

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

vs.

CURTIS J. REEVES,
Defendant.

Case No: CRC1400216CFAES

Division: 1

FILED IN OPEN COURT
THIS 27 DAY OF February 2017
PAULA S. O'NEIL, CLERK & COMPTROLLER
PASCO COUNTY, FLORIDA

BY [REDACTED] D.C.

**DEFENDANT'S RESPONSE TO STATE'S FIRST AND SECOND MOTIONS IN LIMINE
TO EXCLUDE EVIDENCE GENERATED BY MICHAEL KNOX**

The Defendant, CURTIS REEVES, by and through undersigned counsels, hereby files this Response to (1) State's [First] Motion in Limine to Exclude Evidence Generated by Michael Knox and (2) State's Second Motion in Limine to Exclude Evidence Generated by Michael Knox, and as grounds states as follows:

INTRODUCTION

The State has filed two motions wherein it seeks exclusion of Defense expert Michael Knox's photographs of:

- (1) mannequins within Theater 10 of the Cobb Grove Theater (88 photographs that are the subject of the State's First Motion);
- (2) the ceiling lights within Theater 10 (5 photographs that are the part-subject of the State's Second Motion); and
- (3) the seating area and other portions of Theater 10 (31 photographs that are the part-subject of the State's Second Motion).

The State's contentions are that, among other things: (i) the lighting conditions in the mannequin photographs do not "fairly and accurately represent[] the lighting at the time of the shooting" and that the lighting scenarios will not aid or will confuse the fact-finder; State's First Motion, at 1-2; (ii) "[a] photograph taken with a camera lens cannot substantially depict the amount of light that a

human eye can detect and translate into sight;” *State’s First Motion*, at 2; and whether (iii) “a camera lens [can] duplicate what two human eyes can collectively gather, interpret, and translate into what we see in any given lighting situation?” *State’s Second Motion*, at 3.

As detailed below, all of the above-referenced photographs are admissible under the governing standards regarding evidence constituting video- or photographic-experiments.

MEMORANDUM OF LAW

As a preliminary matter, the State’s claim that “a photograph taken with a camera lens cannot substantially depict the amount of light that a human eye can detect and translate into sight” is an esoteric and irrelevant question. Photographs are admissible if they are a fair and accurate representation of the scene that they depict. *Simmons v. Roorda*, 601 So. 2d 609 (Fla. 2d DCA 1992).

Photographic or video reenactments are admissible if they are “conducted under sufficiently similar circumstances.” *Shennett v. State*, 937 So. 2d 287, 292 (Fla. 4th DCA 2006) (citations omitted) (emphasis added). If evidence of an experiment is deemed “sufficiently similar” to the actual event, the degree of similarity between the two is more appropriately directed toward the weight of the evidence rather than admissibility. *Id.* at 292, citing *Johnson v. State*, 442 So. 2d 193, 196 (Fla. 1983). Given this legal standard, whether “a camera lens [can exactly] duplicate what two human eyes can collectively gather, interpret, and translate into what we see in any given lighting situation” is beside the point. The sole question is whether the camera reproduced the event or item at issue in a sufficiently similar manner. *Id.* Further, sufficient similarity need not be established if the experiment is offered for a material purpose other than recreating the event in question. *Mitsubishi Motors Corp. v. Laliberte*, 52 So. 3d 31, 38 (Fla. 4th DCA 2010).

Given these legal standards for admissibility, the photographs of the mannequins within

Theater 10 of the Cobb Grove Theater are admissible. First, they were taken under sufficiently similar circumstances. At the time these photographs were taken, the lighting conditions were set at the same levels as when the shooting occurred on January 13, 2014. When the photographs were taken, an action movie preview (Star Wars) was played on the movie screen. Said movie preview emitted light in a sufficiently similar manner as to the movie previews played on January 13, 2014.

The State's claim that "Mr. Knox did not attempt to reenact or recreate the exact lighting condition at the time of the shooting... [n]or did he attempt to take photos representing what he believed to be substantially similar to the lighting conditions at the time of the shooting" is disproven by Mr. Knox's deposition. Mr. Knox made clear that the photographs are "a representation of what the lighting conditions are like under those circumstances when you have a person that's standing or in the various positions that I had the mannequins in. It's not intended to be this is what Mr. Reeves saw. **There's no way to duplicate that.**" Michael Knox Depo. Tra. at 207 (emphasis added). The State's characterization of Mr. Knox's statement that there is no method to exactly and perfectly duplicate the lighting conditions from the event date – the prosecution said he failed to "attempt to take photos representing what he believed to be substantially similar to the lighting conditions at the time of the shooting," State's First Motion, at 2 - is misleading and irrelevant. The lighting conditions used by Mr. Knox in the mannequin photographs were sufficiently similar, and are therefore admissible.

Additionally, the mannequin photographs are admissible to demonstrate the silhouetting effect. The silhouetting effect refers to the emission of light from the movie screen from behind the body of the person/mannequin. As the photographs depict in various ways, the emission of light from behind the body of the mannequin affects a viewer's ability to detect and perceive details on the face and torso of said body. Contrast detection, which people rely upon to visually distinguish objects and people, is affected by this silhouetting effect. Accordingly, on this alternative ground

the 88 mannequin photographs are admissible. *Mitsubishi*, at 38.

The 5 photographs of the ceiling lights from within Theater 10 are also admissible because they constitute a fair and accurate representation of the scene in which they depict. In particular, they accurately depict the distance between the bulbs. *Mitsubishi*, at 38.

The 31 photographs of the seating area are admissible because many of them do depict the interior of Theater 10 with lighting conditions set at the brightness level as when the shooting occurred - and are therefore sufficiently similar. *Shennett*, 937 So. 2d at 292. The remainder of the photographs from this group are admissible as they provide the fact-finder reference points as to the possible lighting levels within Theater 10.

CONCLUSION

Given all of the above, the State's two Motions in Limine should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this Defendant's Response to State's First and Second Motions in Limine to Exclude Evidence Generated by Michael Knox, by hand delivery to Office of the State Attorney for the Sixth Judicial Circuit, c/o Glenn Martin, this 27rd day of February 2017.

/s/:Richard Escobar

Richard Escobar, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rescobar@escobarlaw.com
Florida Bar No. 375179
Attorney for Defendant

/s/:Dino M. Michaels

Dino M. Michaels, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
dmichaels@escobarlaw.com
Florida Bar No. 526290
Attorney for Defendant

/s/:Rupak R. Shah

Rupak R. Shah, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rshah@escobarlaw.com
Florida Bar No. 112171
Attorney for Defendant