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 TESTIMONY REGARDING VIVIAN REEVES BEING SCARED AT THE TIME OF THE INCIDENT AND WHEN SHE GAVE HER INITIAL STATEMENT TO LAW ENFORCEMENT

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 Vivian Reeves Being Scared at the Time of the Incident and When She Gave Her Initial Statement to Law Enforcement ("State's Motion") and as good cause would show:

Vivian Reeves, the Defendant's wife of over fifty years, was in the theater sitting next to the Defendant at the time of the shooting incident on January 13, 2014. Mrs. Reeves was sixty-seven years old (67) at the time and suffered from several crippling physical infirmities, including arthritis, knee replacement, and pulmonary issues that affect her breathing. Mrs. Reeves was present when Mr. Oulson, in response to the simple request to put his phone away, screamed a barrage of obscenities and threats at the Defendant and leaned over his seat advancing threateningly toward the Defendant. Mrs. Reeves was also present and seated next to the Defendant when Mr. Oulson assaulted the Defendant and was present when the Defendant made the instinctive, split-second decision to defend himself and Mrs. Reeves and use deadly force in response to the imminent threat of great bodily harm or death. Mrs. Reeves's testimony

regarding this incident and her perception is relevant to explain the events that unfolded and is probative of whether the Defendant acted reasonably in response to the threat of great bodily harm or death.

Mrs. Reeves's testimony shows exactly what it is like for the Defendant, as she was seated within inches of the him, to be in a darkened theater with ominous, intense movie trailers playing loudly all around and then hearing an out of control man scream obscenities at her husband. Mrs. Reeves testified that she was fearful at the violent escalation unfolding before her. She was also very frightened when she saw the tall, young Mr. Oulson quickly come to his feet, turn to face the Defendant, and lunge forward in what she quickly determined was Mr. Oulson about to come over the seats at the Defendant.

The State is objecting to testimony of Mrs. Reeves regarding her perception of the events that occurred, specifically; that she felt scared, that she was shaking, she was horrified at the way Mr. Oulson was speaking, and that she cried when she gave her statement to law enforcement. State's Motion at pg. 2-3. The State also objects to Mrs. Reeves's testimony where she clarified what she said in her statement to law enforcement. State's Motion at pg. 3. The State asserts that her testimony "is not logically or legally relevant evidence" and that her testimony is "only being used to bolster the credibility of the Defendant." State's Motion at pg. 1.

Legal Analysis

The United States Supreme Court has said that 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).

Mrs. Reeves testimony that she was scared is probative of whether Mr. Oulsons's actions would induce fear in a reasonable person. *See U.S. v. Brice*, 369 Fed.Appx. 416 (4th Cir. 2010) (Court did not err in allowing witnesses to testify that they were "scared," "nervous," "shocked," and "terrified" during a bank robbery as "[c]ourts routinely admit such testimony as probative of intimidation.") *See, e.g., United States v. Burnley*, 533 F.3d 901, 903 (7th Cir. 2008) ("How the teller who encountered the defendant felt … is probative of whether a reasonable person would have been afraid under the same circumstances, even though the ultimate standard is an objective one.") (internal quotation marks and citations omitted); *United States v. Caldwell*, 292 F.3d 595, 596 (8th Cir. 2002) ("Whether the defendant's actions did induce fear…is not conclusive but is probative of whether his actions were objectively intimidating."). If the Government can elicit testimony from witnesses that they were scared at the time of an incident to prove charges against a defendant, a defendant too can certainly elicit the same to prove an affirmative defense. U.S. Const. Amend. XI, XIV, Fla. Const. Sect. 16.

This Court already correctly ruled that Mrs. Reeves's feelings at the time of the incident are relevant when overruling the State's numerous objections at the immunity hearing. (Immunity Hearing Tr. Vol. XI/pg. 693-95., February 22, 2017). The Court noted that had Mrs. Reeves testified that she was not scared at all, the State would certainly find such testimony "very relevant." *Id.*

The State argues that Mrs. Reeves's testimony that she was scared is unfairly prejudicial. State's Motion at pg. 7-9. Mrs. Reeves's testimony is highly probative to whether the Defendant acted reasonably in response to Mr. Oulson's actions and is not outweighed by the danger of unfair prejudice. Fla. Stat. 90.403. 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). Mrs. Reeves's testimony is probative of the reasonableness of the Defendant's actions and is not outweighed by the danger of unfair prejudice just because it cuts against the State's recitation of events.

The State also brings up anticipatory rehabilitation in nearly two full pages of argument. State's Motion at pg. 6-7. However, it is unclear what, if anything, the State is asking the Court to do on this point. The State's Motion does not object nor ask the Court to limit the use of such testimony. The State cites to a concurring opinion of *Bell v. State*, 491 So.2d 537 (Fla. 1986) that is not precedent and is narrower than the holding of the court. In *Bell*, the Florida Supreme Court stated that a party is allowed to ask its own witness about prior inconsistent statement on direct to "soften the blow". *Id.* at 538. The Defendant is not on notice to respond to any argument regarding anticipatory rehabilitation and as such the Court should strike this portion of the State's Motion.

WHEREFORE, the Defendant respectfully requests this Court to deny the State's Motion *in Limine* to Exclude Testimony Regarding Vivian Reeves Being Scared at the Time of the Incident and When She Gave Her Initial Statement to Law Enforcement.

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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