

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
APPELLATE DIVISION

STATE OF FLORIDA,

Appellant,

vs.

JAMES EDWARD KNIGHT,

Appellee.

Appellate Case No. **2010-AP-012**
/L.T. Case No. 2009-MM-26786
Division: "T"

APPEALS DIVISION
FILED & RECORDED

SEP - 3 10 3:30

LENNIE LEE MAGAHA
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL

16

On appeal from the County Court in and for Escambia County, Florida
Joyce Williams, County Court Judge
Jeremiah Monahan, Assistant State Attorney, for Appellant
Travis Atkinson, Assistant Public Defender, for Appellee

ORDER ON APPEAL

THIS CAUSE is before the Court on an appeal of a non-final order from the county court wherein the trial judge denied the State's Motion in Limine to exclude certain statements of the Defendant made on an in-car video after the Defendant's arrest.

On September 5, 2009, the Defendant was arrested and charged with one count of resisting arrest without violence and one count of disorderly conduct. The State intended to introduce at trial an in-car video of the Defendant, but sought to redact a portion of the video wherein the Defendant purportedly made statements such as: "Never been in trouble; I got nothing on my record; ain't got nothing on me and that's a good thing; yes sir, never been arrested; I ain't never been arrested." (R.7) It is the State's position that such statements are irrelevant, are self-serving hearsay and would constitute improper bolstering of the Defendant.

Case: 2010 AP 000012



00094117169

Dkt: ORD Pg#:

3


The defense argued that these statements should be admitted pursuant to the rule of completeness and that pursuant to §90.108 of the Florida Statutes, the defense has the option to introduce all or part of a recorded statement if the opposing party "opens the door" by referring to portions of it during its case. Chao v. State, 661 So. 2d 1246, 1247 (Fla. 3d DCA 1995), citing Long v. State, 610 So. 2d 1276, 1280 (Fla. 1992).

Under the statute setting forth the rule of completeness, parties may seek introduction of other statements when those statements in fairness ought to be considered contemporaneously with the introduction of the partial statements. Emphasis added. Larzelere v. State, 676 So. 2d 394 (Fla. 1996), other cites omitted. The purpose of the rule of completeness is to avoid the potential for creating a misleading impression by taking statements out of context. Larzelere at 401. Such fairness determination falls within the discretion of the trial judge. Larzelere at 402. The rule of completeness is not absolute, and a trial court may exercise its discretion to exclude irrelevant portions of a recorded statement. Dessett v. State, 951 So. 2d 46 (Fla. 4th DCA 2007).

The trial judge denied the State's motion stating that the statements were spontaneous statements made at the scene. There is no suggestion in the record however that the trial judge viewed or had the opportunity to view the video to make a determination if the statements were in fact spontaneous or whether in fairness these statements ought to be considered contemporaneously with the other statements. The record is devoid of the contents of the video, other than representation made by the State of certain statements of the Defendant that the State wishes to exclude. Based upon the lack of information available in the record regarding the statements made by the Defendant, the context in which the statements were made and the

admissibility of the in-car video, the Court remands the matter to the trial court for a fairness determination pursuant to Larzelere after review of the video.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida on this 3rd day of September, 2010.



W. JOEL BOLES
CIRCUITE JUDGE

Conformed copies to:

- ✓ Travis Atkinson, Assistant Public Defender
- ✓ Jeremiah Monahan Assistant State Attorney
- ✓ The Honorable Joyce Williams

9/3/10-KE