

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASENO.: 16-2012-CF-011572

DIVISION: CR-D

STATE OF FLORIDA

VS.

MICHAEL DAVID DUNN
_____ /

**DEFENDANT'S MOTION IN LIMINE REGARDING
COMMENTS, ACTS, INACTIONS AND/OR PRIOR ACTS**

The Defendant MICHAEL DUNN, by and through undersigned counsel, moves this Honorable Court to enter its Order in *Limine* restricting the admission at the trial of this cause of certain inflammatory comments, suggestions, and/or prior acts; and would show:

Any comments relating to the defendant's actions, or inactions, past and present, regarding any time frame outside of the actual Indictment are inadmissible. There are numerous comments provided by the JSO Homicide detectives during the post-Miranda discussion with Defendant, including but not limited to, alleged inactions by the Defendant **after the charging Indictment's specific allegations**. Said comments, actions and/or inactions by the Defendant are not relevant, unfairly prejudicial, emotionally charged and furthermore inadmissible, including but not limited to, either alleged prior bad acts, improper character evidence, or places an unfair and unlawful burden on the Defendant contrary to Florida Laws.

- A. Evidence which tends only to show bad character or propensity is not relevant and should not be admitted. *Moore v. State*, 701 So. 2d 545, 549 (Fla. 1997).
- B. All relevant evidence is admissible, unless its probative value is substantially outweighed by the danger of unfair prejudice, or unless otherwise excluded by

law. §§ 90.402, 90.403. Under § 90.403, the court must balance the probative value of the proffered evidence versus the prejudicial effect. The proffered evidence may be unfairly prejudicial if it appeals to the emotions of the jury. *Wuornos v. State*, 644 So. 2d 1000, 1007 (Fla. 1994). Further, the proffered evidence may be prejudicial if it has an improper purpose, such as appealing to the bad or evil character of the accused. *Wilding v. State*, 674 So. 2d 114, 119 (Fla. 1996). The Defendant's actions, and/or inactions, and any comments or references regarding same, have absolutely no relevancy, nor probative value, to his charge of First Degree Murder, Attempted First Degree Murder, or Shooting into an Occupied Vehicle. Any probative value is substantially outweighed by the unfair prejudice thereof and are thus still inadmissible. Any alleged comments, actions, or inactions by the Defendant made after the specific date and time of the alleged criminal act charged was completed herein, are simply being used to appeal to the emotions of the jury, as well as place an unlawful burden onto the Defendant contrary to Florida Laws.

- C. The only purpose of such statements, comments, actions, or inactions by the Defendant after the alleged crime was completed as charged in the Indictment is to place prejudicial and misleading inferences in front of the jury. *Whitted v. State*, 362 So. 2d 668, 673 (Fla. 1978). Thus, said Defendant's statements, comments, actions, or inactions after the alleged criminal acts should be excluded because they are irrelevant to the material facts of this case, are improper character evidence, confusing to a jury and places an unlawful burden onto the Defendant contrary to Florida Laws.

WHEREFORE, the defendant respectfully requests that all above evidence be deemed inadmissible, and the State ordered to admonish their witness accordingly.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, Duval County, 220 East Bay St., Jacksonville, Florida 32202 by Efile, Email, Hand Delivery or Facsimile this 2nd September, 2014.

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