

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  
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COURT REPORTER  
PASCO COUNTY, FLORIDA

**STATE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING  
VIVIAN REEVES BEING SCARED AT THE TIME OF THE INCIDENT  
AND WHEN SHE GAVE HER INITIAL STATEMENT TO LAW ENFORCEMENT**

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 regarding Vivian Reeves being scared at the time of the incident and when she gave her initial statement to law enforcement and as good cause would show:

**State's Position**

1. Testimony that Vivian Reeves was scared at the time the Defendant, shot & killed Chad Oulson is not logically or legally relevant evidence and is only being used to bolster the credibility of the Defendant.
2. Testimony that Vivian Reeves was emotion distraught and scared at the time she gave her initial statement to law enforcement is being used in conjunction with the tactic of anticipatory rehabilitation as reason for her inconsistent statements.
3. The inconsistencies brought out by defense counsel are so de minimis as to be of no concern to the State. A waiver by the State to forego its right to cross-examine Vivian Reeves regarding her inconsistent statements would render her testimony regarding be scared by the incident not being relevant and will only unduly confuse or mislead the jury.

## 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 the killing of Chad Oulson was justifiable.

Vivian Reeves was sitting next to the Defendant and directly behind Chad Oulson at the time of this incident. She was in a position, if she chose to see and hear the conduct of the Defendant and Chad Oulson prior to and at the time of the shooting.

Vivian Reeves testified during the Defendant's immunity hearing to her emotional state at the time of the shooting and when she gave her statement to law enforcement, explaining she was scared. See, Exhibit #1, attached. (Excerpt, Immunity hearing transcript, Volume 6, pages 693 - 719.)

The below-identified summary of testimony is non-relevant evidence of Vivian Reeves' emotional state at the time of the shooting and when she gave her initial statement to law enforcement. (All page numbers are from Exhibit #1, attached.)

### *Relevancy and bolstering the credibility of the Defendant*

1. She testified that as to "what happened that day" she has never been so scared in my life. Pg. 693 Ln. 13-16
2. She testified that at the time of the shooting she was never so scared in all her life. Pg. 695 Ln. 13-17.
3. She testified that when she heard Chad Oulson curse at the Defendant she was scared and horrified. Pg. 698 Ln. 9-21.
4. When defense counsel asked her if she was still afraid when the Defendant left her alone when he left to speak to the manager she testified she didn't know at that point. Pg. 699 Ln. 9-21.
5. She testified that after the shooting she was scared and that she has never been that scared before. Pg. 709 Ln. 22-25 through Pg. 710 Ln. 1-23.

### *Relevancy and anticipatory rehabilitation*

6. She testified after she heard the shot, she was shaking, she just couldn't believe it, she was scared. Pg. 710 Ln. 1-23.
7. She testified she was still "scared" and started crying while she was sitting out in the theater lobby waiting to be interviewed. Pg. 717 Ln. 9-15.
8. She testified she was still "scared" and started crying when she gave her statement to law enforcement. Pg. 717 Ln 16-25. That she was very upset and still frightened from what happened in the theater. Pg. 718 Ln. 16-25
9. Defense counsel asked her if it was true she told detectives that the Defendant asked Chad Oulson to stop using his phone. She testified she thought that to be true but now believes she just heard the Defendant say "phone". Pg. 718 Ln. 1-9. For a second time defense counsel asked her if she ever heard the Defendant tell Mr. Oulson to "stop playing with your phone". Pg. 719 Ln. 1-6.
10. She testified that after the Defendant's firearm was on his leg. A man came down the row and picked the firearm up. Pg. 712 Ln. 3-9. Defense counsel told her she told law enforcement that the Defendant handed the firearm to the off-duty police officer and asked her if that was true. She responded no, he picked it up off his lap. Pg. 719 Ln. 10-15.

### **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.)

At trial, the State anticipates the Defendant will continue to claim he acted in self-defense and that the killing of Chad Oulson was justified. The jury will decide if the Defendant's use of deadly force was justified by determining if a reasonable cautious and prudent person under the same circumstances by which the Defendant was surrounded at the time the force was use would have formed the same subjective belief that the danger posed by Chad Oulson could be avoided only through the use of deadly force. While it is true that the danger need not have been actual; to justify the use of deadly force, the appearance still has to be one a reasonable cautious and prudent person would have.

The "reasonableness" analysis required under Florida Statute 776.012 (Use of force in defense of person) and Standard Jury Instruction 3.6(f) (Justifiable Use of Deadly Force) is fact driven. Generally stating one is in "fear"<sup>1</sup> is not sufficient. The facts which caused the emotional experience of "fear" has to be articulated so the jury can make a determination if a reasonable cautious and prudent person under the same circumstances by which the Defendant was surrounded at

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<sup>1</sup>Fear - Apprehension of harm; dread; consciousness of approaching danger. Mental response to threat. H. Black, Black's Law Dictionary (5<sup>th</sup> Ed. 1979)

the time the force was use would have formed the same subjective belief that the danger posed by Chad Oulson could be avoided only through the use of deadly force.

To determine the "reasonableness" of the conduct in using deadly force, the relevant inquiry is into the state of mind of the individual using the deadly force.

The fact that another individual, who may or may not have the same opportunity to observe the same facts as the individual who used deadly force, was "scared" or "afraid" is not relevant.

Being "scared" by someone or becoming "afraid" of a surround circumstance is not the same as experiencing the emotion of "fear" caused by the perception of an imminent threat of danger.

Here, Vivian Reeves testified the profanity of Chad Oulson "scared" her. After she was "scared by the language of Chad Oulson, she did not look his way and testified she blocked out (her memory) everything from the time Chad Oulson leaned over his seat until the shot was fired. Pg. 708 Ln. 16-25 through Pg. 709 Ln. 1-9.

She testified that at the time of the shooting she was never so scared in all her life. Pg. 695 Ln. 13-17.

The State objected on relevancy grounds to Vivian Reeves testify the happenings on January 13, 2014 resulted in her being scared. Pg. 693 Ln. 13-19. The defense argued the testimony that Vivian Reeves was scared was relevant because two people sitting in a theater, one individual charged with illegally discharging a firearm because he was in fear of imminent great bodily harm or death --- relevant to try to understand what that person (Defendant) was feeling. Person (Vivian Reeves) in same place, saw same man coming over same seat - don't think there is a relevancy issue at all. She (Vivian Reeves) can say she was scared to death. Pg. 694 Ln. 12 through Pg. 694 Ln. 1. The Court overruled the States objection. Pg. 695 Ln. 2-19.

Defense argument to the Court was that Vivian Reeves was "scared" at the time of the incident, therefore was relevant admissible evidence to bolster the credibility of the Defendant who maintained he was "scared sh-less" by the event. The defense argument is based on the fact that if it is reasonable for Vivian Reeves to be 'scared" by the event, the Defendant's

conduct of using deadly force must also be reasonable, and the killing justifiable.

There is no logical relevance to such testimony. Vivian Reeves did not experience the same conduct as the Defendant. At most she witnessed half of what the Defendant experienced. Ironically it is the half that she did not experience which is most telling of the Defendant's state of mind. Clearly, the jury could find the Defendant's conduct of using deadly force unreasonable based on the fact that Oulson grab the popcorn from the Defendant's lap, he tossed the bag of popcorn towards the Defendant, afterward he retreated to his side of the isle and at or just before the Defendant fired his pistol, killing Chad Oulson he was heard by two witnesses saying words to the affect "throw your popcorn in my face will ya".

#### *Anticipatory Rehabilitation*

The modern view reflected in Section 90.608 provides that any party, including the party calling the witness, may attack the credibility of the witness. Charles W. Ehrhardt, *Florida Evidence* § 608.2, pg.652 (2019 Ed.) (Cite omitted)

A witness may testify on direct examination about prior inconsistent statements, when the testimony matters relating to the credibility of the witness is elicited in an attempt to soften the blow or reduce the harmful consequences of such evidence. This technique has been termed anticipatory rehabilitation. This technique was approved by the Florida Supreme Court in Bell v. State. Charles W. Ehrhardt, *Florida Evidence* § 608.2, pg.656-57 (2019 Ed.) (Cite omitted)

A concurring opinion in Bell suggested that such evidence should not be admissible if the opposing counsel waives the use of the evidence during cross-examination. In this situation the proffered testimony would lack relevancy. Unless the matter is going to be raised by the opposing counsel, it has no significance in the case. Charles W. Ehrhardt, *Florida Evidence* § 608.2, pg.658-59 (2019 Ed.) (Cite omitted) See, Bell v. State, 491 So.2d 537, 538-39 (Fla. 1986) (Barkett, J. concurring) ("I would allow the evidence of prior inconsistent statements during direct examination unless the opposing party waives the use of such evidence during cross-examination. If the jury is going to hear it, it matters not when it is heard. The choice of whether the jury hears it, however, should be left to the party who has

the right to submit the issue to the fact finder or to waive it.”)

#### *Inconsistent Statements by Vivian Reeves*

1. In her statement to law enforcement she stated that there was a subject in front of them texting. She stated that after the lights went dim her husband asked him to stop. Pasco Sheriff's Report, O#14001529, Pg. 95 (Printed version 1/25/16)
2. In her deposition when she was asked what she heard the Defendant say when he spoke to Mr. Oulson she initially indicated she did think she heard what he said, explaining she knew what he was doing and might have heard him say the word "phone". (Pg.43 Ln 21-25 through Pg. 44, Ln 1-5.) She then explained she didn't know if she heard any of the Defendant's conversation with the Mr. Oulson. (Pg. 45 Ln. 4-23.)
3. In her statement to law enforcement she stated that after the shooting a law enforcement officer asked the Defendant for his gun. Pasco Sheriff's Report, O#14001529, Pg. 95 (Printed version 1/25/16)

Here, defense counsel anticipated the State would bring out the inconsistencies between Vivian Reeves' statement to law enforcement and her deposition and her statement in the immunity hearing. Clearly counsel did so to take the wind out of the State's sail. Having Vivian Reeves' testify that she was still "scared" at the time of the interview provided a reason for the faulty memory at the time she spoke to law enforcement. There was however no such evidence present during her immunity hearing testimony that at the time of her deposition she was still "scared" for any reason.

#### **Conclusion**

The Court must weigh the logical strength of the proffered evidence to prove a material fact or issue against the other facts in the record and balance it against the strength for the reason for the exclusion. The defense argues the testimony is relevant because it tends to corroborate the Defendant's testimony that he was scared, ergo his conduct of

using deadly force was reasonable. The fact that Vivian Reeves was "scared" has no bearing on the material issue - was the Defendant's conduct of using deadly force "reasonable". As previously argued the relevant inquiry into the "reasonableness" of Defendant's conduct of using deadly force, is into his state of mind.

"[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)



To place wife's emotional state before the jury would only confuse and mislead the jury during their deliberation as to the reasonableness of Defendant's conduct.

**WHEREFORE,** the State of Florida respectfully requests the Court to enter its Order excluding any and all testimony regarding Vivian Reeves being scared at the time of the incident and when she gave her initial statement to law enforcement 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 Regarding Vivian Reeves Being Scared at the Time of the Incident and When She Gave Her Initial Statement to Law Enforcement 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 24<sup>th</sup> day of June, 2020.

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B

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**EXHIBIT #1**

1 A. Probably not.

2 Q. Why did you walk behind Mr. Reeves?

3 A. Because usually I go in first, but we were  
4 going to put me between Curtis and my son.

5 Q. Now, as you walk in, are the previews on yet?

6 A. No.

7 Q. As you walk in, do you notice anybody using  
8 their phone?

9 A. Yes.

10 Q. And who do you see using their phone?

11 A. Mr. Oulson had his phone out, and I just saw  
12 that the screen was lit.

13 Q. Okay. Now, we're going to talk about what you  
14 remember, but let me ask you in terms of how this day,  
15 how what happened made you feel, tell the Court  
16 emotionally what toll it had on you.

17 A. I've never been so scared in all my life.

18 MR. MARTIN: Your Honor, I'm going to object.  
19 Relevancy.

20 MR. MICHAELS: Judge, it goes to her testimony.  
21 We have to look at her testimony in context.

22 Certainly she's telling the Court that she was  
23 scared and so, you know, she's going to tell the  
24 Court what she remembers. She's telling the Court  
25 how she felt when that day happened. It's -- we're

1 going to get there one way or another, so we're just  
2 kind of framing what her experience was there, and  
3 so I think it's relevant that she was fearful.

4 MR. MARTIN: Your Honor, her demeanor and her  
5 feelings at that point are not relevant to any  
6 material issue in this immunity hearing at all.  
7 There's nothing for you to consider regarding how  
8 she felt --

9 MR. MICHAELS: Well, here --

10 MR. MARTIN: -- so I object as far as relevancy  
11 for this particular hearing.

12 MR. MICHAELS: Here's why it's relevant: If we  
13 have two people sitting in the theater, one  
14 individual is accused of discharging a firearm  
15 illegally and he's telling the Court that it was a  
16 justified use of his firearm because he was in fear  
17 of imminent great bodily harm or death, somebody  
18 sitting next to him can certainly -- it's certainly  
19 relevant to try to understand what that person was  
20 feeling.

21 If that person is in the same place, the same  
22 dark theater with the same man coming over the same  
23 seat, sitting next to the person that's accused, I  
24 think that -- you know, I don't think there's a  
25 relevancy issue at all here. She can certainly say

1 she was scared to death.

2 MR. MARTIN: Judge, what we're talking about is  
3 Mr. Reeves and what ever perceptions he had. We  
4 can't impute what Ms. Reeves might feel like as an  
5 elementary school teacher, a banker and going and  
6 working as a secretary to a seasoned veteran police  
7 officer. It just doesn't -- you can't make that  
8 logical leap that one will feel like the other.

9 It's not relevant as to how she felt about the  
10 situation. We haven't even had the same predicate  
11 that she saw even the same things that Reeves did.  
12 There are too many variables here to impute:  
13 Because she was scared, he had the right to be  
14 scared, so I object to relevancy.

15 THE COURT: All right. I'm going to overrule  
16 it. I'm very certain that if her testimony was that  
17 she wasn't scared at all, the State would find that  
18 very relevant, so I think it's relevant and I will  
19 overrule.

20 BY MR. MICHAELS:

21 Q. So how did you feel that day as a result of  
22 that day? How did it affect you emotionally?

23 A. That day --

24 MR. MARTIN: Excuse me, Judge. Now that I've  
25 heard Mr. Michael's second question, he's asking her

1 after everything was over, how did she feel? That  
2 is not relevant.

3 THE COURT: Let's get a little more of a  
4 predicate as far as what we're talking about.

5 BY MR. MICHAELS:

6 Q. You walk down the aisle following your husband,  
7 right?

8 A. Yes.

9 Q. And you've already testified that you see  
10 Mr. Oulson holding his phone in some way?

11 A. Yes.

12 Q. And is it -- do you see the light from the  
13 phone?

14 A. Yes.

15 Q. Do you hear him talking on the phone at all?

16 A. No.

17 Q. Now, at that point do you sit down with your  
18 husband?

19 A. Yes.

20 Q. And are the previews on yet?

21 A. No.

22 Q. Where is Mr. Oulson related to -- in relation  
23 to where you're sitting?

24 A. He's in front of me.

25 Q. Mr. Oulson is directly in front of you?

1 A. Yes.

2 Q. And your husband is on the movie screen, and  
3 you're seated in your seat. Where is your husband?

4 A. He's to my left in front of Mrs. Oulson.

5 Q. Okay. Now, when you sit down, what happens?  
6 What do you do? Do you take popcorn?

7 A. I took a Ziplock bag and I took part of the  
8 popcorn so I could hold mine and he could hold his.

9 Q. Now, you have your popcorn. What's on the  
10 screen as you're sitting there?

11 A. It was not the previews. I don't remember  
12 exactly, but it wasn't the previews.

13 Q. Now, at some point the previews come on?

14 A. Yes.

15 Q. And describe to the Court how you know the  
16 previews are on.

17 A. They played the thing -- they played the  
18 message to discontinue using your cell phones, and then  
19 the previews came on.

20 Q. Did the lights change?

21 A. Yes, much darker.

22 Q. What about the sound coming from the screen?

23 A. Very, very loud.

24 Q. Now you're seated there. The previews are on.  
25 Do you see your husband lean forward at all?

1 A. Yes.

2 Q. Do you hear anything that he says?

3 A. He spoke so softly, I don't think I did.

4 Q. Did you see who he appeared to be talking to or  
5 leaning towards?

6 A. Mr. Oulson.

7 Q. Did you hear Mr. Oulson say anything?

8 A. Yes, I did.

9 Q. Okay. Now, I know you don't want to use the  
10 words but it's important that you use the exact words  
11 that you recall. What did you recall Mr. Oulson saying?

12 A. He used the word "fuck" or "fucking." He was  
13 very loud, and I think he -- the word "texting" and his  
14 daughter.

15 Q. And when you heard that, the previews were on?

16 A. Yes.

17 Q. And his voice was louder than the previews?

18 A. Yes.

19 Q. Now, how did that make you feel?

20 A. It scared me. I was horrified that somebody  
21 would act like that, especially in a movie theater.

22 Q. Did you do anything at that point?

23 A. No.

24 Q. What did your husband do?

25 A. He started to stand and he said, "I'm going to



1 go get the manager."

2 And I said, "Let's just move," and he just  
3 continued on.

4 Q. Do you know whether your husband heard you or  
5 not?

6 A. I don't.

7 Q. Did he answer you in any way?

8 A. No.

9 Q. Now, your husband's off. He told you he's  
10 going to see the manager. You're still in your seat.  
11 What feelings are going through you at that point?

12 A. I don't want to be there, and I don't look  
13 at -- I don't look at Mr. Oulson. It's like if I don't  
14 look at him, he's not there.

15 Q. Kind of like a child?

16 A. Yes.

17 Q. Why were you feeling that way? Were you still  
18 afraid?

19 A. Yes, I -- well, I don't know if I was afraid at  
20 that point, but I just thought it was an awful way to  
21 act. We don't talk like that in my house.

22 Q. Now, are you looking at the screen or what are  
23 you doing?

24 A. Probably.

25 Q. Now, at some point does your husband come back?

1 A. Yes.

2 Q. Now tell me, when your husband walked past you  
3 to go to the manager, did you hear him grumbling at all?

4 A. No, I didn't hear anything.

5 Q. Was he acting in any way that you could tell  
6 that he was angry in any way?

7 A. No.

8 Q. Was he doing anything other than walking slowly  
9 down the aisle?

10 A. That's what he was doing.

11 Q. Now, he comes back in a couple of minutes?

12 A. Yes.

13 Q. Do you remember that?

14 A. Yes.

15 Q. What happened when your husband comes back?

16 A. I hand him his popcorn and he sits down.

17 Q. He sits back next to you?

18 A. Yes.

19 Q. And he takes his popcorn?

20 A. Yes.

21 Q. What do you see next?

22 Now, before we get there, when your husband  
23 sits down next to you, are you paying any attention to  
24 Mr. Oulson when your husband first sits down or are you  
25 still --

1 A. No, I'm not focused on him.

2 Q. You're still hoping everything will go away?

3 A. Yes.

4 Q. Tell me what the next thing is that happens.

5 A. They both spoke, and I don't know who spoke  
6 first, but Curtis leaned forward again.

7 Q. Could you hear any words that Curtis said?

8 A. I couldn't hear anything Curtis said.

9 Q. Could you hear anything that Mr. Oulson said?

10 A. Yes.

11 Q. What did Mr. Oulson say?

12 A. "You told on me. Who the fuck do you think you  
13 are?"

14 Q. Were the previews on?

15 A. Yes.

16 Q. Was that statement that you just said Mr.  
17 Oulson said, "Who the fuck do you think you are," was  
18 that louder than the previews?

19 A. Well, it was -- I can't say that it was louder  
20 than the previews, but it was loud enough to be heard.

21 Q. It was loud enough for you to hear over the  
22 previews?

23 A. Yes.

24 Q. Are you looking now towards that direction or  
25 are you still kind of looking straight ahead?

1 A. Well, I looked when Curtis leaned forward.

2 Q. What happened next?

3 A. Mr. Oulson quickly stood up and turned and he  
4 leaned forward, and I thought he was coming over.

5 Q. Okay. So right after you heard, "Who the fuck  
6 do you think you are," Mr. Oulson got up and faced you  
7 and your husband?

8 MR. MARTIN: Your Honor, I'm going to object to  
9 constant summarizing of testimony the way that  
10 Mr. Michaels would like it perceived. This is a  
11 who, what, where, how type of direct examination.

12 MR. MICHAELS: Judge, I appreciate the  
13 prosecutor's criticisms; however, this is an old  
14 prosecutor's method and I think they call it looping  
15 in law school. We're just getting to the next  
16 question the same way the prosecutors do in every  
17 single trial. There's -- we're just reframing the  
18 question.

19 This is a lay witness. She's obviously upset.  
20 I want to keep her focused and we want her to  
21 continue on telling what happened, so we're just  
22 trying to frame it. I'm not testifying at all.

23 MR. MARTIN: Judge, we don't need to loop the  
24 last five minutes of conversation. If he wants to  
25 say, "Okay, he sat down and he had popcorn. What

1           happened next? After he got the popcorn, what  
2           happened next?" But we don't loop the last five  
3           minutes to get to what happened next.

4           MR. MICHAELS: Respectfully, I will let  
5           Mr. Martin question people the way he wishes to. I  
6           would beg the Court to allow me to question the  
7           witnesses the way that I wish to.

8           THE COURT: All right, as long as you don't  
9           loop five minutes' worth.

10          MR. MICHAELS: All right. I promise it won't  
11          be five minutes.

12          THE COURT: Thank you.

13 BY MR. MICHAELS:

14          Q. Okay. Now, you have Mr. Oulson saying, "Who  
15          the fuck do you think you are," and he stands up. At  
16          that point is the theater dark?

17          A. Yes.

18          Q. And are the previews on?

19          A. Yes.

20          Q. You're looking at Mr. Oulson at that point and  
21          you see him lunging forward; is that correct?

22          A. Yes, I saw that.

23          Q. When you say he was leaning forward, describe  
24          for the Court what it is that you were seeing at that  
25          time.

1           A.    It happened very quickly, and his whole upper  
2 body just came forward and I thought that he was coming  
3 over.

4           Q.    I would like for you to look at a videotape, if  
5 you would.  It's Exhibit 17.  It's already been admitted  
6 into evidence.

7           MR. MICHAELS:  Your Honor, this is quarter  
8 speed 1, so with permission we will fast forward  
9 through some of the gaps -- the Court already  
10 understands that there's certain delays within it --  
11 to allow Mrs. Reeves to look at the videotape.

12          THE COURT:  Any objection to fast forwarding  
13 through the blank one?

14          MR. MARTIN:  No, but I may have an objection to  
15 the video once we get there.  So if we can get  
16 there --

17          MR. MICHAELS:  This is the video that's already  
18 been admitted into evidence.

19          MR. MARTIN:  I don't care.  The question is  
20 whether or not this witness will be allowed to view  
21 it and comment on the content.  That's what's at  
22 issue.

23          MR. MICHAELS:  Judge, the plans are to allow  
24 her to view it --

25          THE COURT:  Uh-hum.

1 MR. MICHAELS: -- and then I'll question her  
2 afterwards.

3 THE COURT: Okay. We can have a  
4 contemporaneous objection at that point, I suppose.

5 (Video played.)

6 MR. MICHAELS: If we can pause it right there,  
7 please.

8 BY MR. MICHAELS:

9 Q. Do you recognize that person?

10 A. Yes. That's my husband.

11 Q. Okay. Continue, please. Is that you?

12 A. Yes.

13 Q. Is that where you described earlier that you  
14 both entered the theater and sat down initially?

15 A. Yes.

16 MR. MARTIN: Your Honor, I'm going to object to  
17 the constant running commentary on the video  
18 suggesting an answer to this witness about what the  
19 content shows.

20 MR. MICHAELS: That's the same argument, and  
21 I'm not sure -- could you please pause that, Mr.  
22 Shah?

23 It's the same argument. I'm not sure why we're  
24 having it. The question calls for a yes-or-no  
25 answer. This is a lay witness. This is somebody

1 that's obviously been affected. I think -- I can  
2 ask permission to even lead this witness, frankly,  
3 but I'm just asking questions that ask for a  
4 yes-or-no answer. I'm not suggesting at all what  
5 the answer may be.

6 THE COURT: I will allow her to answer.

7 MR. MICHAELS: Fast forward, please.

8 BY MR. MICHAELS:

9 Q. Go ahead. Was that last series where you  
10 describe your husband sitting forward or not?

11 A. Yes.

12 Q. Okay. Leaning forward?

13 A. Yes.

14 Q. Speaking to Mr. Oulson?

15 A. Yes.

16 Q. Okay. Now, it's almost like your husband is  
17 leaning forward a second time. Do you recall that?

18 A. Has he gone out?

19 Q. Go back a little bit, please, Mr. Shah.

20 See, it almost looks like Mr. Reeves is leaning  
21 forward a second time. Do you remember that?

22 A. I don't.

23 Q. Okay. Go ahead.

24 That's your husband getting up; is that right?

25 A. Yes.



1 Q. Does your husband use the arm of a chair to  
2 push off of to get up?

3 A. Certainly most of the time that's what I see.

4 Q. Is that your husband holding on to the wall as  
5 he walks slowly past?

6 A. Yes.

7 Q. This is your husband coming back?

8 A. Yes.

9 Q. This is after the way you described after the  
10 manager, he went to see the manager?

11 A. Yes.

12 Q. What is -- what do you see your husband doing  
13 here?

14 A. I'm not sure.

15 MR. MICHAELS: Okay. Continue forward.

16 THE WITNESS: It's taking his popcorn from me.

17 BY MR. MICHAELS:

18 Q. Okay. Now he's sitting down; is that right?

19 A. Yes.

20 Q. Now, was it sometime after that that Mr. Oulson  
21 stood up and leaned over the seat?

22 A. Yes.

23 Q. Now, would you describe Chad Oulson coming over  
24 the seat in front of you? He's in the seat in front of  
25 you; is that right?

1 A. Yes.

2 Q. When he's coming over, is he coming directly  
3 over towards you?

4 A. No.

5 Q. How is he coming over?

6 A. He's going, like, for Curtis.

7 Q. So he's at an angle going towards --

8 A. I think so.

9 Q. -- Curtis?

10 Did you see what Mr. Oulson did after you  
11 initially saw him stand up quickly and lunge over the  
12 seat?

13 A. Before?

14 Q. Afterwards.

15 A. After?

16 Q. Not on the movie. Do you remember what he did?

17 A. After he stood up, no. I just blocked it out.

18 Q. Okay. Do you know if you closed your eyes?

19 A. I don't know.

20 Q. Because it looked in the video, would you agree  
21 with me --

22 MR. MARTIN: Your Honor, I object to the  
23 leading nature of the question and commenting on the  
24 content of the victim -- I mean of the video to the  
25 witness, "It looked like it to me."

1 THE COURT: I'll sustain.

2 MR. MICHAELS: I'll move on.

3 BY MR. MICHAELS:

4 Q. Did you see anything after Mr. Oulson was  
5 lunging over the seat coming after Curtis?

6 A. No. I wish I had.

7 Q. What's the next thing that you remember? You  
8 hear a shot?

9 A. I hear a shot.

10 Q. After you hear the shot, does your husband say  
11 anything to you?

12 A. Yes. He said, "He hit me in the face."

13 Q. And at that point do you look over at your  
14 husband or what do you do?

15 A. He had his hands on his face, and I didn't  
16 examine his face. I was -- I was just -- I don't know.  
17 I just didn't know what had happened and I just couldn't  
18 handle what happened.

19 Q. Did you see the gun?

20 A. It was -- the first time I saw the gun it was  
21 laying on Curtis's leg, left leg.

22 Q. And at that point what emotions are you  
23 feeling? Are you crying?

24 A. I don't think I was crying then.

25 Q. Were you shaking?

1 A. Oh, yes.

2 Q. What was going through your mind in terms of  
3 your emotions?

4 MR. MARTIN: Your Honor, the same objection,  
5 relevancy at that point in time.

6 MR. MICHAELS: It's relevant, Judge, because he  
7 later gives an interview to the detective shortly  
8 thereafter.

9 THE COURT: Overruled.

10 BY MR. MICHAELS:

11 Q. What were you feeling at that moment?

12 A. What I was I feeling?

13 Q. Now, take a moment and think about it. Put  
14 yourself back there and tell the Court what you were  
15 feeling at that moment.

16 A. I just couldn't believe it.

17 Q. Were you still scared?

18 A. Oh, yes. I was scared.

19 Q. Have you ever been as scared as you were on  
20 that day?

21 A. Never.

22 Q. On that moment, at that moment?

23 A. Never.

24 Q. So now what happened? Your husband tells you  
25 that he's been hit in the face?

1 A. In the face.

2 Q. He's holding his head in his hands?

3 A. Yes, he's got his hands up.

4 Q. And you said that somebody comes over for his  
5 gun?

6 MR. MARTIN: Your Honor, we're back to the  
7 looping. Can we please stop that?

8 THE COURT: Well, I didn't --

9 MR. MARTIN: It's the form of the question and  
10 it's what --

11 MR. MICHAELS: Judge, a man's life is on the  
12 line. We have his wife up here testifying about  
13 what happened that day. She's already testified  
14 about how shaken she was and, you know, we have  
15 these -- I don't know what the legal objection is.  
16 No looping? I've never seen that in the evidence  
17 book.

18 I have no idea what Mr. Martin is objecting to  
19 other than to try to stop me from questioning this  
20 witness effectively.

21 MR. MARTIN: I object to commenting on the  
22 evidence and not having a direct question. It is  
23 improper questioning, improper form. That's my  
24 objection.

25 THE COURT: And leading. It was leading, that

1 last question, so just rephrase.

2 BY MR. MICHAELS:

3 Q. After you saw the gun on your husband's leg,  
4 what happened next?

5 A. A man came down the row on Curtis's left and  
6 said he was an off-duty police officer or whatever,  
7 sheriff's deputy or something, and he picked the gun up.

8 Q. Off of your husband's leg?

9 A. Yes.

10 Q. Did you sit there next to Curtis or did you  
11 move over?

12 A. I moved over. I think he told me to move over.  
13 The man who took the gun took the clip out of it, and I  
14 said something to Curtis.

15 Q. What did you say?

16 A. I said, "What happened? You can't shoot into a  
17 theater full of people," something like that.

18 And he said, "Not now," and then I moved over.

19 Q. Did your husband ever point at you?

20 A. Not that I remember.

21 Q. Or cuss at you?

22 A. No.

23 Q. Now, you're not seated next to him. You're  
24 seated in a seat or two over, as you testified to.

25 Do you see your son, Matt, there at all?

1 A. Not then.

2 Q. When do you see Matt?

3 A. I don't know if I had moved back next to  
4 Curtis, but something happened before I saw Matt.

5 Q. What happened?

6 A. I looked down and there was a cell phone  
7 between Curtis's feet, and popcorn, and I don't know why  
8 Curtis didn't have his phone out but for some reason I  
9 assumed that was his phone because I didn't expect  
10 somebody else's to be there.

11 And I asked the deputy, "Can I pick -- can I  
12 get his phone?" And he said, "Don't touch anything," and  
13 I felt like that meant Curtis, too.

14 Q. Let me show you what's been marked as Defense  
15 Exhibit 41.

16 MR. MICHAELS: Judge, at this time we would  
17 move into evidence Exhibit 41. They've been  
18 stipulated to in terms of authenticity and chain of  
19 custody.

20 I don't know if the State is going to require  
21 me to lay a predicate. Certainly I can with the  
22 witness.

23 THE COURT: All right. It will be admitted.

24 MR. MICHAELS: And what number would that be  
25 from the Court?

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THE COURT: 26.

(Whereupon, Defense Exhibit 26 for identification was received in evidence by the Court.)

BY MR. MICHAELS:

Q. This is a composite of three photographs. This is 2060459 JPEG.

Do you recognize that, Mrs. Reeves?

A. Yes, I do.

Q. Okay. What are we looking at here?

A. That is in front of Curtis's seat.

Q. Is that the aisle that you were seated on?

A. Yes.

Q. And so I'm pointing to the popcorn. This appears to be popcorn. Is that in front of your husband's seat?

A. Yes.

Q. And the row that I'm showing, pointing to, which appears to be right in front of the row with the popcorn, is that the row where Chad Oulson was?

A. Yes.

Q. There's a little bag that looks like of candy down here that I'm pointing to. Do you recognize that?

A. Yes, probably.

Q. Maybe -- can you see it better up there?



1 MR. MICHAELS: Can you zoom in at all?

2 THE WITNESS: Yes.

3 BY MR. MICHAELS:

4 Q. What is that?

5 A. Skinny Cow candy.

6 Q. And how do you recognize that?

7 A. Because I took it in.

8 Q. Okay. Now, once you're seated there, what's  
9 the next thing that happens? Do you see that?

10 A. I saw Matt at the end of my row. He had blood  
11 on his hands and on his clothes, and he came down and his  
12 dad told him to get me out of there, but he said, "Let me  
13 go clean up."

14 Q. Okay. So did he finally get you out of there?

15 A. Yes, he came and got me.

16 Q. Where did you go?

17 A. He sat me down at a table outside by the  
18 concession stand, and someone, an employee of the theater  
19 told him he could have some bleach or something to try to  
20 clean up better, so -- do you want me to keep going?

21 Q. Yeah. Tell me what happened. Did you stay  
22 there?

23 A. I stayed there.

24 Q. Did you move at some point?

25 A. At some point, but not then.

1 Q. Why did you move?

2 A. I moved when Matt came back and because people  
3 sat down. People came out of the theater, sat down, and  
4 they were talking about it.

5 Q. What are some of the things they were saying?

6 A. I can't tell you.

7 MR. MARTIN: Your Honor, I'm going to object.

8 MR. MICHAELS: She said she couldn't tell me,  
9 Judge.

10 THE COURT: What's your objection?

11 MR. MARTIN: Hearsay right now.

12 MR. MICHAELS: It definitely was going to be  
13 offered for the proof of the matter asserted. I can  
14 assure you that. At any rate, she said she can't  
15 recall.

16 THE COURT: Okay. Move on.

17 BY MR. MICHAELS:

18 Q. So, then, now what happens? You're seated  
19 there. Your son takes you away. Where do you go to?

20 A. We go stand in front of the concession stand.

21 Q. What's the next thing that happens?

22 A. Sheriff's deputies came through the front door,  
23 and Matt had his badge out. They had guns. And Matt  
24 showed his badge and said that it was under control, but  
25 they just rushed past.

1 Q. Okay. And so do you wait there in the lobby?

2 A. The theater employee came and got us and said  
3 we could go into an office.

4 Q. And what happened once you get in the office?  
5 Does anybody come to join you?

6 A. Yes, a deputy stayed with us the entire time.

7 Q. At some point are you interviewed?

8 A. Yes.

9 Q. Now, when you're there in the front lobby and  
10 you see the police come in with long guns. What were you  
11 feeling?

12 A. I was scared.

13 Q. And when you were put in the room by the  
14 employee, how were you feeling?

15 A. I started crying.

16 Q. Now, at some point does a detective come and  
17 speak to you?

18 A. Yes.

19 Q. Do you agree to speak to the detective?

20 A. Yes.

21 Q. When you were speaking to the detective, tell  
22 me what you were feeling. Like, were you still scared?

23 A. I was very upset.

24 Q. Were you still crying?

25 A. Yes.

1 Q. Now, in your statement you tell the detective  
2 that your husband asked Mr. Oulson to stop using his  
3 phone. Is that true?

4 A. That's what I thought to be true.

5 Q. Okay. So do you remember your husband saying  
6 those exact words, "Stop," or do you remember it as one  
7 word, or tell me what you remember.

8 A. No. If I heard anything, that was the word  
9 "phone." That's all I heard.

10 Q. The police officer said you told him, and  
11 there's a recording of it, that your husband handed the  
12 gun to the off-duty police officer.

13 A. No, he picked it up.

14 Q. Off of his lap?

15 A. Yes.

16 Q. And, again, while you're giving the answers to  
17 these questions, are you crying?

18 A. I may have stopped, but I was at first.

19 Q. Okay. Were you shaking?

20 A. Yes.

21 Q. Were you upset?

22 A. Very upset.

23 Q. Were you still frightened from what happened in  
24 the theater?

25 A. Yes.

1 Q. Did you ever hear your husband say, "Stop  
2 playing with your phone" --

3 A. No.

4 Q. -- to Mr. Oulson?

5 A. No.

6 Q. What happened after you spoke with a detective?

7 A. I spoke to two detectives. I was concerned  
8 about Curtis, you know, and I asked him about -- I asked  
9 about Curtis, you know, what -- and what do I do?

10 And he said, "We'll take good care of him and  
11 he'll call you tonight," and then they took Matt and I to  
12 stand outside the theater where you buy your -- I don't  
13 think it's where you buy your tickets, but we were on the  
14 outside and they said, "Don't leave."

15 And they said that -- they asked permission to  
16 search my car and said that they might impound it, and --

17 Q. Did you give them permission to do that?

18 A. I did. I gave permission.

19 Q. Okay. At some point you leave the theater?

20 A. Yes. Matt left his truck and drove me home.

21 Q. Okay.

22 MR. MICHAELS: Your Honor, I've shown the  
23 prosecutor what has been marked as Defense  
24 Exhibit 60. I'm going to have to have it marked by  
25 the Court Clerk.