

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

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Pasco County, Florida
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**STATE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY
REGARDING THE PHYSICAL INFIRMITIES OF VIVIAN REEVES**

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 the physical infirmities of Vivian Reeves and as good cause would show:

State's Position

The physical infirmities of Vivian Reeves on January 13, 2014 are not relevant to prove or disprove any material fact.

Factual Basis

The Defendant is charged with 2^o 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.

Vivian Reeves is the wife of the Defendant and was sitting next to him at the time the Defendant made the decision to use deadly force and killed Chad Oulson.

During the Defendant's immunity hearing, defense counsel asked Jennifer Shaw about Vivian Reeves physical infirmities. See, Exhibit #1, attached. (Immunity Hearing Transcript, Volume 1, pages 31 - 34)

During the Defendant's immunity hearing, defense counsel asked Vivian Reeves about her physical infirmities. See, Exhibit

#2, attached. (Immunity Hearing Transcript, Volume 6, pages 674 - 683)

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."

Here, Jennifer Shaw is testifying as to what she knows about Vivian Reeves physical infirmities and Vivian Reeves is testifying about she knows about her own physical infirmities. Neither witness made the decision to use deadly force on January 13, 2014. Their respective "state of mind" as to what they knew about Vivian Reeves physical infirmities is not relevant.

Vivian Reeves' physical infirmities are not a material issue.

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

It is the Defendant's personal knowledge on January 13, 2014 of Vivian Reeves physical infirmities that may be relevant. Only the Defendant can testify to his "state of mind" at the time he decided to use deadly force and kill Chad Oulson.

The prejudicial nature of said testimony substantially outweighs any probative value. The nature of said testimony will improperly appeal to the emotions of the jury. The Defendant can testify to his knowledge of Vivian Reeves' physical infirmities.

WHEREFORE, the State of Florida respectfully requests the Court to enter its Order excluding any and all testimony regarding the physical infirmities of Vivian Reeves on January 13, 2014 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 the Physical Infirmities of Vivian Reeves 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 July day of June, 2020.

BERNIE McCABE, State Attorney
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EXHIBIT #1

1 fitness?

2 A. Yes, sir.

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

4 It's leading and calls for speculation.

5 THE COURT: Sustained.

6 BY MR. MICHAELS:

7 Q. Now, let's talk a little bit about your mother,
8 okay?

9 A. Okay.

10 Q. How old is your mother?

11 A. My mom is 70.

12 Q. And do you know if she is being treated for --
13 she was being treated at a hospital of any sort?

14 MR. MARTIN: Your Honor, I'm going to object to
15 this line of questioning as being not relevant under
16 402 based on the discussions at the bench.

17 MR. MICHAELS: Judge, it's relevant because we
18 have an elderly woman who also is declining in
19 health in the movie theater. Certainly, Mr. Reeves
20 is justified if he's acting to thwart an attack or
21 thwart any imminent threat of attack to himself or
22 to his wife.

23 So I think it's important that we hear this
24 testimony so that we can understand Mr. Reeves'
25 state of mind and his perception with the big

1 picture that he is sitting next to his wife and
2 she's also in declining health and getting older.

3 MR. MARTIN: Then Mrs. Reeves can take the
4 stand and testify when, where, and why she was in
5 the hospital, and where she was sitting. But for
6 Ms. Shaw to come up here and be a conduit for
7 Ms. Reeves is inappropriate.

8 THE COURT: To the extent that she has personal
9 knowledge and that alone, I'll overrule.

10 MR. MARTIN: We would ask for a date.

11 THE COURT: And times.

12 BY MR. MICHAELS:

13 Q. All right. Do you know any specific dates?

14 A. No, sir.

15 Q. Or time periods?

16 A. Well, I know that she's had -- she had a knee
17 replacement in the last couple of years. She's also --

18 MR. MARTIN: Your Honor, it's nonresponsive to
19 the question. The question was: Do you know any of
20 the dates when she was in the hospital, and now the
21 responses are hearsay and calls for a medical expert
22 testimony, but the only way she would know that is
23 if Mrs. Reeves told her, therefore, it is hearsay.

24 THE COURT: She's her daughter. To the extent
25 that she knows, I don't need medical details, just

1 basically the recitation of time period and
2 procedure.

3 BY MR. MICHAELS:

4 Q. So about two years ago -- do you agree or
5 disagree with me that about two years ago your mother
6 received some sort of treatment?

7 A. Yes, she had a knee replacement.

8 Q. Okay. So she had some sort of surgery; is that
9 fair to say?

10 A. Yes, sir.

11 Q. And do you agree or disagree with me that your
12 mother has also been visiting Moffitt Cancer Center?

13 A. Yes, sir.

14 Q. And is that for a period of years now?

15 A. Yes, sir. It has been over a period of years.

16 Q. Now, you -- are you aware of whether or not
17 your mother and father exercise together?

18 A. They do on occasion. Yes, they do.

19 Q. And what sort of exercise?

20 A. Sometimes they will -- well, prior to -- what
21 time frame are we talking about?

22 Q. Prior to 2013.

23 A. Okay. Yes, they would walk together in the
24 neighborhood. At that point in time, I guess my mom's
25 doctors at Moffitt had told her there was a possibility

1 she might have to have surgery and that she needed to get
2 in shape so that recovery could --

3 MR. MARTIN: Your Honor, again, they're talking
4 about -- I object. First, it's hearsay, what her
5 mother told her, and the question was walking so it
6 is nonresponsive also.

7 THE COURT: Sustained. Let's go back to it.

8 MR. MICHAELS: Thank you, Judge.

9 BY MR. MICHAELS:

10 Q. In 2000 -- between 2013 and 2014, did your
11 mother and father exercise together?

12 A. Yes, sir.

13 Q. Okay. And what sort of physical activities did
14 your father do between 2013 and 2014, that you're aware
15 of?

16 A. Together?

17 Q. Just your father.

18 A. Oh, just my father. He walked with my mother.
19 He also rode his bike and then he did calisthenics, just
20 kind of stretching exercises.

21 Q. And what sort of bike did he ride? Was it a
22 road bike or mountain bike?

23 A. No. Well, he has both bikes. If he rode with
24 my mother, he would typically ride a mountain bike. And
25 then if he rode with friends or by himself for

EXHIBIT #2

1 A. Absolutely not.

2 Q. What about your husband? Does he look the
3 same?

4 A. Oh, no.

5 Q. Okay. So let's talk about some of those
6 physical changes. Let's talk about any physical changes
7 you may have.

8 Are you the same or are you the same -- were
9 you the same on January 14th as you were back when you
10 got married in 1967?

11 A. No.

12 MR. MARTIN: Your Honor, I'm going to object to
13 this line of questioning. Her travel through time
14 and how her own body has changed is not relevant
15 here at all.

16 MR. MICHAELS: Judge, it is relevant because
17 certainly Mr. Reeves has the right to be justified
18 in defending himself or another, and certainly his
19 wife sitting next to him in a movie theater is
20 somebody that he is justified to protect as well as
21 himself.

22 Again, it goes to Mr. Reeves' mind set, his
23 perception. If a person who's seventy years old is
24 sitting in a theater and next to them is his elderly
25 wife also sitting in the theater, and that person

1 has some maladies or weaknesses or some fragility,
2 certainly that's going to color the individual's
3 perception into whether or not he needs to act in a
4 certain way to defend himself and to defend his
5 wife.

6 THE COURT: All right. I had a question of
7 that early on with the first witness, his character
8 traits being described as one of knowledge of
9 impending frailty or one for peacefulness.

10 Mr. Michaels?

11 MR. MICHAELS: I'm sorry, Your Honor.

12 THE COURT: What character trait are you
13 attempting to elicit from this line of questioning?

14 MR. MICHAELS: Frailty of both Mr. Reeves and
15 Mrs. Reeves.

16 THE COURT: Is that character trait, knowledge
17 of impending frailty, that you're --

18 MR. MICHAELS: Actually, realization, because
19 it is no longer impending. It's here, the
20 realization that on that day, on January 13th of
21 2014, that she had the realization that she was
22 frail and that her husband had the same realization
23 as he sat next to her in that Cobb Theater.

24 MR. MARTIN: Judge, as I repeated over and
25 over, the criteria in an immunity hearing is the

1 knowledge of Mr. Reeves. If Mr. Reeves wants to
2 take the stand and say, "My knowledge of my wife is
3 this, and maybe I did it because of this," that's
4 what we're talking about.

5 We can't have his wife explain all the ailments
6 he may or may not know she has when it's not
7 relevant to what he knew. The only thing that's
8 relevant is what's in his mind. We can't impute or
9 assume by a witnesses' testifying that I have A, B
10 and C, that he knows it. He has to take the stand
11 and say what was in his own mind, so it's not
12 relevant for Mrs. Reeves to sit there and explain
13 all her ailments in this particular setting.

14 MR. MICHAELS: I think that we could be
15 secure -- and Mr. Escobar will correct me if I'm
16 wrong -- I'm sure we could be secure in the fact
17 that Mr. Reeves will indeed be testifying at this
18 hearing. There's no question about that.

19 MR. MARTIN: And that might be true, but his
20 knowledge might be more or less than what we'll hear
21 from the stand.

22 So what we're doing here, we can't have our
23 cake and eat it, too. If Mr. Reeves is going to
24 testify, great. I'll handle it when Mr. Reeves
25 testifies, but Mrs. Reeves can't say, "I have these

1 infirmities," and we impute that to Mr. Reeves
2 because they may change his mind and he may not
3 testify.

4 MR. ESCOBAR: I can assure the Court there's no
5 way that I could keep Mr. Reeves off the stand. He
6 will be testifying in this immunity hearing.

7 THE COURT: All right. That's neither --
8 that's not for my consideration about this witness
9 anyway.

10 To the extent that her testimony is -- leads to
11 that sort of character trait, which is -- I'm -- I
12 determined is part of the defense's theory, and in
13 light of the witnesses who have testified already,
14 I'm going to allow it. Overruled.

15 BY MR. MICHAELS:

16 Q. So tell us a little bit, Mrs. Reeves, about how
17 your body and your abilities have diminished over the
18 years from when you were married up until January of
19 2014.

20 A. I have arthritis in my hands, and it was in my
21 knee and I had a knee replacement three years ago, and I
22 have a nodule in my lung, and my pulmonologist sent me to
23 Moffitt, and --

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

25 We can't have a lay witness come in and give medical

1 terms that, "I have this," or, "Some doctor told
2 me."

3 She can say, "My hand hurts," but she can't
4 give the diagnosis. That's a lay opinion that's not
5 appropriate. She can explain all her ailments and
6 how she feels, but she's not a doctor.

7 MR. MICHAELS: I would be happy to go through
8 them all one by one, Your Honor, so I'm beginning
9 the question again.

10 BY MR. MICHAELS:

11 Q. Mrs. Reeves, you said that you have arthritis
12 and you're not allowed to say that.

13 Do your hands hurt?

14 A. Yes, they do.

15 Q. Okay. And show the Court your hands, if you
16 would, please?

17 A. (Indicating.)

18 Q. Okay. And they hurt when you do what?

19 A. I can't -- I can hardly open jars or bottles.
20 I wear a brace on my hand, but it's doing better now, but
21 I wore a brace for a while.

22 Q. And --

23 A. They're weak.

24 Q. And what about -- do they get stiff?

25 A. Yes.

1 Q. Do they hurt when it's cold out?

2 A. Yes.

3 Q. Okay. How about your hips? We'll work our way
4 down. How are your hips?

5 A. They're good.

6 Q. What about your knees? You have pain in your
7 knees?

8 A. I have pain in my knees.

9 Q. Now, you have one knee -- without saying what
10 happened to it -- that you had to go see a doctor about,
11 right?

12 A. Right.

13 Q. And did you have to go to the hospital for that
14 particular knee?

15 A. Yes.

16 Q. And when you went to the hospital, did they
17 knock you out at some point?

18 A. Yes.

19 Q. And when you woke up, were you having pain?

20 A. Not immediately.

21 Q. All right. That was probably the medicine, but
22 after a while did you have pain?

23 A. Yes.

24 Q. Where was that pain?

25 A. In my left knee.

1 Q. And were you in the hospital?

2 A. Yes.

3 Q. How long were you in the hospital?

4 A. At least two days.

5 Q. And when you woke up and looked at your knee,
6 was it open to the air or was it bandaged in some way?

7 A. It was bandaged.

8 Q. And at some point they take the bandage off?

9 A. Yes.

10 Q. Tell me whether or not you saw any change in
11 your knee. Was there a scar, for instance?

12 A. I had -- yeah, there was a big scar. Now it's
13 smaller.

14 Q. And did it hurt when you walked?

15 A. Oh, yes.

16 Q. Does it still hurt?

17 A. Yes.

18 Q. What other parts of your body hurt or are
19 affected by age?

20 Let's talk about your skin. Let's talk about
21 that. When you were young and you bumped up against
22 something, would you bleed or bruise?

23 A. No.

24 Q. What about now?

25 A. Yes, I do now.

1 Q. Do which?

2 A. I bruise. There are dark purple bruises on my
3 arms and my hands, and I bleed easily.

4 Q. Okay. Can we see your arms? Can you show the
5 Court your arms?

6 A. (Witness complies.)

7 Q. Okay.

8 A. This one is way up here.

9 Q. That's a bruise before -- let me ask you this:
10 Before 2014, in January, had you ever fallen around the
11 house?

12 A. Yes.

13 Q. And tell us about that. Was it a trip and fall
14 or just lose your balance and fall?

15 A. Probably losing my balance and fall.

16 Q. And, again, did your husband try to pick you
17 up?

18 A. Yes.

19 Q. Did he ever have problems picking you up?

20 A. Yes.

21 Q. Did he ever almost fall picking you up?

22 A. Yes, I almost pulled him down.

23 Q. Now, what else hurts?

24 A. I cough and it's hard to breathe.

25 Q. Okay. So you have a problem breathing?

1 A. Yes.

2 Q. And have you had to go to a doctor regarding
3 that particular complaint or problem?

4 A. Yes.

5 Q. And did you go to Moffitt Cancer Center for
6 them to examine you in some way?

7 A. Yes.

8 Q. And did you start involving yourself in kind of
9 an exercise program of some sort?

10 A. Yes.

11 Q. And is that because you were preparing for some
12 sort of surgery potentially?

13 A. If I had to have surgery, I was instructed to
14 do that, and even if I didn't have surgery that it would
15 help me out.

16 Q. Those were the doctors of Moffitt?

17 A. Yes.

18 Q. Now, let's talk about your husband. Is he the
19 same -- in the same physical condition now or in 2014 of
20 January as he was back in 1967?

21 A. No.

22 Q. Tell me some of the differences that you're
23 aware of.

24 A. He's gained a lot of weight, and he also
25 bruises very easily and bleeds easily, and he's got

1 problems with his shoulders and his back and his feet.

2 Q. Okay. Now, how do you know that he bruises
3 easily?

4 A. Because I see it.

5 Q. What about the bleeding?

6 A. I see that.

7 Q. By bleeding easily, give an example to the
8 Court of how he started bleeding.

9 A. About -- the last time was about probably a
10 month ago.

11 Q. Well, before -- let's talk about before 2014.

12 A. Oh, okay. Just if he sticks himself, like
13 picking up limbs or doing anything, he bleeds, and I put
14 something called Wound Seal on him.

15 Q. Is that what you use for yourself as well?

16 A. Yes.

17 Q. Now, when he was younger did he used to run?

18 A. Yes, he did.

19 Q. When did that stop?

20 A. Before he went to work at Busch Gardens.

21 Q. Okay. Once he started -- what year was that,
22 approximately?

23 A. At Busch Gardens?

24 Q. Yep.

25 A. It would be about -- oh, my.