

STATE OF INDIANA)	IN THE MARION SUPERIOR COURT
)SS:	CRIMINAL DIVISION, ROOM 21
COUNTY OF MARION)	CAUSE NO. 49-G21-1108-FD-055231
)	
STATE OF INDIANA)	
)	
v.)	
)	
DANNY LEFLORE)	

STATES REQUEST TO USE OUT OF COURT STATEMENTS
(FORFEITURE BY WRONGDOING)

Comes now the State of Indiana by its Deputy Prosecuting Attorney, Megan Singleton, and files this Motion to allow out of court statements made to the police officers and to Department of Child Services agent(s) by the alleged victim, Santana Tolden, and State's witness, Bessie Bland, and in support of the same, alleges as follows:

1. Procedurally, this cause is a re-file of charges originally levied against Defendant under 49G17-1006-FD-047677. Those charges were dismissed on September 14, 2010, because the predecessor Court (Marion Superior Court, Criminal Division, Room 17; Hon. Clark Rogers, Judge) denied the State's motion for forfeiture by wrongdoing without affording the State an opportunity to be heard on the motion. However, subsequent to the dismissal, on March 3, 2011, the Indiana Court of Appeals, via unpublished opinion under Case Number 49A05-1010-CR-698, reversed the Court 17 ruling. Attached hereto and incorporated herein by reference as Exhibit "1" is a copy of the subject Court of Appeals decision, as well as the Court's subsequent opinion upon rehearing.

2. Defendant, Danny Leflore, is charged with Count 1: Battery on Child (with Injury), a Class D Felony; Count 2: Battery, a Class A Misdemeanor; and Count 3: Criminal Recklessness, a Class B Misdemeanor. Defendant was

originally arrested on June 15, 2010. Defendant had an initial hearing under cause 49-G17-1006-FD-047677 on June 21, 2010, and was held in the Corrections Corporation of America (“CCA”) facility (a/k/a “Marion County Jail II”) during the pendency of that cause.

3. At the initial hearing on June 21, 2010 (in relevant part), Defendant was ordered to have no contact with the alleged victim, Santana Tolden.

4. On August 4, 2010, Defendant, by notice, set taped statements for witness, Bessie Bland, and alleged victim, Santana Tolden. Deputy Prosecuting Attorney Austin Shadle had both notices sent to Ms. Bland (Santana’s grandmother), because said counsel believed the Department of Child Services had placed Santana with his grandmother on an emergency basis. However, both Ms. Bland and Santana failed to appear at the August 4, 2010 taped statement. Afterward, DPA Austin Shadle received returned envelopes from the U.S. Postal Service with an indication that Ms. Bland no longer lived at the same address.

5. Therefore, Defendant reset the taped statements for August 18, 2010. And so, DPA Austin Shadle had Santana and his mother, Rochelle Tolden, hand served with subpoenas for Santana to attend the taped statement. Ms. Tolden was hand served with subpoenas by Department of Child Services Family Case Manager, Marianne Teixeira, and IMPD Detective, Julie Dutrieux. However, on August 18, 2010, Santana and his mother, Ms. Tolden, failed to appear for the second time.

6. Recorded telephone calls from Defendant, Danny Leflore, to Rochelle Tolden were researched, and DPA Shadle discovered Defendant had violated the no contact order (by indirect contact) with the adult witness, Bessie Bland (Rochelle Tolden's mother, Santana's grandmother). Additionally, the telephone conversations reveal that Defendant and Rochelle Tolden had conspired to make sure Bessie Bland did not come to Court and testify as a witness for the State. The State incorporates herein the following transcript [June 29, 2010]:

Defendant: "But this is all ... this is the whole thing: I go to court, back to court, August 17th."

[...]

Defendant: "If your momma and Tana Man don't come to Court, cause the lawyer already said, I go to Court August 17th and the 24th. If your momma and Tana Man ...

[...]

Rochelle Tolden: **"So, tell her, 'Don't go to court'?"**

Defendant: **"Yeah! Don't ... just don't ... stay the fuck away from down here ... around them, around them days. Just be over at Dora's or some-mother-fuckin-where. As long as her and Tana Man aint here in court on the 17th ..."**

Rochelle Tolden: "They don't got an address for her anyway. Mommy's movin' again. They don't got an address for her. So, you don't gotta worry about that [...]"

[...]

Defendant: "We don't ... we don't ... we don't need no attorney all ... all your momma ... as long as your momma and Tana Man aint here..."

Rochelle Tolden: "I'm gonna make sure of that! And I aint going even [indiscernible] me not come either, right?"

Defendant: “Yeah, it don’t matter about you comin’. Well, it does, but you don’t really got to. **Just make sure you got them some other place.**”

Rochelle Tolden: **“We be gone, right. Shit, we goin’ out of town for that weekend. Shit, they don’t know.”**

Defendant: **“Yep. Cause if they aint here on the 17th and the 24th, they can’t ... he said they’ll, on the 26th, they’ll just drop it.”**

[...]

[and on August 19, 2010]:

Rochelle Tolden: “I had to have Mommy [Bessie Bland] go and take Onnie to the clinic.”

Defendant: **“You gotta keep her the fuck the away from over there, man, ‘til this shit is over, man! I keep tellin’ you that!”**

Rochelle Tolden: “I know that, but I had to have her go to the clinic, because the lady is not rescheduling. They got a phone. She knows not to come here.”

Defendant: “You gotta keep this muther fuckin’ shit [indiscernible] ...”

[...]

7. Additionally, DPA Austin Shadle discovered Defendant had violated the no contact order (by indirect contact) with the child victim, Santana Tolden. Attached hereto and incorporated herein by reference as Exhibit “2” is a partial transcription of the relevant phone conversations between Defendant and Rochelle Tolden (with emphasis added to certain portions of the transcript). Indeed, Defendant’s explicit directives for Ms. Tolden to talk to Santana on Defendant’s behalf were a violation of the Court’s pre-trial no contact order. Additionally, Defendant’s actions amounted to obstruction of justice; and therefore, Defendant should not be able to benefit from conspiring with Ms.

Tolden to either prevent Santana from appearing in court, or if he must appear, to make Santana “shut down”.

8. Based upon Defendant’s misdeeds, on September 7, 2010, the Defendant was charged under cause 49-G16-1009-FD-068755 with Obstruction of Justice, a Class D Felony, and Invasion of Privacy, a Class A Misdemeanor. Attached here to and incorporated herein by reference as Exhibits “3” and “4” are copies of the Court 16 Probable Cause Affidavit and Charging Information, respectively.

9. On May 19, 2010, the Defendant was found guilty at a bench trial of all counts under cause 49-G16-1009-FD-068755. Attached hereto and incorporated herein by reference as Exhibit “5” is a copy of the Court 16 Abstract of Judgment finding Defendant guilty of these charges.

10. The State requests forfeiture, by Defendant’s wrong-doing, of Defendant’s rights which he may hold under the following: (1) Sixth Amendment of the U.S. Constitution (and/or similar confrontation rights under the Indiana Constitution); (2.) protections under the Indiana Rules of Evidence which may otherwise deem the evidence inadmissible; and (3.) any other procedural rule (including local rules), statute, common law or other bar or protection afforded Defendant in this matter. The State believes Defendant’s Sixth Amendment Right is of the highest, most important right or protection at issue. Therefore, if the State prevails on its forfeiture motion of Defendant’s Sixth Amendment Right, all lesser rights are also forfeited.

11. Pursuant to the decisions in Giles v. California, 554 U.S. 353, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008); Crawford v. Washington, 541 U.S. 36 (2004), Fowler v. State, 829 N.E.2d 459 (Ind. 2005), *cert.denied*, 547 U.S. 1193

(2006), Roberts v. State, 842 N.E.2d 1018 (Ind.Ct.App. 2008), and Boyd v. State, 866 N.E.2d 855 (Ind.Ct.App. 2007), the State would request the court permit the State of Indiana to use witness statements made to Department of Child Services investigator, Kenneth Appleby, and police officers about Defendant on the day of the alleged incident. The Defendant has forfeited his 6th Amendment right to confront witnesses against him, and has waived any such objections of admissibility under the Indiana Rules of Evidence, because he has committed the crimes of invasion of privacy and obstruction of justice, and Defendant's devious conduct was designed to prevent State's witnesses, Bessie Bland and Santana Tolden from testifying against him.

WHEREFORE, the State of Indiana respectfully requests that this motion be granted and that any and all appropriate orders be issued by the Court.

Respectfully submitted,

Megan Singleton,
Deputy Prosecuting Attorney
Domestic Violence Division

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon
counsel of record,

_____, by:

_____ postage pre-paid U.S. First Class Mail to:

_____.

_____ personal service (or service in open Court).

_____ placing in the public defender's mailbox on _____
_____, 2011.

Megan Singleton

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ORDER

The Court having read and carefully considered same, now finds that said Motion should be and is hereby

Granted _____.

Denied _____

Set for Hearing on _____

So ordered this _____ day of _____, 2011.

Judge, Marion Superior Court
Criminal Division, Room G21

Distribution:

State of Indiana: Megan Singleton
Defense Attorney of Record: Kevin Lawrence