

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
2022 JAN 14 PM 3:34
NIKKI ALVAREZ-SOWLES
Clerk & Comptroller
Pasco County, Florida

**STATE'S MOTION IN LIMINE TO EXCLUDE
TESTIMONY DEFENDANT WAS DIAGNOSED WITH CANCER**

COMES NOW, Bruce Bartlett, 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 the in 1988 the Defendant was diagnosed with cancer and as good cause would show:

State's Position

1. The fact that in 1988, over twenty-five years before the Defendant shot and killed Mr. Oulson, the Defendant was diagnosed with cancer is not relevant to prove or disprove any material fact.
2. In a self-defense case, it is the circumstances by which the Defendant was surrounded at the time the force was used that is relevant.
3. The testimony will only inflame the jury or appeal improperly to the jury's emotions.

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 killing of Chad Oulson was justifiable.

At the immunity hearing the Defendant testified that in 1988 he was diagnosed with cancer. He underwent surgery and radiation

treatment. Attachment #1(Immunity hearing transcript, Volume 14, pages 1780 - 1783)

The Defendant never testified the fact he had cancer over 25 years before the shooting was a factor in his decision-making process at the time of the altercation.

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."

It is what the Defendant knew at the time the decision to use deadly force was made that is indicative of his "state of mind", not information he subsequently acquires.

Because the facts sought to be introduced were not part of the Defendant's decision-making process at the time of the altercation the testimony is not relevant.

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

The Defendant's state of mind is material to the issue of the circumstances that surrounded him at the time he decided it was necessary to use deadly force. Since the "reasonableness" of Defendant's conduct of using deadly force is determined at the precise moment it was used, what information the Defendant did not consider (His battle with cancer in 1988) in the decision-making process is not relevant and would only appeal to the emotions of the jurors.

WHEREFORE, the State of Florida respectfully requests the Court to enter its Order excluding any and all testimony that in 1988 the Defendant was diagnosed with cancer 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 That the Defendant Was Diagnosed with Cancer 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, Personal Service or Email at rescobar@escobarlaw.com this 14th day of January 2022.

BRUCE BARTLETT, State Attorney
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ATTACHMENT #1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO: CRC14-0216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XIV

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 28, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

PLACE: Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
PAGES 1635 - 1818

VERBATIM PROFESSIONAL REPORTERS, INC.
601 Cleveland Street, Suite 380
Clearwater, Florida 33765
(727) 442-7288

1 Q. Now, the exposure that you had with all of this
2 training took place at various locations throughout the
3 country; is that correct?

4 A. Yes, sir. Yeah.

5 Q. Officer survival, general -- general
6 investigations, do you remember starting to teach yourself
7 some of these courses at the academy?

8 A. Yes, sir. I had picked up some expertise in
9 some of the schools, and so I was asked to teach some
10 classes at the academy.

11 I had probably two or three different classes
12 that I was teaching at the time, anything from general
13 investigations to sex crimes to -- and officer survival
14 is part of the weapons program, or I made it a part of
15 the weapons program. So I went to officer survival
16 schools at the time, too.

17 Q. Now, were you also a board member of the Tampa
18 Police Pistol and Rifle Club?

19 A. Yes, sir. At that time, the Tampa Police Pistol
20 and Rifle Club was on the property that was -- that was
21 leased from the City. It was located off of West
22 Hillsborough Avenue. We had a very active law enforcement
23 program out there, and I was on the board of directors for
24 a couple of years.

25 Q. So you are running these various segments of law

1 enforcement as a captain there at the TPD and still
2 running tactical; you're still running your Response Team,
3 your SWAT team. What happens in 1988?

4 A. In 1988, I got cancer.

5 Q. And what resulted as the -- from the fact that
6 you had developed cancer?

7 A. I ended up with a surgery and radiation.

8 Q. Okay. What was your thought process about your
9 career as a law enforcement officer when you got cancer?

10 A. Well, I think with the dedication that I had, it
11 was kind of devastating.

12 Q. What were you thinking about your future?

13 A. Well, I was concerned about it. I guess any
14 time you get cancer, you're crazy if you don't worry about
15 it, and then the radiation. I was concerned that I
16 wouldn't be able to keep doing what I was doing.

17 Q. Which you loved to do?

18 A. (Indicating.)

19 Q. Did you come back to the department?

20 A. Yes, sir.

21 Q. What was your goal when you came back to the
22 department?

23 A. Well, I think you try to get your energy back.
24 You try to get your strength back. You try to get -- you
25 try to get yourself going again.

1 Q. And had the doctors told you a benchmark for at
2 least some relief for you, in your own mind, at that time?

3 A. Yes, sir. I think the consensus of opinion was,
4 if you were cancer-free for five years, then you were
5 probably insurable. So, you know, you didn't want to
6 change jobs right then.

7 Q. So you stayed working in the department for how
8 many years after your cancer?

9 A. Five years.

10 Q. And was that because you wanted to make sure
11 that you were going to be cancer-free and --

12 A. Yes, sir.

13 Q. You had benefits there at the TPD that paid for
14 your health insurance?

15 A. Yes, sir.

16 Q. Life insurance?

17 A. Yes, sir.

18 Q. In 1991, were you asked by the chief of police
19 to take care of a delicate situation that was taking place
20 with vice and narcotics?

21 A. Yes, sir.

22 Q. And did the chief want you to go over there --

23 A. Yes, sir.

24 Q. -- and help things out?

25 A. Yes, sir.

1 Q. And did you?

2 A. Yes, sir.

3 Q. When you went over there as a captain of vice
4 and narcotics, was there much help for you?

5 A. Well, when I first got there, there was a major
6 in the division that normally would run that division, and
7 shortly after I got there he was promoted to a temporary
8 position. So, yeah, I was -- I was -- I ran it pretty
9 much by myself for a year or so.

10 Q. After your recovery from cancer, were you
11 thinking towards retirement?

12 A. Yes, sir.

13 Q. And in 1993, did you retire from the Tampa
14 Police Department?

15 A. Yes, sir.

16 Q. So now you think you're going to retire and
17 you're just going to go out there and enjoy your
18 retirement?

19 A. That was the false hope.

20 Q. So what happens in 1993, after you retired?

21 A. I -- well, before I retired, I heard about a
22 position that was becoming available locally at Busch
23 Gardens, so I applied for it.

24 Q. Why would you apply if you're thinking of
25 retirement?