute read as follows:

> (1) Except as provided in sub-section (4) a person who carries a concealed weapon or electronic weapon or device on or about his or her person commits a misdemeanor of the first degree . . .
>
> (2) A person who carries a concealed firearm on or about his or her person commits a felony of the third degree . . .

The above amendments are far less specific than the 1967 Statute, which read:

> Whoever shall secretly carry arms of any kind on or about his person, or whoever shall have concealed on or about his person any dirk, pistol, metallic knuckles, sling shot, billie or other weapon, except a common pocketknife, shall be guilty of a misdemeanor . . .

The problem with the old 1967 Statute was that criminals were very inventive, much like the Okinawans had been, and would use screw drivers,

shoes or anything else they could get their hands on to do great bodily harm, yet not be in violation of the 1967 Statute. The Courts, and later the legislature, decided what is or isn't a weapon boils down to common sense.

In Reilly v. State Department of Corrections, M.D., Fla. 1994, 847 F.Supp. 951 the Court ruled that the Statute proscribing the carrying of a concealed weapon on or about the person is not unconstitutionally vague, as the Statute gives adequate notice to people of ordinary intelligence concerning what conduct it prohibits. In R. R. v. State, 826 So.2d 465 (Fla. 5th DCA 2002) the Court held that a razor blade, like a nail file, keys, or a hat pin, is usually considered a common household item when carried on or about a person. However, any of these items may become a concealed "weapon" if used in a threatening manner so that it might be considered deadly. In R.R. v. State, supra, the Court decided it was a jury question whether a juvenile who carried a seven-inch straight edged razor was in fact carrying a concealed weapon.

In C.J.R. v. State, 429 So.2d 753 (Fla. 1st DCA 1983), the Court held that there was competent evidence to support the trial court's conclusion that "num chucks" concealed by a juvenile in his shirt were a "deadly weapon" prohibited by the Statute.

In another case involving a juvenile, R.V. v. State, 497 So.2d 912 (Fla. 3rd DCA 1986) the Court found that while nunchaku were originally designed as farm implements, the instrument has no constructive social utility on the streets of urban Miami and their sole modern use was to cause great bodily harm. The conviction of carrying a concealed weapon was affirmed.

In another juvenile proceeding, C.A.W. v. State, 817 So.2d 1077 (Fla. 5th DCA 2002) the District Court of Appeal held that a sharpened Chinese star was a deadly weapon. The juvenile carrying the sharpened Chinese star in his pocket was properly adjudicated delinquent for carrying a concealed weapon. The Defendant argued that because the Chinese star was not listed as a weapon in the concealed weapon Statute, it could not be categorized as a "other deadly weapon" without proof of its use in a threatening or deadly manner. The Court disagreed. The current version of Florida Statute 790.01, dealing with concealed weapons, focuses on the manner in which the potential "weapon" may be used and the circumstances surrounding its carrying. The case of Nystrom v. State, 777 So.2d 1013 (Fla. 2nd DCA 2000) the trial court had found the defendant guilty of carrying a concealed weapon for carrying a steak knife. The Court of Appeals remanded the case for further proceedings because they decided that as a matter of law, a steak knife was not a "deadly weapon". The Court found that although a steak knife could be used to inflict death, carrying a steak knife in a concealed manner was neither per se lawful nor unlawful.

In the Nystrom case, the defendant had parked his car in a residential neighborhood for an extended period of time and a neighbor, who was aware of a crime being committed in the neighborhood a week earlier, called the police. An officer approached Nystrom and discovered a steak knife in his front pocket. At trial, Mr. Nystrom explained that on the day of his arrest, he was cooking a steak for dinner in the common kitchen of his boarding house. When Mr. Nystrom finished, he placed his knife and fork in his pocket in order to carry his

plate and drink up to his room. However, when Mr. Nystrom arrived at his room, he was confronted by his landlady who evicted him on the spot. Mr. Nystrom packed his belongings into garbage bags and placed them in his car, where he was still sitting trying to decide where to go when the officer confronted him. Evidence was not presented on whether or not a fork was also found in Mr. Nystrom's pocket.

Similarly, in the case of State v. A.D.H., 429 So.2d 1316 (Fla. 5th DCA 1983) the court held that the carrying of a concealed butcher knife was not necessarily unlawful, although a butcher knife could be included within the purview of the Statute prohibiting the carrying of a concealed weapon. In that case the Trial court dismissed a delinquency petition and the State appealed. The Court of Appeal remanded the case for further proceedings. The accused delinquent was carrying a butcher knife with a six-inch blade inside the lining of her jacket. The Defendant was arrested for shoplifting and the knife was discovered while she was in custody. The Court of Appeals concluded that while the carrying of a butcher knife was not per se unlawful under the concealed weapons statute, neither was it necessarily lawful. Citing as authority the case of Bennett v. Florida Parole and Probation Commission, 422 So.2d 1016 (Fla. 1st DCA 1982) the court held that whether or not the charge of carrying a concealed weapon will hold depends on the facts of each case.

Ironically, by placing nunchuka or sais in a carrying case in order to transport them to the dojo without intimidating or threatening passersby, the student could be considered to be "concealing" these weapons under the wrong

set of circumstances. (I.e. walking from the parking lot to the dojo probably wouldn't merit a conviction; carrying the weapons case back into a bar after a heated argument likely would.) Still, it would appear more reasonable to err on the side of caution by transporting weapons in a case, where they could not immediately be used, as opposed to openly brandishing them in public.

Familiarity with students by dojo staff should not lead the latter to assume that the purchase of nunchaku or sais by a minor has been authorized by the parents. Florida Statute 790.17 states:

> The person who sells, hires, barters, lends, transfers, or gives any minor under eighteen years of age any dirk, electronic weapon or device, or other weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian. . . commits a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083.

Under a clear reading of the Statute it would probably be sound business practice to sell weapons only to parents, in the presence of parents, or having obtained authorization (preferably in writing) from the parent. Most karate students recognize the dangers inherent in handling Kobujutsu weapons but accidents happen. If a child's playmate is severely injured or paralyzed by a sai, there should be little doubt that the attorneys involved in the case would want to know how it was the minor assailant came into possession of the weapon. If it turns out the weapon was purchased by the child in violation of the Statute, then the likelihood of a civil judgment against the seller will be greatly enhanced.

Aggravated assault is defined by Florida Statute 784.021 as an assault (threatening bodily harm with the apparent ability to do so)

(a) with a deadly weapon without intent to kill; or
(b) with intent to commit a felony.

In Johnson v. State, 249 So.2d 452 (Fla. 45h DCA 1971) the court held that whether a shoe could be considered a deadly weapon would depend on the evidence. A detailed analysis of shoes as weapons can be found at Bass v. State of Florida, 172 So.2d 614 (Fla. 2d DCA 1965). Proofs have shown BB guns and cars to be dangerous weapons, but skateboards were not. See Footnotes eight, nine and ten of Florida Statutes annotated 784.021 attached. Again, these are jury questions which will hinge on how the alleged "weapon" was used and the surrounding circumstances.

CAVEAT

The above discussion is by no means a comprehensive study of karate and the law. The cases cited above were a sampling of all the reported appellate decisions in Florida in which the term karate was cited in the Westlaw electronic reporting system. Numerous issues were not even touched upon in the above analysis and would require volumes to explore; what is required for the bulk sale of a karate dojo? Would a non-compete clause signed by your instructors be enforceable by the sensei if the juniors were to start their own schools? Are the "waivers and releases" signed by students enforceable? What are the tax versus liability advantages and disadvantages of a dojo being incorporated? What are the patent and trademark implications for different styles domestically and internationally? Like the study of karate itself, these questions could involve

lifelong study because the law, like karate, is steeped in tradition but is also constantly changing. As Thomas Jefferson said, "The system not amenable to change carries within it the seeds of its own destruction".