NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY APPELLATE DIVISION

STATE OF FLORIDA,

Appellant,

vs.

Appeal Case No. CRC 09-00036 APANO

UCN No. ~~522008MM021017XXXXNO~~
522009AP000036XXXXCR

SAMUEL VINSON,

Appellee.

_____/

Opinion filed: 9/24/10.

Appeal from a judgment and sentence entered by the Pinellas County Court
The Honorable Judge James Pierce

Bernie J. McCabe, Esquire
State Attorney Sixth Judicial Circuit
Attorney for Appellant

Kym B. Rivellini, Esquire
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

On July 18, 2008, the State of Florida (Appellant) charged Samuel Vinson (Appellee) with one count of battery. The Information alleges that on or between the 13th

day of February and the 18th day of April, 2008, Defendant intentionally touched or struck Raven Gilbert (Gilbert) against her will. (R 1) The charge is based on several alleged incidents of touching, including hugging, kissing, and snapping a towel or shirt. This matter is before the Court on the State's appeal from an order of the County Court granting three motions in limine. This Court has jurisdiction and affirms two of the orders and reverses one.

Defendant was a high school gym coach. Gilbert was one of his students. In her deposition, Gilbert testified that she had a normal student/teacher relationship with the defendant, but it changed after he kissed her hand. (R 74-75) A week or so after that incident, the defendant allegedly began making sexually inappropriate comments to Gilbert. (R 79) These comments are the subject of the first Motion In Limine.

There were three such comments. First, the defendant allegedly asked Gilbert whether she worked late because she was sleeping with her boss. Though Gilbert cannot remember specific incidences, she alleges that the defendant made comments of that nature three different days. (R 12, 78-79) During that period, the defendant allegedly used a towel or shirt to hit Gilbert's buttocks. (R 84) Second, the defendant allegedly asked Gilbert whether she "[was] excited to see me or are you just cold?" This occurred when Gilbert was wearing a white t-shirt and the comments apparently were a reference to her nipples. (R 12, 84). Third, when Gilbert was icing a hip injury, the defendant allegedly said "something to the effect of 'I guess I know what you won't be doing tonight.'" This was perceived to be a reference to Gilbert having sex with her boyfriend. (R 12, 85)

As to Defendant's comments, the trial judge ruled:

> Well, that's the thing I have to get over the hurdle of, is this really relevant to any genuine issue in this case, the fact that he may have made some statements which

> may or may not be considered to be exculpatory. Well, it's really not even exculpatory or inculpatory, just some statements made to her at a different time. And the State is saying they need that to show that this was against her will. Well, I find that the probative value of those type of statements do not really support or prove any material elements of a battery, so I am going to grant the motion in limine. (R 34)

The State argues that this ruling was error because the statements were relevant to show that the touching allegedly constituting the battery was against Gilbert's will and that the statements were inextricably intertwined with the battery charge. *Griffin v. State*, 639 So.2d 966 (Fla. 1994). This Court agrees and finds that these statements are clearly relevant. The statements fall squarely in the categories recognized in *State v. Rambaran*, 975 So.2d 519, 524 (Fla. 3d DCA 2008). There the court defined three categories of evidence that could be characterized as inextricably intertwined with the events upon which the charge is based. They are evidence that is necessary to (1) "establish the entire context out of which the charged crimes arose;" (2) "provide an intelligent account of the crimes charged;" and (3) "adequately describe the events leading up to the crimes." The statements that the defendant allegedly made to Gilbert fall into all three categories. Hence, we reverse the trial judge's ruling on this matter.

The second Motion In Limine sought to exclude evidence that the defendant tried to make sure Gilbert showed up for her classes by having other students contact her on her cell phone or calling her himself. The final Motion In Limine moved to exclude Gilbert's testimony that she suffered from depression and anxiety as a result of the defendant's actions. The trial court found this evidence to be irrelevant and granted the motions. We agree.

Accordingly, this Court reverses the order excluding the defendant's statements and affirms the order excluding the phone calls and testimony pertaining

to Gilbert's depression and anxiety. The Court remands this cause for further action in accord with this opinion.

COVERT and HELINGER, C. JJ., concur.

DEMERS, J., concurs in part and dissents in part with opinion.

I concur with all of the majority order and opinion, except I respectfully dissent from the reversal of the order granting the Motion In Limine as to Defendant's statement to Gilbert. The standard for reviewing decisions on most evidentiary questions is abuse of discretion. In *Knight v. State*, 15 So.3d 936, 938 (Fla. 3d DCA 2009), the court says:

> We review the trial court's ruling on admissibility for an abuse of discretion. A "trial court has broad discretion in determining the relevance of evidence and such determination will not be disturbed absent an abuse of discretion." *Heath v. State*, 648 So.2d 660, 664 (Fla.1994); see *Castro v. State*, 547 So.2d 111, 114 (Fla.1989). In the context of the trial proceedings to that point, reasonable trial judges might well disagree on whether the defense objection should have been overruled or sustained, and thus no abuse of discretion has been shown.

In my view, the decision on exclusion of the defendant's statements is one about which reasonable trial judges might disagree; therefore, it should not be reversed. It is not at all clear that the involved statements fall into any of the categories of material constituting inextricably intertwined evidence recognized by the majority; nor is it clear from this record how those statements tend to prove that the alleged battery was against Gilbert's will. Certainly, these things were understandably unclear to the trial court. The record is limited as to explanations of context, time, and circumstances of the statements as they relate to anything, particularly the alleged battery.

Perhaps these matters will become clearer during the trial when the State presents its evidence. And therein lies the pitfalls with motions in limine – they are never permanent and it is good for trial judges to make that clear. Thus, in *State v. Zenobia*, 614 So.2d 1139, 1140 (Fla. 4th DCA 1993), the court said: "We view a judge's pretrial ruling

on a motion in limine as entirely tentative. After evidence is actually adduced at the trial, the judge may suffer a change of mind and decide-contrary to a pretrial ruling-that evidence may have to be admitted or excluded." For that reason, the court expressed hesitancy to reverse such rulings, especially when they include findings of fact concerning probative value versus prejudice.

For the foregoing reasons, I am comfortable with all of the trial judge's rulings. I am less comfortable with this Court deciding before trial what statements made by a defendant to an alleged victim are relevant. For that reason, I would affirm all of the rulings on the motions in limine with the understanding that the trial judge should be open to reconsideration of the rulings based upon the evidence that is actually presented.

DONE AND ORDERED in State v. Vinson (Appellate Court No. 09-00036 APANO) at Pinellas County, Florida this 23rd day of Sept, 2010.

Original order entered on September 23, 2010 by Circuit Judges David A. Demers, Thane B. Covert, and Chris Helinger.

Copies to:

The Honorable Judge James Pierce

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