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

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

STATE OF FLORIDA,

Plaintiff,

v.

BRANDON LEE BRADLEY,

Defendant.
_____/

FILED IN OPEN COURT
Date 2-27-14 Time 1:42pm
CLERK,
CIRCUIT AND COUNTY COURT
By Suttle D.C.

ORDER RE: DEFENDANT'S "MOTION IN LIMINE 3" AND "MOTION IN LIMINE 4 – DETECTIVE GREGORY GUILLETTE"

THIS CAUSE came before the Court on February 21, 2014, on the Defendant's "Motion in Limine 3." It is hereupon

ORDERED AND ADJUDGED:

1. In paragraph one of the "Motion in Limine 3," the Defendant alleges that the State intends to introduce Defendant's prior conviction for robbery without a weapon in Case No. 05-2008-CF-036782-AXXX-XX as a prior violent felony aggravating circumstance pursuant to section 921.141(5)(b), Florida Statutes (2012) if a penalty phase is held in this case.

The Defendant was charged by Information in Case Number 05-2008-CF-036782-AXXX-XX, with two counts of robbery with a firearm (Counts One and Two), one count of kidnapping with a firearm (Count Three), and one count of

kidnapping (Count 4), but pled pursuant to a plea agreement and was convicted of one count of robbery without a weapon.

During the penalty phase proceeding of a capital trial, the trial court has the discretion to admit evidence concerning the details of any previous felony convictions involving the use or threat of violence in order to provide the sentencing jury the context of the crime. Lebron v. State, 894 So. 2d 849, 853 (Fla. 2005); § 921.141(1), (5)(b), Fla. Stat. (2012). It is well settled that the State is not restricted to the bare admission of a conviction when presenting evidence in support of the prior violent felony aggravating circumstance, but rather the State may adduce any testimony that the trial court deems relevant to the nature of the crime and the character of the defendant because whether a crime constitutes a prior violent felony is determined by the surrounding facts and circumstances of the prior crime. Tai A. Pham v. State, 70 So. 3d 485, 495 (Fla. 2011) (quoting Miller v. State, 42 So. 3d 204, 225 (Fla. 2010)). The State, however, may not introduce testimony or evidence pertaining to prior violent felony convictions that is irrelevant, violates the defendant's confrontation rights, or where the probative value of the evidence is far outweighed by the prejudicial effect. Lebron v. State, 894 So. 2d 849, 853 (Fla. 2005)

Based on Lebron v. State, 894 So. 2d 849 (Fla. 2005), the Defendant asserts that any references to the use of a firearm in Case Number 05-2008-CF-036782-AXXX-XX should be excluded in any future penalty phase in the subject case. In Lebron, the Supreme Court of Florida granted a new penalty phase to Lebron because the probative value of details of a prior felony conviction

regarding Lebron's possession and use of a gun during a prior robbery and kidnapping was far outweighed by the prejudicial effect. Lebron v. State, 894 So. 2d 849, 853 (Fla. 2005). Lebron was convicted of first-degree felony murder and robbery with a firearm of Larry Neal Oliver, who had been lured to a house to purchase "spinners" for his truck, forced to lie faced down, and was shot in short range in the back of the head. Id. at 851. As specifically acknowledged by the Florida Supreme Court, Lebron was a unique case, in that the jury made a special and specific finding that Oliver was killed by someone other than Lebron and Lebron did not possess a firearm during the commission of the robbery. Lebron, 894 So. 2d 849, 851 (Fla. 2005). The Supreme Court of Florida explained that "[p]rior to commencing the analysis, we pause to acknowledge the unique factual posture of the case before us, which generates unusual problems." Id. at 851. The Supreme Court of Florida then considered whether testimony concerning a separate, unrelated case ("Nassar case"), in which Lebron had been convicted of robbing a different person, was admissible in the penalty phase. Id. at 854. The Florida Supreme Court concluded that prejudice resulted from the erroneous admission of evidence pertaining to Lebron's possession and use of a gun during the Nassar incident, because there was a strong, striking parallel between the offense described against Nassar and that committed in the instant matter against Oliver for whom the jury had made a specific finding that Oliver had been killed by someone other than Lebron and Lebron did not have a firearm in his personal possession at the time of Oliver's murder. Id. The Florida Supreme Court explained that "[i]t would have defied

natural human impulse for a jury hearing that description [Nassar being forced to the ground and having a shotgun placed to his head], to draw any other conclusion than that Lebron committed essentially the same act against Oliver." Id. The Supreme Court pointed out, "This is particularly true where the evidence advanced is directly and precisely to the contrary of a specific factual finding by a prior jury." Id. at 854-55.

The Supreme Court of Florida decided Lebron in 2005, and subsequently issued in 2010, the opinion of Miller v. State, 42 So. 3d 204, 225 (Fla. 2010), which re-confirmed that "[d]uring a penalty phase proceeding, the trial court has the discretion to admit evidence with regard to the details of a defendant's previous conviction for a felony involving the use or threat of violence." See also Gore v. State, 706 So. 2d 1328, 1333 (Fla. 1997) (Documentary evidence, charging or conviction documents, or testimony may be introduced to establish the circumstances surrounding a defendant's prior crime to satisfy the requirements of a prior violent felony under section 921.141(5)(b)). In Miller, the Florida Supreme Court wrote, "This Court has repeatedly held that the State is not restricted to the bare admission of a conviction when presenting evidence in support of the prior violent felony aggravating circumstance." Miller v. State, 42 So. 3d 204, 225 (Fla. 2010); see also Banks v. State, 46 So. 3d 989, 998 (Fla. 2010) (same). The high court further explained, "Rather, the State may adduce any testimony that the trial court deems relevant to the nature of the crime and the character of the defendant" and "[w]hether a crime constitutes a prior violent felony is determined by the surrounding facts and circumstances of the prior

crime." Miller v. State, 42 So. 3d 204, 225 (Fla. 2010). The Florida Supreme Court further explained that even if a defendant has pled guilty to a lesser offense, the trial court may allow the State to present evidence that demonstrates a greater offense. Id. at 226.

Therefore, the Court finds that evidence with regard to the nature of conviction in Case Number 05-2008-CF-036782-AXXX-XX is admissible. As to paragraph one in Defendant's "Motion in Limine 3," it is **DENIED.**

2. As to paragraph two in Defendant's "Motion in Limine 3," the Court **GRANTS** the motion as to "[t]estimony by any witness, in particular Amanda Paige Ozburn, that the (sic) she saw the Defendant point a gun at her boyfriend; or that the Defendant shot up her house."

As to testimony by any witness or Amanda Paige Ozburn "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," the Court **RESERVES RULING,** to evaluate relevancy in a proffer by the State prior to any such testimony been presented to the jury.

3. As to paragraph three in Defendant's "Motion in Limine 3," the motion in limine is **GRANTED.**

4. As to paragraphs four and eleven in the Defendant's "Motion in Limine 3," the Court **RESERVES RULING,** to evaluate in a proffer by the State prior to any such testimony been presented to the jury whether the testimony legally qualifies as an exception to the hearsay rule.

5. As to paragraphs five and six in the Defendant's "Motion in Limine 3," the motion in limine is **GRANTED.**

6. As to paragraph seven in the Defendant's "Motion in Limine 3," the motion in limine is **GRANTED** without prejudice for the State to re-address.

7. As to paragraph eight in the Defendant's "Motion in Limine 3," the Court **RESERVES RULING,** to evaluate in a proffer by the State prior to any such testimony been presented to the jury, the relevance of such evidence. §§ 90.401, 90.403, Fla. Stat. (2012).

8. As to paragraphs nine and ten, the Defendant's "Motion in Limine 3" is **GRANTED.**

10. As to paragraph twelve in the Defendant's "Motion in Limine 3," subparagraphs (a), (b) and (c) are **GRANTED.**

In subparagraph (d) of the motion in limine, the Defendant seeks to exclude a portion of the interview with him by agents at the Brevard County's Sheriff's Office on March 6, 2012, specifically:

> From 8:37:08 – 8:38:30 on the DVD, Agent [Mike] 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 Agent Spadafora's non-expert opinion by agreeing with Agent 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.

After reviewing the transcript of the March 6, 2012, interview, the Court **GRANTS** the Defendant's motion in limine to the extent that the following excerpts from the interview shall be excluded:

On page 73, lines 11 through 19:

> **AGENT MIKE:** That's different. That's different from having a mental disability. That's feelings. That's different than a mental disability. That's feelings.
>
> **BRANDON BRADLEY:** That's—
>
> **AGENT MIKE:** But that's different from having a mental disability. Everybody has feelings. That's different than having a mental disability.

On page 74, lines 4 through 7:

> **AGENT MIKE:** Exactly. That's what I'm saying. If you had some kind of mental disabilities, you maybe would not know that.
>
> **BRANDON BRADLEY:** Yeah.

On page 74, lines 18 through 22:

> **AGENT MIKE:** Okay. You see what I'm saying, that has nothing to do with feelings. That's a mental – you didn't understand.
>
> **BRANDON BRADLEY:** Now that you're breaking it down to me, I understand.

11. Defendant's "Motion in Limine 4 – Detective Gregory Guillette" is **GRANTED** as to Detective Guillette's opinion testimony.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida, this 27th day of February, 2014.

MORGAN LAUR REINMAN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do certify that copies hereof have been furnished to **James D. McMaster and Tom Brown**, **Assistant State Attorneys, Office of the State Attorney**, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940, BrevFelony@sa18.state.fl.us and **Randy Moore, Esq., Michael Mario Pirolo, Esq., Mark Lanning, Esq.,** Assistant Public Defenders, Attorneys for Defendant, 2725 Judge Fran Jamieson Way, Building E, Viera, Florida 32940, BREVARDFELONY@PD18.NET by hand delivery/courier/e-service/U.S. Mail this 27th day of February, 2014.

Billie Lockaby
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