

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.

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**DEFENDANT'S RESPONSE TO STATE'S MOTION *IN LIMINE* TO EXCLUDE  
TESTIMONY REGARDING THE PHYSICAL INFIRMITIES OF VIVIAN REEVES**

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 Testimony Regarding the Physical Infirmities of Vivian Reeves and as good cause would show:

The Defendant and Mrs. Reeves have been married for over fifty years. Mrs. Reeves accompanied the Defendant to the movie theater and was an eyewitness to the events on the day of the shooting. On January 13, 2014, Mrs. Reeves was sixty-seven (67) years old. Like the Defendant, Mrs. Reeves is elderly and suffers from several physical infirmities that affected her health and her ability to protect either herself or the Defendant.

The State objects to evidence of Mrs. Reeves's infirmities on the grounds of relevance. State's Motion at pg. 1. At the immunity hearing on February 22, 2017, Mrs. Reeves testified that she suffers from arthritis, knee issues necessitating a knee replacement, and has pulmonary issues that affect her breathing. (Immunity Hearing Tr. Vol. XI/pg. 677-82).

Mrs. Reeves's health issues are relevant to the Defendant's state of mind at the time of the shooting and probative as to whether or not he acted reasonably in response to the imminent threat of great bodily harm or death. Not only does the Defendant have a right to protect himself,

but that right extends to protection the of others as well. Fla. Stat. 776.012(2). The Defendant's fear and resulting need to protect himself was compounded by the fact that his equally frail wife was by his side, one seat closer to Mr. Oulson who was perceived by the Defendant to be totally out of control, full of anger and rage, and a threat. Mrs. Reeves was not able to intercede or assist her husband. Furthermore, if the Defendant was incapacitated due to great bodily harm or death, there would be no one there to protect Mrs. Reeves from the same harm. Mrs. Reeves's physical infirmities are directly tied to the Defendant's state of mind at the time of the shooting. These are the facts and circumstances that surrounded the Defendant and he has a constitutional right to present this evidence to prove his affirmative defense. U.S. Const. Amend. XI, XIV, Fla. Const. Sect. 16.

### Legal Analysis

Relevancy is a low bar. *Tennard v. Dretke*, 542 U.S. 274 (2004). Relevancy of evidence has historically referred to the “logical tendency to prove or disprove a fact.” Ehrhardt, *Florida Evidence* (2019) at 159. Citing *Johnson v. State*, 595 So.2d 132, 134 (Fla. 1st DCA 1992) (“The threshold test for admissibility of evidence elicited on cross-examination is relevance ... There are two main forms of relevancy: *logical* and *legal* ... The relevancy of a fact to an issue being tried is ordinarily a question of logic, rather than one of law. Logically relevant evidence is ‘evidence tending to prove or disprove a material fact.’”) (emphasis in original). To be relevant, evidence “must have a tendency to establish a fact in controversy or to render a proposition more or less probable.” *Thigpen v. United Parcel Serv., Inc.*, 990 So.2d 639, 646 (Fla. 4th DCA 2008).

“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).

Mrs. Reeves’s testimony regarding her physical infirmities is material to the Defendant’s state of mind at the time of the offense. The Defendant was incapable of protecting himself as well Mrs. Reeves due to his own frailty. Mrs. Reeves was equally elderly and frail and as such the Defendant was fearful for her because of her physical infirmities.

Mrs. Reeves is competent to testify to her own physical infirmities, as is her daughter, Jennifer Shaw. Her physical infirmities make the fact that the Defendant was fearful of great bodily harm or death more likely than not. Evidence regarding Mrs. Reeves’s physical

infirmities gives important context to the Defendant's state of mind and is therefore legally relevant.

The State also argues that the evidence of Mrs. Reeves's physical infirmities does not pass the balancing test of having probative value that outweighs unfair prejudice. Fla. Stat. 90.403. Here, the testimony regarding Mrs. Reeves's frailty is highly probative of the Defendant's state of mind and the reasonableness of his actions in response to the threat of great bodily harm or death to both himself and Mrs. Reeves who sat directly beside him in the face of that threat. Relevant testimony is by its very nature inherently prejudicial to one side or the other. "[T]he court's discretion to exclude evidence under Rule 403 is narrowly circumscribed. 'Rule 403 is an extraordinary remedy which should be used only sparingly since it permits the trial court to exclude concededly probative evidence.' The balance under the Rule, therefore, should be struck in favor of admissibility.' *State v. Gerry*, 855 So.2d 157, 163 (Fla. 5th DCA 2003) (quoting *United States v. Norton*, 867 F.2d 1354, 1361 (11th Cir. 1989) (Citations omitted))." *Veach v. State*, 254 So.3d 624, 628 (Fla. 1st DCA 2018). The jury will not be moved to acquit the Defendant because Mrs. Reeves has arthritis and breathing issues. Mrs. Reeves's testimony is probative of the reasonableness of the Defendant's actions and is not outweighed by the danger of unfair prejudice.

The State is also misguided in its assertion that evidence of Mrs. Reeves's health issues is irrelevant because "only the Defendant can testify to his 'state of mind' at the time he decided to use deadly force." State's Motion at pg. 4. Evidence of the circumstances surrounding what the Defendant faced are relevant and admissible.

WHEREFORE the Defendant respectfully requests this Court deny the State's Motion *in Limine* to Exclude Testimony Regarding the Physical Infirmities of Vivian Reeves.



**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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