

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FL

CASE NO.: 2014 CF 000956
DIVISION: 50

STATE OF FLORIDA

vs.

JONATHAN EDWIN CANALES,

Defendant.

**ORDER ON NOTICE OF INTENT TO INTRODUCE EVIDENCE
AND DEFENDANT'S SECOND MOTION IN LIMINE**

THIS CAUSE was heard by this Court on the State's Notice of Intent to Introduce Evidence of other Crimes, Wrongs or Acts and Defendant's Second Motion in Limine and after a careful review of the pleadings, the argument of counsel, the testimony of Tiffany Norman, the Deposition of Melissa Canales, the contents of the Court file and the applicable law, this Court finds:

1. The State seeks to introduce evidence of prior acts of domestic violence by the Defendant against the victim, Tiffany Norman to prove motive, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake/consent, as provided in 90.402 and 90.404, *Fla. Stat.* (2014). Specifically, the State seeks to introduce the testimony of Tiffany Norman to describe prior acts of domestic violence by the Defendant against her, to corroborate her description of the Defendant's acts of domestic violence alleged in this case. The State also seeks to present the testimony of Melissa Canales, the wife of Defendant's cousin, concerning a statement by the Defendant about killing the victim and 1 episode of domestic violence by the Defendant against the victim witnessed by Ms. Canales. The defense objects to the admission of this evidence claiming that such testimony and acts are too remote in time and too factually dissimilar to be relevant to the issues in this case and filed their Second Motion in Limine to exclude such evidence from the trial.

2. Section 90.404(2) provides that "Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge identity, or absence of mistake or accident but it is inadmissible when the evidence is relevant solely to prove bad character or propensity." This provision embodying what is commonly called the "Williams Rule"¹ in Florida allows for the admission of similar facts, including evidence of the commission of other crimes or bad acts, where that evidence is relevant to prove a fact at issue.

3. In *McLean v. State*, 934 So.2d 1248 (Fla. 2006), the Florida Supreme Court held that Section 90.404 "comports with the requirements of due process of law when used as a conduit for evidence that corroborates the victim's testimony that the crime occurred rather than to prove the identity of the

¹ Under *Williams v. State*, 110 So.2d 654 (Fla. 1959) all relevant testimony is admissible to prove a material fact. Testimony of similar facts or action may be admitted when relevant, as long as its probative value is not outweighed by its prejudicial effect. This is true even when the similar facts concern prior crimes or bad acts committed by the Defendant.

alleged perpetrator.” *McLean*, 934 So.2d at 1251. The Court stated that because the statute is qualified by the phrase “may be considered for its bearing on any matter to which it is relevant,” relevancy remains the threshold question. See Section 90.402, *Fla. Stat.* (2005) (“All relevant evidence is admissible, except as provided by law.”).” *McLean* at 1259. Furthermore, the Florida Supreme Court stated that “[u]nder the Florida Evidence Code, chapter 90, Florida Statutes, ‘[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.’ 90.403. Thus, relevancy remains the threshold consideration for the admission of the evidence and even relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice. § 90.403, *Fla. Stat.* (2006); citing *McLean v. State*, 934 So.2d 1248 (Fla.2006). However, it is important to note that the requirement that similar fact crimes contain similar facts to the charged crime is based on the requirement to show relevancy. This requirement does not bar the introduction of evidence of other crimes which are factually dissimilar to the charged crime if the evidence of other crimes is relevant. *Sexton v. State*, 697 So.2d 883, 886 (Fla. 1997). Thus, evidence of other bad acts, like evidence of prior domestic violence, may be admissible if relevant to prove material elements of the criminal charges in the case at issue.

4. In this case, the State seeks to introduce evidence from the victim, Ms. Norman, of 2 prior acts of domestic violence by the Defendant. In the first incident, the Defendant became upset with the victim when she revealed that she was pregnant. The Defendant “got in her face and hit and choked her.” This incident occurred about 2 years before the incident in question and did not involve the use of a firearm.

In the second incident, the victim claims that while still pregnant she was laying on a mattress on the floor when the Defendant flipped over the mattress, knocking her off. Ms. Norman fled to the bathroom and locked the door. The Defendant attempted unsuccessfully to break down the door. After a period of time, Ms. Norman opened the door and the Defendant dragged her out of the bathroom, down the hallway where Ms. Norman struck her face on the wall and fell to the floor. The Defendant then drug her out the door of the residence.

Further, Ms. Norman claims that the Defendant often and repeatedly threatened to kill her. She recalled that the Defendant specifically threatened that he could “kill you and nobody would know about it because I will hide your body.” Ms. Norman remembers that the Defendant made that threat the day before the incident. The evidence shows that Ms. Norman was particularly vulnerable at the time of these threats. She did not drive and was required to get the Defendant’s consent before leaving the residence. In addition, the Defendant monitored her cell phone calls. At the same time, the Defendant isolated Ms. Norman from her family by discouraging her from contacting them and limiting her ability to see or visit them.

The facts of both instances of prior domestic violence are different from the allegations here that the Defendant shot his wife in the head/neck with a rifle. Despite such differences, however, such evidence would be relevant and, therefore, admissible to show, for instance, the absence of mistake or accident. Here, the Defendant’s primary defense will be that the victim shot herself either deliberately or by accident. The Defendant denies any involvement in the shooting. Accordingly, evidence that the Defendant was violent with his wife at other times and evidence that he stated that he would have to kill her would be directly relevant and therefore admissible to show the Defendant’s plan, scheme, intent and motive to shoot his wife on this occasion. Further, such evidence may also be admissible to establish involvement in the shooting and the deliberate nature of the shooting.

5. In addition, the State intends to offer the testimony of Melissa Canales. The court read the testimony of Ms. Canales from a deposition taken on October 3, 2018. In it, she testified that she overheard the Defendant comment that he was pretty much f#@ked for the rest of his life, that the only way he was going to be able to get rid of her[victim] was to kill her, and that was because of the baby. Ms. Canales also testified that there were others that heard the Defendant's comment. This comment allegedly occurred after the birth of their son, Austin, but before the incident in question. Defendant's hearsay statements are admissible only as provided under 90.801-804, *Fla. Stat.* (2018) and would be directly admissible as evidence of motive, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake/consent.

Ms. Canales also testified that she witnessed the Defendant "grab the victim by the neck and put her up against the wall in my kitchen." She testified that other family members were present and her husband had to "diffuse" the situation by pulling the Defendant out of their house. Ms. Canales' personal observations are direct evidence of those facts, unhampered by hearsay or other evidentiary restrictions. Her observations of the Defendant's conduct in other circumstances is admissible if relevant to the issues in this case and as long as the probative value of such evidence is not outweighed by its prejudicial effect.

The probative value of evidence of prior domestic violence between the same Defendant and victim was discussed in *Simmons v. State*, 790 So.2d 1177 (Fla. 3d DCA 2001). In that case, the Defendant was charged with aggravated battery, aggravated assault with a deadly weapon, armed kidnapping, and battery against his girlfriend. The State filed its intent to rely on similar fact evidence under the Williams Rule² seeking to admit evidence that the Defendant battered the same victim a year before. The State also filed its intent to rely on evidence that the Defendant committed aggravated assault with a firearm against his former girlfriend 7 years earlier. The defense objected but the trial court permitted the State to introduce evidence of the battery of the same victim. The trial court sustained the objection to the domestic violence to the ex-girlfriend 7 years before.

In affirming the admission of such evidence, the Court held that evidence of the Defendant's prior violent behavior toward [his girlfriend] was relevant to prove his intent to commit the crimes of aggravated battery, aggravated assault and battery. However, in finding that the domestic violence incident involving the ex-girlfriend 7 years ago was admissible, the Court noted that the Defendant testified at trial that he was the victim and was not violent with the victim. The Court found such evidence relevant and admissible to impeach the Defendant's misleading testimony by showing he had violently assaulted a prior girlfriend.

Evidence that the Defendant violently battered the same victim approximately 1 year before the incident in question would be directly relevant to show motive, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake/consent. The principal defense in this case is that the victim tried to commit suicide and the Defendant played no role in shooting her in the head. Clearly, evidence of prior domestic violence and threats to kill are relevant to this defense. Moreover, the probative value of this evidence is not outweighed by its prejudicial effect. Therefore, this evidence is admissible in our case.

Based on the above findings, it is hereby ORDERED as follows:

² Similar to the instance case, the State asked the Court to admit similar fact evidence under *Williams v. State*, 110 So.2d 654 (Fla. 1959) claiming prior domestic violence was relevant and admissible to prove intent and absence of mistake in the later case arising out of domestic violence. The Court found that evidence and testimony of prior domestic violence may be admitted when relevant to any issue in the case, as long as its probative value is not outweighed by its prejudicial effect.

1. The State's Notice of Intent to Introduce Evidence of Other Crimes, Wrongs or Acts is hereby **granted**. The victim's testimony regarding the Defendant's prior acts of domestic violence and prior threats to kill her are relevant to material issues in this case and are, therefore, admissible. Further, the testimony of Ms. Canales describing the Defendant's violent actions against Ms. Norman when he grabbed her by the neck and put her up against the wall and the Defendant's comments overheard by Ms. Canales wherein the Defendant expressed his need to kill Ms. Norman are similarly relevant to show motive, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident and, therefore, relevant to the issues in this case.
2. The Defendant's Second Motion in Limine on the same issues is hereby **denied**, however, it is granted as to the defendant's comments or threats regarding the victim's abortion.
3. The Court will give a limiting instruction to the jury regarding such evidence upon the request of either party.

DONE AND ORDERED in Bunnell, Flagler County, Florida.

10/12/2018 12:58 PM 2014 CF
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e-Signed 10/12/2018 12:58 PM 2014 CF 000956

TERENCE R. PERKINS
CIRCUIT JUDGE

Copies to:
Office of the State Attorney
GARRY WOOD