

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VERSUS

FILED

CAUSE NO. 2010-10,464(2)

AUG 16 2011

HUGH GREGORY WIGGINS

DEFENDANT

JOE W. MARTIN, JR. CLERK
By *[Signature]*

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE came before the Court on the Motion of the defendant to dismiss the charges against him or to suppress evidence obtained as a result of statements he made, and the Court, having heard the arguments of counsel, having considered the authorities submitted and having been further fully advised in the premises, finds that the defendant's Motion is well taken and should be granted.

The defendant was charged by indictment with the felony of accessory after the fact by aiding Patrick Gonzalez, Jr. in the concealment of weapons used by Gonzalez in a murder committed in the state of Florida. The weapons were recovered in Jackson County, Mississippi. The defendant filed a Motion to Suppress and to Prohibit Prosecution because of an offer of immunity extended to him by the State of Florida. In exchange for information he provided, the state of Florida agreed not to prosecute the defendant because of the statement he made or evidence recovered as a result of the statements he made.

At the outset, the Court notes that the State freely admits it is bound by the immunity offered to the defendant by the state of Florida. The only argument offered in support of the prosecution going forward is that the evidence (i.e., the weapons) to be used against the defendant would have inevitably been discovered even without the defendant's cooperation with

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the state of Florida. First, the Court understands that Florida's offer of immunity included both prosecution based on his statements and any evidence obtained as a result of his statements. Based upon the evidence presented at the hearing on this matter, the weapons were indeed recovered based upon the information given by the defendant.

The State herein merely attempts to circumvent the defendant's immunity by trying to establish that the evidence would have been discovered anyway, regardless of the defendant's cooperation. Even if that were so, the evidence was discovered as a result of the defendant's cooperation, and he is entitled to the immunity granted him by the state of Florida which the State concedes binds them as well. *Wright v. McAdory*, 536 So. 2d 897 (Miss. 1988).

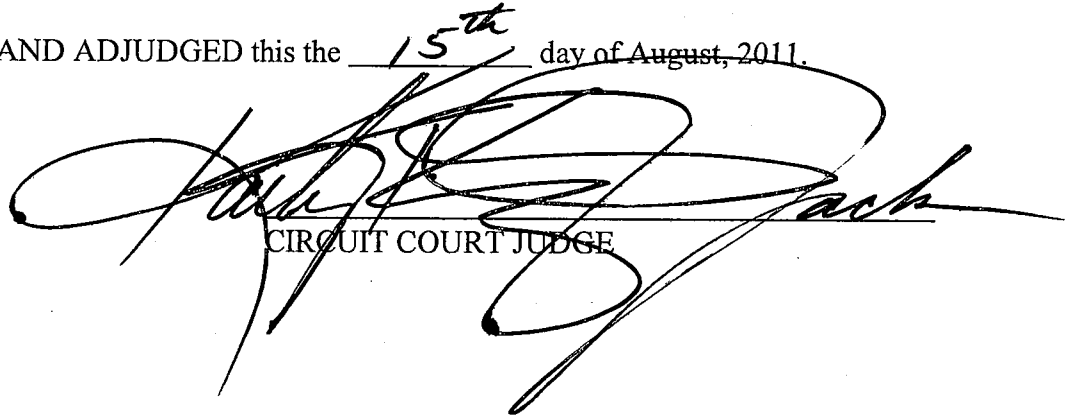
If the Court were to ignore the defendant's immunity from prosecution in this matter and consider the State's argument that the evidence would have inevitably been discovered, the Court reaches the same conclusion. In order for the inevitable discovery rule to apply the State must prove that they would have obtained the evidence through independent and constitutionally permissible means. See *Hill v. State*, 432 So. 2d 427 (Miss. 1983) and *Fraise v. State*, 17 So. 3d 160 (Miss. Ct. App. 2009).

Here, the State put on evidence detailing the investigation performed in the state of Florida. They attempted to show that the leads in that investigation would have eventually led to the location of the weapons. Based on the evidence presented in the hearing on this motion, the Court is not convinced that the convoluted leads and records discovered during the investigation would have inevitably led to the location of these weapons. Without the information provided by this defendant, the guns in question could have been destroyed or removed prior to any discovery by authorities based upon independent evidence. But for the information provided under the immunity agreement, there is no guarantee that the guns would ever have been located.

Without evidence to prove to the Court that these weapons would, in fact, have been recovered absent the assistance of the defendant, the law is clear that this evidence is not admissible against the defendant in the prosecution of the case against him. Without this evidence, the case against the defendant may not proceed. IT IS, THEREFORE,

ORDERED AND ADJUDGED that the defendant's Motion to Dismiss be, and the same if hereby, GRANTED. The charges against the defendant are dismissed with prejudice.

SO ORDERED AND ADJUDGED this the 15th day of August, 2011.



CIRCUIT COURT JUDGE