IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
2014CF000216CFAXES-1

STATE OF FLORIDA

V.

CURTIS JUDSON REEVES

SUPPLEMENT NO. 1 TO STATE'S MOTION TO USE REDACTED TRANSCRIPTS OF DEFENDANT'S INTERVIEWS BY LAW ENFORCEMENT

COMES NOW, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, files this supplement number 1 to its motion to use the transcripts of the Defendant's two interviews by law enforcement as an aid to the jury in understanding the content of the recorded interviews, and as good cause would show:

Supplement Case Authority

US v. Williston, 862 F.3d 1023, 1038-39 (2017) (Instead, the rule "functions as a defensive shield against potentially misleading evidence proffered by an opposing party." *Echo Acceptance Corp. v. Household Retail Servs., Inc.*, 267 F.3d 1068, 1089 (10th Cir. 2001). Only the portions of a statement that are relevant to an issue in the case and necessary to explain or clarify the already-admitted portions need be admitted. *United States v. Lopez-Medina*, 596 F.3d 716, 735 (10th Cir. 2010). The four factors to consider are whether the statement or statement portion that a party seeks to admit under the rule of completeness (1) explains the admitted evidence, (2) puts the admitted evidence in context, (3) does not itself mislead the jury, and (4) ***1039** ensures that the jury can fairly and impartially understand the evidence. *Id.* Hearsay statements that do not meet this test remain inadmissible. *See id.*)

Nock v. State, 256 So.3d 828 (2018) (The "purpose" of section 90.108(1) is "to avoid the potential for creating misleading impressions by taking statements out of context." *Larzelere v. State*, 676 So.2d 394, 401 (Fla. 1996).)

Carter v. State, 226 So.3d 268, 271 (2017) (Fairness is clearly the focus of this rule. Thus, when a party introduces part of a statement, confession, or admission, the opposing party is ordinarily entitled to bring out the remainder of the statement. This rule is not absolute, and the correct standard is whether, in the interest of fairness, the remaining portions of the statements should have been contemporaneously provided to the jury.)

Tundidor v. State, 271 So.3d 587, 599 (2017) (Section 90.108(1), Florida Statutes, provides that, "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him or her at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously." This rule of completeness is not limited to situations where statements are taken out of context, and "[u]nder a plain reading of the statute, parties may seek the introduction of other statements when those statements 'in fairness ought to be considered contemporaneously' with the introduction of the partial statement." Larzelere v. State, 676 So.2d 394, 402 (Fla. 1996) (quoting § 90.108, Fla. Stat. (1991));)

Larzelere v. State, 676 So.2d 394, 402 (1996) (*See also Mulford v. State,* 416 So.2d 1199, 1201 (Fla. 4th DCA 1982) (section 90.108 gives parties "only a *qualified* right to seek the admission" of an entire statement) (emphasis added); Ehrhardt, *supra,* § 108.1 at 35 ("Under ... section 90.108, the remainder to the document or writing is not automatically admissible when requested or offered by the adverse party."). Under a plain reading of the statute, parties may seek the introduction of other statements when those statements "in fairness ought to be considered contemporaneously" with the introduction of the partial statement. § 90.108, Fla.Stat. Such a fairness determination falls within the discretion of the trial judge. *Correll* (trial judge did not abuse his discretion in holding matters irrelevant).)

Pulcini v. State, 41 So.3d 338, 348 (Fla. 4th DCA 2010) (The purpose of the rule of completeness is to avoid the potential for creating misleading impressions by taking statements out of context. *Larzelere v. State,* 676 So.2d 394, 401 (Fla.1996). Under this rule, once a party "opens the door" by introducing part of a statement, the opposing party is entitled to contemporaneously bring out the remainder of the statement in the interest of fairness. *Id.* at 401-02. The rule of completeness, however, is not absolute and a trial court may exercise its discretion to exclude irrelevant portions of a recorded statement. *Layman v. State,* 728 So.2d 814, 816 (Fla. 5th DCA 1999).)

Dessett v. State, 951 So.2d 46, 48-49 (Fla. 4th DCA 2007) (In this case, there was no violation of the rule of completeness, because the trial court merely excluded irrelevant portions of Dessett's statement. The state's edited ***49** version of the tape did not create misleading impressions or take statements out of context. Additionally, the state's edited version did not exclude exculpatory statements. In fact, part of what the state excluded was Dessett's admission that he used the robbery money to buy drugs, a collateral bad act.)

Swearingen v. State, 91 So.3d 885, 886 (Fla. 5th DCA 2012) ([T]he purpose of the rule is to "avoid the potential for creating misleading impressions by taking statements out of context." The proper standard for determining the admissibility of testimony under the rule is "whether, in the interest of fairness, the remaining portions of the statements should have been contemporaneously provided to the jury." *Id.* at 1248 (quoting *Larzelere v. State,* 676 So.2d 394, 401, 402 (Fla.1996)); *see also Metz,* 59 So.3d at 1226-27 ("A defendant's exculpatory out-of-court statement is admissible into evidence when a state witness has testified to incriminating statements contemporaneously made by the defendant and 'the jury should hear the remaining portions at the same time so as to avoid the potential for creating misleading impressions by taking statements out of context.' " (quoting *Mason v. State,* 719 So.2d 304, 305 (Fla. 4th DCA 1998))).)

Cotton v. State, 763 So.2d 437, 439 ((Fla. 4th DCA 2000) (When a defendant seeks to introduce his own out-of-court exculpatory statement for the truth of the matter stated, it is inadmissible

hearsay. Ehrhardt, Florida Evidence § 801.3 (1998); *Lott v. State*, 695 So.2d 1239 (Fla.1997); *Logan v. State*, 511 So.2d 442 (Fla. 5th DCA 1987); *Fagan v. State*, 425 So.2d 214 (Fla. 4th DCA 1983). However, if a defendant's out-of-court statement is not offered by the defendant to prove the truth of its content, it is not hearsay and should be admitted, provided the purpose for which the statement is being offered is relevant to a material issue in the case. *See* Ehrhardt, Florida Evidence § 801.3.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Supplement No. 1 To State's Motion To Use Redacted Transcripts of the Defendant's Interviews By Law Enforcement was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail or Personal Service this 1st day of December, 2020.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

[redacted]

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