

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
2014CF000216CFAXES-1

STATE OF FLORIDA .

V.

CURTIS JUDSON REEVES

Filed For Record
Pasco County, Florida
2020 JUN 24 PM 3:11
KIM MURPHY-SOWLES
Clerk of Court
Pasco County, Florida

**STATE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY
THAT IN DECEMBER, 2014 THE DEFENDANT FELL AND BROKE HIS HIP**

COMES NOW, Bernie McCabe, State Attorney, for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney hereby respectfully requests this Honorable Court to enter an order excluding any and all testimony the in December, 2014 the Defendant fell and broke his hip and as good cause would show:

State's Position

1. The fact that in December, 2014, approximately eleven months after the shooting of Chad Oulson, the Defendant fell and broke his hip is not relevant to prove or disprove any material fact.
2. In a self-defense case, it is the circumstances by which the Defendant was surrounded at the time the force was used that is relevant.
3. The testimony will only inflame the jury or appeal improperly to the jury's emotions.

Factual Basis

The Defendant is charged with 2° Murder. After an immunity hearing, Judge Barthle denied the Defendant's immunity request. The State anticipates the Defendant will continue to maintain he acted in self-defense and that killing of Chad Oulson was justifiable.

Jennifer Shaw was asked by defense counsel if she was aware that in December, 2014 the Defendant fell and broke his hip. The

State's objection to the testimony was sustained by the Court. (Immunity hearing transcript, Volume 1, pages 44-47)

Argument

Relevancy

The threshold for admissibility of all evidence is relevancy. See § 90.402, Fla.Stat. (2019). Furthermore, the relevancy of sought-after evidence must be demonstrated by the party seeking its admission. Hitchcock v. State, 413 So.2d 741 (Fla.), cert. denied, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 213 (1982).

In order for evidence to be relevant, it must have a logical tendency to prove or disprove a fact which is of consequence to the outcome of the case. Wright v. State, 19 So.3d 277 (Fla. 2009). If the evidence is logically probative, it is relevant and admissible unless there is a reason for not allowing the jury to consider it. State v. Taylor, 648 So.2d 701, 704 (Fla. 1995).

"To be legally relevant, evidence must pass the tests of materiality (bearing on a fact to be proved), competency (being testified to by one in a position to know), and legal relevancy (having a tendency to make the fact more or less probable) and must not be excluded for other countervailing reasons: Pearson, *Ungarbling Relevancy*, Fla.Bar J. 45 (1990)." Sims v. Brown, 574 So.2d 131, 134 (Fla. 1991)

"Despite logically relevant evidence being admissible under Section 90.402, and not being excluded under any of the exclusionary rules in the Code, it is inadmissible under section 90.403 when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or needless presentation of cumulative evidence." Charles W. Ehrhardt, *Florida Evidence* § 403.1, pg.229 (2019 ed.)

Here, the State anticipates the Defendant will continue to argue that he acted in self-defense and that the killing of Chad Oulson was justifiable.

Florida Standard Jury Instruction 3.6(f) (2014) states in part: "In deciding whether defendant was justified in the use of deadly force, you must judge [him][her] by the circumstances by which [he][she] was surrounded at the time the force was used."

It is what the Defendant knew at the time the decision to use deadly force was made that is indicative of his "state of mind", not information he subsequently acquires.

Because the facts sought to be introduced only become known to the Defendant after he made the decision to use deadly force, the testimony is not relevant.

Exclusion of relevant evidence

"[P]roper application of section 90.403 requires a balancing test by the trial judge. Only when the unfair prejudice substantially outweighs the probative value of the evidence must the evidence be excluded." *Alston v. State*, 723 So.2d 148, 156 (Fla.1998).

"Unfair prejudice" has been described as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Brown v. State*, 719 So.2d 882, 885 (Fla.1998) (quoting *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)). This rule of exclusion "is directed at evidence which inflames the jury or appeals improperly to the jury's emotions." *Steverson v. State*, 695 So.2d 687, 688-89 (Fla.1997). In performing the balancing test to determine if the unfair prejudice outweighs the probative value of the evidence, the trial court should consider the need for the evidence, the tendency of the evidence to suggest an emotional basis for the verdict, the chain of inference from the evidence necessary to establish the material fact, and the effectiveness of a limiting instruction. *Taylor v. State*, 855 So.2d 1, 22 (Fla.2003). The trial court is obligated to exclude evidence in which unfair prejudice outweighs the probative value in order to avoid the danger that a jury will convict a defendant based upon reasons other than evidence establishing his guilt." *McDuffie v. State*, 970 So.2d 312, 326-27 (Fla. 2007).

Conclusion

The Defendant's state of mind is material to the issue of the circumstances that surrounded him at the time he decided it was necessary to use deadly force. Since the "reasonableness" of Defendant's conduct of using deadly force is determined at the precise moment it was used, what information the Defendant may have acquired after the incident is not relevant and would only confuse or mislead the jury in their determination of "reasonableness."

WHEREFORE, the State of Florida respectfully requests the Court to enter its Order excluding any and all testimony that in December, 2104 the Defendant fell and broke his hip and to instruct the attorney for the Defendant, and any witnesses, not to mention or refer, or interrogate concerning, or attempt to convey to the jury in any manner either direct or indirect, any of the above mentioned facts without first obtaining permission of the Court outside the presence and hearing of the jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing State's Motion in Limine to Exclude the Testimony That in December, 2014 The Defendant Fell and Broke His Hip was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail or Personal Service this JHE day of June, 2020.

BERNIE McCABE, State Attorney
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EXHIBIT #1

1 her to stop, you know, wait -- wait a minute, let me hold
2 the bike up, that kind of thing to try to get them both
3 on and get them going. So no, it wasn't a swing your leg
4 over and get on.

5 Q. Now, are you aware of whether your father had a
6 fall in December of 2014 in the house?

7 A. I can't remember exact month, but yes, sir, I
8 am aware of when he fell.

9 Q. And --

10 MR. MARTIN: Your Honor, I'm going to object to
11 the -- to this testimony, and it occurred after the
12 incident of January 13 of 2014. What occurred and
13 what injuries occurred afterwards is not relevant
14 for this particular case. If they can try to tie it
15 up with Dr. Foley, then we'll see if they can do it.

16 But right now I'm suggesting to the Court that
17 there is no relevancy because it's after the
18 incident. Therefore, it would not be part of the
19 knowledge that Mr. Reeves knew at the time of
20 January 13, 2014.

21 MR. MICHAELS: But it would be evidence, Judge,
22 of the continuing aging process. It would be
23 evidence that part of the degenerative changes Mr.
24 Reeves was suffering from is lack of bone density.
25 Mr. Foley [sic] will indeed be able to testify as to

1 that's what happened. We're going to be able to
2 look at the x-rays.

3 The Court's going to see that he has an
4 artificial hip in the x-rays and Dr. Foley is going
5 to be able to say that old people's bones get
6 brittle, therefore, when they fall, they can't take
7 it like when they're young, and therefore, Mr.
8 Reeves had this degenerative condition.

9 Dr. Cohen's going to further be able to -- to
10 tie it up by saying that's what happens with old
11 people, that's how they know they're vulnerable.
12 Here's further proof that this is a vulnerable old
13 man. So I believe that it is relevant in this case,
14 even though it happened post January of 2014.

15 THE COURT: Anything further?

16 MR. MARTIN: Well, briefly, Judge, the
17 relevancy, as the Court is well aware, is the
18 knowledge of the defendant on January 13, 2014, at
19 the time of the shooting. He had none of that
20 knowledge.

21 It cannot be considered as being one of the
22 factors. Whatever happens before that, I believe is
23 probably fair game but not afterwards.

24 MR. ESCOBAR: Your Honor, may I respond as
25 well?

1 THE COURT: One at a time.

2 MR. ESCOBAR: Judge, may I have a moment, then?

3 MR. MARTIN: Judge, maybe Mr. Escobar put it a
4 little more articulate than I did -- articulately.
5 Essentially, this is relevant because it goes to
6 show the difference between an old person and a
7 young person. In this particular instance, Mr.
8 Reeves is on the back porch playing with his
9 granddaughter, walking there, falls, breaks a hip
10 and needs a hip replacement, and that doesn't happen
11 to a 43-year-old.

12 And so it's relevant to show the aging process,
13 to show his vulnerability, to show that he had
14 recognition of his vulnerability.

15 THE COURT: How can anything, really, that
16 happened afterwards be considered relevant to his
17 state of mind and feelings at the time?

18 MR. MICHAELS: Because his feelings at the time
19 were that, hey, I'm an old man. I can't -- I can't
20 let somebody -- I can't take a punch from somebody.
21 I can't. Because if I do, I could sustain great
22 bodily harm. If I do take a punch from somebody, I
23 could die or be killed, and so this is further
24 evidence that that was true. Not only is it a
25 perception but it was true because his bones are

1 deteriorating.

2 THE COURT: All right. There just -- I can't
3 allow stuff after -- after the event. It just
4 doesn't jive, and I don't really need corroboration
5 from a witness to say that this happened afterwards
6 to know that every day that goes by we all age. So
7 I get it. I don't need to hear about stuff that
8 happened afterwards just to corroborate that.

9 And I'm not seeing any other purpose for it,
10 and it simply can't have any relevance to his state
11 of mind at the time of the incident, so I'm going to
12 sustain that.

13 BY MR. MICHAELS:

14 Q. Now, growing up your father was a police
15 officer. Did he treat you at home like a police officer
16 treats a suspect?

17 A. No, sir.

18 MR. MARTIN: Your Honor, I'm going to object to
19 that. How would she know how he treats someone on
20 the street?

21 THE COURT: I'm going to sustain that. I mean,
22 rephrase.

23 BY MR. MICHAELS:

24 Q. Okay. Growing up was your father a bossy,
25 authoritative person?