

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

STATE OF FLORIDA,
Plaintiff,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.

**DEFENDANT'S RESPONSE TO STATE'S MOTION *IN LIMINE* TO EXCLUDE THE
TESTIMONY OF JENNIFER SHAW REGARDING THE DEFENDANT'S
CHARACTER AND TO REQUIRE A PROFFER OF DEFENDANT'S CHARACTER
EVIDENCE OUTSIDE THE PRESENCE OF THE JURY**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through his undersigned counsel, submits the following response to State's Motion *in Limine* to Exclude the Testimony of Jennifer Shaw Regarding the Defendant's Character and to Require a Proffer of Defendant's Character Evidence Outside the Presence of the Jury, ("State's Motion") and as good cause would show:

The Defendant is on trial for Second Degree Murder and aggravated assault stemming from a shooting incident that occurred on January 13, 2014. The Defendant has asserted the affirmative defense of self-defense and as such the jury must determine whether his reaction to the imminent threat of great bodily harm or death was reasonable. The State seeks to preclude the Defendant's daughter, Jennifer Shaw, from testifying to various facts and recollections regarding the Defendant as well as his present disposition. *See* State's Motion at pg. 2.

The State specifically points to several of Ms. Shaw's statements at the immunity hearing and argues they are inadmissible. State's Motion at pg. 2. Ms. Shaw testified in general terms regarding the Defendant's demeanor as she recalled it throughout her childhood as well as his

long standing and present disposition of being a direct but reasonable person. The Defendant has a fundamental right to defend himself and his character in order to receive a fair trial. The United States Supreme Court has said that such character evidence is available to a defendant:

“... this line of inquiry firmly denied to the State is opened to the defendant because character is relevant in resolving probabilities of guilt. He may introduce affirmative testimony that the general estimate of his character is so favorable that the jury may infer that he would not be likely to commit the offense charged. This privilege is sometimes valuable to a defendant for this Court has held that such testimony alone, in some circumstances, may be enough to raise a reasonable doubt of guilt and that in the federal courts a jury in a proper case should be so instructed. *Edgington v. United States*, 164 U.S. 361, 17 S.Ct. 72, 41 L.Ed. 467.”

Michelson v. U.S., 335 U.S. 469 (1948). Statements by Ms. Shaw that the Defendant is not an aggressive person are permissible. This Court correctly ruled in line with the United States Supreme Court precedent when the State objected to this same type of evidence elicited from the Defendant’s wife at the immunity hearing. (Immunity Hearing Tr. Vol. XI/pg. 22, February 22, 2017).

The State also objects to statements made by Ms. Shaw regarding specific instances of conduct of the Defendant that she recalled from her childhood and concerning his reaction to news of her impending divorce. Specific acts of conduct are usually off limits unless regarding character as an essential element of the charge or defense. Rule 90.405. However, the State “opened the door” in opening statements by referring to the Defendant as an angry and vengeful man who shot Mr. Oulson to get back at him for throwing popcorn. (Immunity Hearing Tr. Vol. I/pg. 22, February 20, 2017). *See Siegel v. State*, 68 So.3d 281, 288 (Fla. 4th DCA 2011) (“In order to open the door, the witness must offer misleading testimony or make a specific factual assertion which the opposing party **has a right to correct** so that the jury will not be misled. *Cullen v. State*, 920 So.2d 1155, 1156 (Fla. 4th DCA 2006)”) (emphasis added)

The State made comments that assailed the Defendant's character and made him out to be a gun wielding hot head and a former law enforcement officer used to being in authority who overacted because he did not get his way. (Tr. Vol. XI/pg. 667). *See Post v. State*, 315 So.2d 230, 231 (Fla. 2d DCA 1975). (Reversible error; defendant "denied his constitutionally guaranteed right to fair trial because assistant state attorney handling his case, in his opening statement to the jury, attacked the defendant's character"). The Defendant, whose fate is to be determined, has an absolute right to a fair trial and to correct the inaccurate portrait painted by the State. U.S. Const. Amend XI, XIV; FL. Const. Sect. 16.

The Florida Supreme Court explained:

"As an evidentiary principle, the concept of 'opening the door' allows the admission of otherwise inadmissible testimony to qualify, explain, or limit testimony or evidence previously admitted. *Thompkins v. State*, 502 So.2d 415, 419 (Fla. 1986); *See Huff v. State*, 495 So.2d 145, 150 (Fla. 1986). This principle is premised on 'considerations of fairness and the truth-seeking function of a trial.'" *Id.* (internal quotations and citation omitted).

Rodriguez v. State, 753 So.2d 29, 42 (Fla. 2000). The State made specific, factual assertions about the Defendant's character and the Defendant had the right to correct it.

"Fairness is the key concern of this evidentiary principle" and therefore this Court must determine whether the preceding testimony triggers this legal doctrine. *Henderson v. State*, 135 So.3d 472, 476 (Fla. 2d DCA 2014) *citing Redd v. State*, 49 So.3d 329, 333 (Fla. 1st DCA 2014). The Defendant is facing charges of second-degree murder and aggravated battery and the reasonableness of his reaction to the threat of great bodily harm or death will be scrutinized by the jury in determining whether he was justified to use deadly force. For the State to paint him as an irrational, angry person heightens the Defendant's need to rebut these statements.

Ms. Shaw testified that her father never reacted angrily when punishing her as a child and that he responded reasonably appropriate when involved in an automobile accident. (Hearing Tr. Vol. I/pg. 21-27). Ms. Shaw's testimony was necessary to show the bigger picture of who the Defendant is; a patient and kind man. These statements were also necessary to correct the inaccurate assertions made by the State and the Defendant is guaranteed the right to do so in fairness and in order that the jury not be misled. *See Siegel v. State*, 68 So.3d at 288, *see also* U.S. Const. Amend XI, XIV, FL. Const. Sect. 16.

It is disingenuous for the State to violate the rule against attacking the Defendant's character before the Defendant puts his own character in question, then turn around and ask this Court to preclude the Defendant from curing that error. Rule 90.404(1)(a), *See Ehrhardt, Florida Evidence* (2019) at 252. *Citing Young v. State*, 195 So. 569 (1939) (“[A] defendant's character may not be assailed by the State in a criminal prosecution unless good character of the accused has first been introduced.”) *See also Villanueva v. State*, 917 So.2d 968 (Fla. 3d DCA 2005) (Statements by witnesses in State's case in chief that Defendant like to scare people with a gun constituted “an attack on the defendant's character and were improper as the defendant did not place his character in issue.”) citing *A.K v. State*, *A.K. v. State*, 898 So.2d 1112, 1116 (Fla. 4th DCA 2005) (“The state cannot introduce evidence attacking the character of the accused during its case in chief, since the accused must first put his good character in issue.”); *Smart v. State*, 596 So.2d 786, 787 (Fla. 3d DCA 1992)(holding that arresting officer's comment regarding his past contact with the defendant was inadmissible because comment was “solely relevant to establish the defendant's bad character”).

WHEREFORE the Defendant respectfully requests this Court deny the State's Motion *in Limine* to Exclude the Testimony of Jennifer Shaw Regarding the Defendant's Character and to Require a Proffer of Defendant's Character Evidence Outside the Presence of the Jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by Electronic Submission and United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 11th day of September, 2020.

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