



3. Admissibility of “Consciousness of Guilt” Evidence or Evidence of Flight. That the State be permitted to present evidence demonstrating Gustavo and Alejandro Cantus’ consciousness of guilt. Evidence of flight is probative of guilt. *State v. Miller*, 231 Wis. 2d 447, ¶ 21, 605 N.W.2d 567 (Ct. App. 1999) (citation omitted). “Analytically, flight is an admission by conduct. The fact of an accused’s flight or related conduct is generally admissible against the accused as circumstantial evidence of consciousness of guilt and thus of guilt itself.” *Id.* (quotation omitted). Importantly, evidence of flight “need not occur immediately following commission of the crime.” *Id.* (citation omitted). Evidence of a defendant’s consciousness of guilt is not “other acts evidence.” *State v. Bauer*, 2000 WI App 206, ¶¶ 7–8, 238 Wis. 2d 687, 617 N.W.2d 902. “[T]he fact of an accused’s flight, escape from custody and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself.” *State v. Knighten*, 212 Wis. 2d 833, 840, 569 N.W.2d 770 (Ct. App. 1997); see also *State v. Quiroz*, 2009 WI App 120, ¶¶ 18–27, 320 Wis. 2d 706, 772 N.W.2d 710 (affirming as a reasonable exercise of a circuit court’s discretion to admit evidence of flight concerning the defendant’s absconding on bond for several years).

Here, Gustavo Cantu had two criminal cases pending in Brown County at the time of the alleged offense. In Brown County case 19CF1429, Gustavo Cantu allegedly failed to attend a court appearance on May 20, 2022, and the case was in warrant status until September 1, 2022, over three months later. Similarly, Gustavo Cantu also failed to appear for his May 20, 2022 hearing in Brown County case 19CF520. Further, it is noteworthy that Gustavo Cantu failed to appear despite the fact that a \$15,000 cash bond had been posted in 19CF1429, and another \$500 cash had been posted in 19CF520.

Likewise, Alejandro Cantu had two criminal cases pending in Brown County at the time of this alleged offense. In 20CF1673, Alejandro Cantu failed to appear for a scheduled status conference on May 9, 2022, despite the fact that a \$2500 cash bond had been posted on his behalf. In 21CF2124, Alejandro Cantu also missed a court appearance scheduled for May 9, 2022. Alejandro Cantu remained in warrant status until September 1, 2022, as well. This evidence is probative evidence of the defendants’ consciousness of guilt for the charged offense(s).

4. Prohibition of McMorris Evidence. That the defendant be prohibited from introducing evidence regarding what the defendant believed to be the turbulent and/or violent nature of the alleged victim by means of prior specific instances of violence within his knowledge of the time of the incident without first giving notice to the State. *State v. McClaren*, 2009 WI 69, 318 Wis. 2d 739, 767 N.W.2d 550; see also *McMorris v. State*, 58 Wis. 2d 144, 152, 205 N.W.2d 559, 563 (1973). Circuit courts have the authority to “exercise reasonable control” over the “presentation of evidence.” Wis. Stat. § 906.11(1). The Wisconsin Supreme Court has held that where a defendant seeks to introduce *McMorris* evidence in support of any self-defense claim, “the circuit court has the authority under Wis. Stat. § 906.11, in conjunction with Wis. Stat. § 901.04(3)(d), to order the defendant to disclose prior to trial any specific acts that he knew about at the time of the incident and that he intends to

offer as evidence so that admissibility determinations can be made prior to trial.” *McClaren*, 318 Wis. 2d 739, ¶ 28. To date, the State has not received notice of such evidence, if any.

5. Prior Convictions of Witnesses. That the parties be precluded from asking any witness whether the witness has any prior criminal conviction(s) or adjudication(s) of delinquency without the Court first conducting a hearing pursuant to Wis. Stat. § 906.09(3), outside the presence of the jury, or based upon prior stipulation of the parties as to the existence and number of convictions.

6. Prior Convictions of the Defendants. That, in the event the defendants testify, the State be permitted to inquire as to the number of the defendants’ prior convictions. See Wis. Stat. § 906.09. The State believes that Alejandro Cantu has seventeen (17) prior criminal convictions while Gustavo Cantu has thirty (30) prior criminal conviction and will provide the defendant with a copy of the defendant’s criminal record upon request.

7. Use of an “In-Life” Photograph of the Decedent. That the State be permitted to introduce an “in-life” photograph of Randall Denny at trial. Courts have upheld the admissibility of limited background testimony and “in-life” photographs regarding a homicide victim. See, e.g., *Commonwealth v. Degro*, 733 N.E.2d 1024, 1032 (Mass. 2000) (“The Commonwealth may ‘tell the jury something of the person whose life [has] been lost in order to humanize the proceedings...’ and a photograph may be admitted for this purpose.”) (citations omitted).

8. Prohibiting Argument in Opening Statement. The State notes that the purpose of an opening statement is to provide each party an opportunity to provide a preview of the evidence the jury is about to hear or see. See, e.g., *Beavers v. State*, 63 Wis. 2d 597, 606, 217 N.W.2d 307 (1974). Discussion as to the credibility of witnesses, elements of the offense or the law, the burden of proof, or otherwise commenting upon the legal burden which the State or the defendant might suffer constitutes argument. The appropriate place in a trial for argument and persuasion, including the discussion of law, elements of the offense, credibility of witnesses, weight of evidence and burden of proof, etc., is in the closing argument, not in the attorneys’ opening statements. The State therefore respectfully asks the Court to limit the opening statements to that of presenting a summary of the evidence which they reasonably anticipate the jury will hear.

9. Exception to Sequestration: Case Detective. That the State be excepted from any exclusion order entered by the Court with respect to the presence of District Attorney Investigator Brad Biller, formerly of the Green Bay Police Department, who acted as the lead detective in the investigation of the current case and whose presence is necessary to assist the State. See Wis. Stat. § 906.15(2)(c) (permitting the presence of a person shown by a party to be “essential to the presentation of the party’s cause”).

10. Exception to Sequestration: Victim's Family. That the State be excepted from any exclusion order entered by the Court with respect to the presence of the family of the victim, Randall Denny. The Wisconsin Statutes do not authorize victims from being included in a sequestration order prohibiting them from hearing testimony, unless excluding the victim is necessary to provide a fair trial for the defendant. Wis. Stat. § 906.15(2)(d). However, "the presence of a victim during the testimony of other witnesses may not by itself be a basis for a finding that exclusion of the victim is necessary to provide a fair trial for the defendant." *Id.* A "victim" includes Denny's family members and any person who resided with Denny. Wis. Stat. § 950.02(4)(a)4. The State has included several members of the victim's family on the witness list, including his father, his siblings and his daughter.

Date Signed: 09/04/24

Electronically Signed By:

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