

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

v.

Case No. 99-32857MMANO

ROBERT S. MINTON
SPN 02077072
_____ /

ORDER ON STATE'S MOTION IN LIMINE

THIS CAUSE came on to be heard pursuant to the Motion in Limine of the State of Florida. After hearing argument by counsel for the respective parties, who were present pursuant to proper notice, and being otherwise duly advised in the premises, it is hereby ORDERED and ADJUDGED as follows:

The State's Motion in Limine raises twelve separate evidentiary issues and requests this court to find that certain evidence is not admissible because it is either not relevant or that its relevance is outweighed by unfair prejudice.

All relevant evidence is admissible, except as provided by law. Section 90.402, Florida Statutes (1999). Relevant evidence is inadmissible when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. Section 90.403, Florida Statutes (1999), See Also State v. McClain, 525 So.2d 420, 422 (Fla. 1988). Whether to exclude otherwise relevant evidence rests in the sound discretion of the trial judge who must determine whether the probative value of the evidence is substantially outweighed by the exclusionary reasons set forth above. Lewis v. State, 570 So.2d 412, 415, (Fla. 1st DCA

1990). In balancing these factors, the trial judge may consider the need for the particular evidence, the availability of alternative means of proof and whether a limiting instruction will ameliorate any unfair prejudice. Walker v. State, 707 So.2d 300, 310 (Fla. 1997). Almost all evidence sought to be introduced by the State in a criminal prosecution will be prejudicial to a defendant. Only where the unfair prejudice substantially outweighs the probative value of the evidence should it be excluded. Amoros v. State, 531 So.2d 1256, 1259 (Fla. 1988).

Similarly, evidence which is inextricably intertwined with the crime charged is admissible under Section 90.402, where it is necessary to adequately describe the deed because it is a relevant and inseparable part of the act which is in issue. Coolen v. State, 696 So.2d 738, 742-743 (Fla. 1997).

Moreover, it is not the province of the court to weigh the evidence to determine the propriety of the defendant's defense. Instead, upon the establishment of his theory of defense, a defendant is permitted to present evidence to support that theory. Stewart v. State, 672 So.2d 865 (Fla. 2d DCA 1996).

In addition, it is well settled that a defendant in a criminal case must be afforded a full opportunity to cross-examine a witness to expose motives or biases to testify untruthfully. Fluellen v. State, 703 So.2d 511 (Fla. 1st DCA 1997), See Also Auchmutz v. State, 594 So.2d 594 (Fla. 4th DCA 1992).

Against this backdrop, this court hereby rules on the State of Florida's Motion in Limine as to each correspondingly numbered paragraph as follows:

1. & 7. The State of Florida seeks to limit the defense from any discussion or mention of the alleged "fair game policy" or any corporate policy, practice, belief, doctrine or dogma

of the Church of Scientology or agents thereof as not being relevant, or if relevant, that it is outweighed by unfair prejudice and/or possible jury confusion.

This court cannot rule on any unnamed and yet to be described corporate policy, practice, belief, doctrine or dogma of the Church of Scientology and, therefore limits this ruling only to the alleged "fair game policy". As to all other policies of the Church of Scientology, unless and until any such other policy is identified, described and shown to be relevant and not unfairly prejudicial, any ruling by this court on such policy is hereby reserved.

Robert Minton (hereinafter the "Defendant") asserts that the "fair game policy" is a policy promulgated by the Church of Scientology for dealing with critics of the church and addresses consequences for church members who are unsuccessful in implementing the policy. Defendant contends that according to this alleged policy, church members, when confronted by church critics, attempt to have them labeled as criminals by provoking a battery. The State asserts that Richard Howd (hereinafter the "Victim") has no knowledge of such a policy.

The Defendant contends that evidence demonstrating this policy, the Victim's knowledge of this policy, as well as the Defendant's knowledge and belief that this policy exists, and that the Victim, on the day in question, was either acting in conformity with this policy, or was believed by Defendant to be acting in conformity with it, or both, is material to his theories of self-defense and/or accident. In addition, Defendant asserts that he is entitled to cross-examine State's witnesses on this policy and should be given wide latitude to develop the motives behind any witness' testimony in this regard.

Instruction 3.04(e), the Florida Standard Jury Instructions in Criminal Cases, entitled Justifiable Use of Non-Deadly Force, provides in pertinent part:

Defendant would be justified in using force not likely to cause death or great bodily harm against the victim if the following two facts are proved:

1. Defendant must have reasonably believed that such conduct was necessary to defend himself against the victim's imminent use of unlawful force against the defendant.
2. The use of unlawful force by the victim must have appeared to defendant ready to take place.

In deciding whether the defendant was justified in the use of force not likely to cause death or great bodily harm, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of force not likely to cause death or great bodily harm, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed the danger was real. (emphasis supplied)

This instruction, commonly known as the self-defense instruction, contemplates the state of mind of the defendant, the appearance of danger and what a reasonably cautious and prudent person would believe under the same circumstances.

Defendant contends that his belief that the Victim was acting in conformity with what he believed was the Church of Scientology's "fair game policy" on the day in question, explains his actions on that day and goes to the very heart of his theory of self-defense and/or accident.

In addition, Defendant contends that whether the Victim has knowledge of, and is acting in conformity with, the alleged "fair game policy" of the Church of Scientology goes to

the very heart of Defendant's theory that the alleged touching, which constitutes the battery herein, was not unconsented to, but instead, the desired result by the Victim.

Upon establishing his theory of defense, a defendant is permitted to present evidence to support it. Stewart v. State, Id. Testimony regarding both the defendant's and the victim's state of mind is relevant to explain their actions on the day in question. See Coolen v. State, Id. Moreover, the defendant must be afforded wide latitude to develop the motive behind a witness' testimony. Livingston v. State, 678 So.2d 895 (Fla. 4th DCA 1996).

Accordingly, assuming the proper predicate can be laid, testimony and other evidence of the alleged "fair game policy" of the Church of Scientology will be admissible as relevant evidence.

2. The State seeks to limit the Defendant from introducing into evidence prior incidents between Defendant, or others, and any other member of the Church of Scientology or agents thereof.

The State's motion, on this point, is principally directed to video tapes of incidents similar to the incident in question. These videos were reviewed by the court, in the presence of counsel at the hearing on this motion. These videos are summarized as follows:

- a) Defendant's video taken 10/31/99; depicts two separate incidents on the same day:
 - i) Defendant in front of the Largo, Florida home of David and Vinetta Slaughter;
 - ii) Victim and Defendant engaged in the incident in question.
- b) Defendant's video depicts three separate incidents:
 - i) Incident in Boston, Massachusetts in 1998, similar to the one in question. However, the alleged Victim in the instant case is not depicted. Instead, other members of the Church

of Scientology are depicted in a role similar to the role of the Victim herein;

- ii) Incident in Los Angeles, California in March of 1999. While the incident is similar in nature to the one in question, neither Defendant nor Victim are depicted.
- iii) Incident in Clearwater on 7/11/99 between Defendant and a member of the Church of Scientology, who is not this Victim.

- c) Victim's video of incident in question. (Version #1)
- d) Victim's video of incident in question. (Version #2)
- e) Victim's video of incident in question. (Version #3)
- f) Video entitled "Yo Mamma".

These videos break down into the following categories:

- a) The incident in question. Both Defendant and Victim, and/or others acting in concert with them, took separate videos. There are a total of four.
- b) Prior incidents between Defendant and church members. However, none of these depict this Victim.
- c) Prior incidents between church members and others. Neither the Victim nor the Defendant are depicted.

Clearly, all videos of the incident are relevant and, therefore, admissible in evidence upon the proper predicate being laid.

In addition, videos of the 1998 Boston, Massachusetts incident and the July, 1999 Clearwater, Florida incident depicting the Defendant and other members of the Church of Scientology are also admissible as being relevant to: 1) Defendant's state of mind at the time of the incident; 2) Defendant's theories of self-defense and lack of intent; and 3) Defendant's theory that, because of the Church of Scientology's alleged "fair game policy", the subject

battery was not unconsented to but was, instead the desired result. See Smith v. State, 606 So.2d 641 (Fla.1st DCA 1992).

The State has argued forcefully that the videos which do not depict the Victim are inadmissible under Section 90.404, Florida Statutes (1999), as similar fact evidence and has cited State v. Savino, 567 So.2d 892 (Fla. 1990) and Smith v. State, 700 So.2d 446 (Fla. 1st DCA 1997) in support of this argument. However, neither of these decisions bear on the novel issue at hand. The issue is, whether evidence of collateral occurrences by members of an organization are admissible to show that the behavior of another member of that organization, in a similar situation, was consistent with the policies of that organization for handling certain situations, and therefore, explain his behavior on the day in question. Counsel for both parties acknowledged that they could find no cases directly bearing on this issue.

Indeed, the timeless wisdom of Supreme Court Justice Oliver Wendell Holmes, as set forth in the sometimes quoted passage below, is instructive here:

The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened scepticism (sic), that is, toward a deliberate reconsideration of the worth of those rules. When you get the dragon out of his cave on to the plain and in the daylight, you can count his teeth and claws, and see just what is his strength. But to get him out is only the first step. The next is either to kill him, or to tame him and make him a useful animal ... It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past. O.W. Holmes, *The Path of the Law*, 10 Harv.L.Rev. 457, 469 (1897).

Section 90.402(2)(a) lists proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident as illustrative of some of the issues to which the evidence of collateral occurrences may be relevant. Certainly many of these issues have been raised in this case. It is well settled that this rule is equally applicable to evidence offered by a criminal defendant. See State v. Savino, Id. Moreover, it is error to deny evidence which "tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt". Rivera v. State, 561 So.2d 536 (Fla. 1990).

Because the videos do not depict this Victim, the predicate that must be laid, as a condition precedent to the admissibility of these videos, will be significant and, at a minimum, will require a showing that the Church of Scientology has a policy for dealing with critics of the church, that there are penalties for failing to carry out the policy, and that Victim knew of the policy.

However, neither the California video, wherein neither the Defendant nor the Victim are depicted, nor the inflammatory video entitled "Yo Mamma" wherein the Defendant, but not the Victim, is depicted, are ~~admissible even though tenuously relevant because~~, in addition to their probative value being outweighed by unfair prejudice, they are cumulative and therefore lack any serious probative value.

3. & 6. For the same reasons set forth in No. 2 above, allegations of previous incidents of conflict between the Defendant and the Victim and other members of the Church of Scientology, in addition to those depicted in the videos, upon laying the proper predicate, may be relevant to show the state of mind of both the Defendant and the Victim on the date in question and may be in furtherance of Defendant's theories of defense in this case. See

Livingston v. State, Id. However, because these incidents are as yet unidentified they must be first proffered out of the presence of the jury so that this court may rule on them.

4. Allegations that members of the Church of Scientology left a ~~dead rat~~ on the doorstep of Defendant are admissible only if Defendant can produce evidence of such fact. Defendant's mere statement of belief as to who may have done this, without more, is not admissible.

5. Defendant may not, in either direct or cross-examination, inquire into the State of Florida's decision making process as to whether the Victim should have been charged with a crime in connection with this incident. Such inquiry is not relevant, and, therefore, not admissible evidence. However, the Defendant may cross-examine State witnesses as to whether the Victim was, in fact, charged with a crime as a result of this incident. See Fluellen v. State, Id.

8., 9., & 10. The State seeks to limit the Defendant from any mention of the Lisa McPherson Trust, the pending civil suit in Hillsborough County involving Lisa McPherson and the criminal investigation into the death of Lisa McPherson pending in Pinellas County. Given, at the time of the incident, and in other similar incidents which have been herein ruled admissible in evidence, that Defendant was engaged in a demonstration outside the Church of Scientology for the purpose of protesting the Lisa McPherson matter, these matters are so inextricably intertwined with this incident that it would be unduly burdensome to limit any mention of them. See Shivley v. State, 752 So.2d 84 (Fla. 5th DCA 2000).

However, any discussion of the Lisa McPherson Trust, the civil suit or the criminal investigation should only be that which is absolutely necessary to place them in the context of the incident in question and to elicit such testimony from witnesses who might be biased by

such proceedings. Nelson v. State, 704 So.2d 752 (Fla. 5th DCA 1998); See also Kelly v. State, 425 So.2d 81 (Fla. 2nd DCA 1982). In no way will these matters become a feature of this trial.

11. The State seeks to limit out evidence or testimony concerning incidents or persons alleged to have suffered physical or emotional harm from the Church of Scientology or any agents thereof.

Defendant argues that such evidence would be relevant to show both the Victim's and Defendant's state of mind at the time of the incident and is consistent with his theories of self-defense, accident, and that the alleged touching was not unconsented to.

Moreover, Defendant argues that such testimony would be relevant to expose reasons why a member of the Church of Scientology might testify untruthfully for fear of retaliation and would also be relevant to explain the Victim's actions on the day in question.

At the hearing on this motion, no witnesses were identified or were facts proffered so that this court might review and consider whether such evidence would be relevant and, if so, not so unduly prejudicial so as to outweigh its probative value.

Accordingly, this court reserves ruling on this issue. In the event the Defendant seeks to introduce such evidence, it should first be proffered out of the presence of the jury so that the court can rule on it.

12. The State has conceded that the instruction on justifiable use of non-deadly force would require the court, in effect, to instruct the jury to place themselves "in the shoes of the defendant" and has, therefore, withdrawn this point in its motion.

Accordingly, for the reasons set forth herein, the State's Motion in Limine is DENIED in part, GRANTED in part, and RULING IS, in part, RESERVED.

DONE and ORDERED in Chambers in Clearwater, Pinellas County, Florida, this
17th day of May, 2000.



Honorable Robert J. Morris, Jr.
County Judge

Copies furnished:

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