



## ELEVENTH CIRCUIT DISCUSSES WHEN OFFICER DISCIPLINE CAN BE BROUGHT UP IN COURT

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On March 3, 2017, the Eleventh Circuit Court of Appeals decided the *United States v. Ray*<sup>i</sup>, in which the court discussed when an officer's discipline for misconduct can be used against the officer in court.

Officers stopped Glen Edward Ray, Jr., for a traffic violation. Ray was subsequently arrested and during a search incident to arrest, an officer found drugs in Ray's pocket. One of the officers on the scene as a back-up officer was Officer Beal. Officer Beal was subsequently forced to resign from the police department because of a pattern of stopping questioning citizens without reasonable suspicion. During the trial, Ray wanted to introduce evidence that Beal was terminated for making improper stops in violation of the Fourth Amendment. The district refused to allow Ray to present evidence regarding the reason for Beal's resignation.

On appeal, Ray argued that the district court violated his rights under the Fifth and Sixth Amendment by excluding evidence regarding the circumstance of Beal's resignation.

The court of appeals first examined legal rules pertaining to Ray's issue. The court stated

A district court's exclusion of a defendant's evidence violates the Compulsory Process and Due Process guarantees in four circumstances:

First, a defendant must generally be permitted to introduce evidence directly pertaining to any of the actual elements of the charged offense or an affirmative defense. Second, a defendant must generally be permitted to introduce evidence pertaining to collateral matters that, through a reasonable chain of inferences, could make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain. Third, a defendant generally has the right to introduce evidence that is not itself tied to any of the elements of a crime or affirmative defense, but that could have a substantial impact on the credibility of an important government witness. Finally, a defendant must generally be permitted to introduce evidence that, while not directly or indirectly relevant to any of the elements of the charged events, nevertheless tends to

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place the story presented by the prosecution in a significantly different light, such that a reasonable jury might receive it differently. *Id.* at 1363 (emphases added).<sup>ii</sup>

The court further noted that, while generally they should allow a defendant to present his or her theory of defense, the evidence used to do so must be relevant. The court discussed the concept of relevance and stated

For evidence to be relevant, "(1) [t]he evidence must be probative of the proposition it is offered to prove, and (2) the proposition to be proved must be one that is of consequence to the determination of the action." United States v. Glasser, 773 F.2d 1553, 1559 n.4 (11th Cir. 1985). Irrelevant evidence is inadmissible. Fed. R. Evid. 402. As for relevant evidence, it may be excluded if its probative value is substantially outweighed by the danger of "unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "It is the province of the trial judge to weigh any materiality against any prejudice and, unless the judge's reading is 'off the scale,' his discretion is not abused." United States v. Shelley, 405 F.3d 1195, 1201 (11th Cir. 2005).

The court then set out to examine the facts of Ray's case in light of the rules above. The court first analyzed the factors from *Hurn*. Regarding the first factor, they noted that Beal's forced resignation did not involve Ray's incident, but rather different incidents. Regarding the second factor, the court noted that the evidence Ray sought to present was not relevant under a reasonable chain of inferences, meaning Beal did not initiate the stop involving Ray and did not search and find the drugs. Further, Beal's misconduct did not involve planting drugs on suspects, which is the inference that Ray would hope to suggest to the jury. Regarding the third factor, since the government never called Beal as a witness, there was no need to impeach his credibility. Lastly, regarding the fourth factor, Beal did not make the stop or conduct the search. He was also not called by the government to testify. Incidentally, Ray subpoenaed Beal to testify but chose not to call him to the stand. Therefore, under *Hurn*, the Eleventh Circuit held that Ray's Fifth and Sixth Amendment rights were not violated.

The court of appeals also examined if the evidence was properly excluded because it was not relevant. Notably, Beal did not initiate or conduct the stop in Ray's case and did not conduct the search. Therefore, any evidence regarding Beal, on different cases, making improper Terry stops, is not relevant to anything he did in Ray's case.

Lastly, the court of appeals noted that even if they assumed that the evidence was relevant, the probative value was substantially outweighed by the danger of unfair prejudice against the government's case and confusion of the issue. The issue in the prosecution was whether Ray possessed 28 grams or more of cocaine, rather than how Beal made improper stops. The court noted that Ray did not even challenge the validity of the traffic stop in his case.

Therefore, the Eleventh Circuit affirmed the decision of the district court in excluding the evidence of Beal's misconduct in unrelated cases.

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<sup>i</sup> No. 16-11602 (11<sup>th</sup> Cir. Decided March 3, 2017 Unpublished)

<sup>ii</sup> *Id.* at 3-4