

ORIGINAL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

2012 OCT 18 P 3:14

FILED

UNITED STATES OF AMERICA

v.

ROBERT CARTER,
Defendant.

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Criminal No. 2010-CF1-2095
Judge Thomas Motley
Trial: November 5, 2012

NOTICE OF INTENT TO INTRODUCE EVIDENCE OF OTHER CRIMES

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby gives formal notice of its intent to use evidence of uncharged conduct as part of its proof in this case. In support of the use of this evidence, the government relies on the following points and authorities, and such other points and authorities that might be cited at any hearing:

FACTS

On July 19, 2011, a D.C. Superior Court grand jury charged defendant Robert Carter in a 24-count indictment for: murdering Angel Morse; kidnapping Michael Morse, Shaheed Walker Eric Gordon, Rachelle Morse, Christopher Morse, and Moria Morse; shooting Moria Morse and Shaheed Walker; stealing Eric Gordon's car; carjacking a MetroAccess vehicle with a passenger inside; and then crashing the car into a building. At trial, the government intends to prove that during the afternoon of October 29, 2010, the defendant shot Angel Morse once in the head, killing her. Angel Morse was the defendant's thirteen-year-old daughter. The defendant shot Angel in the basement of the family home located at [REDACTED] in Northwest, Washington, D.C. As Angel's siblings and Eric Gordon arrived at the home later that afternoon, the defendant held each of them hostage at gun point in the living room. When Moria Morse,

Angel's mother, arrived home later, the defendant aimed his gun at her and a struggle ensued. The defendant then shot Moria Morse and Shaheed Walker (10-year-old brother of Angel Morse), injuring both.

The defendant fled from the house, continuing to fire his gun. He then stole Eric Gordon's car, which was parked in front of the home, and drove it from the neighborhood. Several blocks away, however, the defendant pulled over, got out of the car, and approached a MetroAccess vehicle parked on the street. The defendant pulled out his gun and ordered the driver to get out of the MetroAccess vehicle. As the driver got out, the defendant jumped into the car and drove away with an elderly passenger still inside. Eventually, the defendant pulled over and told the passenger to get out of the car. The defendant continued to flee in the MetroAccess car until he crashed in Prince George's County, Maryland, adjacent to the area of Route I-295 and Eastern Avenue in Northeast, Washington, D.C.

On or about August 3, 2011, the defendant filed notice of his intent to raise an insanity defense at trial. Trial was subsequently scheduled for November 5, 2012.

OTHER CRIMES EVIDENCE

With the Court's permission, the government intends to introduce evidence from a series of incidents where the defendant assaulted other people (including family members) and regularly sold and ingested drugs - most often, cocaine. The evidence is appropriate and necessary to prove the government's case-in-chief and/or to rebut the defendant's expected use of the insanity defense.

The evidence of the defendant's drug selling and drug usage will be elicited from the testimony of family members, friends, and colleagues.

In addition, the government expects to present admissible evidence that in the time period leading up to October 29, 2010, Angel Morse reported to family members that the defendant, her biological father, had gotten into bed with her and inappropriately touched her on her buttocks. Further, the government intends to present evidence that the family members confronted the defendant about the incident prior to the defendant murdering Angel.

The government also intends to present scientific evidence that, at the time of the autopsy, sperm was found inside Angel Morse's mouth.

The government further intends to present evidence from Superior Court Case No. 2009-DVM-535, where on March 6, 2009, the defendant got into a verbal argument and physical altercation with two of his other daughters. He then got into an argument with Moria Morse and choked her during the argument. The two daughters attempted to stop the defendant, at which point the defendant chased one of his daughters, yelling, "You all are going to find yourselves in my trunk. I'm going to kill you bitches!" The defendant appeared intoxicated during the incident. The defendant was arrested and, on March 7, 2009, was ordered by a Judge of the Superior Court for the District of Columbia to stay away from Moria Morse. Nevertheless, on April 20, 2009, the defendant texted and repeatedly called Moria Morse in violation of the stay away order (Superior Court Case No. 2009-DVM-953). Both of these cases were dismissed for want of prosecution when the witnesses did not appear for trial.

The government also intends to present evidence from Superior Court Case No. 2010-DVM-1793, where on August 2, 2010, the defendant broke into the family home. Once inside, he flipped over a table, pulled a knife, and threatened Moria Morse by saying, "I'll put you in the

trunk of the car, and I'll kill all you bitches." This case was also dismissed for want of prosecution because the witnesses did not appear for trial.

Lastly, the government intends to present evidence that on February 8, 2005, the defendant kidnapped an ex-girlfriend from her place of employment in Northeast, Washington, D.C. The defendant then took the ex-girlfriend to her home in Prince George's County, Maryland, where the defendant sexually assaulted her. The defendant was arrested and prosecuted for these actions by the Prince George's County States's Attorney's Office and the defendant eventually pled guilty to one count of Second Degree Sex Offense and one count of Kidnapping.

The government has already provided all of the discovery paperwork in the above-referenced criminal cases.

ARGUMENT

"Evidence of other crimes is admissible when relevant to (1) motive, (2) intent, (3) the absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of the one tends to establish the other, and (5) the identity of the person charged ..." (William) Johnson v United States, 683 A.2d 1087, 1098 (D.C.1996). "Ordinarily evidence of prior acts which are criminal in nature, whether adjudicated as such or not, and which are wholly independent of the crime charged, is inadmissible unless it comes within" one of the Drew exceptions. Id. at 1096 (citing Drew v. United States, 331f.2d 85, 90 (D.C. Cir. 1964)). In this case, the prior incidents are appropriately admitted for the purposes of proving the defendant's motive to kill the decedent (and kidnap and shoot the

others), intent to kill the decedent (and the others), absence of mistake or accident, and to establish the defendant's identity as the perpetrator of these crimes.

Once the government establishes that the evidence fits into one of the Drew categories, the government must still show (1) that there is "clear and convincing evidence" that the defendant committed the other crime (2) if the drew category is intent, "the evidence of the other offenses [must be] directed to a genuine, material and contested issue in the case" (3) "the evidence is relevant to the issue beyond demonstrating the defendant's criminal propensity; and (4) the evidence is "not more prejudicial than probative." Flores v. United States, 698 A.2d 474,482 (D.C. 1997) (citing Roberts v United States, 683 A.2d 1234, 1238 (D.C. 1998). The trial court has wide latitude in determining the admissibility of prior bad acts evidence. Bacchus v. United States, 970 A.2d 269, 274 (D.C. 2009). See generally Frye v. United States, 926 A.2d at 1092. The government will show - through witness testimony - clear and convincing evidence that the prior criminal conduct outlined above occurred.

The defendant's prior criminal conduct is also appropriately admitted under Johnson v. United States, 683 A.2d 1087 (D.C. 1996) and its progeny. In Johnson, the Court allowed the admission of evidence in three areas not covered by Drew v. United States, 331 F.2d 85, 89-90 (D.C. Cir. 1964):

it is clear that Drew's strictures do not come into play in every instance in which evidence offered to prove guilt of the charged offense could be offered in support of a prosecution of another crime. Specifically, Drew does not apply where such evidence (1) is direct and substantial proof of the charged crime; (2) is closely

intertwined with the evidence of the charged crime, or (3) is necessary to place the charged crime in an understandable context.

Johnson, 683 A.2d at 1098. The Johnson Court made such evidence presumptively admissible, holding that the trial court should exclude such evidence only if its “probative value is substantially outweighed by the danger of unfair prejudice.” Johnson, 683 A.2d at 1099

For example, the Court of Appeals, citing Johnson, has since held that threats by defendants toward decedents are admissible as direct evidence of the homicide. See Muschette v. United States, 936 A.2d 791 (D.C. 2007) (holding that evidence that defendant threatened decedent with a gun several weeks prior to the shooting homicide and defendant’s threat to rob the decedent were properly admitted as direct evidence of the homicide); see also Wilson v. United States, 690 A.2d 468 (D.C. 1997) (holding that evidence that defendant threatened to kill decedent three days before the homicide was properly admitted as direct evidence of the homicide). In this case, all of the defendant’s prior conduct (described above) is necessary to show the motive, intent, the absence of mistake or accident, to rebut insanity, and to place the events of October 29, 2010, in an understandable context.

Because the above-described incidents go to show, in addition to intent, the defendant’s identity as the perpetrator killer, plan to kill and commit the other crimes, and motive in perpetrating the killing and the other crimes, the Court need not find that the proffered evidence relates to a contested issue in the case. See Jackson v. United States, 856 A.2d 1111, 1118-1119 (D.C. 2004) (finding that the “contested issue” requirement of Thompson v. United States, 546 A.2d 414 (D.C. 1988), is limited only to the Drew category of intent). Finally, none of the other crimes evidence is of a magnitude greater than the charged offense, so the evidence is clearly not

unfairly prejudicial to the defendant. Accordingly, there is little likelihood that the jury will be lured into declaring guilt on an improper basis.

As a result, witness testimony concerning the defendant's prior conduct should be admitted into evidence at trial.

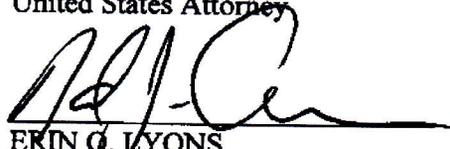
CONCLUSION

For the foregoing reasons, the government respectfully submits that the proffered evidence admitted at a trial in this matter.

Respectfully submitted,

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Certificate of Service

I hereby certify that I caused the attached notice to be served on 10/18/12 by email upon Steven Kiersh, Esq., counsel for defendant Robert Carter at skiersh@aol.com.


DAVID J. GORMAN
Assistant United States Attorney