

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
Northern District

AUGUST TERM, 2008

State of New Hampshire

v.

Michael Addison

No. 07-S-0254

**STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE: HEARSAY
STATEMENTS OF ANTOINE BELL-ROGERS**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, to respond to the defendant's motion in limine regarding alleged hearsay statements of Antoine Bell-Rogers. In support of this response, the State says as follows:

I. INTRODUCTION

1. A Hillsborough County Grand Jury charged the defendant with one count of capital murder arising from the shooting death of on-duty Manchester Police Officer Michael Briggs on October 16, 2006. Jury selection is scheduled to begin on September 22, 2008.

2. On the night of the murder, the defendant and Antoine Bell-Rogers were together for most of the night. When Ofr. Briggs and his partner Ofr. John Breckenridge rode past the intersection of Litchfield Lane on Lincoln Street they saw two men who fit the description of Antoine Bell-Rogers and the defendant. Ofr. Briggs approached the men and stated, "Stop, Police." at least three times. Antoine Bell-Rogers stopped and the defendant continued walking. The defendant eventually turned and shot Ofr. Briggs in

the head before fleeing. Antoine Bell-Rogers remained at the scene. He made a number of statements both at the scene and later. The defendant has filed a motion in limine to exclude various statements made by Antoine Bell-Rogers as outlined in paragraphs (a) through (g) of the defendant's motion.

3. With the exception of the statements referred to in paragraph (g) of the defendant's motion, the State does not intend to introduce Antoine Bell-Rogers statements during the guilt or penalty phases of trial unless the defendant somehow opens the door to those statements or they are necessary for rebuttal.

4. With respect to paragraph (g) of the defendant's motion, the statements of Antoine Bell-Rogers are admissible as direct admissions of the defendant, statements of a co-conspirator, and/or adoptive admissions as explained in more detail below.

II. FACTUAL BACKGROUND

5. As described in detail in the State's Motion in Limine No. 2 (Guilt Phase) filed on August 18, 2008, the defendant and Bell-Rogers had committed a number of crimes together in the days before October 15, 2006. Following the shooting at Edward J. Roy Drive, the police began to focus on the defendant and Bell-Rogers as suspects in those crimes. At about 4:00 p.m. on October 15, 2006, the police interviewed Angela Swist and Kyarra Davis. Davis had been staying with Angela Swist and was the daughter of Bruce Edwards, one of the targets of the EJR Drive shooting. (218-19).¹ By 6:00 p.m. on October 15, Davis confirmed that the defendant and Bell-Rogers had been involved in that shooting, and also informed the police that the defendant, Bell-Rogers,

¹ References are to Bates stamped page numbers in discovery. These citations do not reflect all of the interviews or reports contained in discovery that make reference to the cited facts.

Angela Swist, and Teresia Shipley together had committed the robbery of the 7-Eleven store in Hudson. (6121-6193).

6. At about 6:30 p.m. on October 15, the police interrupted their interview with Angela Swist because she was having an asthma attack, and she returned home to 267 Central Street to get her inhaler. Soon thereafter, Lieutenant Enoch Willard and Detective Sean Leighton went to Swist's home to ask her to resume the interview, and also asked Shipley to come to the police station for an interview. (1294-96).

7. While Lieutenant Willard and Detective Leighton were inside Angela Swist's apartment talking to her, Shipley, who was outside, saw the defendant and Bell-Rogers pull down the alleyway. Bell-Rogers was driving and the defendant sat in the front passenger seat. Shipley walked over to the car and told the defendant and Bell-Rogers that they needed to leave because the police were there and they were in trouble. During an interview on December 4, 2006, Teresia Shipley informed the police that the following exchange occurred when she approached the defendant and Bell-Rogers in the vehicle:

TS:² . . . Twizz was driving, and I went over to the car and I said what are you f--, what are you doing here? What the fuck is going on? They were gone two days with her car. And the gun was sitting, okay, he's in the car, the gun was sittin' on his lap.

NW: Now, who's his?

TS: Twizz, Twizz' lap. And I was like, you know the detectives are here? Right. And they said, we don't give a fuck. We're out for blood. And I said, you need to fuckin' leave. You need to leave. And don't come back. And they left.

NW: Who says we're out for blood?

² Abbreviation are "TS" for Teresia Shipley, "NW" for Lt. Nick Willard, and "SL" for Det. Sean Leighton.

TS: They both did, like almost simultaneously, they both said, we're out for blood. We don't give a fuck.

NW: And what did you, what did you take that to mean?

TS: That they were going to hurt somebody, didn't know who, didn't know what, they were gona to do something stupid.

...

SL: They made that statement, in a direct

TS: Yes.

SL: response to you're telling them that there was detectives in the house.

TS: I said you obviously know detectives are here, I mean, you[r] cars were everywhere, and they're not stupid, I don't know why they would come to my house, they know the things that they have done.

SL: Um, hum.

TS: And when they said that they were out for blood, it just scared me, I told 'em to leave. You don't say that to somebody cause that can mean anybody. Whether it's a cop or not, it can mean any--, killing somebody, is killing somebody. Yes, killing a cop is bad, you know, they're out there protecting us, but killing anybody is bad. Hurting anybody is not right. And to have a gun in plain sight, I mean, it's kinda scary.

NW: Which gun was it?

TS: It was the same gun. The silver gun, that was it, [it] never changed.

(9162-9165).³ Shipley told the two men that they were in trouble and needed to leave.

The defendant and Bell-Rogers left, and Shipley went inside, where the police were still interviewing Angela Swist. (1294-96, 9162-70, 9737-42).

³ In an interview several months later, Shipley told the police she clearly remembered Bell-Rogers making the statement and was unsure if the defendant made a similar statement. (6749-79).

8. After the police escorted Swist and Shipley to the police station to be interviewed, the defendant called Ruth Schulz – who was the tenant and 267 Central Street and who was close to both Shipley and the defendant. (8550). The defendant asked Schulz why the police were talking to Shipley and Swist. (8550). When Schulz told the defendant she did not know what the police wanted, the defendant said to Schulz, “Have the girls call me when they’re gone.” (8550).

9. Soon after the defendant and Bell-Rogers saw Shipley outside 267 Central Street, they visited their friend Keyonn Brown and asked him to get rid of the car that they had used in their various crimes and to wipe it down. (3563-66). Ruth Schulz then went to pick the defendant and Bell Rogers up and bring them back to 267 Central Street. (6751).

10. After the police left the apartment, the defendant and Bell-Rogers returned to 267 Central Street. There, the defendant, Bell-Rogers, and Shipley discussed how they were in trouble because of the robberies and other crimes they had committed. During this conversation, the defendant, Bell-Rogers, and Shipley also made a plan to flee that night, and Shipley made arrangements for someone to take custody of her kids and started packing. (6740-79).

11. After the defendant and Bell-Rogers left 267 Central Street on the evening of October 15, Shipley went to the police department for her interview. (6740-79). During that interview, Shipley eventually admitted that the defendant, Bell-Rogers, she, and Angela Swist were involved in the shooting at 345 EJR Drive, as well as the robbery of the 7-Eleven store in Hudson. (7248-87).

12. Between 10:30 p.m. and 11:00 p.m. on October 15, 2006, Shipley and Swist left the police department after their interviews. (8800). Following her interview, Shipley continued to talk to the defendant and Bell-Rogers throughout the night on her phone. (6740-79). The three continued to discuss their plans to flee Manchester before the police arrested them. (6740-79).

III. LEGAL ARGUMENT

A. The statements of Antoine Bell-Rogers and Michael Addison are admissions of the defendant.

13. The defendant has moved to exclude statements made by Antoine Bell-Rogers while the police were at 267 Central Street. During at least one of her interviews with the police, Teresia Shipley attributed the statement, "We're out for blood. We don't give a fuck," to both the defendant and Antoine Bell-Rogers simultaneously. Any statement made by the defendant when he was told that the police were present at 267 Central Street is indisputably admissible because it is not hearsay, but rather an admission of the defendant. See N.H. R. Ev. 801(d)(2)(A). To the extent that Addison and Bell-Rogers are both expressing a similar sentiment about the presence of the police in each other's present, the statement is an adoptive admission. N.H. R. Ev. 801(d)(2)(B). In other words, if Shipley testifies that Bell-Rogers made the statement, "We're out for blood. We don't give a fuck," and the defendant verbally or physically indicated his approval of this statement in any way, then the statement clearly falls within the parameters of the adoptive admission. See State v. Jansen, 120 N.H. 616, 618 (1980) ("In the instant case, there was no evidence presented which would indicate that the

defendant attempted to deny his complicity in the robbery in any manner whatever. Miss Bruscoe testified that 'both' men told her about the robbery during a conversation between the three of them late one evening. She was unable to attribute the statements made during that three-way conversation to one or the other of the two men. Even if the defendant made none of the incriminatory statements, however, his failure to refute or deny them when he had ample opportunity to do so may be found to be an affirmation of their truth. State v. Nelson supra. We therefore rule that Miss Bruscoe's testimony concerned admissions by the defendant and was properly admitted into evidence by the trial court."); State v. Colby, 116 N.H. 790, 794 (1976).

14. Even if Addison did not specifically verbalize his assent to Bell-Rogers's statement, "We're out for blood. We don't give a fuck," the defendant's silence is an adoptive admission. Recently, the New Hampshire Supreme Court clarified the test for admissibility of an adoptive admission where the defendant is silent in response to an incriminating accusation or statement. See State v. Forbes, ___ N.H. ___, 2008 WL 2987211, at *3 (Aug. 6, 2008). The Court articulated the following test:

[F]or evidence of an adoptive admission by silence to be admissible as direct evidence of guilt, the trial court must determine that the defendant had sufficient opportunity and motive to deny the truth of the accusations to permit a reasonable jury to conclude that his failure to respond was so unnatural that it supports the inference that the defendant acquiesced in the statement. The court must also determine that no other explanation is equally consistent with the defendant's words of conduct.

Id. (quotations, citations, and brackets omitted).

15. During a later interview, Teresia Shipley told the police that Bell-Rogers was driving Angela Swist's black Dodge Neon and the defendant was in the passenger seat when they pulled up to the house. (6751-52). Bell-Rogers had the silver .380

handgun on his lap. (6752-53). Shipley approached the passenger side of the car and addressed the defendant and Bell-Rogers through the passenger window. (6751). She told them that they were in trouble and they needed to leave because the police were in the apartment. (6751). She told the police that Bell-Rogers made the statement, "Fuck that. I'm out for blood." (6751-53). She said that the defendant was very quiet, which was unlike him. (6753). Later in that same interview, Shipley acknowledged that the defendant may have said, "Fuck that. We're out for blood," but she was not 100% positive that he said it too, but that she was positive that Bell-Rogers made that statement. (6774).

16. Even if the defendant did not make the statement, "Fuck that. We're out for blood," the context of the statement makes it admissible under the Forbes test as an adoptive admission. The defendant had a sufficient motive and opportunity to deny the statement that he and Bell-Rogers were out for blood. See Forbes, 2008 WL 2987211, at *3. Shipley leaned through the passenger window of the car and told both the defendant and Bell-Rogers that the police were in the house, they were in trouble, and they needed to leave. The defendant was in the passenger seat of the car. There is no way he could have avoided hearing the exchange between Shipley and Bell-Rogers. More importantly, the defendant's failure to respond was "so unnatural that it supports the inference that the defendant acquiesced in the statement." Id. (quotation and brackets omitted). Bell-Rogers's statements, "we're out for blood" while the gun was clearly visible on his lap in response to being told that the police are just a few feet away is a shocking statement. Shipley certainly understood the import of that statement. She told the police that she was scared, she raised her voice, she may have been swearing, and she ordered them to

leave. (9162-9165). The defendant did not protest or make any statement indicating he wanted no part of that plan. Teresia Shipley's reaction of fright and her orders for them to leave were a natural reaction to Bell-Rogers's statements. The defendant's behavior suggests no innocent explanation, but rather clearly indicates that he acquiesced in Bell-Rogers's intentions. See Forbes, 2008 WL 2987211, at *3.

B. The statements of Antoine Bell-Rogers are admissible as admissions of a co-conspirator.

17. Even if the defendant was silent and his silence could be construed as something other than an adoptive admission, Bell-Rogers's statements are still admissible as a statement of a co-conspirator pursuant to Rule 801(d)(2)(E). The rules of evidence permit the State to introduce evidence of statements by one co-conspirator against another as an admission. Rule 801(d)(2)(E) provides that a statement is not hearsay if "[t]he statement is offered against a party and is . . . a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." "[I]t is well established that the applicability of the 'co-conspirator' exception to the hearsay rule is not conditioned on the presence of a conspiracy count in the indictment." State v. Favreau, 134 N.H. 336, 341 (1991) (quotation omitted). The State is required to present a prima facie case of the existence of the conspiracy in order to admit statements under the co-conspirator exception. See State v. Gibney, 133 N.H. 890, 899 (1991). The existence of the conspiracy may be established through circumstantial evidence. See State v. Gilbert, 121 N.H. 305, 312 (1981); Colby, 116 N.H. at 794-95.

18. In the week before the statements at issue, the defendant and Bell-Rogers had committed two robberies and a shooting at Edward J. Roy Drive. The shooting at EJR Drive had occurred less than 18 hours before the statements at issue. Teresia Shipley clearly conveyed to the defendant and Bell-Rogers that the police were looking for them. The testimony in the EJR Drive trial established that they knew the police were looking for them because they had seen the police respond to the apartment complex. In fact, the actions immediately after leaving 267 Central Street establish that there was an agreement to flee the state. The defendant and Bell-Rogers left Shipley's house when they learned that the police were there, they went to their friend Keyonn Brown, and asked him to get rid of the car used in the various crimes. They then returned to 267 Central Street and discussed the plan to flee New Hampshire in more detail with Shipley.

19. The course of events in the hours after the EJR Drive shooting clearly establish that the defendant, Bell-Rogers, Shipley, and Swist had an agreement to hinder apprehension or prosecution. See RSA 642:3. The defendant and Bell-Rogers returned to 267 Central Street and talked with Shipley. Shipley warned them the police were inside her apartment and that they were in trouble – a clear violation of RSA 642:3, I(c) (“warns such person of impending discovery or apprehension”). Bell-Rogers's (and the defendant's) response was also a clear threat to violate RSA 642:3, I(e) (“obstructs by force . . . anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person”). The defendant and Bell-Rogers then enlisted their friend Keyonn Brown to dispose of the vehicle. See RSA 642:3, I(d) (“conceals any physical evidence that might aid in the discovery, apprehension, or conviction of such person”). The defendant and Bell-Rogers then returned to Shipley's apartment to finalize

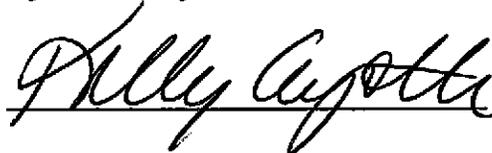
their plans to flee the state. Such conduct – including any statements made by Bell-Rogers at 267 Central Street while the police were inside – is well within the scope of a conspiracy to hinder apprehension. See Arroyo v. State, 239 S.W.3d 282, 292-93 (Tex. Ct. App. 2007) (“there is little question that Appellant and Hersain were working together to avoid being apprehended and that Hersain’s statement was made to help them escape the jurisdiction.”); Commonwealth v. Cull, 656 A.2d 476, 481-82 (Pa. 1995) (statements made by co-conspirator were admissible where the statements “formed the basis of the co-conspirators’ joint efforts to avoid detection by the police”). Thus, Bell-Rogers’s statements, “Fuck that. We’re out for blood,” is admissible as a statement of a co-conspirator in furtherance of the conspiracy to hinder apprehension regardless of whether the defendant also voiced similar statements outside 267 Central Street.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- A. Deny the defendant’s motion in limine to exclude Antoine Bell-Rogers’s statements with respect to paragraph (g) of the defendant’s motion; and
- B. Order such further relief as this Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
By its attorneys,



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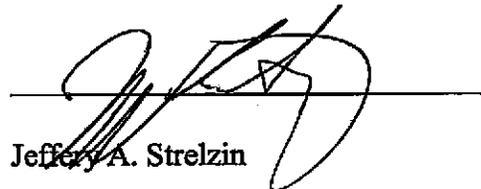


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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been mailed to Richard Guerriero,
Esquire, David Rothstein, Esquire, Caroline Smith, Esquire, and Donna Brown, Esquire.

August 28, 2008



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