

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY,
FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 2012-036059-CFAES

vs.

MICHAEL JON MORRISON,

Defendant.

**DEFENDANT'S OBJECTION TO PLAINTIFF'S
MOTION TO STRIKE DEFENDANT'S EXPERT WITNESS**

COMES NOW the Defendant, MICHAEL JON MORRISON, by and through his undersigned counsel, and objects to Plaintiff's Motion to Strike Defendant's Expert Witness as specious and contrary to established case law. As grounds therefor:

1. The Defendant was shot by Holly Hills Police Officer Armstrong on October 22, 2012.

2. The Defendant was arrested on October 22, 2012, and charged with Aggravated Assault on a Law Enforcement Officer (Firearm) on Officer Armstrong and Officer Kelly while allegedly engaged in the lawful performance of a legal duty.

3. The Defendant has been represented by several privately retained attorneys, (Tanya Cromartie, Donovan Huseman, Jr., Joan Anthony, David Damore, Allison Thero, and Steven Robinson).

4. None of the prior counsel effectively addressed Defendant's position that the police officers were not, in fact, engaged in the lawful performance of a legal duty at the time Officer Armstrong shot Michael Jon Morrison in the torso through a window of his own home.

5. The Defendant hired the undersigned attorney on or about January 20, 2016, more than three (3) years after the date of the incident and within about three (3) months of the naming of Defendant's Expert, Roy Bedard, who is an expert in police practice and procedure as evidenced by his Curriculum Vitae which has been provided to the Plaintiff.

6. A telephonic deposition of the Expert Witness was scheduled with Jackie Snow, Assistant to ASA Erica Kane, to take place on Friday, April 29, 2016. Ms. Kane subsequently

insisted on deposition by Skype, for which the Expert could not be available until Tuesday, May 3, 2016.

7. The State maintains that the disclosure of the expert witness is "untimely" and, because he would not be available to be deposed in Ms. Kane's preferred media until after the start of the trial, that the witness should be struck altogether.

8. The Defendant objects to Plaintiff's motion on the grounds that it is specious and unsupported by the case law in the State of Florida.

MEMORANDUM OF LAW

It is well established that the failure of a party to timely disclose a witness in discovery is not, in and of itself, a sufficient ground to exclude that witness. *See, Lucas v. State*, 376 So.2d 1149, 1151 (Fla. 1979). Moreover, excluding a defense witness because the defense failed to disclose the witness, or to timely disclose the witness, is a "severe sanction" that "should be a last resort reserved for extreme or aggravated circumstances." *See, Livigni v. State*, 725 So.2d 1150, 1151 (Fla 2d DCA 1998). In *Wilkerson v. State*, 461 So.2d 1376, 1379 (Fla. 1st DCA 1985), it was held that relevant evidence should not be excluded from the jury unless no other remedy suffices, and it is incumbent upon the trial court to conduct an adequate inquiry to determine whether other reasonable alternatives can be employed, such as ordering a recess or a continuance. *See, also, Tomengo v. State*, 864 So.2d 525 (Fla. 5th DCA 2004), where the 5th District Court of Appeals found that the trial court erred in excluding a late disclosed exculpatory defense witness.

WHEREFORE, the Defendant objects to the Plaintiff's Motion to Strike Defendant's Expert Witness and requests that the Motion to Strike be DENIED.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-portal to the Office of the State Attorney this 28th day of April, 2016.

s//A. Michael Bross//

A. MICHAEL BROSS, ESQ.

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