

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

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: CRC1400216CFAES

CURTIS JUDSON REEVES,

Defendant.

PROCEEDINGS:

MOTIONS [Excerpt]

DATE:

January 19, 2022

BEFORE:

THE HONORABLE SUSAN BARTHLE
Circuit Judge
Sixth Judicial Circuit
Dade City, Florida

PLACE:

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Dade City, Florida 33523

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P R O C E E D I N G S

* * * * *

(Thereupon, proceedings were reported but not requested as part of this transcript.)

(OPEN COURT.)

(Defendant not present.)

THE COURT: All right. Mr. Martin, we're back on the record. And what do you want to take up next?

MR. MARTIN: Judge, along with the motion that we just did --

THE COURT: Uh-huh.

MR. MARTIN: -- there's four other motions that deal with relevancy.

THE COURT: Okay.

MR. MARTIN: The case law is exactly the same.

THE COURT: Uh-huh.

MR. MARTIN: There's no reason to read it again and go through it again. The only thing I'll do with each one, I'll put on the record that I'll rely on the case law that I previously provided to the Court.

THE COURT: Okay.

MR. MARTIN: So I think we can streamline these next four to get right down to the facts.

1 You know the case law and so that's what we'd like
2 to do if that's okay with you.

3 THE COURT: Fantastic. I'm all ears.

4 MR. MARTIN: The next one is the State's
5 motion in limine to exclude the testimony that in
6 December of 2014 the defendant fell and broke his
7 hip.

8 THE COURT: All right.

9 MR. MARTIN: Do you have that one up there?

10 THE COURT: I just clicked off of JAWS.

11 MR. ESCOBAR: Your Honor, I can provide it to
12 you.

13 THE COURT: Okay. Thanks.

14 MR. MARTIN: Did you give her the exhibit?

15 MR. ESCOBAR: No. But if you want to give her
16 the exhibit.

17 MR. MARTIN: Yeah. If she doesn't have it.

18 THE COURT: Yeah. I've got it. I can pull it
19 up right here. And now I've got defendant's
20 response. And I had it up, but I just clicked on
21 the wrong thing. And it's not up anymore, but it
22 will only take me a second.

23 This file even in JAWS takes a long time to
24 load up. I guess because it's --

25 MR. MARTIN: I have a copy of the exhibit for

1 the Court. I mean, I would need it back.

2 THE COURT: The exhibit being the transcript?

3 MR. MARTIN: Yes. This argument is not going
4 to take that long.

5 THE COURT: Okay.

6 MR. MARTIN: May I --

7 THE COURT: Do you need it to argue?

8 MR. MARTIN: It won't take long to argue. No.

9 THE COURT: Okay. I'll take it.

10 MR. MARTIN: May I go ahead and proceed, Your
11 Honor?

12 THE COURT: Uh-huh.

13 MR. MARTIN: Judge, in this particular motion
14 in limine, you might recall during the immunity
15 hearing Jennifer Shaw was asked if she was aware
16 that her father had fallen, and, at that point, the
17 State objected.

18 I've provided you the transcript from that
19 hearing where we argued whether or not something
20 had occurred in December of 2014 when the offense
21 was in January of 2014, to what extent that was
22 relevant.

23 And if the Court would just take a moment to
24 refresh the Court's memory as to how you ruled, but
25 the bottom line is, after argument from Counsel,

1 you indicated that, I think your words were, you
2 got it; I don't need to hear stuff that took place
3 afterwards; and you sustained my objection. I'm
4 asking you do the same here.

5 THE COURT: That's right. It was after --
6 after this, as I recall. After the shooting, the
7 January 13th that he broke his hip; is that
8 correct?

9 MR. ESCOBAR: It is, Your Honor.

10 THE COURT: Okay. Yeah. I still feel the
11 same way.

12 You know, I get it. The testimony of
13 Dr. Bedard about self efficacy. And I know that's
14 where you think the relevancy is, but --

15 MR. ESCOBAR: Judge, if I just may make some
16 argument because we have some cases that are on
17 point.

18 THE COURT: Okay. Go ahead.

19 MR. ESCOBAR: That the Court, I think, you
20 know, should consider.

21 You know, this case is somewhat unique because
22 of the fact that the jury has to, number one, stand
23 in the shoes of Mr. Reeves. In other words, it's
24 not Rick Escobar determining for Rick Escobar
25 whether it was reasonable to pull that gun and fire

1 that gun.

2 If I was a juror, I've got to stand in the
3 shoes of Mr. Reeves. I've got to stand in the
4 shoes of a 71 year old. So I've have to figure
5 that into my equation. I've got to stand in the
6 shoes of Mr. Reeves as a 27-year decorated veteran
7 that started the first SWAT team for the Tampa
8 Police Department and all of the courses that he
9 took on use of force.

10 I've got to stand in the shoes of Mr. Reeves
11 being 71 years old and having the degenerative
12 changes to his skeletal systems that Dr. Foley
13 testified that -- remember, Dr. Foley didn't say
14 these happened just now. They were longstanding
15 degenerative changes to his skeletal systems.

16 I've got to stand in the shoes of Mr. Reeves
17 as the head of security for Busch Gardens dealing
18 with similar places. Busch Gardens is a place
19 where individuals come and entertain themselves in
20 that facility. This is not much different than
21 someone going to a theater because you have masses
22 going to a theater entertaining themselves and what
23 can happen at these places of entertainment.

24 And so because of that, it is very, very
25 relevant and very probative to be able to prove

1 that Mr. Reeves' perception of vulnerability, that
2 his perception of vulnerability was accurate.

3 And if you look at the cases that we've cited,
4 we get a pretty robust response on this particular
5 issue because it is so important, frankly, to the
6 Court.

7 And in this case, if you look at the legal
8 analysis that we spoke to, first of all, I think
9 Mr. Michaels was correct and when he argued in his
10 motion that the issue of relevancy is really a very
11 low threshold. In other words, we don't have to
12 meet a high threshold in order to be able to
13 introduce evidence in a criminal case, especially a
14 defense case because, as the Court knows, the
15 Supreme Court of the United States has bent over
16 backwards to say, hey, listen, if someone is
17 charged with a crime, you've got to do whatever you
18 can to allow that defendant to actually prove his
19 defense in that allegation.

20 And so when you look at this Tennard Case,
21 which is a U.S. Supreme Court case, and I'd ask the
22 Court to read that case because it is a very robust
23 case dealing with this low bar and what happens in
24 these particular cases and what we should be
25 looking at.

1 But most importantly, on Page 5 of my
2 memorandum, you will see that certainly there is a
3 section at the very bottom of Page 5 talking about
4 subsequent events. Because, for some reason, you
5 know, there's this general perception out there
6 that if an event happened after the accusation that
7 you then can't use that event because it's not
8 relevant. And these cases, the cases that I've
9 cited, okay, one being Ruiz, which is located at 39
10 F.Supp.3d 1264, as well as Mack versus -- United
11 States versus Mack, which is at 643 F.3d 119, all
12 stand for the proposition that, no. Just because
13 it happened after doesn't necessarily mean that it
14 is not relevant to an issue before the Court.

15 And so you can see that in the Ruiz case,
16 there were subsequent violations of the liquor
17 laws. And the government sought to introduce those
18 particular subsequent violations in order to show
19 the intent of the individual that was being
20 accused. And the Court said, absolutely, because
21 it is relevant to that particular issue. Despite
22 the fact that it happened after, it is still
23 relevant to that particular issue considering,
24 obviously, that low bar.

25 Likewise, Your Honor, in United States versus

1 Mack, which is at the very bottom of that, again,
2 the government was prosecuting someone for drug
3 sales. And in the fact that these sales occurred
4 after the fact was relevant and admissible to show
5 the state of mind, that being the intent of the
6 defendant in the prior sale. And so just because
7 this particular injury occurred after the fact does
8 not make this excludable.

9 And let's talk about why. Certainly we all
10 know that as we get older, as part of the aging
11 process, we've got individuals that become more
12 vulnerable. There's a reason why in the State of
13 Florida, if I was to punch Dino right now in the
14 arm, because he's under 65, that's just a battery.
15 But the minute that Dino becomes 65, if I do that
16 same act, that's a felony.

17 Because the law in Florida has recognized that
18 individuals that are older are more vulnerable.
19 And so remember throughout this entire defense,
20 we're trying to determine and trying to prove, we,
21 myself and Mr. Michaels, as part of the Defense,
22 that it was Mr. Reeves' reasonable belief. We've
23 got to be able to prove that. We've got to be able
24 to prove that, hey, look, yeah, it was reasonable
25 for him to perceive his vulnerability. And how do

1 we do that? We do that because of two things.
2 We're going to introduce Dr. Foley. Who Dr. Foley
3 will testify to the fact that, yes, the fact that
4 he got his broken hip is probative, okay, of the
5 fact that he had these degenerative changes going
6 on in his body.

7 Number two, we're going to show the jury
8 exactly how he fell. He fell, not by playing
9 football, not by playing basketball, not by doing
10 anything out of the ordinary, just merely walking
11 in his back patio, falling and breaking his hip.

12 I think the Court would recognize if someone
13 in their 50's if they fall on a patio are probably
14 not going to break their hip. But the minute that
15 you became Mr. Reeves' age with those types of
16 changes to their skeletal system, then it becomes
17 more likely.

18 And the word "likely" is what we're trying to
19 prove. Yes. It has a tendency to prove that, in
20 fact, Mr. Reeves' perception of his vulnerability
21 was accurate. And that's what the jury has to do.

22 If we're not allowed to do that, then we're
23 stripping Mr. Reeves of this very vital defense.
24 And that is -- that's the jury instruction. It
25 even tells you in the jury instruction, Your Honor,

1 and I don't have it here with me, but it tells you
2 in the jury instruction that the jury should
3 consider the physical capabilities of both the
4 defendant and the victim. That is the jury
5 instruction.

6 And so if the jury instruction is telling you
7 that, and this deals with an individual that his
8 physical capabilities were much more vulnerable
9 because of his age and his deteriorating condition,
10 how can it not be relevant? How can it not be
11 probative?

12 You know, I'm sure Mr. Martin doesn't want
13 that because it is so powerful for us. But to take
14 it away from us, based upon case law that's
15 directly on point, these cases are directly on
16 point in that these were subsequent acts. And in
17 every motion that we responded here, that was our
18 goal is to give this Court cases that have done
19 what we're asking this Court to do so that this
20 Court can be on solid ground to say, okay, if that
21 court has found that that is, in fact, relevant and
22 it was a subsequent act, and it has a tendency to
23 prove the fact that Mr. Reeves was right that he
24 was vulnerable, it's crucial to our defense.

25 THE COURT: Thank you.

1 Mr. Martin?

2 MR. MARTIN: Judge, I refer the Court back to
3 the standard jury instruction 3.6(f). When we're
4 talking about self defense, when an individual puts
5 forth a claim of self defense, what is relevant is
6 what that individual knew at that time. That is
7 what is judged.

8 Now, we're going to have some arguments and
9 issues later on with Dr. Foley, because you
10 remember Dr. Foley's testimony was, I didn't -- I
11 didn't examine Mr. Reeves. He also indicated
12 people have different thresholds of pain. He
13 doesn't even know if Mr. Reeves was aware of the
14 changes in the bone density of what's going on
15 because it just happens under the skin and you
16 don't know about it.

17 So when we're talking about a self defense
18 claim, it's what the defendant knew at the time.
19 That's what he brings to the table.

20 Not -- having changes going inside your body
21 that you don't know about can't be brought to the
22 table. And so it's not relevant to the
23 decision-making process if you are cognitively
24 aware of the fact, if you're not aware that your
25 bones are ostracizing or whatever that word is,

1 getting the bone is changing in the density, if
2 you're not aware of it then how can it affect your
3 decision making process.

4 Now, Mr. Escobar says, well, we've got these
5 cases they're very robust. These things happened
6 afterwards, therefore, they're relevant. Well,
7 what cases did he cite? He cited Williams Rule
8 cases where we talk about state of mind and intent
9 for bad acts after whatever the crime charged was
10 to prove the individual's state of mind at the time
11 of the crime charged.

12 Well, that's -- that's apples and oranges.
13 There's nothing robust about that at all when we're
14 talking about Williams Rule type of evidence and
15 that criteria of relevancy as opposed to a self
16 defense claim where the relevancy is what he knew
17 at the time.

18 So that's the -- that's where the Court needs
19 to separate the Defense argument from the State
20 argument. And what occurs ten months later, he
21 doesn't know it's going to occur.

22 There was no testimony, you might recall from
23 the Defense, the defendant at the time of the
24 hearing about he knew all the little things that
25 Dr. Foley was talking about. I mean, he did his

1 physical. I can't do this. I can't move this. Is
2 this consistent with. But it didn't cover it all.
3 And so that's why the State brings this to the
4 Court's attention. It's what he knew at the time.
5 That's what's relevant. The State's -- I mean the
6 Defense cases are not on point for this issue..

7 THE COURT: Thank you.

8 MR. ESCOBAR: Judge, a couple of things that
9 are incorrect factually that Mr. Reeves did not
10 know the state of his condition and the state of
11 his degenerative bones is absolutely incorrect and
12 we will be presenting testimony of Mr. Reeves
13 concerning his perception.

14 The Court remembers, even when he was
15 questioned by law enforcement, he talked to law
16 enforcement about his arthritis, his back was a
17 wreck. So that's not true. He has a great deal of
18 knowledge about his skeletal system at that time.

19 It's incorrect -- and I'd ask the Court to
20 read those cases. These are not Williams Rule
21 cases. That is incorrect. As the Court knows what
22 Williams rule is. You'd have to have some very
23 unique set of facts in order to introduce Williams
24 Rule. These are not Williams Rule evidence. These
25 were specifically as relevant evidence to show the

1 state of mind of that individual at a time prior.

2 So let's think about that. A subsequent event
3 that's being introduced by the Government in order
4 to prove the state of mind of the accused at a
5 previous time.

6 Somehow Mr. Martin thinks that what's good for
7 the goose is not good for the gander. Meaning
8 that, oh, well, if this was in a prosecution, the
9 prosecution can do it. No. No. What's good for
10 the goose is good for the gander. Whatever the
11 prosecution can introduce to prove that state of
12 mind so can the Defense prove that state of mind
13 through the evidence.

14 And so, Your Honor, I would -- I would ask the
15 Court if the Court is -- has not read thoroughly
16 these particular cases -- I know the Court had made
17 a decision previously. These particular cases were
18 not presented to the Court at that time. This is
19 really a very crucial issue for the Defense. And,
20 frankly, I think that if, for some reason, and I
21 say this with all respect, if the Court were to get
22 it wrong it's clearly reversible.

23 The problem is is that if the Court gets it
24 wrong and it's reversible and Mr. Reeves goes to
25 prison, the chances that he'll be able to come out

1 after the Second District makes a decision, it's
2 not good. He lost 40 pounds when he was in jail
3 and we had to go to the Second District to get him
4 a bond.

5 And so the only thing I'd ask for the Court --
6 we have given you a very thorough memorandum -- but
7 I'd ask the Court to read the cases that we've
8 cited because I frankly think that they are on
9 point and there's no distinction whatsoever.

10 And the unique issue that this jury's going to
11 have to decide is was Mr. Reeves perception of
12 vulnerability at that time, taking everything that
13 Mr. Reeves is all about, including his skeletal
14 system and his degenerative changes, I've got to be
15 able to prove that. And one way to prove that is
16 to say, you know what, he was right. He was
17 walking on his patio, fell down and broke his hip.
18 I think that's -- that's very, very relevant. And,
19 remember, the threshold of relevancy especially in
20 a Defense case is very low.

21 THE COURT: Thank you.

22 And I also have to remember a 403 analysis of
23 if there is relevance to it, does its probative
24 value outweigh its prejudice.

25 You know, as I often do when I have the

1 analytical decision to make or question put to me,
2 I just, you know, flip the facts. What if
3 Mr. Reeves did not break -- fall and break his hip,
4 does that mean everything that you've been saying
5 wasn't true?

6 That's not, you know -- that's not how it
7 works. And I'm well aware that there are -- that
8 subsequent acts isn't an automatic bar to
9 admission. You know, so let's get that out of the
10 way.

11 But in this case, there's no way that
12 Mr. Reeves would have thought that he's going to
13 break a hip. You know, all of his aging and all of
14 the testimony about his frailties, he's 71 years
15 old, of course he can testify to his, you know --
16 he's certainly able to testify about how he felt
17 about himself, that he knew he wasn't the guy that
18 he was in his 30's.

19 No problem. Of course. You know? But
20 there's no way that he could have predicted that he
21 was going to fall and break his hip. And there's
22 no way that that could have been playing in his
23 mind at the time of the incident.

24 In general, his frailties, certainly. I don't
25 have a problem. But the problem I have is, you

1 know, that's almost bolstering if you will. See,
2 he was right. No. That's not really how it works.

3 MR. ESCOBAR: Your Honor, you know that
4 Dr. Cohen is going to testify. You remember
5 Dr. Cohen.

6 THE COURT: Uh-huh.

7 MR. ESCOBAR: She's going to testify that that
8 is at the forefront elderly people's minds, meaning
9 falling and breaking their hip.

10 THE COURT: Okay.

11 MR. ESCOBAR: The reason being is because it
12 is so prevalent out there.

13 THE COURT: Okay.

14 MR. ESCOBAR: How many times -- and not only
15 breaking their hips. When elderly people break
16 their hips their incidents of death is enormous.
17 So -- so, no, I think that, you know, Mr. Reeves'
18 vulnerability and realizing that, hey, you know, if
19 I get hit by this guy --

20 THE COURT: I could break a hip. Not a
21 problem. Not a problem. But not the fact that he
22 did break his hip.

23 MR. ESCOBAR: But that's how I prove that it's
24 reasonable.

25 THE COURT: No. You don't -- no. You can't

1 prove that it's real. It has to be -- the jury has
2 to find that it's reasonable. And would it be
3 reasonable for a 71 year old man to feel that he
4 was frail. You don't have a subsequent act that
5 happened as proof. See, I told you he was frail.
6 No. You know, that's just not --

7 I take distinction from all the cases offered
8 and your arguments. I'm going to draw the line on
9 this one. No. The probative value, it calls for
10 sympathy from the jury and I don't find that it has
11 any probative value other than bolstering.

12 Bolstering the -- you know, what he's already going
13 to testify to that he felt frail. Okay.
14 Seventy-one years old. Have at it.

15 You know, I read the transcript of his
16 description. I believe what he said was something
17 about being wrecked. He's wrecked. You know, his
18 body, his hands and couldn't even pull the trigger.
19 You know, that's all fair game.

20 But a broken hip after the fact simply can't,
21 under any case law or stretch of the imagination,
22 have been playing on his mind other than what you
23 indicated, Mr. Escobar, about all aged people
24 probably worry about breaking a hip or knocking
25 themselves in the head or any number of things. In

1 general, you know, that's -- sure. That's
2 something that he might have worried about.

3 But to point to an actual event, no. I'm
4 not -- I'm not going to allow that. So I'm going
5 to grant the State's a motion as to testimony about
6 his hip being actually broken.

7 MR. MARTIN: I'll provide the Court an order
8 tomorrow. I apologize. It must be on my desk
9 someplace.

10 THE COURT: Okay.

11 MR. MARTIN: I'll provide it tomorrow.

12 And, Bailiff?

13 THE BAILIFF: Yes.

14 MR. MARTIN: Your Honor, if I could get my
15 exhibit back from you too so I can make my file
16 complete. If you're finished with it.

17 THE COURT: Yep.

18 MR. MARTIN: Thank you, Bailiff.

19 THE BAILIFF: You're welcome.

20 THE COURT: Okay. Next.

21 MR. MARTIN: Judge, I'd like to take up one of
22 the motions I filed earlier, I think Friday or this
23 week, dealing with the fact that Mr. Reeves was
24 with the police department had a bought with
25 cancer.

1 THE COURT: Uh-huh.

2 MR. MARTIN: The argument is the same that I
3 made with the broken hip. He did have a bought
4 with cancer. Apparently, he successfully battled
5 that. But to go through, you know, my life
6 history, I had -- I had cancer, again, we're --
7 it's the State's position that it's not relevant as
8 far as the decision-making process at the time of
9 the incident. Getting hit isn't going to cause me
10 to have cancer again. You know what I mean? It
11 just doesn't factor into why he responded the way
12 he did. It has no relevance to that.

13 It can't factor in because there's nothing
14 that Mr. Oulson can do to cause him to have cancer
15 again. Nothing. So that just can't factor into it
16 and it only goes to the sympathy.

17 So under 402 and 403, the State would ask that
18 the -- that you grant the State's motion in limine
19 to exclude the testimony by the defendant that he
20 was diagnosed with cancer.

21 THE COURT: What about that, Mr. Escobar?

22 MR. ESCOBAR: Judge, what happens with people
23 that have cancer is, in fact, they become more
24 vulnerable in many areas. So somehow Mr. Michaels
25 thinks -- excuse me -- Mr. Martin thinks that

1 people that have cancer that it somehow it's not
2 going to affect them other than during the period
3 that they had cancer. That somehow, you know,
4 their muscular system, somehow, their body organs,
5 somehow, you know, they all just become normal
6 again because now you don't have cancer anymore in
7 your body and that's just not the case.

8 I think that all of his ailments that he's had
9 throughout the years are relevant. And it plays --
10 if you listen to Dr. Cohen's testimony, those
11 things play on your mind because the minute that
12 you do have cancer, you realize as an individual
13 that you're that much more vulnerable and that you
14 can't do the things that you used to do prior to
15 having cancer depending upon how that cancer has
16 affected you, you know, within your abilities to
17 move around and with your abilities to have the
18 energy that you used to have, with your abilities
19 to function as a normal human being.

20 So if we're going to -- if we're going to
21 color Mr. Reeves something that he's not, I think
22 that's a big mistake. I think the fact that he's
23 had all of these conditions play to the fact that
24 he, in his mind, got up that morning, that he went
25 to the theater like he does every morning, and

1 finds himself that much more vulnerable every day
2 that he has another ailment. And that's part of
3 the aging process and it's a very real issue in
4 this case.

5 You know, one of things that I want the Court
6 to consider, let's assume that Mr. Reeves was not
7 71. Let's assume Mr. Reeves was four years old.
8 And let's assume that because Mr. Reeves was four
9 years old, Chad Oulson was going to (indicating)
10 pop that four year old in the head. How would we
11 feel about that? Would we feel that that four year
12 old, because of the four year old's age is
13 vulnerable? Of course we would. Of course we
14 would.

15 It's no different when people get old. It's
16 just like when people are very young they can't
17 sustain the type of abuse that individuals can
18 sustain when they're a robust 30 year old going to
19 the gym lifting weights, pumping weights. Yeah,
20 you may be able to take a punch.

21 I will remind the Court, okay, that even their
22 witnesses talked about one punch homicides.

23 And so you don't have a very high threshold on
24 this issue of great bodily harm. I think the Court
25 knows that, you know, a broken nose is great bodily

1 harm.

2 And so for us to say that conditions that
3 Mr. Reeves has had, and serious conditions, cancer
4 is a serious condition, that that did not affect
5 his perception, his perception of vulnerability I
6 think is wrong. I think we all -- it's the
7 arthritis, the degenerative changes to your
8 skeletal system, it's the broken bones. All those
9 things in cumulation of one of the other make us
10 feel reasonably vulnerable. Reasonably vulnerable.

11 And so I would make the same argument that him
12 having cancer, as well as him having all of the
13 ailments that he has, and we're going to, you know,
14 elicit all of the ailments that he's had
15 throughout, you know, his life, especially as he
16 got older --

17 THE COURT: All right.

18 MR. ESCOBAR: -- are relevant.

19 And Dr. Cohen is going to talk about that as
20 an expert in this area.

21 THE COURT: Okay. What -- you know, and I'm
22 more than likely going to deny this. But what sort
23 of cancer are we talking? Did he --

24 MR. ESCOBAR: He had prostate cancer, Your
25 Honor.

1 THE COURT: Okay. Okay. Good enough. You
2 know, if it was a little mole on his nose --

3 MR. ESCOBAR: No. It was prostate cancer.

4 THE COURT: -- you know, come on. We're kind
5 of pushing the impact.

6 MR. ESCOBAR: I wouldn't do that, Your Honor.

7 THE COURT: Okay. I'm going to deny then. I
8 know we're -- what you're trying to prove with the
9 vulnerability and that this having cancer would --
10 but he knew he had cancer.

11 MR. ESCOBAR: Yes, ma'am.

12 THE COURT: The difference there. So that
13 could certainly weigh on his mind. I'm going to
14 deny as to that one.

15 MR. MARTIN: You might recall, Judge, during
16 the immunity hearing there was no other testimony
17 regarding that.

18 THE COURT: There was no other what?

19 MR. MARTIN: Testimony regarding that the
20 cancer, just said that he had cancer. Dr. Cohen
21 didn't testify about cancer.

22 MR. ESCOBAR: Judge, I will tell Mr. Martin
23 there's a lot of things that we didn't bring up the
24 immunity hearing that will be brought out in this
25 trial. A lot of stuff.

1 MR. MARTIN: I taught you well. I know.

2 THE COURT: All right. Yeah.

3 MR. ESCOBAR: You're going to do the same
4 thing.

5 THE COURT: All right.

6 (Staff conversation.)

7 MR. MARTIN: Judge, the next one I'd like to
8 discuss along with the relevancy is the State's
9 motion in limine to exclude testimony the defendant
10 handled a delicate situation in Vice and Narcotics.

11 Again, we're talking about the -- he didn't go
12 into what it was, to what extent that is relevant
13 in a claim of self-defense as to his
14 decision-making at the time of the altercation. It
15 has no relevancy whatsoever.

16 So I've outlined my argument in the motion.
17 It's all the cases I cited to the Court. We've had
18 a lot of discussion about what is relevant and not
19 relevant, what's relevant in a self defense case.
20 I suggest to the Court that that life experience
21 has no relevancy in this case.

22 THE COURT: I'm sure you're going to tell me
23 why it's relevant.

24 MR. ESCOBAR: Judge, this is the issue. And
25 I'm not going to show my cards to Mr. Martin as to

1 what Mr. Reeves is going to testify about
2 concerning his life experience as a law enforcement
3 officer.

4 But that life experience as a law enforcement
5 officer, even Bedard in the hearing that we had
6 testified how unique, you know, that was for a case
7 like this, to have Mr. Reeves have the background
8 that he had with use of force. And I want to start
9 there because I think it's very important for us to
10 talk about that.

11 Mr. Reeves was selected by the captain back
12 many years ago in order to form the first SWAT team
13 ever for the Tampa Police Department. That was an
14 incredible feat that he was asked to do because he
15 had the responsibility of not only educating
16 himself, meaning going throughout the country
17 taking these particular courses dealing with use of
18 force, but, more importantly, educating the men
19 that were going to be working under him. He was
20 the captain of the SWAT team at the time.

21 And so as the Court knows and I believe
22 Mr. Reeves testified about this, he had extensive
23 experience out on the street both as a patrolman
24 and as a detective on how things and how quickly
25 things can change in the life an of an individual

1 out there in the community.

2 And we've argued the cues that law enforcement
3 has to adhere to in order to prevent something
4 tragic happening to themselves while they're out in
5 the line of duty.

6 It's important to look at the self-defense
7 instruction because the self-defense instruction is
8 a preventative instruction. In other words, it
9 contemplates you not waiting for that first blow.
10 You can use deadly force to prevent that particular
11 forceable felony and that particular act, that
12 felonious act of striking, that can cause great
13 bodily harm or death. You don't have to wait to
14 say, okay, give me the first punch and then I can
15 pull my gun out and kill someone. Because after
16 that first punch, you may not be able to pull out
17 your gun. You may be dead.

18 And so his life experiences out there as a law
19 enforcement officer in narcotic cases, in domestic
20 violence cases, in homicide cases, in SWAT cases
21 are all going to be factors that this jury is going
22 to have to hear and consider. Because, again, it
23 is not Joe Blow jury that is a surgeon at Tampa
24 General that puts herself in those shoes alone.
25 She's got to put herself in Mr. Reeves' shoes.

1 And so anything that would enlighten the jury
2 concerning those particular risk factors and how
3 something can be totally benign or look totally
4 benign and all of a sudden turn and be drastically
5 violent is something that he's going to be able to
6 testify about.

7 You know, one of the things in this case that
8 is monumental in the evaluation of this threat
9 assessment is the theater. I go to theaters all
10 the time with my wife. It's my Sunday routine. We
11 go to the theater. We go to the CineBistro, my
12 wife and I, late in the afternoon because then, you
13 know, I go to bed and ready for Monday, right.

14 And I can tell you in my -- I'm 64 -- in my 64
15 years as I stand here today, I have never had
16 anybody stand up in a theater yelling, screaming,
17 cursing, threatening anybody. And so as a law
18 enforcement officer, when something so outrageous
19 is taking place in that setting, it is a cause --
20 it is a cue that that particular individual is
21 totally out of control. And that individual is
22 more dangerous with or without a weapon than anyone
23 can imagine.

24 Those are the experiences that Mr. Reeves
25 uniquely brings to this case. Most individuals

1 that pull a gun and shoot someone in self defense
2 don't have this background. Mr. Reeves has this
3 background and the jury has to consider that
4 background and all of his life experiences while he
5 was out on the road, when he was doing homicide
6 detective work, when he was doing SWAT work. In
7 order to determine, that jury's got to say, okay,
8 Mr. Reeves has told me about all these instances,
9 these one-punch homicide, which I've defended one.
10 One-punch homicide. I've got to take that, I've
11 got to listen to it, and if Mr. Reeves is
12 believable about that, then I've got to use that in
13 my evaluation as to whether or not it was
14 reasonable for Mr. Reeves to perceive his
15 vulnerability at that point in time.

16 And so that's what this particular issue is
17 about. I know Mr. Martin doesn't know the
18 particulars of it. He took extensive, you know,
19 depositions of Mr. Bedard. I don't believe that he
20 touched upon this issue with Mr. Bedard. But
21 there's going to be testimony of this issue and
22 many other instances that Mr. Reeves was out there
23 serving our community as a law enforcement officer,
24 protecting our community, that gave him the
25 knowledge and the experience to be able to deal

1 with a situation in the right way, in a reasonable
2 way.

3 THE COURT: Mr. Martin, do we know what we're
4 talking about here?

5 MR. MARTIN: I have no idea.

6 THE COURT: Delicate situation?

7 MR. MARTIN: I have no idea. I have no idea
8 how Mr. Escobar the last ten minutes even addressed
9 this issue. I'm sorry. I just -- it didn't
10 address it.

11 The bottom line is, we have a situation where
12 he testified he handled a delicate narcotics
13 situation as part of his three hours of who I am,
14 which I will deal with later but not today.

15 THE COURT: Okay.

16 MR. MARTIN: So I have -- how can that apply
17 to his decision-making process as far as use of
18 force in handling a delicate situation in Vice and
19 Narcotics?

20 THE COURT: Well --

21 MR. MARTIN: And it just leads to speculation
22 and guesswork on part of the jury's what are we
23 talking about or anything. So, again, I'm back to
24 402 and 403. You just throw it out there and
25 hopefully it sticks and I'm asking the Court to

1 find that it doesn't stick. This has nothing to do
2 with this case.

3 THE COURT: Certainly if the delicate
4 situation involved an individual who was pretty
5 tall and lanky and hollering and screaming who
6 maybe then went on to fire a firearm, I could see
7 that that would be pretty relevant that he might
8 have that on his mind. But, you know, other than
9 that, I don't know.

10 I'm inclined to just leave this and we'll have
11 to do a proffer, I guess. It shouldn't be long I
12 wouldn't think, and I'll determine if it's relevant
13 or not.

14 I can't -- I understand your argument about
15 life experiences, but I don't know, you know -- 403
16 analysis here, I don't know. I don't know about
17 the probative value versus the prejudicial impact.

18 So I will reserve for contemporaneous proffer.

19 MR. MARTIN: All right. I'll draft an order
20 to that effect.

21 THE COURT: Okay. Thanks.

22 MR. MARTIN: May I have just a moment to make
23 some notes here, Judge?

24 THE COURT: Uh-huh.

25 MR. MARTIN: I'll have that typed up and have

1 it for you tomorrow.

2 THE COURT: All right.

3 MR. MARTIN: Judge, the next one, along the
4 same lines, is a motion in limine regarding Vivian
5 Reeves and her physical infirmities.

6 There was, you might recall -- I'm sure you do
7 recall, Judge. There was testimony, I believe,
8 from not only Mrs. Reeves but even possibly from
9 Jennifer Shaw, but don't hold me to that, dealing
10 with, you know, what her physical state was.

11 I'm suggesting to the Court that her physical
12 state is not relevant to the extent that it's not
13 known to the defendant.

14 If the defendant takes the stand and says, my
15 wife has A, B, C, then that's fine. But we can't
16 infer that -- what he knows of her ailments. He
17 can testify to whatever was in his head. That
18 would be fine. But for her to make a laundry list
19 of everything that's wrong with me and then imply
20 or infer that that is the knowledge of the
21 defendant, well, that would just be cause for
22 speculation on part of the jury as to what he
23 actually knew and to what extent he even considered
24 it.

25 So that's why I ran the motion. I did the

1 same thing. I objected at the time of the immunity
2 hearing.

3 Does the Court have my exhibit? I attached
4 the discussion that Mr. Michaels and I had with the
5 Court. I argued that it was -- may I have just a
6 moment, Your Honor?

7 THE COURT: Is it part of your motion?

8 MR. MARTIN: She talked about her knee
9 replacement, the treatment that she's had over the
10 years. And this was Jennifer Shaw talking about
11 her mom.

12 And the way it came about is Ms. Shaw
13 indicating what her mother told her, I objected as
14 far as being hearsay, and you sustained the
15 objection.

16 So that's why I ran the motion depending on
17 what Jennifer Shaw testifies to about her mom and
18 what Vivian Reeves testifies to. It's not relevant
19 to infer exactly to what extent Mr. Reeves had
20 knowledge and to what extent it factored in.

21 Like you've already pointed out, it's fair
22 game. Mr. Reeves can take the stand and say
23 whatever he wants and I'll object when I feel it's
24 appropriate. But have the other witnesses come in
25 to infer it is not appropriate especially based on

1 hearsay. So I'd ask the Court to grant the State's
2 motion.

3 THE COURT: Response.

4 MR. MICHAELS: Judge, the plan is is this:
5 Vivian Reeves is going to take the stand. She's
6 going to talk about these infirmities. She's going
7 to say that her husband knows about them because he
8 took her to the hospital when she woke up and had
9 bandages all over her knees. He was there in the
10 hospital and held her hand. He took her to
11 physical therapy when she was learning to walk
12 again. He was right there. He made her breakfast
13 at home.

14 You know, she's going to be able to testify
15 that certainly he has knowledge. They've been
16 married, I forget how many years now. It's been so
17 long since the hearing. I didn't do the math, but
18 however many years.

19 You know, the same with the breathing. She
20 took me to the doctor. I had trouble breathing.
21 And so certainly it's relevant because in this case
22 it was self defense. It's not only defense of self
23 but defense of others. So I certainly think that
24 it's clearly relevant and I don't think there's any
25 evidentiary problem with getting that information

1 out. Certainly Mr. Reeves doesn't even have to
2 testify. He has the right not to testify. But
3 certainly Vivian, Mrs. Reeves I should say, can
4 testify about those infirmities.

5 In terms of, you know, Jennifer Shaw, the
6 daughter, saying it, you know, I don't see where
7 that's even going to happen. You know, we're going
8 to have Mrs. Reeves up there talking about it.
9 And, certainly, she was in very close proximity,
10 sitting right next to her husband. Certainly we
11 all know Mr. Oulson was in front of her, so all of
12 that makes this relevant and I think appropriate in
13 this sort of case.

14 THE COURT: All right.

15 MR. MARTIN: Judge, just -- and, you know, at
16 some point, you know, it comes to, well, that's
17 more appropriate for cross or whether or not you
18 leave it out. But you might recall Mr. Reeves left
19 his wife alone after the conversation, after the
20 confrontation and altercation that wasn't pleasant.
21 It was so unpleasant and disturbing that he went
22 and complained to the manager and left her there.

23 So, you know, to say that what is in his head
24 and how to what extent he did what he did, it kind
25 of begs the question can you infer what he knew

1 about her and how that played in his decision
2 making.

3 And then so it goes back to speculation on
4 part of the jury about what he knew, especially
5 given the fact that he left her there alone with
6 Mr. Oulson sitting right in front of her.

7 So --

8 THE COURT: Well --

9 MR. MARTIN: -- you know, that's where we are
10 at.

11 THE COURT: I get that. And I understand what
12 you're getting at. As far as anything that he
13 didn't know about, Mr. Michaels is correct. I
14 mean, I'm sure he knew -- I mean, was there
15 something that happened afterwards major that came
16 out or is it just like her knees and her breathing
17 and --

18 MR. MICHAELS: Her knees, her breathing, her
19 arthritis.

20 THE COURT: Yeah.

21 MR. MICHAELS: The things that he knows about
22 from living with her and taking her to the doctor
23 and all of that, Judge.

24 THE COURT: All right. And I think my prior
25 ruling was basically a sustaining of a hearsay

1 objection primarily.

2 MR. MARTIN: On Jennifer Shaw it was.

3 THE COURT: Right.

4 MR. MICHAELS: And I think there was a hearsay
5 objection with Mrs. Reeves, knowing what her
6 medical condition was that caused me to go down the
7 line and say, well, did you have pain in your knee?
8 Did you go see a doctor? Did you wake up one day
9 after surgery? You know, that sort of thing. But,
10 yes, Judge, you did.

11 THE COURT: Yeah. No. I'm going to -- I'm
12 going to deny that one.

13 And just to clarify, as I recall, Jennifer
14 Shaw was asked, what did your mom tell you about
15 her injuries? Isn't that how it went, something
16 along those lines? And I sustained on a hearsay
17 objection about that.

18 MR. MARTIN: You sustained on a hearsay
19 objection.

20 THE COURT: Okay. All right. That's -- yeah.
21 I'll deny on that one. I think that's fine.

22 And, real quick, Mr. Martin, I've been --
23 something has been making me chuckle every time I
24 look at this docket. I think -- I don't know when
25 you said you'd have something typed up, either you

1 or somebody in your office, your auto correct or
2 something must automatically make everything that
3 supposed to say proffer into poofer.

4 Have you noticed that?

5 MR. MARTIN: Judge, I wish I could tell you.

6 THE COURT: I've seen that 100 times on the
7 docket. I'm like, what? What is that? What is a
8 poofer? Did I miss part of that? You know,
9 it's -- I thought that was comical.

10 MR. MARTIN: Mr. Michaels gives me grief about
11 my grammar and --

12 THE COURT: It's just a funny-looking word. A
13 poofer. Poofer. What does that mean?

14 MR. MICHAELS: The grammar's good. It's just
15 the typos.

16 MR. MARTIN: The typing is awful because my
17 B's are P's and my A's are whatever you get and
18 it's awful. So, hey, chalk it up to a learning
19 disability.

20 THE COURT: Oh, well.

21 MR. MARTIN: I passed the Bar.

22 THE COURT: That's it.

23 MR. ESCOBAR: That was important.

24 MR. MARTIN: That was important. You can
25 harass me all you want about the other stuff. I'll

1 take it in stride, but it is embarrassing.

2 THE COURT: I'm still lamenting the loss of
3 Word Perfect that I used to use in private practice
4 and now everything is Word that I -- I feel like
5 it's Communist or something. It makes you do what
6 it wants you to do. You can't have a choice.

7 MR. ESCOBAR: It tells you. If you put in a
8 word and it tells you, no, you don't want this
9 word, put this one in. I'm, like, no, I want the
10 word.

11 THE COURT: Yes. Yes. I've begged -- I've
12 begged for years, can't we all go to Word Perfect?

13 MR. MARTIN: As long as you understand what I
14 was trying to write.

15 THE COURT: I do. I do.

16 MR. MARTIN: I appreciate that you do that.

17 THE COURT: All right. What next? We're
18 getting close to wrapping it up probably.

19 MR. MARTIN: The rest are kind of long.

20 THE COURT: Kind of long?

21 MR. MARTIN: Because we're done with the
22 quick. We did five quick after one long one. So
23 what we have left is three dealing with defendant's
24 character. Mr. Escobar's going to argue one of
25 them doesn't involve that. But we have those three

1 left.

2 THE COURT: Okay.

3 MR. MARTIN: And the State's motion to redact
4 the statements.

5 THE COURT: Okay. Right.

6 MR. MARTIN: That's all that's left as far as
7 the State.

8 Defense has the motion for a material witness
9 I think they want to do probably before we leave.
10 And maybe now's a good time to stop because I've
11 got some stuff to give to Mr. Escobar tonight so
12 I'm going to be working.

13 MR. ESCOBAR: If we can hopefully finish
14 tomorrow? Do you think the Court -- I'm willing to
15 stay a little bit late if need be, but I'd love to
16 be able to stop tomorrow.

17 MR. MARTIN: I think we can finish tomorrow.

18 THE COURT: Okay.

19 MR. MARTIN: I mean, yeah. I think we can.

20 THE COURT: I'm good. We'll get done as much
21 as we can now.

22 One thing, didn't I see -- did we still have
23 stuff outstanding on Mr. Knox?

24 MR. ESCOBAR: We do, Your Honor.

25 And this is what I'm going to propose: We

1 brought Mr. Knox in on a scheduled motion date and
2 then we had this issue with the court reporter and
3 so that day was canceled. Every time we bring in
4 one of my experts, I just got a bill for payment
5 for \$17,000 for one appearance here.

6 Mr. Reeves is not that kind of wealthy, you
7 know, individual. And so what I would propose with
8 Mr. Knox is maybe -- I haven't spoken to Mr. Martin
9 about this, but that we have that argument before
10 he -- you know, before he testifies so that we can
11 avoid that additional -- that additional charge. I
12 think Mr. Martin and I agree the motions have been
13 well briefed on both sides.

14 THE COURT: Uh-huh.

15 MR. ESCOBAR: And I believe we've also
16 included in our brief his actual testimony --

17 THE COURT: Uh-huh.

18 MR. ESCOBAR: -- that he had in Court.

19 And I don't think -- I think that the issues
20 that Mr. Martin is objecting to is maybe two or
21 three issues.

22 Is that correct?

23 MR. MARTIN: I have one.

24 MR. ESCOBAR: Yeah. So I would ask the Court
25 to consider doing that. But if the Court says no,

1 we're going to do it next week, you know, I'll find
2 out what day he's available and I will bring him in
3 and we'll do whatever we need to do. I'm just
4 trying to --

5 THE COURT: Well, let's get through what we
6 can without bringing him.

7 MR. ESCOBAR: Okay.

8 THE COURT: And then -- like, I saw motions in
9 limine directed at him. And then, as best I can
10 tell, we've got a Daubert motion still outstanding
11 on him.

12 MR. MARTIN: Right.

13 THE COURT: So obviously, the Daubert we need
14 to get done and that typically involves testimony.

15 MR. ESCOBAR: And all of the motions, Your
16 Honor, even the non-Daubert motions are probably
17 going to require him to testify to substantiate our
18 position.

19 And so I think, frankly, if we pick, you know,
20 one late afternoon to argue his motion before he
21 testifies, I think we'd be able to do that.

22 THE COURT: Okay. Well, let's try and do that
23 this week then, like Friday.

24 MR. ESCOBAR: I haven't checked with him this
25 week.

1 THE COURT: Oh. You want to have him here.

2 MR. ESCOBAR: I would have to bring him back
3 and I'm going to avoid that cost if I can.

4 MR. MARTIN: You want to do it in the middle
5 of trial?

6 MR. ESCOBAR: I want to do it, yes, at some
7 point. He's going to testify. It's just a matter
8 as to whether he's going to testify to everything
9 or whether he's going to testify to --

10 THE COURT: Okay.

11 MR. ESCOBAR: Don't you think, Dino?

12 THE COURT: Well, you know, we'll -- I think,
13 we can talk about that during trial then. I think
14 that would be okay. Certainly I don't want to
15 waste jury time, but, undoubtedly, we're going to
16 have some, you know, lags perhaps here and there.
17 And we can certainly schedule it to where
18 everybody's on the same page and it will have the
19 least impact on the jury.

20 MR. ESCOBAR: We appreciate that. I know
21 Mr. Reeves would financially appreciate it.

22 THE COURT: That makes sense.

23 All right. So for tomorrow we're going to do
24 the transcript -- oh, Mr. Reeves' testimony.

25 MR. MARTIN: To redact the law enforcement.

1 THE COURT: Uh-huh.

2 MR. MARTIN: And then the defendant's
3 character by Jennifer Shaw, the defendant's
4 character put on by Vivian Reeves, and then what I
5 call the awards.

6 THE COURT: Yeah.

7 MR. MARTIN: Three hours of awards.

8 MR. ESCOBAR: Judge, we did file one other
9 motion. We were speaking to Fred Meyers. If you
10 remember, Fred Meyers was the manager of the Cobb
11 Theatres.

12 THE COURT: Okay.

13 MR. ESCOBAR: He was on board to come. We
14 had -- Matt had had numerous conversations with
15 him. We were getting his airline tickets, the
16 whole shebang. And then he started this week,
17 actually I think it was Monday, to get a little
18 squirrely, saying, well, I haven't been subpoenaed
19 so -- he's in Georgia. I haven't been subpoenaed,
20 so I'm not going to -- you know, I don't know if I
21 have to; why don't you use my former testimony.

22 And so we were in the process already because
23 I don't trust witnesses just telling me that
24 they're going to come. Once we found him, we were
25 in the process of drafting this motion and getting

1 it over to Georgia so that Georgia could issue a
2 certificate for the subpoena and then we'd have an
3 investigator of ours over there in Georgia serve
4 him.

5 And this is our request -- I believe it was
6 filed 1/19. And I can give you a copy of it so you
7 can see it.

8 THE COURT: Uh-huh.

9 MR. ESCOBAR: I don't think that
10 Mr. Michaels -- I mean, Mr. Martin is going to have
11 an objection to this process.

12 And while you're reading, Your Honor, the
13 reason for -- his materiality is listed in the
14 motion, but just to remind the Court, Mr. Reeves
15 left the theater, went to him, was very calm. He
16 testified he was very calm. There was nothing
17 unusual about Mr. Reeves. Mr. Reeves was very
18 patient there at the counter waiting for him to
19 finish speaking to another patron.

20 MR. MARTIN: That is a Fred Meyers?

21 MR. ESCOBAR: That's Fred Meyers.

22 MR. MARTIN: No. Fred Meyers is the
23 vice-president who came down and gave the flash
24 drive.

25 MR. ESCOBAR: No. Fred Meyers is that

1 individual.

2 THE COURT: The one at the counter?

3 MR. ESCOBAR: The one at the counter.

4 THE COURT: Do you have any objection?

5 MR. ESCOBAR: You're talking about the guy
6 that came from Alabama is someone completely
7 different.

8 MR. MARTIN: Another Meyers.

9 MR. ESCOBAR: No. It wasn't a Meyers. I'm
10 trying to think his name now. But the guy that
11 came to pick up the hard drives or to control the
12 hard drives being removed?

13 Yeah. That was someone else. I'm pretty
14 sure.

15 If Your Honor wants to, why don't you table
16 this until tomorrow.

17 THE COURT: Okay. Yeah. Check it out.

18 All right. So I've got this certificate that
19 I can sign ASAP.

20 MR. ESCOBAR: Tomorrow.

21 THE COURT: Tomorrow we'll talk about it.

22 MR. ESCOBAR: That way he can have a chance to
23 look at the transcript.

24 THE COURT: Uh-huh. All right. Well, done
25 then. We'll stand in recess until 2:00 tomorrow.

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Thank you, everybody.

MR. ESCOBAR: Thank you.

(Proceedings concluded.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)4)
5 COUNTY OF PASCO)6
7 I, Victoria L. Campbell, Registered Professional
8 Reporter, certify that I was authorized to and did
9 stenographically report the foregoing proceedings and that
10 the transcript is a true record.11 DATED this 28th day of January, 2022.
12
13
14

15 /s/Victoria L. Campbell

16 Victoria L. Campbell, RPR
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