

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO. 05-2012-CF-035337-AXXX

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY

Defendant,

MOTION IN LIMINE 3

The Defendant, BRANDON LEE BRADLEY, pursuant to article I, sections 2, 9, 16, 17, 21, 22 and 23 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and Florida Statutes sec. 90.403, moves this Court to enter its order to exclude from evidence the following matters:

1. All references to the use of a firearm in Brevard County case 2008CF036782, in which the Defendant was convicted of robbery without a weapon. Initially the Defendant was charged with robbery with a firearm and kidnapping. The State intends to introduce this conviction at the penalty phase as a prior violent felony. In a case on point - Lebron v. State, 894 So.2d 849, 853-854 (Fla. 2009) - Lebron was charged with robbery with a firearm and kidnapping with a firearm but convicted of robbery without a weapon. Lebron was convicted subsequently of a capital homicide. During the penalty phase of that trial, the State introduced evidence of the robbery without a weapon conviction as a prior violent felony, including, over objection, the alleged use of a firearm. The Court reversed and remanded for a new penalty phase proceeding, holding that the probative value of the evidence pertaining to Lebron's possession and use of a gun during the robbery and kidnapping was far outweighed by the prejudicial effect. Regarding Mr. Bradley's robbery conviction, the State did not seek, nor did the Defendant admit to possession or use of a firearm during the commission of the robbery.
2. Testimony by any witness, in particular Amanda Paige Ozburn, that she saw the Defendant point a gun at her boyfriend; or that the Defendant shot up her house; or that she had seen the Defendant with a gun before March 6, 2012, or felt one in his waistline; or that she heard the Defendant say "it will always be my life over others" or alleged statements to that effect.

3. Testimony by Russell Huff that he had purchased crack cocaine from the Defendant; that Mr. Huff owed \$900 to the Defendant; that the Defendant pulled a gun and threatened Mr. Huff to "pay up".

4. Testimony by Jeffrey Dieguez that he was engaged in a phone cellphone conversation presumably with Amanda Kirchner around the time of the shooting of Dep. Pill, and that he allegedly heard a female voice say "baby you don't have to do this", or words to that effect. Such alleged comments, attributed to co-defendant Amanda Kirchner are inadmissible in that they constitute hearsay as well as an expression of opinion by her about the lawfulness and appropriateness of the Defendant's conduct at the time of the shooting. Her alleged comments would further constitute speculation about the Defendant's perceptions of the circumstances preceding the shooting, as well as the defendant's thought processes related to those circumstances. Such comments would also constitute speculation about the Defendant's thought processes as they relate to the issues of premeditation and the cold, calculated, premeditated aggravating circumstance.

5. Testimony by William Metzger that he bought drugs from the Defendant; that the Defendant took Mr. Metzger's SUV at gun point, and that the Defendant's friends later gave drugs to Mr. Metzger to "broker the deal" (i.e. consummate the sale of the SUV to the Defendant).

6. Introduction of rap videos by the Defendant, including those entitled "Death Trap" and "I'm 'bout that".

7. That the Defendant's cellphone account name was "Hooligan Baby".

8. That the Glock handgun, allegedly used in the shooting of Dep. Pill, had been stolen by Robert Marks and then traded by him to a "crack dealer" named "Boogie" (allegedly one of the Defendant's "street" names) for crack cocaine and cash.

9. Any testimony that the defendant on a regular basis sold crack cocaine to Robert Marks.

10. Testimony by any witness that the Defendant is a drug dealer; that the defendant is known to carry guns; that the Defendant is a gang member; that the Defendant wears colored bandanas or gang emblems or gang insignia.

11. Testimony by Andria Kerchner, or any other witness, regarding statements allegedly made by Andria Kerchner, in which Ms. Kerchner expresses or expressed her opinion that the shooting of Deputy Pill was "unnecessary" or that "you don't need to do this."

12. Inadmissible portions of the audio/video recorded interrogation of the Defendant by BCSO Agents, identified as follows:

a) At approximately 7:34:33 of the DVD a law enforcement officer tells the Defendant: "You've been through the system."

b) At approximately 8:40 of the DVD a law enforcement officer tells the Defendant: "You had no license to carry a gun."

c) At approximately 8:45:10 to 8:46:31 on the DVD (transcript P.84, L7 – P.85, L11) Addressing the Defendant, Agt. Spadafora expresses his opinions, beliefs and theories about the case. Agt. Spadafora is not questioning the Defendant rather informing the Defendant of what Agt. Spadafora believed happened in the shooting of Dep. Pill in including his opinions about the Defendant's intent, among other things. Immediately following this monologue, Agt. Spadafora terminates the interrogation of Mr. Bradley and leaves the interrogation room. Agt. Spadafora's statements are hearsay, opinions, and therefore inadmissible in this jury trial. Sparkman v. State, 902 So.2d 253 (Fla. 4th DCA 2005).

d) From 8:37:08 – 8:38:30 on the DVD, Agt. Spadafora asks the Defendant about his ability to read and perform simple tasks to establish that the Defendant does not suffer from mental disabilities. At the end of Agt. Spadafora's non-expert speculation about the Defendant's mental health, the Defendant defers to Agt. Spadafora's non-expert opinion by agreeing with Agt. Spadafora that he does not suffer from mental disabilities. Such opinions are inadmissible as not meeting the criteria of Fla. Stat. Sec. 90.701 and 90.702.

WHEREFORE, the Defendant moves this Court to grant the requested relief and any other relief the Court deems just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished E-delivery to the Office of the State Attorney, Brevard County, Florida, this 19th day of February, 2014.



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