
STATE OF WISCONSIN,

Plaintiff

v.

Case No. 11 CF 390

DEMARIOUS GRAY,

Defendant

NOTICE OF PROPOSED EVIDENCE TO BE SUBMITTED,
PURSUANT TO §904.04(2), STATS.

The defendant Demarious Gray, through his attorney Joseph L. Sommers, pursuant to §904.04(2), Stats. and Whitty v. State, 34 Wis.2d 278.149 N.W.2d 557 (1967) hereby gives notice that he intends to introduce evidence at trial showing:

1. That Ashton Davis committed the crime for which Demarious Gray has been charged.
2. That Ashton Davis and Darell Fowler are members of the 'lic squad' that commits armed robberies and home invasions in the Madison area.
3. One home invasion committed by the 'lic Squad' was on February 4, 2011 at 1818 Fordem Avenue, Apartment 26.
4. The 'lic squad' stashed their guns and fruits of their crimes at 802 Vera Court, Madison, WI.
5. Madison police, especially Det. Thomas Helgren, have taken a systematic course of conduct in order to obscure the criminality and 'lic squad' status of both Davis and Fowler.

The due process rights of a criminal defendant are in essence, the right to a fair opportunity to defend against the state's accusations. State v. Evans, 187 Wis.2d 66, 82, 522

N.W.2d 554 (Ct.App. 1994), quoting Chamber v. Mississippi, 410 U.S.284, 294 (1973). The right to present evidence is rooted in the Confrontation and Compulsory Process Clauses of the United States and Wisconsin Constitutions. Evans, at 82-83, citing State v. Pulizzano, 155 Wis.2d 633, 645, 456 N.W.2d 325, 330 (1990) Thus, while a court's evidentiary rulings may be nominally labeled discretionary, the court must accommodate the accused's right to present a defense.

Sec. 904.04(2), Stats., provides:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Although other crimes evidence is typically applied against a criminal defendant, §904.04(2), Stats., is not limited to a defendant's acts; it is applicable to any person. State v. Johnson, 184 Wis.2d 324, 336, 516 N.W.2d 463 (Ct. App. 1994)

Before the trial court admits evidence of other acts, it must first determine whether the proffered evidence is relevant in light of §904.01, Stats., and admissible for one of the purposes described in §904.01, Stats., and admissible for one of the purposes described in §904.04(2), Stats. State v. Grande, 169 Wis.2d 422, 430, 485 N.W.2d 282 (Ct. App. 1992) If the evidence is relevant and admissible, the trial court must then determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury. Grande, 169 Wis.2d at 430; §904.03, Stats.

Relevant evidence is evidence that has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable. §904.01, Stats. Before a court allows the introduction of evidence that the defendant was framed, it must determine (1) whether the frame up evidence concerned a fact of consequence to the determination of the action, and (2) if it did concern such a fact whether it made the existence of that fact more or less probable. See State v. Richardson, 210 Wis.2d 695, 706-709 (1997) The "any tendency" standard reflects a broad definition of relevancy and results in a low threshold for the introduction of evidence. There is a strong presumption that proffered evidence is relevant. Id. Relevant proffered evidence of a frame-up should be allowed in unless, pursuant to §904.03, Stats., the probative value of such evidence is outweighed by the danger of confusion of the issues and misleading the jury and by considerations of undue delay and waste of time. See Id.

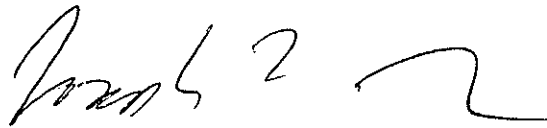
The defendant respectfully requests that he be allowed to put into evidence at trial the proffer made prior in this motion. The defense puts forth that this evidence will support the defendant's assertion that he is innocent of the crime charged, and that he is being blamed for conduct committed by Davis, and that this includes an active effort by Det. Helgren, and maybe other Madison police officers, to frame him for the benefit of Ashton Davis and Darell Fowler. The evidence in question goes

directly to the motive and identity of the particulars involved, and is necessary in order for the defense to receive a fair trial.

Further, the probative value of this evidence is not substantially outweighed by unfair prejudice. See §904.93, Stats; State v. Speer, 17 Wis.2d 1101, 1114, 501 N.W.2d 429 (1993). And therefore, the evidence should be admissible.

Dated in Madison, WI this 17th day of October, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Sommers", with a stylized flourish at the end.

Joseph L. Sommers
Attorney for the Defendant