

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

STATE OF FLORIDA,
Plaintiff,

Case No.: CRC-1400216FAES

Division: 1

v.

CURTIS J. REEVES,
Defendant.

**MOTION TO EXCLUDE TESTIMONY BY ALAN HAMILTON REGARDING
STATEMENT(S) ALLEGEDLY MADE BY DEFENDANT AND/OR BY VIVIAN
REEVES AND ANY LAY WITNESS TESTIMONY REGARDING PROPRIETY OF
DEFENDANT'S ACTIONS**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through undersigned
counsels, and pursuant to the Florida Evidence Code (§ § 401, 402, 403, 604, 701) and moves this
Honorable Court to enter an order excluding:

- (1) Any and all testimony by State's witness, Alan Hamilton, regarding statement(s)
allegedly made to Vivian Reeves by Defendant;
- (2) Any and all testimony by State's witness, Alan Hamilton, regarding statement(s)
allegedly made by Vivian Reeves to Defendant; AND
- (3) Any lay opinion by Vivian Reeves and/or any other lay witness regarding the
propriety of Defendant's actions.

As grounds therefore, Defendant states as follows:

1. The State has listed Alan Hamilton as a Category A witness.
2. Alan Hamilton is a law enforcement officer who was present, off duty, at the movie theater
on January 13, 2014.

3. On that date, Mr. Hamilton wrote a handwritten, voluntary statement on the Pasco Sheriff's Office "Voluntary Statement Form." A copy of that form is attached to this Motion as Exhibit A.

4. In that statement, he made no reference to comments between Mr. and Mrs. Reeves.

5. Also on that date, Mr. Hamilton provided a sworn recorded interview to Pasco County Sheriff's Office detectives on January 13, 2014. A transcript of that interview is attached to this Motion as Exhibit B.

6. During his sworn, recorded interview on January 13, 2014, Mr. Hamilton stated that Mrs. Reeves "comes over and she says something to [Mr. Reeves] and [Mr. Reeves] puts his finger in her face and shakes his finger at her." Exhibit B at 5.

7. During his interview with detectives, Mr. Hamilton was asked before concluding the interview if he had anything additional to add and still, did not mention any of the alleged statements:

"DETECTIVE: Okay. Anything else you can tell me?
CORPORAL HAMILTON: Nothing." Exhibit B at 9-10.

8. Weeks later, on February 5, 2014, Mr. Hamilton testified at a bond hearing in this case before Circuit Court Judge Pat Siracusa. A copy of Mr. Hamilton's testimony at the bond hearing is attached to this Motion as Exhibit C.

9. During his direct examination by the State, Mr. Hamilton made the following statements for the very first time, despite having given two prior statements:

"Q. Did you hear any other statements that were attributed to Mr. Reeves?
A. No, sir.
Q. Did you hear a conversation between he and his wife?
A. Yes, sir, I did.
Q. Okay. Can you tell us about that.
A. Yes, sir. During the first portions I mean it was dark. I mean I -- they eventually turn on the lights. And he had leaned towards -- you know, an the time I didn't know who she was,

but she was sitting to his right -- leaned towards his wife and made a comment. And then she postured and she said, "**That was no cause to shoot anyone.**"

And then he leaned back around and stuck his finger out, you know, as to, you know, scold her and said, '**You shut your fucking mouth and don't say another word.**' Exhibit C at 13-14.

10. On cross-examination, Mr. Hamilton admitted that he never mentioned either of the alleged statements to law enforcement on the day of the incident and that, had he heard these statements, they would have been important to mention.

11. Mr. Hamilton testified as follows during his cross-examination at the February 5, 2014 bond hearing:

"Q. So you were thorough in your statement to law enforcement in your form that you filled out, correct?

A. To the best of my ability at the time." Exhibit C at 20.

"Q. And in addition to signing that form, you had the opportunity to have a conversation with Detective Proctor. Remember Detective Proctor?

A. Yes, sir, that's correct.

Q. And where did that conversation take place?

A. It was maybe like in a child's daycare or where children can play.

Q. Within the theater building?

A. Within the theater building.

Q. Ok. So he took you to a location away from individuals?

A. Correct, yes, sir.

Q. So that you could have a peaceful, quiet place to converse?

A. Yes, sir.

Q. And he questioned you in detail concerning what you remembered of the incident, correct?

A. Yes, sir.

Q. And you would agree that your recollection on the 13th is much better than your recollection today?

A. Should be, yes, sir.

Q. And the whole reason -- and you were aware that he was taking notes, correct?

A. I knew -- I knew that I was being recorded.

Q. Even better, right?

A. Right.

Q. And so -- and so the reason for that is that law enforcement wants to memorialize your events as you remember them that day.

A. Document events, yes, sir.

Q. And you do that in your job everyday.

A. Yes, sir.

Q. And you know the importance of it.

A. That's correct." Exhibit C at 21-22.

"Q. And you made a statement that he made some awful remark, that his wife said something that was uncalled for. Is that what you're telling us today?

A. No, sir, I didn't say it was not called for. I said that she said that there was no cause to shoot him.

Q. Now, you didn't write that in your statement that you wrote on January the 13th of 2014, did you?

MR. GARCIA: Judge, I object to negative impeachment.

THE COURT: Overruled.

Q. (By Mr. Escobar) Correct? You didn't write it in your statement, did you?

A. No, sir. No, sir, I did not.

Q. I'm going to show you what's been marked as Defense Exhibit Number 2.

MR. ESCOBAR: Can I approach, your honor?

THE COURT: You may.

Q. (By Mr. Escobar) And see if Exhibit Number 2 is a document that you recognize.

A. Yes, sir, that's mine.

Q. What is that document?

A. It's a voluntary statement form from Pasco County Sheriff's Department.

Q. Is that your handwritten voluntary statement form?

A. Yes, sir.

Q. It's not been altered, deleted? Take your time and read it, please. If you have any questions, I want to make sure that it is a clean copy.

A. (Perusing document.) This is -- this is mine.

Q. Okay. Now, in that form you made no statements as to what Ms. Reeves told Mr. Reeves, correct?

A. No, sir, I did not.

Q. There's -- there's no documentation of that.

A. No, sir.

Q. And then I believe in direct examination you said something to the effect of 'Shut your fucking mouth.'

MR. ESCOBAR: Excuse my language, your Honor.

Q. (By Mr. Escobar) Correct?

A. Yes, sir, that's correct.

Q. You didn't write that in there either?

A. No, sir.

Q. Those are pretty important statements; are they not?

A. Yes, sir.

Q. But they weren't important enough to put in that statement?

A. I didn't put them in there, no, sir, I didn't.

Q. My question was whether – we know that you didn't put them in there. They weren't important enough for you to put in that statement?

A. Sure, they're important.

Q. Well let's take it one more step. In addition to you writing this statement in the comfort of your space there, correct –

A. Yes, sir.

Q. – you also had the opportunity of going with Detective Proctor, the lead detective in this case, to that playroom and to discuss with him in great detail everything you knew about this case, correct?

A. In great detail?

Q. Yeah. You wanted to tell him as much as you could possibly –

A. As much as I could possibly do.

Q. Because you knew you were being recorded.

A. Correct.

Q. Well, did you tell Detective Proctor in that room that Mrs. Reeves had allegedly made that statement?

A. No, sir, I did not.

Q. Well did you tell Detective Proctor in that room that my client allegedly said, 'Shut your fucking mouth'?

A. I don't recall if I told him that or not.

Q. You don't recall?

A. I don't recall that I told him verbally that or not.

Q. Did you believe that that session with you and Detective Proctor was important?

A. Yes, sir it was.

Q. So as you sit here, you can't imagine any scenario why you wouldn't have told him that?

A. Any scenario why I wouldn't have told him that?

Q. Yeah. You're being recorded. They're asking you to give him all the details of what you know, right?

A. That's correct, yes, sir.

Q. What you heard Mr. Reeves tell his wife was, "Vivian, They're going to come in here storming. Move a couple of chairs over." That's what you heard him say to her –

MR. GARCIA: Judge, I'm going to object. Where's this testimony coming from?

THE COURT: I have no idea, but let's let him answer the question and see.

Q. (By Mr. Escobar) That's what you heard him say, correct?

A. No, sir, that's not what I heard him say." Exhibit C at 21-44.

12. The Defense deposed Mr. Hamilton on March 20, 2015. The deposition transcript is

attached to this Motion as Exhibit D.

13. During his deposition over a year after the incident, Mr. Hamilton made the following statements:

“Q. Now before the police arrive do you hear -- and think carefully about this -- do you hear Mr. Reeves say anything at all to anyone else?

A. Yes.

Q. What do you hear?

A. When his wife was sitting next to him –

Q. Now which point are we talking about now?

A. We're -- I'm -- his wife sat there for a brief period of time after I had retrieved the gun from him and whenever she turned around and told him, that was no cause to shoot that man. And he immediately turned around in his chair and told her, don't you say another word.” Exhibit D at 108.

“Q. No, Mr. Reeves telling his wife.

A. He never told her to move.

Q. You said he pointed his finger.

A. He pointed his finger and just basically told her not to say anything else. He didn't tell her to get up and move, she done that on her own. You know, if he'd a told her, you know, get the hell out of here or get away from me, this is not good for you or, you know, run as fast as you can -- no. That wasn't -- that wasn't the way that was done, and I'll stick to my guns. He turned around and told her, don't say anything else. He didn't tell her to move, just basically shut your mouth.

Q. Do you remember 100 percent of what he said to her?

A. Again, when we're -- when we're playing with the the's, and I's, and those, and ins, and outs, it was within that realm of basically, hush your mouth and don't say another word. Or shut up and don't say another word. It's basically telling her, you don't need to open your mouth no more. I don't need you in this any longer. So whatever context that may have been, or whatever, you know, how word, by word, by word, I can't say, but he scolded her. If we had a, you know, a recording on it, yeah, I could tell you, yeah that's what she said, but it was a -- it was a stern scold.” Exhibit D at 115-116.

14. Mr. Hamilton again testified in this case during the hearing on Defendant's motion for “Stand Your Ground” immunity on March 1, 2017. The transcript of that testimony is attached to this Motion at Exhibit E.

15. Mr. Hamilton's statements at that hearing were as follows:

“Q. What was that statement?

A. That was no cause to shoot that man'

Q. Did Mr. Reeves respond?

A. Yes , sir. He responded. He turned quickly to her, she was to his right, pointed his finger at her and told her to shut her mouth and not say another word.

A. Well --

A. Basically, not to say another fucking word.

Q. Mr. Hamilton, would you tell the Court his exact words, Please?

A. He pointed his finger at her and told her to shut her mouth and not to say another fucking word." Exhibit E at 19.

ARGUMENT

Relevant evidence is "evidence tending to prove or disprove a material fact." § 90.401. The alleged statement(s), "you shut your fucking mouth" (and/or variations) attributed to Mr. Reeves by Mr. Hamilton are irrelevant to any material fact before the Court. If admitted into evidence, the alleged statement(s) present the unacceptable potential for the creation of undue prejudice, confusion of the issues, and the misleading of the fact-finder. All relevant evidence is admissible, except as provided by law." § 90.402. These alleged statement(s) are neither probative as to any material fact nor reliable for the purpose of any conclusion. Accordingly, admission of any testimony regarding these alleged statement(s) is prohibited, as it would have no probative value. §§ 90.401, 90.402, Fla. Stat. (2019).

Further, given the absence of any probative value to the alleged statements, the unduly high risk of unfair prejudice, confusion of issues, and of misleading the fact-finder, they should be excluded. Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. § 90.403. "In determining whether the probative value is outweighed by unfair prejudice, the court may consider the need for the evidence; the tendency of the evidence to cause a jury to improperly make a decision; the chain of inference necessary to establish a material fact; and the effectiveness of a limiting instruction." *Washington v. State*, 281 So.3d 609 (Fla. 1st

DCA 2019) (*citing State v. McClain*, 525 So.2d 420, 422 (Fla. 1988) (*quoting* C. Ehrhardt, Florida Evidence § 403.1 (1984 Edition) discussing the application of section 90.403, Florida Statutes)).

Pursuant to section 90.604 of the Florida Statutes, “a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter.”

As for the opinion testimony of lay witnesses, a lay witness cannot give opinion testimony when the witness’s use of inferences or opinions will mislead the trier of fact to the prejudice of the objecting party and the witness’s use of inferences or opinions will require a special knowledge, skill, experience, or training. The second statement sought to be excluded—Mrs. Reeves’s alleged declaration that “there was no cause to shoot that man” (and/or variations)—implicates Mrs. Reeves’s opinion as to the propriety of Mr. Reeves’s actions. Mrs. Reeves is not an expert in the use of force, so her opinion testimony is irrelevant and inadmissible. Fla. Stat. § 90.701. The Defense has listed a use-of-force expert who is prepared to testify at trial to offer an opinion as to the appropriateness of Mr. Reeves’ actions. Allowing a lay witness statement of opinion on this subject will only serve to mislead the jury to the prejudice of Mr. Reeves. The rendering of this type of opinion requires a special knowledge, skill, experience, or training. This alleged statement(s) as well as any opinion regarding the propriety of Mr. Reeves’ action by Mrs. Reeves or any lay witness should therefore be excluded from evidence.

CONCLUSION

Based on the above, the following items should be excluded from admission into evidence:

- (1) Any and all testimony by State’s witness, Alan Hamilton, regarding statement(s) allegedly made to Vivian Reeves by Defendant including but not limited to “you shut your fucking

mouth” (and/or variations);

- (2) Any and all testimony by State’s witness, Alan Hamilton, regarding statement(s) allegedly made by Vivian Reeves including but not limited to “there was no cause to shoot that man” (and/or variations); AND
- (3) Any lay opinion by Vivian Reeves or any lay witness regarding the propriety of Defendant’s actions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by electronic delivery to the Office of the State Attorney for the Sixth Judicial Circuit, c/o Glenn Martin, Esq., at glenmartin@co.pinellas.fl.us and via U.S postal service at P.O. Box 5028, Clearwater, Florida 33758 on this 30th day of June 2020.

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

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

/s/ Nicole N. Sanchez
Nicole N. Sanchez, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
nsanchez@escobarlaw.com
Florida Bar No. 107402
Attorney for Defendant