

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

*Rebecca Keaton*  
Court Rules: [www.cobbsuperiorcourtclerk.com](http://www.cobbsuperiorcourtclerk.com)  
Rebecca Keaton  
Clerk of Superior Court Cobb County

THE STATE OF GEORGIA

INDICTMENT NO.: 14-3124

v.

JUDGE STALEY

JUSTIN ROSS HARRIS

**MOTION IN LIMINE TO EXCLUDE**  
**SELF-SERVING HEARSAY STATEMENTS OF DEFENDANT (O.C.G.A. § 24-8-801)**

COMES NOW THE STATE OF GEORGIA and moves this Court to prohibit Defendant in the above-styled case from introducing any prior self-serving hearsay statements Defendant has made after June 18, 2014. The State shows as follows:

1.

On April 6, 2016, the State learned that Defendant made statements to Defense witness Dr. David Diamond regarding the day of June 18, 2014. It is unknown to the State when the statement was made by Defendant to Dr. Diamond, but there is no doubt it was on some date after June 18, 2014. On April 6, 2016, the State learned that Defendant made statements to Defense witness Dr. Bhushan Agharkar regarding the day of June 18, 2014. It appears that Defendant made said statements to Dr. Agharkar on or about February 9, 2016.

2.

Hearsay is any "statement, other than one made by the declarant while testifying at the trial or hearing, offered for the truth of the matter asserted." O.C.G.A. § 24-8-801(c). Consequently, unless a defendant, "testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is...otherwise admissible," the prior statement of a Defendant is inadmissible hearsay if sought to be introduced by Defendant. O.C.G.A. § 24-8-

801(d)(1)(a). Consistent with this rule, it is well-settled in Georgia law that a defendant may not introduce into evidence, whether oral or written, statements of a self-serving nature. Parker v. State, 276 Ga. 598, 598-99 (2003); See also McCartney v. State, 262 Ga. 156, 229-30 (1992); Grude v. State, 189 Ga. App. 901 (1989). While a defendant is allowed to declare his innocence in court, he is not allowed to avoid the opportunity with pre-trial declarations of innocence. Parker, 276 Ga. at 598. Moreover, the United States Court of Appeals for the Eleventh Circuit has held that, even where a Defendant elects to testify and subject himself to cross-examination, a defendant's pretrial self-serving declarations are inadmissible hearsay unless the extrajudicial statements fall within an exception to the 801 hearsay rule. United States v. Bradley, 644 F.3d 1213 (11<sup>th</sup> Cir. 2011).

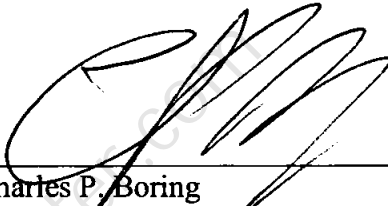
3.

In addition to the hearsay argument, the probative value of referencing the Defendant's statements to Dr. Diamond and Dr. Agharkar would be substantially outweighed by the danger of unfair prejudice pursuant to O.C.G.A. §24-4-403. In a recent Supreme Court of Georgia case, Harvey v. State, 2015 Ga. LEXIS 201 (Ga. Mar. 27, 2015), the State filed a motion in limine to prevent the defense from mentioning the defendant's interview until the statements themselves have been introduced. During opening statements, the defense improperly, and against direct order by the court, told the jury his client was cooperative during her interview, which was several hours long. The prosecutor immediately objected and moved for a mistrial, which was granted by the trial court. Id. The Supreme Court of Georgia held that the trial court did not abuse its discretion by granting the mistrial. Id. Should the defense in this case reference the Defendant's statements to Dr. Diamond and Dr. Agharkar in any way during the opening statement or through witnesses before the State has opened the door or the Defendant has

testified, the State would have “an additional burden of proving why [the State] didn’t present [the statement]” Id. Because the State does not seek to tender into evidence the statements to Dr. Diamond and Dr. Agharkar, the statements would be inadmissible hearsay unless and until the Defendant testifies or the State opens the door; if the Defendant is allowed to reference the statement before either happens, it would be substantially more prejudicial than probative.

WHEREFORE, the State moves this Court to prohibit Defendant in the above-styled case from introducing any hearsay statements of a self-serving nature made by Defendant and any reference to the statements at all.

Respectfully submitted, April 9, 2016.



---

Charles P. Boring  
Assistant District Attorney  
Cobb Judicial Circuit

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

THE STATE OF GEORGIA

v.

JUSTIN ROSS HARRIS

INDICTMENT NO.: 14-3124

JUDGE STALEY

CERTIFICATE OF SERVICE

I hereby certify that I have served the within and foregoing *Motion in Limine to Exclude Self-Serving Statements of Defendant* upon the Defendant and the attorney of record for Defendant by Electronic Mail as set forth below this day, April 9, 2016.



Charles P. Boring  
Assistant District Attorney  
Cobb Judicial Circuit

Office the Cobb County District Attorney  
70 Haynes Street  
Marietta, GA 30090  
770-528-3080