

376 So.2d 289  
 (Cite as: 376 So.2d 289)

District Court of Appeal of Florida, Third District.  
 Barfield BURCH, Jr., Appellant,  
 v.  
 The STATE of Florida, Appellee.  
**No. 78-1608.**

Oct. 30, 1979.  
 Rehearing Denied Nov. 26, 1979.

Defendant was convicted in the Circuit Court, Dade County, Herbert Stettin, J., of manslaughter and sale and possession of a controlled substance, and he appealed. The District Court of Appeal held that trial court correctly denied defendant's motion for acquittal made on contention that on the evidence cause of victim's death could have been from conduct with which defendant was not charged in the information.

Affirmed.

West Headnotes

### Homicide 203 1330

#### 203 Homicide

##### 203XI Questions of Law or Fact

##### 203k1330 k. Cause of Death. Most Cited Cases

(Formerly 203k268)

In prosecution for first-degree murder arising from incident wherein defendant allegedly forcibly administered to victim by injection an overdose of a drug, trial court correctly denied defendant's motion for acquittal made on contention that on the evidence cause of victim's death could have been from manner he was handled after the injection, with which conduct defendant had not been charged in the information, rather than from injection of the drug.

\*289 Bennett H. Brummer, Public Defender, and Elliot H. Scherker, Asst. Public Defender, for appellant.

Jim Smith, Atty. Gen., Paul Mendelson, Asst. Atty. Gen., and Clifford D. Miller, Legal Intern, for appellee.

Before HENDRY and NESBITT, JJ., and CHARLES CARROLL, (Ret.), Associate Judge.

PER CURIAM.

By indictment Barfield Burch, Jr., was charged with first degree murder, and with the sale and possession of a controlled substance. Trial before a jury resulted in conviction of manslaughter, and of the drug sale and possession charges.

The victim died from overdose of a drug, alleged to have been administered to him by Burch and one Willie Charles Rumph. There was evidence that the drug was forcibly administered to the victim by an injection made by Rumph while the victim was being held by Burch; that when the victim showed evidence of overdose, by lapsing into periods of unconsciousness and semiconsciousness, instead of obtaining medical aid for the victim, they proceeded, through the night and part of the next day, to try to revive the victim by various methods including walking him around, applying water on him, placing him in a shower, etc. Eventually he was taken to a hospital, where he died.

The several contentions presented by appellant have been considered in the light of the record, briefs and arguments, and we hold that no reversible error has been shown. The challenged rulings of the court on admissibility of evidence were not error. The court correctly denied the defendant's motion for acquittal made upon contending that on the evidence the cause of death could have been from the manner the victim was handled after the injection (with which conduct the defendant was not charged in the information), rather than from the injection of the drug. The claimed error of the court in failing to give a jury instruction of causation was not preserved for appeal in the manner required by [Fla.R.Crim.P. 3.390](#). [Zuberi v. State, 343 So.2d 664 \(Fla. 3d DCA 1977\)](#). Cf. [Stevenson v. State, 285 So.2d 61 \(Fla. 4th DCA 1973\)](#).

Affirmed.

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