

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 THE
CLERK OF CIR. CT.
BREVARD CO. FL.

2014 MAR 20 P 5:47

SCOTT ELLIS

SUPPLEMENTAL ORDER RE: DEFENDANT'S "MOTION IN LIMINE 3";
ORDER RE: DEFENDANT'S "MOTION IN LIMINE – DEFENDANT'S ALLEGED
STATEMENTS AS INTERPRETED BY ANDRIA KERCHNER"; AND ORDER
DENYING DEFENDANT'S "MOTION TO STRIKE THE STATE'S NOTICE OF INTENT
TO RELY UPON BUSINESS RECORD CERTIFICATION"

THIS CAUSE came before the Court on March 18, 2014, on the Defendant's "Motion in Limine 3," filed on February 19, 2014; "Defendant's Written Objection and Motion to Strike the State's Notice of Intent to Rely upon Business Record Certification," filed on March 3, 2014; and Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner," filed herein on March 17, 2014.

On February 27, 2014, the Court entered an "Order Re: Defendant's 'Motion in Limine 3' and 'Motion in Limine 4 – Detective Gregory Guillette.'" In the February 27, 2014 order, the Court reserved ruling on some of the issues in the Defendant's "Motion in Limine 3," and the purpose of this Supplemental Order is to address those issues after the State proffered pre-trial evidence and testimony on March 18, 2014.



On March 17, 2014, the Defendant filed an additional motion in limine, entitled "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner." This motion was also heard on March 18, 2014.

At the motion in limine hearing held on March 18, 2014, Robert Marks, Andria Michelle Kerchner, and Jeffrey Jamie Dieguez, Sr., testified. Based on a review of the motions, the official Court file, evidence presented, testimony heard, authorities submitted, and argument of counsel, the Court makes the following findings of fact and conclusions of law:

a. The parties agree that paragraphs four and eleven in the Defendant's "Motion in Limine 3" and the Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner" are related, so the Court addresses these portions of the motions in limine together. The State represented that it would not present the testimony in paragraph five of the Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner."

In paragraph four of the Defendant's "Motion in Limine 3," the Defendant seeks to exclude testimony by Jeffery Jamie Dieguez that he was engaged in a cell phone conversation with Andria Michelle Kerchner around the time of the shooting of Deputy Pill during which he heard Kerchner state, "Baby, you don't have to do this." In paragraph eleven of the Defendant's "Motion in Limine 3," the Defendant seeks to exclude testimony by Andria Michelle Kerchner that the shooting of Deputy Pill was "unnecessary" or that "you don't need to do this." In the Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner," the Defendant also seeks to exclude any statements by Kerchner that Defendant stated he did not want to

go back to prison and he would do whatever he could including shooting at police officers.

In her proffered testimony on March 18, 2014, Kerchner testified that on March 6, 2012, she was in the vehicle stopped by Deputy Pill. She testified the Defendant stated that police had seen the vehicle's tag, he did not want to go back to prison, would do whatever he had to do not to go back to prison, and he would shoot the "crackers." Kerchner testified that she tried to talk the Defendant out of shooting the deputy.

In his proffered testimony on March 18, 2014, Dieguez testified that on March 6, 2012, after talking with Kerchner, the cell phone line remained open, and he heard the Defendant yelling to Kerchner that she needed to hand him over a gun, he then heard a siren, and Kerchner stating, "No baby, we don't need to do this." Dieguez testified that the Defendant stated, "Yes, we need to do this, because that bitch saw my tag and we need to kill that bitch." Dieguez testified that the Defendant continued to repeat the statement, and Kerchner continued to plead with him. Dieguez testified that he then heard two gun shots.

The Florida Evidence Code defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." § 90.801(1)(c), Fla. Stat. (2012). If an out-of-court statement is not offered to prove the facts contained in the statement, it is not hearsay. Id. However, even where an out-of-court statement is offered for a purpose other than proving the truth of its contents, the statement is only admissible when the purpose for which the statement is being offered is a material issue in the action, such

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as, motive or knowledge. Escobar v. State, 699 So. 2d 988, 997 (Fla. 1997), abrogated on other grounds, Connor v. State, 803 So. 2d 598 (Fla. 2001).

Statements by Kerchner trying to talk the Defendant out of shooting Deputy Pill are relevant to the issues of Defendant's intent, plan, time to reflect prior to the shooting of Deputy Pill, premeditation, and motive. Escobar v. State, 699 So. 2d 988 (Fla. 1997), abrogated on other grounds by Connor v. State, 803 So. 2d 598 (Fla. 2001)

Testimony concerning a defendant's statement that he is not going back to prison is relevant to prove the defendant's motive for killing a police officer in a prosecution for the murder of a police officer which occurs during the arrest of the defendant or during a routine investigation. Escobar v. State, 699 So. 2d 988 (Fla. 1997) (testimony that defendant stated he would kill a police officer before he would go back to jail was admissible to provide motive for the murder, establish defendant's then existing state of mind, and explain subsequent conduct), abrogated on other grounds by Connor v. State, 803 So. 2d 598 (Fla. 2001); Jackson v. State, 498 So. 2d 406 (Fla. 1986) (testimony that defendant said she was not going back to jail was relevant to prove motive of defendant killing police officer), cert. denied, 483 U.S. 1010 (1987). Furthermore, a defendant's prior statement regarding what would happen if the defendant was involved in a confrontation with police officers is relevant to establish intent and motivation for the murder, when the statement is not remote in time to the murder and it is relevant to show that the defendant intended to resolve any police confrontation with violence. Hardy v. State, 716 So. 2d 761, 764 (Fla. 1998) (Prior statement by defendant regarding Rodney King beating incident that "[i]f it ever came down to me and a cop, it was the cop" was admissible in defendant's murder trial two

months later for killing a law enforcement officer as statement showed defendant's intent to resolve any police confrontation with violence and it showed motivation for the murder, in that he would rather kill than be arrested for being in possession of a stolen gun); Brooks v. State, 918 So. 2d 181, 204 (Fla. 2005) (Defendant's statement that he was "going to have to shoot" an approaching officer provided proof of consciousness of guilt), receded from on other grounds, State v. Sturdivant, 94 So. 3d 434 (Fla. 2012); Partin v. State, 82 So. 3d 31 (Fla. 2011) (Statement by defendant that he would consider using a gun if police attempted to arrest him was admissible), cert. denied, 133 S.Ct. 107, 184 L.Ed.2d 49 (2012).

The Court finds that the proposed testimony is not offered to prove the truth of the matter asserted, the testimony is relevant to material issues in the case, and the probative value of this testimony is not greatly outweighed by its prejudicial effect.

b. In paragraph eight of the Defendant's "Motion in Limine 3," the Defendant seeks to exclude any testimony that the Glock handgun, allegedly used in the shooting of Deputy Pill, had been stolen by Robert Marks and then traded by him for crack cocaine and cash to a "crack dealer" named "Boogie" (allegedly one of the Defendant's street names). In its Order of February 27, 2014, this Court excluded testimony by any witness that the Defendant is a drug dealer, and the Court excludes testimony that the gun was traded by Marks to the Defendant for crack cocaine.

In Griffin v. State, 639 So. 2d 966 (Fla. 1994), cert. denied, 514 U.S. 1005 (1995), the Supreme Court of Florida held that how a murder weapon is obtained was admissible to identify the gun and establish possession of the murder weapon. In Griffin, Griffin was charged with shooting and killing a law enforcement officer. Griffin,

639 So. 2d 966 (Fla. 1994), cert. denied, 514 U.S. 1005 (1995). The State introduced evidence that the murder weapon had been stolen during a home invasion, and was later used by Griffin to kill the law enforcement officer in an attempt to evade police and avoid going back to jail. Id. In the subject case, the firearm is allegedly the murder weapon used to kill Deputy Pill, is relevant to identify the gun, and is essential to show that the Defendant possessed the murder weapon. Id.; see also Grossman v. State, 525 So. 2d 833 (Fla. 1988) (Evidence of defendant's prior burglary during which defendant stole a handgun was admissible in prosecution for the first degree murder of the officer), cert. denied, 489 U.S. 1071 (1989), receded from on other grounds by Franqui v. State, 699 So. 2d 1312 (Fla. 1997). The Court finds that this testimony is relevant evidence, tending to prove or disprove material facts, and its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. §§ 90.401, 90.403, Fla. Stat. (2012).

Accordingly, it is hereupon **ORDERED AND ADJUDGED:**

1. The Defendant's "Motion to Strike the State's Notice of Intent to Rely upon Business Record Certification" is **DENIED**.

2. As to paragraph two of the Defendant's "Motion in Limine 3," regarding 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 **CONTINUES TO RESERVE RULING**, to evaluate in a proffer by the State prior to any such testimony been presented to the jury.

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3. As to paragraphs four and eleven in the Defendant's "Motion in Limine 3," and paragraph four in the Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner," the motions in limine are **DENIED**, with the caveat that Kerchner and Dieguez shall testify to what each witness personally heard and saw.

4. As to paragraph five in the Defendant's "Motion in Limine – Defendant's Alleged Statements as Interpreted by Andria Kerchner" is **GRANTED**.

5. As to paragraph eight in the Defendant's "Motion in Limine 3," the Defendant's motion is **DENIED** as to testimony that the firearm allegedly used to kill Deputy Pill had been stolen by Marks and sold to "Boogie," allegedly the Defendant's nickname. Testimony that the firearm was traded for crack cocaine or traded to a "crack dealer" is excluded, consistent with the Court's ruling on February 27, 2014.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida, this 20th day of March, 2014.



MORGAN LAUR REINMAN
CIRCUIT JUDGE


CERTIFICATE OF SERVICE

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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 20th day of March, 2014.


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