

Ronald M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA :
 :
v. : INDICTMENT NO.
 : CR-2000433
TRAVIS MCMICHAEL, :
 :
GREG MCMICHAEL, :
 :
Defendants. :

1.14
TRAVIS AND GREG McMICHAEL'S NOTICE OF INTENT TO
INTRODUCE EVIDENCE PURSUANT TO O.C.G.A. § 24-4-404(b)
AND UNIFORM SUPERIOR COURT RULE 31.1

Travis and Greg McMichael file this notice pursuant to O.C.G.A. § 24-4-404(b) and Uniform Superior Court Rule 31.1 and show this Honorable Court the following:

1.

O.C.G.A. § 24-4-404(b), provides "[e]vidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or

accident.” O.C.G.A. § 24-4-404(b). The Eleventh Circuit has characterized Rule 404(b) as a rule of inclusion and has noted that “the list provided by the rule is not exhaustive and the range of relevancy outside the ban is almost infinite.” United States v. Culver, 598 F.3d 740, 748 (11th Cir. 2010) (*quoting* United States v. Cohen, 888 F.2d 770, 776 (11th Cir.1989))(*see also* State v. Frost, 296 Ga. 296, 300 (2015) (explaining Rule 404(b) permits the admission in cases of all sorts of evidence of “other acts” relevant to any fact of consequence to the determination of the action, so long as the evidence is not offered to prove the character of a person in order to show action in conformity therewith).

Pursuant to O.C.G.A. § 24-4-404(b), Travis and Greg McMichael offer the following evidence because it shows Mr. Arbery’s modus operandi, his motive, his preparation, his plan, his identity, and his intent, and thus, his absence of mistake to: use running or jogging as a cover to commit crimes against persons and the community; to steal; to commit burglary; to commit forcible felonies; and to either flee when challenged, confronted, or questioned by citizens or law enforcement about his conduct and /or to commit forcible felonies against citizens or law enforcement who challenge, confront, or question his conduct.

2.

The following acts are relevant:

1. On March 14, 2013, security camera video from South Georgia Technical College reveals Mr. Arbery provided a friend a pair of wire cutters to use as a weapon as he, the friend, and others waited for another group of men to appear. When the other group arrived, Mr. Arbery and the others engaged in a violent fight;
2. On December 3, 2013, Glynn County Police reports reveal Mr. Arbery unlawfully concealed a handgun into his waistband and tried to gain admission into a high school basketball game. Officers noticed the butt of the gun protruding from his waistband and ordered for him to stop. Mr. Arbery ran from police, which resulted in two officers sustaining injuries: one because Mr. Arbery scratched his arm to get away; the other because the officer fell and sustained injuries during his chase of Mr. Arbery. Also, the Chief of Police reported that as he chased Mr. Arbery in his vehicle, Mr. Arbery reached into his waistband as if searching for his firearm. Police eventually surrounded Mr. Arbery and charged him. He was later convicted for several felony and misdemeanor charges, including gun possession

and obstruction;

3. On October 7, 2017, Glynn County Police body cam video reveals an officer spotted a sole car parked in a park area known for drug activity. The officer could not see who was in the car due to the occupant being inside the car and the car having tinted windows.

When he approached the car, the occupant, Mr. Arbery, got out. The officer asked Mr. Arbery for his ID. Within a minute and thirty seconds of the officer holding Mr. Arbery's license to check his background, Mr. Arbery said, "Nobody not even driving the car. What the fuck you coming over here for? The fuck you come over here and fuck with me for?" When the officer began to explain his purpose to Mr. Arbery, Mr. Arbery quickly changed his conduct, launched forward at the officer, crossing several feet to confront the officer, and threw out his arms. The officer had to put his arm out to stop Mr. Arbery from colliding with him. Mr. Arbery cursed the officer and then told the officer, "Bitch you hit me with that shit, bitch, you gonna be fucked up." This caused the officer to tell Mr. Arbery he was going to search him for weapons and a second officer to attempt to use a taser on Mr. Arbery. He was not arrested;

4. In June of 2018, 911 audio reveals Mr. Arbery's mother, Wanda Jones, called 911 due to Mr. Arbery's refusal to give Ms. Jones her car keys. She made the call from inside her car while Mr. Arbery stood outside her car. During her call to 911, she cautioned the operator that Mr. Arbery had a mental condition that had "escalated" over time. Additionally, Ms. Jones told the officer that Mr. Arbery might get violent with the officers due to his mental illness, if they were too confrontational with Mr. Arbery or tried to arrest him or take him into custody;
5. On August 21, 2018, Burke County witness reports and Burke County Office body cam video reveals Mr. Arbery was caught by a stay-at-home mom who saw him in her backyard looking into the windows of her cars. She called police who found Mr. Arbery at his grandmother's residence. Police officers arrived to give Mr. Arbery a trespass warning about his conduct and behavior. When confronted by the officers about the eye-witness report, he lied said he had "gone running in the street," and then became aggressive, confrontational, and repeatedly threatened that he would "whip the officer's ass" if they didn't leave him alone. He was not arrested;

6. On October 23, 2018, Burke County reports and Burke County officer body cam video reveal Mr. Arbery and two juveniles were confronted in a vacant mobile home by the Burke County Sheriff's Office. Mr. Arbery ran when confronted by the authorities. He was later caught and lied, stating he was just out running, when asked about being in the mobile home. He was charged with misdemeanor obstruction for running when given lawful commands to stop;
7. On December 1, 2018, Glynn County officer body cam video reveals Mr. Arbery was arrested, charged, and later convicted for felony shoplifting by entering a store and attempting to steal a television;
8. In 2019 and 2020, witness interviews reveal Mr. Arbery was seen by his own neighbors, removing screen from windows and trying enter their homes through the windows. When confronted by the neighbors about his conduct and behavior, he appeared "nervous or agitated" and "trying to figure out where to go." Then he said he was interested in buy the house but "took off running." On the second occasion, the home owner observed Mr. Arbery trying to gain entrance through a door. They again tried to talk to Mr. Arbery but he would not speak or say anything, he simply ran away;

9. In 2019 and 2020, local convenience store witness interviews reveal Mr. Arbery became known as “the jogger” for his repeated conduct and behavior of running up, stretching in front in, and then entering several convenience stores where he would grab items and run out before he could be caught; and

10. In 2020, witness cell phone video reveals Mr. Arbery was confronted at a convenience store by employees about his theft conduct and behavior. Mr. Arbery, cornered about his thefts, chose to fight a man who worked on location at the adjacent truck stop who tried to confront him about it.

3.

While counsel believes the following additional acts are intrinsic to the events on February 23, 2020 and explain why Mr. Arbery ran and why Travis and Greg McMichael pursued Mr. Arbery, and are, thus, not subject to the notice requirements of O.C.G.A. § 24-4-404(b) and USCR 31.1, counsel includes them in this notice out of an abundance of caution:

1. On October 25, 2019, home surveillance video at 220 Satilla Drive captures Mr. Arbery at night and in the dark canvassing the interior property and valuables contained within;

2. On November 18, 2019, home surveillance video at 220 Satilla Drive captures Mr. Arbery at night and in the dark canvassing the interior property and valuables contained within;
3. On February 11, 2020, witness testimony, 911 recordings, and home surveillance video at 220 Satilla Drive details that Mr. Arbery was once again canvassing the interior and exterior property and valuables at night and that he fled after police were called.

WHEREFORE, Travis and Greg McMichael request that this Honorable Court hold an evidentiary hearing so that they can meet their burden for the aforementioned reasons.

December 30, 2020.


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Certificate of Service

I hereby certify by my signature that I have served a copy of **1.14 Travis and Greg McMichael's Notice of Intent to Introduce Evidence Pursuant to O.C.G.A. § 24-4-404(b) and Uniform Superior Court Rule 31.1** on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it to District Attorney Joyette Holmes, by emailing it to:

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