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

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.
_____ /

Case No.: CRC-1400216FAES

Division: 1 (J. Barthle)

MOTION TO DISMISS BASED ON STATUTORY IMMUNITY PURSUANT TO SECTIONS 776.032(1), (4), FLA. STAT. (2017), 776.012(1)-(2), FLA. STAT. (2013), AND 776.013(3), FLA. STAT. (2013)

COMES NOW, the Defendant, CURTIS J. REEVES, by and through undersigned counsels, pursuant to Florida Rule of Criminal Procedure 3.190(b) and sections 776.032(1) and (4), Fla. Stat. (2017), 776.012(1)-(2), Fla. Stat. (2013), 776.013(3), Fla. Stat. (2013), and *Nelson v. State*, 853 So. 2d 563 (Fla. 4th DCA 2003), and hereby moves this Honorable Court to find the Defendant immune from criminal liability and prosecution, and as grounds therefore states as follows:

PROCEDURAL HISTORY

The Legislature's recent amendment to Chapter 776 vigorously reinforces the Defense's claim that he is entitled to pretrial immunity from prosecution. On June 9, 2017, the Florida Legislature passed, and the Governor of the State of Florida approved, Chapter 2017-72, §1, Laws of Florida. That law created subsection (4) of Florida Statute 776.032, which states:

> In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

§776.032(4). Section 2 of Chapter 2017-72 states that "[t]his act shall take effect upon becoming a law."

Given the Legislature's clear intention of passing Chapter 2017-72 to remedy and correct the Florida Supreme Court's erroneous conclusion concerning both the quantum of proof and the allocation of said burden under section 776.032, Fla. Stat. (2011), as well as the applicable case law regarding retroactive application of procedural and remedial laws, Chapter 2017-72 and section 776.032(4), Fla. Stat. (2017) applies to incidents preceding June 9, 2017.

A. The Supreme Court in *Bretherick* erroneously interpreted Section 776.032, Fla. Stat. (2011) to place the burden on defendants to prove entitlement to immunity from prosecution

In 2005, what is commonly referred to as the "Stand Your Ground" amendments ("SYG") was passed unanimously by the Florida Senate and overwhelmingly by the House of Representatives. *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008); S.J. 8, Reg. Sess., at 262-63 (Fla. 2005) (39 yeas to 0 nays in the Senate); H.R. J. 12, Reg. Sess., at 342-43 (Fla. 2005) (94 yeas to 20 nays in the House). The SYG law created sections 776.032 (immunity from criminal prosecution and civil action for justifiable use of force) and 776.013 (Home protection; use of deadly force; presumption of fear or great bodily harm) while amending sections 776.012 (use of force in defense of person) and 776.031 (defense of others).

The "heart of the Stand Your Ground amendments" was section 776.032, Fla. Stat. (2013). *Hill v. State*, 143 So. 3d 981, 984 (Fla. 4th DCA 2014). "The plain language of section 776.032 grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial." *Dennis*, at 462 (emphasis added). During a pretrial evidentiary hearing on a request for immunity, the trial court "must resolve the matter by confronting and weighing *only*

factual disputes." *Peterson*, at 29 (emphasis added).

The Florida Supreme Court, tasked with the issue of ascertaining which burden of proof best effectuates the intent of the Legislature, determined that the version of section 776.032 in effect at that time placed the burden on the defendant to establish - by a preponderance of the evidence - entitlement to immunity from prosecution. *Bretherick v. State*, 170 So. 3d 766, 774-79 (Fla. 2015). The majority opinion in *Bretherick* further concluded:

> [t]hat placing the burden of proof on the defendant to establish entitlement to Stand Your Ground immunity by a preponderance of the evidence at the pretrial evidentiary hearing, rather than on the State to prove beyond a reasonable doubt that the defendant's use of force was not justified, is consistent with this court's precedent and gives effect to the legislative intent.

Id. at 779 (emphasis added).

Then-Justice Charles Canady (now Chief Justice), joined by Justice Ricky Polston, dissented because they contended that a proper interpretation of section 776.032 yields the conclusion that the burden should be placed on the prosecution to prove disentitlement. The dissenters argued that the majority was, simply put, ignoring the Legislature's intent:

> [b]y imposing the burden of proof on the defendant at the pretrial evidentiary hearing, the majority substantially curtails the benefit of the immunity from trial conferred by the Legislature under the Stand Your Ground law. There is no reason to believe that the Legislature intended for a defendant to be denied immunity and subjected to trial when that defendant would be entitled to acquittal at trial on the basis of a Stand Your Ground defense. But the majority's decision here guarantees that certain defendants who would be entitled to acquittal at trial will nonetheless be deprived of immunity from trial.
>
> The majority's argument that the burden should be placed on the defendant because it is easier for a defendant to prove entitlement to immunity than it is for the State to disprove entitlement to immunity has no more force in the context of a pretrial evidentiary hearing than it does in the context of a trial, where it admittedly has no application. That argument has no basis in the text of the Stand Your Ground law. Similarly, the majority's concern that placing the burden of proof on the State in the pretrial evidentiary hearing will potentially result in "two full-blown trials" — by

> no means a specious concern — cannot justify curtailing the immunity from trial under the Stand Your Ground law for those individuals whose use of force or threat of force is legally justified under the governing statutory standard. Practical problems raised by the Stand Your Ground law are a matter for the Legislature to consider and resolve.

Bretherick, at 779-80 (emphasis added).

Thus, both the majority and dissenting opinions in *Bretherick* concluded that the *Legislature's intent* determines both the burden of proof and the party that bears said burden at a pretrial immunity hearing under the SYG law.

However, in 2015 the dueling opinions came to different conclusions as to the Legislature's intent.

B. Chapter 2017-72 is passed to remedy the *Bretherick* opinion's error

The legislative history of Chapter 2017-72 clearly establishes that the law was passed to correct the *Bretherick* majority opinion's erroneous conclusion that Section 776.032 places the burden of proof upon the defendant. First, the Senate Judiciary Committees' staff analysis specifically notes the majority and dissenting opinions in *Bretherick v. State* and then concludes that the bill shifts the burden of proof to the state in pretrial hearings under section 776.032. *Self-defense Immunity*, CS/SB 128, February 7, 2017, *1, 7 (Senate Judiciary Committee Bill Analysis and Fiscal Impact Statement).

Supporters of Chapter 2017-72 also expressly and specifically stated that the bill was to correct the *Bretherick* court's mistaken interpretation of section 776.032, Fla. Stat. (2011). For example, at a Senate Rules Committee meeting on February 9, 2017, Senator Rob Bradley, a sponsor of Chapter 2017-72, specifically and expressly stated that the bill was intended to remedy the *Bretherick* ruling's error:

> One would naturally assume that the government has the burden of proof in [a]

> immunity hearing [under section 776.032]. However, in 2015 the Florida Supreme Court held otherwise. In Bretherick v. State, in a five to two decision the Florida Supreme Court ruled that the burden of proof for self-defense rested on the accused [-] not the government. Two conservative judges dissented on the Florida Supreme Court. **This bill corrects the error of the Bretherick decision**.[1]

During deliberations at the House of Representatives, the following April 7, 2017 exchange occurred between Representative Robert Asencio and Representative Bobby Payne, the bill's House sponsor:

> Rep. Ascensio: So, can you explain briefly the intent. Is it to ease the burden of those who are going to claim this defense?
>
> Rep. Payne: No, I would disagree with that in saying it's not easing the burden [-] it's putting the burden back where it should belong based on our constitutional beliefs and, that is, everyone is innocent until proven guilty and that burden is on the state.
>
> Rep. Ascensio: I guess a better way of asking is [-] for those who are justified or those who are claiming to be justified in using force whether it is deadly or less than deadly… is this bill supposed to make it easier on them so they don't go through the burden of prosecution, or I'm sorry, pretrial and posttrial?
>
> Rep. Payne: Yes, this bill is based on the original intent of the law in 2005, [which] was to shift the burden to the state. It was not intended to be another form of an affirmative defense but a true immunity.
>
> Rep. Ascensio: So this is just codifying what was in the statute as self-defense, am I correct?
>
> Rep. Payne: Yes this is putting the intent back where it was, or excuse me, putting the burden back **where it was intended** by the 2005 law.[2]

On April 5, 2017, Representative Gayle B. Harrell, who played a role in the passage of Chapter 2005-27, reflected and posited that:

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1 CS/SB 128, 02/09/2017 Senate Rules Committee, https://thefloridachannel.org/videos/2917-senate-rules-committee [timestamp: 59:41] (emphasis added)

2 CS/CB Second Reading, 04/04/2017 House Session, https://thefloridachannel.org/videos/4417-house-session/ [timestamp: 3:25:30] (emphasis added)

> The burden of proof is on the state. You do not have to prove your innocence. You – we are so blessed to live in this country where we are innocent – innocent – innocent until proven guilty. That's what this bill is about. The burden of proof. I was here in 2005 when we passed the very first – **the first bill that this is really trying to correct. This bill is trying to correct what the court has overruled…and really has legislated from the bench on this bill**. I was here and I was very much a part of the conversation on the intent of that bill. There is no doubt that the intent of that bill was to make sure that the state had the burden of proof, and that when you used force to protect yourself, that the burden of proof was on the state to say that you committed a crime. **This [i.e. Chapter 2017-72] is a correction. This bill is simply a correction of a misinterpretation of what the intent was in 2005**.[3]

Against this overwhelmingly clear legislative intent to correct the error of the Florida Supreme Court, Chapter 2017-72 was passed by the Legislature and signed into law by the Governor.

C. The prosecution now has the burden of disproving a claim of justifiable use of force by clear and convincing evidence

The amendment to Chapter 776 has critical and significant consequences – all of which support the granting of pretrial immunity. The prosecution now "bears the burden of disproving, by clear and convincing evidence, a facially sufficient claim of self-defense immunity in a criminal prosecution." *Martin v. State*, 2018 WL 2074171, *1 (Fla. 2d DCA May 4, 2018).

The clear and convincing evidence standard is a vigorous, and not easily satisfied, one. The clear and convincing evidence standard "entails both a qualitative and quantitative standard." *In re Watson*, 174 So. 3d 364, 368 (Fla. 2015). As our Supreme Court determined, the clear and convincing evidence standard cannot be satisfied unless and until:

[1] "the evidence must be found to be credible," AND

[2] "the facts to which the witnesses testify must be distinctly remembered," AND

[3] "the memories of the witnesses must be clear and without confusion," AND

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3 CS/CB 128 Third Reading 04/05/2017 House Session, https://thefloridachannel.org/videos/4517-house-session/ [timestamp: 3:11:50] (emphasis added)

[4] "the testimony must be precise and explicit," AND

[5] "the witnesses must be lacking in confusion as to the facts in issue," AND

[6] "the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy."

Watson, at 368.

Appellate court decisions provide illustrations of how and when a fact is – or is not - proven by clear and convincing evidence. For example, in *In re Davey* the Supreme Court found that because the testimony of three witnesses (as to "when" certain meetings took place and "what transpired" during those meetings) was "direct," "unequivocal," and "consistent," the *substance* of that aforementioned testimony was established by clear and convincing evidence. 645 So. 2d 398, 404 (Fla. 1994)[4]. The *Davey* court also found that other witness testimony was "indecisive," "confused," and "contradictory" and was therefore insufficient to support a finding by clear and convincing evidence.

The prosecution at every pretrial immunity hearing in the State of Florida now has the significant burden of proving the material facts necessary to disprove a claim of justifiable use of deadly force by clear and convincing evidence. That means each and every material fact which the State must to prove to defeat the immunity request must be, among other things, credible,

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4 *In Re Davey* also features an example of where witness testimony was deemed to be "indecisive," "confused," and "contradictory" – which the Supreme Court determined was "a far cry from the level of proof required to establish a fact by clear and convincing evidence." *Id.*, at 404-05. One of the factual issues in *Davey* was whether two witnesses, named Cooper and Douglass, saw a particular negotiable instrument (i.e. a check). Cooper testified that he could not certify that he ever saw the check. *Id.*, at 404-05. At another part of his testimony, he contradictorily and "inexplicably said the exact opposite." *Id.*, at 405. Douglass also contradictorily said "I don't know that I ever saw [the check]" and "I think I did see a copy of it." Given these contradictions and equivocal statements, the testimony was insufficient to support a finding by clear and convincing evidence that the negotiable instrument actually existed. *Id.*

distinctly remembered, precise, explicit, highly probable, consistent, and based on unequivocal proof.

INTRODUCTION

On January 13, 2014, a forty-three (43) year old Chad Oulson verbally and physically attacked a seventy-one (71) year old elderly man named Curtis J. Reeves. Oulson subjected Mr. Reeves to an escalating and terrifying barrage of curse words, screaming, menacing behavior, threats to cause serious bodily harm, and then, two physical attacks. Oulson unleashed his fury and violent rage on Mr. Reeves for a trivial reason: the seventy-one (71) year old had asked the forty-three (43) year old to stop using his cellular phone during the viewing of movie previews in a theater. Mr. Reeves, who shot Oulson before he could fully complete a third attack, was charged with Murder in the Second Degree.

To victimize an elderly person is to violate a cherished tenet and principle of our society. Crimes against the elderly are, like those against children and the disabled, offenses against a physically vulnerable segment of the population.

The Florida Legislature, in recognizing that the senior citizens of our state need special protections, passed laws substantially enhancing the criminal penalties for offenders who physically attack someone sixty-five (65) years of age or older. The Legislative findings in support of these laws reflect the reality that the elderly are susceptible to serious injury, and protecting them is consistent with our societal values. Representative Sally A. Heyman, in supporting a bill that imposed a mandatory minimum three (3) year term of incarceration for Aggravated Assault or Aggravated Battery on a Person 65 Years of Age or Older, noted that the elderly were a "vulnerable population" and that enhanced penalties are needed because of what such offenses "do to [an elderly person's] lifespan as well as… their health in the lifetime they have left." *See Assault*

or Battery on Persons 65 Years of Age or Older, H.B. 1393, House Floor Debate, February 5, 2002 (Statement of Rep. Sally A. Heyman). Representative Ronald A. Silver in 1989 stated that the people that attack elderly persons are in the "bottom part of our society because they are taking advantage of people who cannot protect themselves." *See Assault or Battery on Persons 65 Years of Age or Older, H.B. 1029, House Floor Debate, May 25, 1989* (Statement of Rep. Ronald A. Silver).

These Legislative findings put Chad Oulson on notice that an attack against an elderly person is both an attack on a physically vulnerable member of our society and a violation of a number of criminal statutes. The laws that were passed also made it clear to Oulson that targeting someone in this segment of the population would result in harsh and severe criminal penalties.

The totality of the circumstances establishes that Oulson had intimidated, verbally attacked, and physically battered Mr. Reeves. In doing so, Oulson had committed a number of felony offenses against Mr. Reeves. These felony offenses include:

1. Aggravated Assault on a Person 65 Years of Age or Older (Deadly Weapon) (§ 784.08 (2)(b), Fla. Stat. (2013));

2. Aggravated Assault on a Person 65 Years of Age or Older (Commit a Felony Upon the Victim) (§ 784.08 (2)(b), Fla. Stat. (2013));

3. Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon) (§ 784.08 (2)(a), Fla. Stat. (2013));

4. Attempted Aggravated Battery on a Person 65 Years of Age or Older (Great Bodily Harm) (§§ 777.04 (1) & 784.08 (2)(a), Fla. Stat. (2013));

5. Attempted Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon) (§§ 777.04 (1) & 784.08 (2)(a), Fla. Stat. (2013));

6. Aggravated Assault (Deadly Weapon) (§ 784.021, Fla. Stat. (2013));

7. Aggravated Assault (Commit a Felony Upon the Victim) (§ 784.021, Fla. Stat. (2013));

8. Aggravated Battery (Deadly Weapon) (§ 784.045, Fla. Stat. (2013));

9. Attempted Aggravated Battery (Deadly Weapon) (§§ 777.04 (1) & 784.045, Fla. Stat. (2013));

10. Attempted Aggravated Battery (Great Bodily Harm) (§§ 777.04 (1) & 784.045, Fla. Stat. (2013));

11. Assault on a Person 65 Years of Age or Older (§ 784.08(2)(d), Fla. Stat. (2013));

12. Battery on Person 65 Years of Age or Older (§ 784.08 (2)(c), Fla. Stat. (2013)); and

13. Robbery by Sudden Snatching (§ 812.131, Fla. Stat. (2013)).

Having already been victimized by the decedent's criminal conduct, Mr. Reeves developed a well-founded and reasonable belief that firing his weapon was necessary to prevent serious physical injury, the commission of a forcible felony, or death. The facts and circumstances also establish that Mr. Reeves reasonably believed that deadly force was necessary to prevent Oulson from committing the felony offenses of:

1. Aggravated Assault on a Person 65 Years of Age or Older (§ 784.08 (2)(b), Fla. Stat. (2013));

2. Aggravated Battery on a Person 65 Years of Age or Older (§ 784.08 (2)(a), Fla. Stat. (2013));

3. Aggravated Assault (§ 784.021, Fla. Stat. (2013));

4. Aggravated Battery (§ 784.045, Fla. Stat. (2013));

5. Assault on Person 65 Years of Age or Older (§ 784.08(2)(d), Fla. Stat. (2013); and

6. Battery on Person 65 Years of Age or Older (§ 784.08 (2)(c), Fla. Stat. (2013).

Mr. Reeves should be granted immunity from criminal prosecution under sections 776.032 (1), 776.013 (3), and 776.012 (1)-(2), Fla. Stat. (2013), because he reasonably believed using deadly force was necessary to protect himself from serious bodily injury, a forcible felony, and/or

death.

Mr. Reeves should further be granted immunity from prosecution for the Aggravated Battery charge involving Mrs. Oulson's injury. The rule in Florida is that "if the killing of the party intended to be killed would, under all the circumstances, have been excusable or justifiable homicide upon the theory of self-defense, then the unintended killing [or injury] of a bystander, by a random shot fired in the proper and prudent exercise of such self-defense, is also excusable or justifiable." *Nelson v. State*, 853 So. 2d 563, 565 (Fla. 4th DCA 2003) (quoting *Brown v. State*, 84 Fla. 660, 94 So. 874, 874 (1922)). For these reasons, Mr. Reeves should be granted immunity for both charges.

STATEMENT OF FACTS

This Court must fully consider Mr. Reeves' age – he was seventy-one (71) years old at the time of this incident - and his understanding and knowledge of his physical limitations. Mr. Reeves knew that a physical attack by a taller, younger, and stronger male made him dangerously susceptible to serious bodily harm or death. *Dowe v. State*, 39 So. 3d 407, 410 (Fla. 4th DCA 2010); *Filomeno v. State*, 930 So. 2d 821, 822-823 (Fla. 5th DCA 2006); *see also In re. Std. Jury Instr. in Crim. Cases*, 976 So. 2d 1081, 1084 (Fla. 2008) ("to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real") (emphasis added). The aging process makes elderly persons particularly vulnerable to serious and potentially irreparable injury from physical impacts. The elderly, as they grow older, are in the best position to understand how their abilities have diminished and deteriorated. Mr. Reeves knew this because he was a senior citizen himself. He had undergone and experienced

significant health and body changes in the years before the incident.

Mr. Reeves' life of devotion to his wife, children, law enforcement, friends, community, and church is also relevant to the issues before this Court. Mr. Reeves was a dedicated public servant who protected his community as a twenty-seven (27) year veteran of the Tampa Police Department. After he retired from the Tampa Police Department, he continued to protect others in the community by serving as the Director of Security of Busch Gardens. Mr. Reeves' walked into the Cobb Grove Theater with a reputation for being caring, compassionate, calm and respectful. *Johnson v. State*, 108 So. 3d 707, 709-710 (Fla. 5th DCA 2013). The reputation evidence will establish that he did not act with ill will, spite, or hatred, and that Mr. Reeves reasonably believed he had to discharge his weapon to prevent serious bodily injury, the commission of a forcible felony, or death.

This Court must also thoroughly consider Mr. Reeves' extensive law enforcement training and experience when conducting the necessary factual and legal inquiry into whether his discharge of the firearm was legally justified. This inquiry is necessary because Mr. Reeves' perceptions of Oulson's unexpected behaviors, unpredictable conduct, and escalating violence were inextricably influenced by his decades of work as a law enforcement officer. *Dowe*, at 410; *Mobley v. State*, 132 So. 3d 1160, 1164-1165 (Fla. 3d DCA 2014). Mr. Reeves carried the many lessons from his decades-long law enforcement career into the Cobb Grove Theater on January 13, 2014.

Mr. Reeves started his law enforcement and public service career in 1966 by applying to and joining the Tampa Police Department. At the police academy he received hundreds of hours of instruction and hands-on training in a wide range of topics including Florida criminal law, threat assessment, officer safety and survival, and the use of force. At the police academy Mr. Reeves first learned that law enforcement officers must know how to read and interpret body language and

human behaviors. This, however, is not enough to remain safe. There is an imperative need for law enforcement officers to respond to menacing and dangerous behavior in a fraction of a second. As one would expect, a person that undergoes thousands of hours of training and works tens of thousands of hours in the field would have a both more realistic and acute appreciation of the dangers that unstable and aggressive individuals pose than would a civilian. For these reasons, service as a law enforcement officer is a transformational experience.

When Mr. Reeves graduated from the police academy, he was recognized for his outstanding achievement among his peers. This recognition was the first of many occasions where his supervisors acknowledged his unique contributions to his work and studies. After his graduation from the academy, his first position was as a patrol officer.

Mr. Reeves, in his two (2) years as a Patrolman, immediately began applying the lessons he learned from the police academy to real-life situations. On numerous occasions Mr. Reeves responded to calls for help from injured victims. He and his partners had face-to-face encounters with unstable and sometimes violent suspects. In some of those circumstances, force was necessary to be applied to subdue and take the violent suspect into custody.

Mr. Reeves was rapidly promoted and within two years he was assigned to the Selective Enforcement Unit. This new unit entailed plain clothes assignments on burglary/robbery stakeouts and the apprehension of individuals wanted on felony warrants. His service in the Selective Enforcement Unit involved particularly dangerous police work, because criminals committing serious offenses and fugitives from the law often reacted irrationally and violently towards arresting law enforcement officers.

While Mr. Reeves was rising in the Tampa Police Department ranks, he also started a family. In 1967 Mr. Reeves married Vivian Yarborough. In 1969 Mr. and Mrs. Reeves purchased

a house in Lutz, Florida, where they remained for the next thirty-six (36) years. They spent much of their time with family members, attended services at the First Baptist Church of Lutz, and maintained friendships with numerous members of the community. During this period he developed and maintained a reputation for being caring, compassionate, calm, and respectful.

In 1970, Mr. Reeves was promoted to Detective and assigned to the Tampa Police Department's Homicide/Robbery Bureau. At the Homicide/Robbery Bureau, Mr. Reeves conducted hundreds of criminal investigations for victims of violent crimes. Some of the victims had severe injuries stemming from attacks with fists, blunt objects, and other deadly weapons. In many of these cases, the serious injuries resulted in death. Mr. Reeves investigated and successfully resolved hundreds of crimes during the approximately seven (7) years that he worked as a Detective.

Throughout his law enforcement career suspects Mr. Reeves arrested and investigated made threats of violence against himself and his family. Like many law enforcement officers, Mr. Reeves endeavored to stay focused on his family, career, and life despite these promises of retaliation.

At one point, while assigned to the Tampa Police Department's Homicide/Robbery Bureau, Mr. Reeves was forced to seek police protection for his family and residence. An individual who Mr. Reeves had investigated and arrested, and who was subsequently successfully prosecuted, made threats to seek vengeance against the law enforcement officer who put him behind bars. That individual escaped from prison, forcing Mr. Reeves to use police protection of his home. Though Mr. Reeves was not subjected to any reprisal, this incident served as a reminder to him of the types of dangers law enforcement officers sometimes face. Law enforcement officers may not remember every person they arrest, investigate, and charge. Convicted criminals,

however, likely never forget the person that put them in prison.

Early in his law enforcement career, Mr. Reeves began pursuing and attending specialized law enforcement training exercises and seminars across the country. Many of these seminars and training programs were operated by governmental agencies such as the United States Army, Federal Bureau of Investigation, and the Florida Department of Law Enforcement. He also conducted research and independently studied law enforcement-related issues. These training programs and his independent studies enabled Mr. Reeves to both improve his ability to serve as a law enforcement officer and to bring home the lessons learned to the Tampa Police Department.

Mr. Reeves also attended and completed college while working full-time as a Detective. In 1976, he graduated *magna cum laude* from the University of Tampa with a Bachelor of Science degree in criminology. His academic achievements were also recognized by the University of Tampa's Alpha Chi Honor Society, which elected him a member.

It was while Mr. Reeves both served as a full-time Detective and attended college that his daughter Jennifer in 1973, and his son Matthew in 1976, were born. Despite the demands of his career and schooling, Mr. Reeves remained devoted to his family and involved with his church and community.

Mr. Reeves' superior level of performance and unique contributions to the Tampa Police Department were again recognized in 1976 when he was both promoted and assigned to create and lead an elite force within his agency. He was promoted to Sergeant and given the responsibilities of reviewing and supervising the work of other law enforcement officers. The duties of his new position expanded his already considerable experience and knowledge of the proper use of force, violent crimes, and the effects of the violent crimes on their victims. This promotion also made him responsible for evaluating the use of force of the officers that reported to him, which enabled

him to evaluate the performance of other law enforcement officers in dangerous situations.

The Chief of Police of the Tampa Police Department also assigned Mr. Reeves the unique privilege and honor of creating and commanding the agency's first Tactical Response Team ("TRT/SWAT team"). As a result of some highly publicized hostage situations and the increase in violent crimes, it became apparent that certain offenses require a specialized and highly trained force. After extensive study, research, and training Mr. Reeves presented to high-ranking Tampa Police Department officials the proposal to create the elite tactical unit they desired. Mr. Reeves' plan was approved and he was named Co-Commander of the TRT/SWAT team.

Mr. Reeves was a TRT/SWAT team Co-Commander from 1976 to the early 1980s, and then the sole Commander until 1991. During this time period he led and supervised TRT/SWAT team operations against suspects, devoted himself to learning about issues relevant to tactical responses, trained and supervised the TRT/SWAT team members, and also instructed hundreds of officers at the police academy on a variety of law enforcement and safety-related topics.

As the TRT/SWAT team Commander, Mr. Reeves both continued attending specialized law enforcement training opportunities across the country as well as pursuing self-study in related fields. He did this to further his personal knowledge of, and proficiency in, special tactics as well as to carry the lessons learned back to the Tampa Police Department and the TRT/SWAT team.

Over his career, Mr. Reeves taught a broad range of subjects, but among the most important were those pertaining to officer safety and survival. These classes and training exercises related to, among other things, identifying signs of danger, tactical response, and close quarters physical confrontations.

When law enforcement officers are summoned to a location, they often do not know the nature and extent of the danger that they face. It is not possible, for example, to accurately predict

whether a suspect carries a weapon without getting in close proximity to them. Close physical proximity, in turn, allows dangerous suspects the opportunity to harm the officer with greater ease.

Further, the law enforcement officer's interactions with suspects are not always in brightly lit parking lots or other unobstructed environments. Rather, these interactions frequently occur in locations with barriers, impediments, and distracting stimuli, such as: poorly lit stairwells and hallways; living rooms with furniture and clutter; and crowded, noisy events like Gasparilla or a Tampa Bay Buccaneers football game.

The officer safety and survival courses that Mr. Reeves taught highlighted the fact that violent suspects frequently use personal weapons against the officers: hands, feet, their head, or other body parts. By 1976, when Mr. Reeves assumed command of the TRT/SWAT team and was teaching at the police academy, he had personally investigated hundreds of violent crimes that were committed with personal weapons. The injuries that he personally observed ran the gamut of what one human being can do to another with their hands, fists, feet and other body parts: broken noses, black eyes, retinal detachments, contusions, orbital fractures, groin injuries, appendage fractures, internal bleeding, concussions, and death.

To help prevent such harm, Mr. Reeves' therefore instructed his students to learn how to identify the signs of danger. The factors that could impact a tactical response included, but were not limited to: the relative physical abilities of the officer and the suspect(s); facial expressions; body language; hand gestures; tone of voice, inflection and pitch; signs of mental instability; indications of intoxication; physical proximity; time; and lighting and noise conditions. He repeatedly admonished his students to both pay close attention to aggressive and menacing behavior and to respond accordingly. Paying attention and responding properly meant the difference between life and death for a law enforcement officer.

Mr. Reeves taught his pupils that the actual commitment either to use or not use deadly force should be based upon the totality of the officer's knowledge of the critical situation, the limitation and the extent of the officer's powers, the risks involved, and the existence of possible alternatives to using force. Mr. Reeves emphasized the philosophy that if an officer can maintain his safety and protection, he or she should pursue a non-physical response. He specifically assigned members of the TRT/SWAT team reading and instructional material that supported this viewpoint.

He made it clear to all of his students, however, that officer safety is paramount. If a suspect becomes violent the officer's response must be rapid, swift, and sufficient to disable the aggressive individual. Otherwise, the officer is prone to serious injury or death.

Notably, Sheriff Chris Nocco of the Pasco County Sheriff's Office recently expounded on the imperative need for officers to rapidly respond to a suspect's actions in order to prevent great bodily harm or death. On July 1, 2014, Pasco County Sheriff's Office Detectives shot and killed an unarmed suspect. In defending the shooting as justifiable use of deadly force, Sheriff Nocco noted that the suspect allegedly had made hand movements and that law enforcement officers "are trained that hands will kill." Cait McVey, Laurie Davison, *Sheriff's Office: Suspect shot to death by deputy wasn't armed*, Bay 9 News, July 2, 2014, http://www.baynews9.com/content/news/baynews9/news/article.html/content/news/articles/bn9/2014/7/2/deputy_shot_suspect.html [last accessed November 5, 2015]. Nocco further explained that the detectives that killed the unarmed suspect made "a split second decision" and that such incidents "happen in a moment's notice." He felt the shooting was legally justified because his "detectives had an absolute fear that their lives were in jeopardy." Aaron Mesmer, *Sheriff Nocco: Deputies forced to shoot during Tuesday arrest*, FOX 13 News, July 2, 2014. Each of Sheriff

Nocco's statements regarding the July 1, 2014 shooting were consistent with the training and instruction that Mr. Reeves gave his students.

During the fifteen (15) years he commanded the TRT/SWAT team he continued his duties as a supervising officer in several different operational assignments. In 1979, he was promoted to Lieutenant and in 1984 to Captain. He continued training future law enforcement officers and devoting his time to the TRT/SWAT team.

By 1991 the then-forty-nine (49) year old Mr. Reeves had difficulty performing the physical tasks necessary to remain on the TRT/SWAT team. The physical problems that made serving on the TRT/SWAT team difficult for him did not immediately arise, but rather developed over time.

Applicants to the TRT/SWAT team had to pass a rigorous physical fitness examination. All TRT/SWAT team members, including the command staff like Mr. Reeves, were also required to maintain their physical proficiency and to pass periodic fitness tests. The practice exercises and actual operations similarly required a great deal of strength and vigor.

At age forty-nine (49), Mr. Reeves no longer had the physical capabilities he had when he helped create the TRT/SWAT team. In the 1980s Mr. Reeves first began suffering from sciatica and experiencing persistent pain in other parts of his body. Around this time period Mr. Reeves also decided that he should no longer serve as an unarmed defense instructor due to his age and the elevated risk of sustaining a serious back or other injury during a training exercise. These factors compelled him to leave the TRT/SWAT team.

As with the rest of his career, however, he continued serving in supervisory positions. He was named the head of the bomb squad and headed the Tampa Police Department's Vice Squad from 1991 until his retirement in 1993. He retired as a Captain in 1993.

During this twenty-seven (27) year career spanning multiple positions and countless tense and dangerous situations, it never became necessary for Mr. Reeves to discharge his firearm in the line of duty.

Mr. Reeves subsequently had the opportunity to continue to apply his extensive law enforcement knowledge and training when, in 1993, he was recruited and hired as the Director of Security of the Busch Gardens amusement park. In a testament to Mr. Reeves' reputation, a former high ranking Tactical Response Team colleague specifically suggested to the Busch Garden's management that they consider him for the position. During that time period, up to five (5) million people visited the amusement park each year. Such a large-scale operation posed numerous security threats and challenges.

Mr. Reeves took a number of steps to ensure that Busch Gardens was a safe and well-protected destination for families and children. Mr. Reeves trained security and regular staff on issues ranging from application of handcuffs and identifying counterfeit currency to how to handle a bomb threat. He helped implement changes to the park's infrastructure so that generators powered the radio-, camera monitoring-, and other necessary systems crucial to the visitor's security in the event of a power outage. He reached out to members of the public living in close proximity to the amusement park and started Neighborhood Watch-type programs.

Mr. Reeves also continued to expand his knowledge of security threats and assumed leadership roles in his field. He attended numerous seminars and conferences relating to developments in law enforcement and security challenges, brought back the lessons and knowledge he obtained to his organization, and shared them with his staff and colleagues. Mr. Reeves served as President of the American Society for Amusement Park Security and Safety and as the Chairman of the local chapter of the American Society for Industrial Security. He further

earned designation as a Certified Protection Professional after a lengthy qualification and testing process. At that time, there were only six thousand (6,000) individuals with this designation nationwide.

Throughout his time as the Director of Security at Busch Gardens, he maintained his reputation for being truthful, caring, compassionate, calm and respectful. Colleagues of his acknowledged that Mr. Reeves was a captive listener and polite. Though he had extensive credentials, many accomplishments, and wide-reaching responsibilities as the Director of Security of a large-scale amusement park, he nonetheless also had a reputation for being modest and hard-working.

As with his twenty-seven (27) years at the Tampa Police Department, Mr. Reeves continued to spend his free-time with his wife and kids, attending church, or socializing with his family friends.

In 2004 Mr. Reeves retired from Busch Gardens for both medical and personal reasons. His sciatica, which had started in the 1980s, and the pain that this condition caused, had exacerbated over the years. Mr. Reeves' position as Director of Security, which required standing and walking for long periods of the day, caused this pain to worsen. He pursued non-surgical steps to address his back problems, but substantial levels of pain persisted. Mr. Reeves, shortly before his retirement, took a three (3) month medical leave to address his health and pain issues. Given his ongoing back and pain management problems, as well as his and his wife's intention to change residences and spend more time together, he retired in 2004.

Aside from some short-term security consulting contracts, after 2004 Mr. Reeves primarily focused on his family and health. He continued spending most of his time with his wife, children,

and starting in 2012, with his granddaughter. He continued attending church on Sundays and socializing with some of the congregants.

During his retirement, Mr. Reeves took steps he believed would improve his health and quality of life. He engaged in specific activities and exercises that helped strengthened his muscles and reduce his back pain. He avoided problematic activities, such as standing or walking for long periods of time, because they worsened his back problems and the bursitis in his shoulders.

Mr. Reeves, despite taking the aforementioned steps to combat the aging process, was frequently reminded that he, like many senior citizens, continued to experience a growing number of physical impairments. For example, when he awoke in the mornings, he frequently experienced body pain and stiffness in his joints. Mr. Reeves started having difficulties getting up from chairs and began relying on armrests to push himself up. He was forced to walk up and down stairs more slowly and had to steady himself to maintain his balance. Several months before January 2014, he realized that he had lost the strength to pull back an arrow on the tense string of his bow. He subsequently explored the option to purchase a crossbow, which allows individuals to load an arrow without substantial physical exertion. On multiple occasions he lacked the arm and hand strength necessary to open food jars, so he resorted to using the table vice in his garage.

The event that epitomizes what the aging process does to the human body occurred in December 2014. Mr. Reeves was on his porch, tripped, fell, and broke his hip. This fracture required surgery and the implantation of an artificial hip into his body.

The fall that caused his hip fracture was not remarkable. When he was younger, Mr. Reeves had similar falls but did not sustain any injury, much less a serious injury. Falling, tripping, and having a body impact with someone or something was, in fact, a common occurrence when he

was a member of the TRT/SWAT team. The aging process had weakened Mr. Reeves' ability to withstand such injuries without serious repercussions.

January 13, 2014

A. Mr. and Mrs. Reeves enter theater 10 in the Cobb Theater

Mr. and Mrs. Reeves went to the Cobb Grove Theater ("Theater") in Wesley Chapel, Florida in the early afternoon of January 13, 2014 to see the film *Lone Survivor*. Mr. Reeves drove the two of them to the Theater parking lot.

Before reaching their destination, they had arranged to meet their son Matthew, an officer serving with the Tampa Police Department, inside the movie theater playing this film. Mr. and Mrs. Reeves anticipated reaching the Theater before Matthew, so they intended to save a seat for their son. Matthew, who was coming from a different location, was to arrive at the Theater in his own vehicle.

After exiting their vehicle, Mr. Reeves walked to the ticket booth and purchased two tickets. After paying for and being handed the two tickets, he and his wife walked into the Theater. The two tickets were handed to a Theater employee and Mr. and Mrs. Reeves then walked to the concession stand. At the concession stand Mr. Reeves purchased a bag of popcorn and a soda fountain drink.

Mrs. Reeves then went into the ladies restroom while Mr. Reeves waited outside. A short while later Mrs. Reeves exited the ladies restroom and the two of them walked into movie theater ten, where *Lone Survivor* was playing.

When they walked into movie theater ten, both Mr. and Mrs. Reeves visually scanned the interior to find a row that had multiple adjacent empty seats. They were expecting Matthew to join them in movie theater ten and they wanted to sit next to each other as a family. There were multiple

empty adjacent seats in the middle of the last row, which is where Mr. and Mrs. Reeves decided to sit. As they took their seats, pre-preview advertisements were playing in the theater.

The last row abutted a large wall. Mr. Reeves sat to the left of his wife. After he sat down, Mr. Reeves sent a text message to his son and stated the location of their seats within movie theater ten.

In the row in front of Mr. and Mrs. Reeves sat Chad Oulson and his wife Nicole Oulson. Mr. Oulson was forty-three (43) years old, six (6) foot four (4) inches tall, and weighed over two hundred (200) pounds.

Mr. and Mrs. Oulson were strangers to Mr. and Mrs. Reeves, as they had never met nor spoken. Mr. Oulson was in the seat in front of Mrs. Reeves. Mrs. Oulson was in the seat in front of Mr. Reeves. The chairs in which Mr. and Mrs. Oulson were seated substantially reclined backward upon the application of pressure.

B. The motion detecting camera surveillance system in theater 10

Within theater 10 were two motion activated infrared cameras that partially recorded and saved footage on hard drives being stored in the Cobb Theater's projector room. "Camera 11" was located (if looking at the movie screen) at an elevated height of 35 feet on the right-side wall, while "camera 12" was also at a similar elevated height, but on the left-side wall. These cameras were positioned to strictly monitor the CineBistro section of the theater, but did capture a small portion of the general seating area.

Cameras 11 and 12 were part of a low-resolution motion-detecting camera recording system that only captured 240 by 320 pixels (compared to handheld smartphones which can capture, for example, 6,000,000 pixels). Although the cameras were motion-detecting, the surveillance system in the theater frequently did not initiate recording - even when there were

multiple individuals moving.

Camera 11 partially recorded the area where Mr. and Mrs. Reeves were seated – but captured little to no portion of the row in which Mr. and Mrs. Oulson sat. However, as explained below, incidents where Mr. Oulson moved into the back row where Mr. and Mrs. Reeves were seated were partially captured by Camera 11.

C. The movie previews start playing

After Mr. and Mrs. Reeves sat down, the lights were either completely turned off or substantially dimmed, causing the interior of movie theater ten to become dark. The announcements asking the moviegoers to refrain from using their cellular phones was clearly displayed on the theater screen. Signs asking the patrons to not use their cellular phone during the show were also posted in multiple places in throughout the Theater lobby.

While Mr. Reeves watched the previews, he noticed a light was shining in his face. The light was from Mr. Oulson's cellular phone. Mr. Reeves politely asked Mr. Oulson to stop using his cellular phone. The forty-three (43) year old Mr. Oulson responded by yelling loud obscenities at the seventy-one (71) year old Mr. Reeves.

Mr. Reeves decided he would inform a Theater employee about the younger man's erratic and furious response. Mr. Reeves stood up from his seat, handed his bag of popcorn to his wife, walked to the aisle, and exited the theater. As he was walking out of the last row, Mr. Reeves had to place his hands on the theater chairs for support and to maintain his balance.

D. Mr. Reeves speaks with theater manager Thomas Peck

Once he reached a service desk, Mr. Reeves patiently waited for the Cobb Theater manager, Thomas Peck, to finish a conversation with another patron named Dawn Michelle Simpson.

Dawn Michelle Simpson went to the Cobb Theater to obtain movie posters. Ms. Simpson stated that as she was speaking with Mr. Peck at the service desk, she observed a man – that is, Mr. Reeves - waiting patiently for her to complete her conversation. After Mr. Peck asked her to write down the names of the movie posters she wanted, she moved to the side to create a list. After moving aside, she observed and heard Mr. Reeves speaking with Mr. Peck. Ms. Simpson testified that Mr. Reeves was "very calm" and "polite" and that she never felt threatened at any time.

When it was his turn to speak, Mr. Reeves calmly told Mr. Peck that he was embarrassedly bringing an issue to the manager's attention. Mr. Reeves told Mr. Peck that there was a man seated in front of him who was using his cellular phone, and that after Mr. Reeves asked for him to stop - the man had said to "F-off." Mr. Reeves asked Mr. Peck to address the situation, and the manager agreed to handle the issue. After completing his conversation with Mr. Peck, Mr. Reeves re-entered the theater and walked to his seat.

E. Mr. Reeves returns to his seat

As he walked to his seat, Mr. Reeves noticed that Mr. Oulson had both stopped using his cellular phone and was looking at him. Mr. Reeves perceived Mr. Oulson's look at him as a sign of agitation, and as a goodwill gesture intended to defuse any ill feelings - Petitioner said he was sorry to have involved theater management.

Before sitting down, Mr. Reeves took the bag of popcorn from Mrs. Reeves. At that point, Mr. Reeves was then (i) seated in his chair, (ii) holding the popcorn bag with his left hand, and (iii) watching the movie previews.

F. Mr. Reeves gets hit in the face with Mr. Oulson's cellular phone

Mr. Reeves was seated for a brief moment when he observed Mr. Oulson and Mrs. Oulson interacting. Mrs. Oulson had both of her hands on Mr. Oulson's left arm, indicating that she was

trying to hold her husband down. Mr. Oulson nonetheless then jumped out of his seat, rapidly stood up, and swung around. After completing this motion, Mr. Oulson was then directly in front of Mrs. Reeves. Mr. Reeves heard him loudly yell something about theater management or a manager.

Oulson then made a throwing motion. Mr. Reeves saw the blur of a cellular phone screen, and then felt a blunt object impact his face. After getting hit in the face, Mr. Reeves was dazed and disoriented.

The blow to his face knocked his glasses askew. After the facial impact the left temple/arm of the glasses were knocked out of their original position and were hanging parallel to his left cheek. Mr. Reeves' vision then became blurred, though he did not immediately associate the fact that his glasses were knocked askew with his difficulty seeing.

After the blow to his head, Mr. Reeves attempted to get out of his seat and stand up. His attempt failed. Mr. Reeves had difficulty getting out of his chair, as he normally was required to push himself up by placing his hands and applying force onto the armrests. After his failed attempt to escape, Mr. Reeves then realized that getting out of his chair would put him in danger, as it would put him closer to the man who was attacking him.

Oulson's throwing motion was captured by camera 11. That camera surveillance footage depicts Oulson's arm, shoulder, and head entering into the top row and moving towards Mr. Reeves' body. Screenshots of that footage, with Mr. Oulson's body highlighted in yellow, are included below.


#1-13:26:25.322


#1-13:26:25.422


#1-13:26:25.522


#1-13:26:25.655


#1-13:26:25.755


#1-13:26:25.855

After realizing that getting up was dangerous, Mr. Reeves pushed his person back in his seat as far as he could to increase the distance between Mr. Oulson and he. While he did this, he saw Mr. Oulson's wife trying to hold on to her husband. As Mr. Reeves leaned back and to his left, his legs were extended in the aisle. As this was occurring, Mr. Reeves heard Mr. Oulson yelling a "lot of sentences with the F word," such as "going to kick your F'in' ass," and "I'm going to – F you," and "if it was any of your F'ing business, I was texting my F'ing daughter."

Mr. Reeves was frightened by Mr. Oulson's vulgar and menacing response. To protect himself, Mr. Reeves resorted to pushing his body into the back of his chair. Mr. Reeves did this to create distance between himself and Mr. Oulson, who was leaning over the back of his chair and screaming at the seventy-one (71) year old.

While Mr. Oulson was menacing Mr. Reeves, movie previews were loudly playing. The State's investigation determined that the movie previews playing at the time of the incident were *Sabotage* and *RoboCop*, both of which are action-packed movies with loud sound effects. Oulson's angry, verbal barrage of vulgarities and threats were even much louder than the action-packed sound effects.

The interior of the theater was also dark. The regular ceiling lights were either completely off or dimmed.

Mr. Reeves had no realistic means of retreat. There was a large wall behind him. Getting up from his seat would have first required getting physically closer to Mr. Oulson.

Mr. Reeves did not understand why Oulson was responding with such explosive rage over such a minor request. Oulson's unpredictable and inexplicable behaviors scared and terrified him.

Mr. Reeves could see that Mrs. Oulson was struggling to restrain her husband to no avail, as Mr. Oulson's body was advancing on the seventy-one (71) year old. Mr. Oulson began leaning

over the chair and extending his arm and hand into Mr. Reeves. When Mr. Reeves saw Mr. Oulson's arm and body coming towards him, Defendant made the decision to shoot him before another physical blow would be inflicted. Mr. Reeves saw that Mr. Oulson was younger – he believed between 35 and 40 years of age - and was a "good-sized man" and "pretty tall." Petitioner did not think at his advanced age - and given Mr. Oulson's youth, size, and height - that he had any other option.

Mr. Reeves removed a handgun that was in his front right pant pocket and discharged it at Mr. Oulson a single time. The bullet grazed Mr. Oulson's right fist. The medical examiner later concluded that Mr. Oulson's right fist was in front of his thorax at the time it was grazed by the bullet. The back of Mr. Oulson's hand had stippling on it, indicating that it was in close proximity to the barrel of the firearm when it was discharged. This was consistent with Mr. Oulson attempting to punch Mr. Reeves. The bullet that struck Mr. Oulson's right fist also hit Mrs. Oulson's left hand ring finger, which she had placed on her husband's chest in a failed attempt to restrain him. That same bullet then penetrated Mr. Oulson's chest, causing his death.

After the shooting, Mr. Oulson's cellular phone that he had thrown at and used to hit Mr. Reeves with was immediately located on the floor between the seventy-one (71) year old's feet by off-duty Sumter County Deputy Alan Hamilton. Said cellular phone was an Apple iPhone 5, and it was encased in an Otterbox case with protective cover. The combined weight of the iPhone 5 and the Otterbox case with protective cover made it heavier than either a cue ball used to play billiards or a baseball. Mr. Reeves' popcorn was also strewn on the floor.

The conclusion that a cellular phone attack occurred is supported by multiple pieces of evidence, including but not limited to:

(1) camera footage clearly depicting Mr. Oulson's arm, shoulder, and head moving into and out of the video in a motion consistent with the throwing of an object;

(2) a witness seated in the same row, Joanna Turner, observed Mr. Oulson standing, facing Mr. Reeves, holding a dark object in his hand (a "mug" or "thermos") and then making a throwing motion at Petitioner;

(3) Oulson's cellular phone was immediately found on the floor between Mr. Reeves' legs, which is consistent with the claim that the object made contact with Petitioner's head and thereafter fell to the floor;

(4) Petitioner told detectives in his on-scene voluntary statement that he saw the blur of a cellular phone screen and that such an object may have hit him in the face; and

(5) Mr. Reeves told third-parties that he had gotten hit in the head – before having any meaningful opportunity to fabricate such a story.

Moreover, the surveillance camera footage, as well as the other facts and circumstances, clearly establish that Mr. Reeves' decision to discharge the firearm was made prior to getting hit by the popcorn. The timestamped surveillance camera footage states the times for various events during the second attack. The (i) time on the image file containing the event described/depicted, (ii) the actual event described and (iii) the time (in seconds) from the event depicted to the time that Mr. Reeves discharged his weapon were as follows:

Time on Timestamp	**Event depicted in the camera 11 footage**	**Time from event to discharge of gun**
13:26:36.346	Mr. Oulson's hand appears in the frame	1.500 seconds
13:26:36.554	Popcorn bag is taken by Mr. Oulson and is moving away from Mr. Reeves	1.292 seconds
13:26:36.946	Popcorn bag is thrown by Mr. Oulson and is moving towards Mr. Reeves	0.900 seconds
13:26:37.146	Popcorn bag hits Mr. Reeves	0.700 seconds
13:26:37.412	Mr. Reeves again becomes visible in the video	0.434 seconds
13:26:37.846	Gun is discharged	0.00

The still frames from the camera 11 video footage therefore conclusively and irrefutably establish that there was a mere 0.700 seconds between (i) Mr. Reeves getting hit by popcorn and (ii) Mr. Reeves firing his weapon. Mr. Reeves could not have (i) perceived and processed the fact that the popcorn bag hit him, then (ii) make the decision to take action, and finally (3) withdraw, raise, point, and discharge the weapon in 0.700 seconds. Clearly, 0.700 seconds was simply an insufficient amount of time for any human being to carry out all of those distinct mental and

physical actions. Any claim that the shooting was based on retaliation for being hit by popcorn is therefore rebutted by the uncontroverted evidence.

After the discharge of his firearm, Mr. Reeves immediately placed the gun on his leg. Mr. Reeves allowed off-duty Sumter County Deputy Alan Hamilton, who was sitting in the last row, to take custody and control of the firearm. Mr. Reeves remained in his seat until law enforcement arrived.

Law enforcement officers searched Mr. Reeves' wallet and found both a valid State of Florida Firearms Proficiency Verification Card for pistols and revolvers and a State of Florida Concealed Weapon or Firearm License. Mr. Reeves was carrying his firearm pursuant to the federal Law Enforcement Officer Safety Act of 2004, 18 U.S.C. § 926C(a) and section 943.132(1), Fla. Stat. (2013).

The United States Congress realized the value of allowing our retired law enforcement officers to carry firearms when it enacted 18 U.S.C. § 921, entitled the Law Enforcement Officer Safety Act of 2004. In passing the law, Congress recognized that retired law enforcement officers should be permitted to carry concealed firearms "so that they may respond immediately to crimes across State and other jurisdictional lines, as well as to protect themselves and their families from vindictive criminals." Proceedings and Debates of the 108th Congress, 150 Cong. Rec. S7301-06 (2004).

In 2003, the United States Senate Judiciary Committee had concluded and found that allowing retired law enforcement officers to carry firearms is crucial because "while a police officer may not remember the name and face of every criminal he or she has locked behind bars, criminals often have long and exacting memories. A law enforcement officer is a target in uniform and out; active or retired; on duty or off." S. Rep. No. 108-29, at 4 (2003).

The Law Enforcement Officer Safety Act therefore authorized and encouraged qualified retired law enforcement officers like Mr. Reeves to carry concealed firearms. The Florida Legislature had enacted section 943.132(1), which implements the legal requirements of the federal law. Further, Mr. Reeves' carrying of his firearm was also lawful under section 790.06, Fla. Stat. (2013).

Though Mr. Reeves was well aware that he could invoke his right to silence and refuse to speak with law enforcement officers, he chose to cooperate. He gave a detailed voluntary recorded statement to Pasco County Sheriff's Office Detectives. He further answered each and every question posed to him by the law enforcement officers.

Mr. Reeves explained to the law enforcement officers that the man sitting in the row ahead of him - who he had never seen nor met - had inexplicably attacked him both verbally and physically. He expressed to the Detectives that Mr. Oulson's explosive rage and threats of serious bodily harm, coupled with the verbal and physical assault, frightened and terrified him.

Mr. Reeves repeatedly told the Detectives that a blunt object had hit his face. Mr. Reeves said the blow to his face was from Oulson's cellular phone. The blow had partially displaced his glasses on his face. The seventy-one (71) year old had seen the blur of the lit cellular phone in the moments before the blow to his face.

Mr. Reeves recounted to the Detectives how Mr. Oulson during the attack was leaning forward over his chair and, at one point, had jumped on his seat. Mr. Oulson's close physical proximity further scared Mr. Reeves. Mr. Reeves made it clear to the Detectives that he believed a continued physical attack by Mr. Oulson was imminent and that it was capable of inflicting serious bodily harm.

The Pasco County Sheriff's Office investigation into this incident was deeply flawed. Inexplicably, law enforcement officers never obtained nor reviewed crucial readily attainable evidence before they formally arrested Mr. Reeves.

The lead law enforcement officer from the Pasco County Sheriff's Office, Detective Allen Proctor, never went into movie theater ten to inspect the scene of the incident until after he signed and swore to the Complaint Affidavit and arrested Mr. Reeves for Murder in the Second Degree. He therefore did not have the opportunity to examine the distances between the theater seats, the lighting and noise conditions during the shooting, and other material and relevant evidence and issues.

Most stunning, however, is that at the time Mr. Reeves was arrested Detective Proctor neither knew nor realized that a Cobb Grove Theater camera surveillance system recorded both some portion of Oulson's physical attack on Mr. Reeves and the shooting in movie theater ten. It is simply remarkable, and likely unprecedented, that a Detective in these circumstances arrested someone for Murder in the Second Degree without watching a video of the actual incident that was readily available to him. Had Detective Proctor visited the scene of the incident before charging Mr. Reeves, he may have noticed and become aware of the clearly visible cameras in movie theater ten. Detective Proctor further did not realize that the cellular phone between Mr. Reeves' feet belonged to Mr. Oulson. Had Detective Proctor known this fact, Mr. Reeves' account of sustaining a blow to his face as a result of Oulson striking him with it would have been corroborated.

STATEMENT OF LAW

In 2005, what is commonly referred to as the "Stand Your Ground" amendments ("SYG") was passed unanimously by the Florida Senate and overwhelmingly by the House of Representatives. *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008); S.J. 8, Reg. Sess., at

262-63 (Fla. 2005) (39 yeas to 0 nays in the Senate); H.R. J. 12, Reg. Sess., at 342-43 (Fla. 2005) (94 yeas to 20 nays in the House). The SYG law created sections 776.032 (immunity from criminal prosecution and civil action for justifiable use of force) and 776.013 (Home protection; use of deadly force; presumption of fear or great bodily harm) while amending sections 776.012 (use of force in defense of person) and 776.031 (defense of others).

The "heart of the Stand Your Ground amendments" is section 776.032, Fla. Stat. (2013). *Hill v. State*, 143 So. 3d 981, 984 (Fla. 4th DCA 2014). "The plain language of section 776.032 grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial." *Dennis*, at 462 (emphasis added). During a pretrial evidentiary hearing on a request for immunity, the trial court "must resolve the matter by confronting and weighing *only* factual disputes." *Peterson*, at 29 (emphasis added). If a defendant that files a motion to dismiss and establishes a prima facie case of justified use of force at a pretrial immunity hearing, the burden shifts to the State to establish by **clear and convincing evidence** that the use of force was not justified. §776.032(4), Fla. Stat. (2017). Further, section 776.032(1) broadly defines immunity from "criminal prosecution" to include prohibitions on arrest, detaining in custody, and the charging and prosecution of a defendant.

The preamble of the law creating section 776.032 makes clear that the intent of these amendments were to provide legal immunity to individuals protecting themselves or their loved ones from aggressors. "[T]he Legislature [found] that it [was] proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear from prosecution or civil action for acting in defense of themselves and others." *Dennis*, at 462 (quoting Ch. 2005-27, 200, Laws of Fla.) (emphasis added). The Legislature further found that "no person or victim of crime should be required to surrender his or her personal safety to a criminal." Ch.

2005-27, 200, Laws of Fla.

Before the 2005 and 2017 amendments, the State's mere establishment of probable cause would force a defendant who had used force in self-defense to undergo the always uncertain prospect of a trial. *Dennis*, at 462. For events that occurred in January 2014, defendants like Mr. Reeves are entitled to a pre-trial immunity hearing upon the filing of an appropriate motion to dismiss.

Relevant to the circumstances of this case, sections 776.012(1)-(2), 776.013(3), and 776.041, as they were in effect on January 13, 2014, delineate when deadly force is justifiably employed. Section 776.012 provides that:

> A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:
>
> (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
>
> (2) Under those circumstances permitted pursuant to s. 776.013.

§ 776.012, Fla. Stat. (2013) (emphasis added). The circumstances provided in section 776.013 initially address when the force is used against someone who unlawfully and forcibly enters a dwelling (subsections (1) and (2)). Subsection (3), however, addresses the situation where the person attacked is in a place other than a dwelling, and it provides as follows:

> A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

§ 776.013(3), Fla. Stat. (2010) (emphasis added). Further, section 776.041 states that a person attempting to commit, committing, or escaping after the commission of a forcible felony or who initially provokes the use of force against himself is not entitled to section 776.032 immunity. § 776.041, Fla. Stat. (2013).

Under these three aforementioned provisions, a person is justified in the use of deadly force and has no duty to retreat if:

> (1) he is in a place where he has the right to be;
>
> (2) he reasonably believes such force is necessary to prevent death or great bodily harm or the imminent commission of a forcible felony;
>
> (3) he did not initially provoke the use of force against himself (i.e. he was not the initial aggressor); and
>
> (4) he was not himself attempting to commit, committing, or escaping after the commission of a forcible felony." *Wyche v. State*, 170 So. 3d 898, 905 (Fla. 3d DCA 2015).

Reading all of the above statutes together, after this Court resolves any factual disputes at the pre-trial hearing it is mandated and compelled by the law to grant Mr. Reeves immunity from criminal prosecution if the prosecution cannot disprove by clear and convincing evidence that:

(1) Mr. Reeves had a lawful right to be in the movie theater; and

(2) Mr. Reeves did not initially provoke the use of force against himself; and

(3) Mr. Reeves did not attempt to commit, was not committing, and was not escaping after the commission of a forcible felony; and

(4) (A) Mr. Reeves reasonably believed that deadly force was necessary to prevent Mr. Oulson from causing great bodily harm to the seventy-one (71) year old; and/or

(B) Mr. Reeves reasonably believed that deadly force was necessary to prevent Mr. Oulson from committing a forcible felony upon the seventy-one (71) year old;

and/or

(C) Mr. Reeves reasonably believed that deadly force was necessary to prevent Mr. Oulson from causing death to the seventy-one (71) year old. *Peterson*, 983 So. 2d at 29; § 776.012(1), Fla. Stat. (2013); § 776.013(3), Fla. Stat. (2013); § 776.032(4), Fla. Stat. (2017).

Given the facts and circumstances in this case, the prosecution cannot prove by clear and convincing evidence that Mr. Reeves is not entitled to immunity from prosecution.

Mr. Reeves was lawfully present in the movie theater and was not engaged in any criminal activity

Mr. Reeves had the legal right to be present in the movie theater on January 13, 2014. Both he and his wife had paid for their *Lone Survivor* tickets, which was playing in movie theater ten.

Further, he had a legal right to carry his firearm in the movie theater. On that day Mr. Reeves had on his person a State of Florida Firearms Proficiency Verification Card for both pistols and revolvers and a State of Florida Concealed Weapon or Firearm License. Mr. Reeves was carrying his firearm pursuant to the (i) federal Law Enforcement Officer Safety Act of 2004, (ii) section 943.132(1), Fla. Stat. (2013) ("Implementation of federal qualified active or qualified retired law enforcement concealed firearms provision"), and (iii) section 790.06, Fla. Stat. (2013) ("License to carry concealed weapon or firearm").

The United States Congress realized the value of allowing our retired law enforcement officers to carry firearms when it enacted the Law Enforcement Officer Safety Act of 2004. This policy enables specially trained retired law enforcement officers to "respond immediately to crimes" and to "protect themselves and their families from vindictive criminals." Proceedings and Debates of the 108th Congress, 150 Cong. Rec. S7301-06 (2004).

On January 13, 2014 Mr. Reeves was in full compliance with the strict criteria of the federal Law Enforcement Officer Safety Act. Mr. Reeves was also in complete compliance with

Florida Statute 943.132(1) (2013), which implemented the legal requirements of the Law Enforcement Officer Safety Act. Section 943.132(1) also expressly authorizes the creation and issuance of a Firearms Proficiency Verification Card. Mr. Reeves was carrying his Firearms Proficiency Verification Card on January 13, 2014.

Mr. Reeves' carrying of his firearm into the Theater was also consistent with another Florida statute, section 790.06 (2013), which allows authorized individuals to carry concealed firearms. Section 790.06 details the criteria for the issuance of a concealed weapon license. Again, Mr. Reeves was in full compliance with all of the criteria.

Further, based on the facts in this case one can conclude that many Floridians exercise their legal right to carry firearms into movie theaters. Off-duty Sumter County Deputy Alan Hamilton – the same individual that Mr. Reeves allowed to take custody of the discharged weapon – was in possession of his firearm in the movie theater. His firearm had been placed in his wife's purse before the time of the shooting.

Similarly, lead Detective Allen Proctor of the Pasco County Sheriff's Office acknowledged that while off-duty he had carried his own firearm into the very same movie theater. Detective Proctor also expects current and retired law enforcement officers to always carry their firearms. Detective Proctor did not find it either unusual or wrong that Mr. Reeves' carried his firearm into the Cobb Grove Theater the day of the incident because he was a retired law enforcement officer.

Mr. Reeves carried a concealed firearm throughout his adult life because of his formative experiences as a law enforcement officer. He was lawfully carrying the firearm in the Theater. He therefore is not precluded from immunity because he was in compliance with the law and had a lawful right to be present in the theater.

Mr. Reeves did not initially provoke Oulson's verbal and physical assault

Mr. Reeves did not commit any overt physical act or make any verbal threat to Oulson. Here, Mr. Reeves made the basic, modest, verbal request to Oulson that he comply with the Theater's rules and stop using his cellular phone during the movie previews. Mr. Reeves made this request after the Theater's announcement that moviegoers should stop using their light-emitting electronic devices during the previews and movies. The only reason Mr. Reeves asked Oulson to stop using his cellular phone is because the light from the device was shining in the seventy-one (71) year olds' face during the movie previews. In a civilized society, a minor request or statement to a stranger is not an invitation to obscenities, menacing and threatening behaviors, threats of serious bodily harm, and physical attack.

The fact that Mr. Reeves left movie theater ten to inform a Theater employee that there was a man who was cursing and yelling further establishes that the seventy-one (71) year old did not provoke any violent response. Informing the Theater employee that Oulson was loudly cursing in the theater was the best non-confrontational means to deal with an erratic and volatile individual.

Mr. Reeves therefore did not initially provoke a violent response from Mr. Oulson and the conditions of section 776.041(2) do not preclude the granting of immunity from criminal prosecution.

Mr. Reeves did not commit, was not committing, and was not escaping from the commission of a forcible felony

The prohibition on the granting of immunity for justifiable use of deadly force when an individual commits an independent forcible felony is not applicable to Mr. Reeves. § 776.041(1), Fla. Stat. (2013) ("The justification described in the preceding sections of this chapter is not available to a person who is attempting to commit, committing, or escaping after the commission

of, a forcible felony"). The Florida Supreme Court held that a defendant charged with a felony and raising self-defense under the provisions of Chapter 776 is precluded from doing so under section 776.041(1) only if he committed an independent forcible felony that is separate and apart from the one for which he is being charged. *Martinez v. State*, 981 So. 2d 449, 451-454 (Fla. 2008).

It is completely clear that Mr. Reeves did not commit any crime, much less an independent forcible felony. Florida law defines forcible felonies as: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. § 776.08, Fla. Stat. (2013). His conduct, apart from the shooting in self-defense, consisted of making oral statements to Oulson and informing a Theater employee that there was an erratic and volatile man in movie theater ten.

Section 776.041(1) therefore also does not preclude the granting of immunity to Mr. Reeves.

Mr. Reeves had a reasonable belief that deadly force was necessary to prevent Mr. Oulson from subjecting him to great bodily harm or death

Mr. Reeves reasonably believed that he had to discharge his weapon in order to prevent Mr. Oulson from subjecting him to a third physical attack which would have caused him great bodily harm or death. To determine whether Mr. Reeves was justified in the use of deadly force, this Court must:

> judge [Mr. Reeves] by the circumstances by which he was surrounded at the time the force was used. The danger facing the [Mr. Reeves] need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, [Mr. Reeves] must have actually

believed that the danger was real. *In re. Std. Jury Instr. in Crim. Cases*, 976 So. 2d at 1084. (emphasis added).

The fact that the Florida Supreme Court's standard jury instruction considers the subjective knowledge and perceptions of a defendant reflects the United States Supreme Court's holding that "**[d]etached reflections cannot be demanded in the presence of an upended knife**." *Brown v. United States*, 256 U.S. 335, 343 (1921) (emphasis added). The Court is required to determine whether a "reasonable and prudent person situated in the same circumstances and knowing what [Mr. Reeves] knew" would have believed that using deadly force was necessary to prevent infliction of great bodily harm, a forcible felony, and/or death. *Mobley v. State*, 132 So. 3d at 1164-1165.

Here, Mr. Reeves' "perceptions of danger were logical and reasonable." *Filomeno v. State*, 930 So. 2d at 822. His perceptions and beliefs were inexplicably influenced by the many lessons he learned as a law enforcement officer in identifying and responding to physical aggression, and well as his acute awareness that as a senior citizen he was at serious risk of great bodily harm from a physical attack by a much stronger, younger, and taller man.

Mr. Reeves' long history of learning, and as well as teaching other officers, the signs of danger, the factors that influence a tactical response, and the paramount importance of officer safety influenced his reasonable and correct conclusion that deadly force was necessary to prevent great bodily, a forcible felony, or death. Mr. Reeves had specifically instructed members of the Tampa Police Department and the Tactical Response/SWAT Team that they must always be observing and assessing whether an individual poses a threat to their safety. The factors that guide a decision on whether a tactical response is necessary, and what kind, compelled Mr. Reeves' use of deadly force.

Even when Mr. Oulson was not explicitly inflicting physical violence on Mr. Reeves, he was displaying and exhibiting the signs of a dangerous person. Oulson's face was contorted. He had a menacing body posture. He had stood up, towered over the seated Mr. Reeves, leaned over his chair, and on several occasions reached into the seventy-one (71) year old. The tone, inflection and pitch of Oulson's voice were that of a man filled with rage. He was loudly swearing and threatening. Oulson was exhibiting the very types of behaviors that Mr. Reeves had warned his students to take very seriously.

The law also compels this Court to consider that Oulson's bizarre conduct occurred in a movie theater, and the effect this fact had on Mr. Reeves' beliefs regarding his safety and welfare. Though the seventy-one (71) year old Mr. Reeves had gone to the cinema on hundreds of occasions since the 1940s, he had never before seen anyone explode with such anger and rage *in a movie theater*. The elderly Mr. Reeves went to the Cobb Grove Theater thinking that he was going to be enjoying yet another quiet and relaxing afternoon of his retirement with his wife and son. Instead, a man Mr. Reeves had never seen nor met started swearing, yelling, and screaming at him, standing, looming and leaning over him, and then ultimately physically attacking and harming the seventy-one (71) year old – all over a simple request to stop using his cellular phone during the movie previews.

Oulson was the prototypical aggressive and out-of-control person whose rage had gone to the point-of-no-return. Mr. Reeves was in the very type of circumstance that was contemplated in the training exercises he conducted in his officer safety and survival classes. Mr. Reeves knew that he had to make a rapid decision on how to respond to this dangerous individual in order to avoid suffering serious bodily harm or death.

It was consistent with Oulson's menacing conduct that he inflicted actual physical violence

upon Mr. Reeves. After the blow to Mr. Reeves' face, the snatching and shoving of the popcorn bag into his person, Mrs. Nicole Oulson's failed attempts to restrain her husband, and Oulson's extension of his arm for a third attack, the seventy-one (71) year old had concluded he needed to discharge his firearm to protect himself.

It is crucial for this Court to consider and acknowledge that the blow to Mr. Reeves' face from Oulson's iPhone 5 smartphone, which was encased in an Otterbox case and protective cover, could have caused great bodily harm or death to the seventy-one (71) year old. The combined weight of the iPhone 5 and the Otterbox case and protective cover exceeded, for example, the weight of a cue ball used to play billiards or a baseball.

Given that the self-defense law requires stepping into Mr. Reeves' shoes, imagine for a moment getting hit in the face with a cue ball or baseball. The damage such a projectile would cause is immense, and ranges from broken noses, orbital fractures, serious and potentially irreparable damage to eyes, to concussions, traumatic brain injuries, and fatalities. The destructive capabilities of baseballs are particularly well-known. People that play the sport, starting at youth T-Ball leagues and all the way up to Major League Baseball games, wear helmets to protect themselves from the grave and potentially deadly effects of being hit in the head with a baseball. One should also consider the intense and excruciating pain that a head impact from a cue ball, baseball, or Oulson's iPhone and Otterbox case and protective cover would cause.

The launching of the iPhone 5 in the Otterbox case and protective cover made it a deadly weapon under the law because it was likely to cause great bodily harm to Mr. Reeves. *J.W. v. State*, 807 So.2d 148, 149 (Fla. 2d DCA 2002). Whether an item is a deadly weapon is a factual determination that takes into consideration "size, shape, material, and the manner in which it was used or was capable of being used." *Simmons v. State*, 780 So.2d 263, 265 (Fla. 4th DCA 2001)

(emphasis added). Courts in Florida have held that blunt objects can be deadly weapons. *Cloninger v. State*, 846 So. 2d 1192, 1193 (Fla. 4th DCA 2003) (unbroken beer bottle was a deadly weapon); *A.H. v. State*, 577 So. 2d 699, 700 (Fla. 3d DCA 1991) (projected rock was a deadly weapon); *H.E.S. v. State*, 773 So. 2d 80, 81 (Fla. 2d DCA 2000) (bottle is a deadly weapon). Courts throughout the United States have also found that a telephone constitutes a deadly weapon. *See Lester v. State*, 2004 WL 635411 (Tex. App – Amarillo 2004); *Smith v. Hedgpeth*, 706 F.3d 1099 (9th Cir. 2013); *U.S. v. LeCompte*, 108 F.3d 948 (8th Cir. 1997). Here, the totality of the circumstances establishes that Oulson used his iPhone 5 covered in the Otterbox protective case in a manner making it a deadly weapon. *Simmons*, at 265. This fact means that Oulson had committed a number of very serious felonies for which the law provides severe punishments. That Mr. Reeves had been subjected to a number of violent felonies supported his belief that he needed to use deadly force to prevent serious bodily harm or death.

Further, Mr. Reeves' fears that the third attack from Oulson's fist would cause great bodily harm were not only well-founded and reasonable, but also consistent with the law. Appellate courts have held that great bodily harm "means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple assault and battery." *C.A.C. v. State*, 771 So. 2d 1261, 1262 (Fla. 2d DCA 2000) (citation omitted).

Physical blows by a fist can cause great bodily harm. *See e.g., Williams v. State*, 84 So. 3d 1164, 1165 (Fla. 2d DCA 2012) (State Attorney's Office for the Sixth Judicial Circuit charged the defendant with Aggravated Battery for throwing a single punch that caused the victim's jaw to fracture in two places); *Coronado v. State*, 654 So. 2d 1267 (Fla. 2d DCA 1995) (facial fracture, numbness and pain around the eye constitutes great bodily harm); *Heck v. State*, 774 So. 2d 844, 845 (Fla. 4th DCA 2000) (single punch causing orbital fracture, swelling, and bruising sufficient to

constitute infliction of great bodily harm); *Owens v. State*, 289 So. 2d 472, 474 (Fla. 2d DCA 1974) (*citing People v. Smith*, (1972), 6 Ill. App. 3d 259, 285 N.E. 2d 460 (two punches to the face causing a lump in the victim's mouth, scar on her face, and bruises under her chin constituted great bodily harm)).

Mr. Reeves also reasonably and correctly believed that Oulson's fists and hands were deadly weapons. *Michaels v. State*, 429 So. 2d 338, 339 (Fla. 2d DCA 1983) (victim killed by two strikes to the face with a fist); *Weir v. State*, 777 So. 2d 1073, 1074 (Fla. 4th DCA 2001) (in a case involving a defendant killing the victim with one punch, a medical doctor opined that "it is possible for one punch to knock someone out, and it is unnecessary to have multiple punches for the victim to become unconscious"). A younger, taller, and stronger man's fists and hands are deadly weapons if they are used to strike an elderly person. Mr. Reeves knew this, and acted accordingly in order to prevent great bodily harm or death to himself.

The aging process had both reminded Mr. Reeves daily that he was an older man and also contributed to his belief that deadly force was necessary to avoid great bodily harm or death. He knew from experiencing the aging process that a physical blow from a deadly weapon like Oulson's iPhone 5 or his fist could easily result in a bone fracture, loss of teeth, a broken nose, concussion, and even death. The fracturing of his hip in December 2014 from a mere fall was consistent with Mr. Reeves' belief on January 13, 2014 that he was highly susceptible to serious injury. As a retired law enforcement officer, Mr. Reeves also knew very well that elderly persons are vulnerable to serious injuries.

Additionally, it is notable that though Mr. Reeves had no legal duty to retreat, he nonetheless had no realistic opportunity to retreat and therefore did not have any alternative to using deadly force. He was seated in a movie theater chair. Mr. Reeves' body was pressed into the

back of his chair. He had a tall, younger, and much stronger person towering over him. The seventy-one (71) year old had a five (5) foot two (2) inch wall behind him. Mrs. Reeves, who was also a senior citizen and of poor health, was seated to Mr. Reeves' right. Mr. Oulson was in the seat directly in front of Mrs. Reeves, making an escape in that direction an impossibility. Merely getting out of the chair would have placed him closer to the attacking Oulson, who was hovering and looming over Mr. Reeves. In order to get up, he would have had to get closer to the standing and menacing Oulson, who was leaning over his chair. Mr. Reeves, who had to apply pressure to armrests to get up from chairs and use physical objects to maintain his balance when walking through a row of chairs, similarly could not safely and rapidly exit to his left. Mr. Reeves was in his seat with a violent person looming over him, and he could not retreat.

Given the above, it is clear that when considering the totality of the circumstances, Mr. Reeves had a well-founded and reasonable belief that he had to use his firearm. The alternative to doing so was to allow Oulson to subject him to great bodily harm or death.

Mr. Reeves had a reasonable belief that deadly force was necessary to prevent Oulson from fully committing a forcible felony against him

The fact that Oulson committed several different forcible felonies against Mr. Reeves contributed to the seventy-one (71) year old's conclusion that deadly force was necessary to prevent another such offense from being perpetrated.

A person can use deadly force if they reasonably believe that such action is necessary to prevent the commission of a forcible felony. Here, Oulson already committed the following offenses against Mr. Reeves:

1. Aggravated Assault on a Person 65 Years of Age or Older (Deadly Weapon) (§ 784.08 (2)(b), Fla. Stat. (2013)), because:

    1. Oulson intentionally and unlawfully threatened, either by word or act, to do

violence to Mr. Reeves; AND

2. At the time, Oulson appeared to have the ability to carry out the threat; AND

3. The act of Oulson created in the mind of Mr. Reeves a well-founded fear that the violence was about to take place; AND

4. The assault was made with a deadly weapon; AND

5. Mr. Reeves was at the time 65 years of age or older.

2. Aggravated Assault on a Person 65 Years of Age or Older (Commit a Felony Upon the Victim) (§ 784.08 (2)(b), Fla. Stat. (2013)), because:

    1. Oulson intentionally and unlawfully threatened, either by word or act, to do violence to Mr. Reeves; AND

    2. At the time, Oulson appeared to have the ability to carry out the threat; AND

    3. The act of Oulson created in the mind of Mr. Reeves a well-founded fear that the violence was about to take place; AND

    4. The assault was made with a fully-formed conscious intent to commit a felony upon Mr. Reeves; AND

    5. Mr. Reeves was at the time 65 years of age or older.

3. Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon) (§ 784.08 (2)(a), Fla. Stat. (2013)), because:

    1. Oulson intentionally touched or struck Mr. Reeves against his will; AND

    2. Oulson, in committing the battery used a deadly weapon; AND

    3. Mr. Reeves was at the time 65 years of age or older.

4. Attempted Aggravated Battery on a Person 65 Years of Age or Older (Great Bodily Harm) (§§ 777.04 (1) & 784.08 (2)(a), Fla. Stat. (2013)), because:

    1. Oulson did some act toward committing the crime of Aggravated Battery on a Person 65 Years of Age or Older (Great Bodily Harm) that went beyond just thinking or talking about it; AND

2. (a) Oulson would have committed the crime except someone prevented Oulson from committing the Aggravated Battery on a Person 65 Years of Age or Older (Great Bodily Harm); OR

   (b) Oulson failed to commit the crime of Aggravated Battery on a Person 65 Years of Age or Older (Great Bodily Harm).

5. Attempted Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon) (§§ 777.04 (1) & 784.08 (2)(a), Fla. Stat. (2013)), because:

   1. Oulson did some act toward committing the crime of Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon) that went beyond just thinking or talking about it; AND

   2. (a) Oulson would have committed the crime except someone prevented Oulson from committing the Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon); OR

      (b) Oulson failed to commit the crime of Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon).

6. Aggravated Assault (Deadly Weapon) (§ 784.021, Fla. Stat. (2013)), because:

   1. Oulson intentionally and unlawfully threatened, either by word or act, to do violence to Mr. Reeves; AND

   2. At the time, Oulson appeared to have the ability to carry out the threat; AND

   3. The act of Oulson created in the mind of Mr. Reeves a well-founded fear that the violence was about to take place; AND

   4. The assault was made with a deadly weapon.

7. Aggravated Assault (Commit a Felony Upon the Victim) (§ 784.021, Fla. Stat. (2013)), because:

   1. Oulson intentionally and unlawfully threatened, either by word or act, to do violence to Mr. Reeves; AND

   2. At the time, Oulson appeared to have the ability to carry out the threat; AND

   3. The act of Oulson created in the mind of Mr. Reeves a well-founded fear that the violence was about to take place; AND

4. The assault was made with a fully-formed, conscious intent to commit a felony upon Mr. Reeves.

8. Aggravated Battery (Deadly Weapon) (§ 784.045, Fla. Stat. (2013)), because:

    1. Oulson intentionally touched or struck Mr. Reeves against his will; AND

    2. Oulson, in committing the battery, used a deadly weapon.

9. Attempted Aggravated Battery (Deadly Weapon) (§§ 777.04 (1) & 784.045, Fla. Stat. (2013)), because:

    1. Oulson did some act toward committing the crime of Aggravated Battery (Deadly Weapon) that went beyond just thinking or talking about it; AND

    2. (a) Oulson would have committed the crime except that someone prevented Oulson from committing the Aggravated Battery (Deadly Weapon); OR

       (b) Oulson failed to commit the crime of Aggravated Battery (Deadly Weapon).

10. Attempted Aggravated Battery (Great Bodily Harm) (§§ 777.04 & 785.045, Fla. Stat. (2013)), because:

    1. Oulson did some act toward committing the crime of Aggravated Battery (Great Bodily Harm) that went beyond just thinking or talking about it; AND

    2. (a) Oulson would have committed the crime except that someone prevented Oulson from committing the Aggravated Battery (Great Bodily Harm); OR

       (b) Oulson failed to commit the crime of Aggravated Battery (Great Bodily Harm).

11. Assault on a Person 65 Years of Age or Older (§ 784.08 (2)(d), Fla. Stat. (2013)), because:

    1. Oulson intentionally and unlawfully threatened, either by word or act, to do violence to Mr. Reeves; AND

    2. At the time, Oulson appeared to have the ability to carry out the threat; AND

    3. The act of Oulson created in the mind of Mr. Reeves a well-founded fear

that the violence was about to take place; AND

4. Mr. Reeves was at the time 65 years of age or older.

12. Battery on Person 65 Years of Age or Older (§ 784.08 (2)(c), Fla. Stat. (2013)), because:

1. Oulson intentionally touched or struck Mr. Reeves against his will; AND

2. Mr. Reeves was at the time 65 years of age or older.

13. Robbery by Sudden Snatching (§ 812.131, Fla. Stat. (2013)), because:

1. Oulson took the property from the person of Mr. Reeves; AND

2. The property taken was of some value; AND

3. The taking was with the intent to permanently or temporarily deprive Mr. Reeve or the owner of his right to the property; AND

4. In the course of the taking, Mr. Reeves was or became aware of the taking.

The totality of the circumstances establishes that had Mr. Reeves failed to discharged his firearm, Oulson would have subjected him to the forcible felonies of

1. Aggravated Battery on a Person 65 Years of Age or Older (Deadly Weapon);

2. Aggravated Assault on a Person 65 Years of Age or Older (Deadly Weapon);

3. Aggravated Assault on a Person 65 Years of Age or Older (Commit a Felony Upon the Victim);

4. Aggravated Battery (Deadly Weapon);

5. Aggravated Assault (Deadly Weapon); and

6. Aggravated Assault (Commit a Felony Upon the Victim).

The law therefore compels this Court to find that Mr. Reeves was justified in employing deadly force against Oulson, because his firearm was discharged to prevent to the commission of various forcible felonies.

WHEREFORE, the Defendant, Curtis J. Reeves, respectfully requests this Honorable Court to grant him immunity from prosecution pursuant to *Martin v. State*, 43 Fla. L. Weekly D1016 (Fla. 2d DCA May 4, 2018), section 776.032, Fla. Stat. (2017), 776.012(3), Fla. Stat.(2013), 776.012(1)-(2), Fla. Stat. (2013), and *Nelson v. State*, 853 So. 2d 563 (Fla. 4th DCA 2003).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 24th day of July 2018.

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