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IN THE DISTRICT COURT OF APPEAL FOR THE SECOND DISTRICT
STATE OF FLORIDA

CURTIS J. REEVES,
Petitioner.

v.

CHRIS NOCCO,
as Sheriff of Pasco County, Florida,
Respondent.
_____/

Case No.: 14-216 CFAES 683538

PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to Florida Rule of Appellate Procedure 9.100, CURTIS J. REEVES, petitions the court for a writ of habeas corpus directed to the Respondent, CHRIS NOCCO, as Sheriff of Pasco County, Florida, and shows the court as follows:

I. BASIS FOR INVOKING JURISDICTION

This court has jurisdiction to issue a writ of habeas corpus under Article V section 4(b)(3) of the Florida Constitution, and rule 9.030(b)(3) of the Florida Rules of Appellate Procedure. Habeas corpus is the proper remedy to challenge the denial of bail. *See Melnik v. State*, 87 So.3d 1255 (Fla. 4th DCA 2012); *Seymour v. State*, 132 So.3d 300 (Fla. 4th DCA 2014). No remedy other than habeas corpus would be adequate to prevent the petitioner's continued unlawful detention.

II. STATEMENT OF THE FACTS

Mr. Reeves is charged with Murder in the Second Degree and Aggravated Battery. The charges stem from a shooting that took place during the previews in a dark movie theater. On January 13, 2014, Mr. Reeves, age 71, went to an early afternoon showing of the film *Lone Survivor* with his wife, Vivian, age 67. [T. 451; 211; 172; 212] They were seated in the last row, which abuts a large wall. [T. 225; 343] Chad Oulson and his wife, Nicole, were seated in front of the Reeves. [T. 464] Mr. Oulson was 43 years old, 6'4", and weighed 240 pounds. [Certified copy of Autopsy attached]

Mr. Reeves was arrested for the shooting and detained without bond at first appearance. [Certified copy of exhibit A to Motion to Release Defendant on his Own Recognizance or Set Reasonable Bail attached] On January 31, 2014, Mr. Reeves filed a Motion to Release Defendant on his Own Recognizance or Set Reasonable Bail. [Certified copy of Motion and exhibits attached] The trial court conducted a two-day hearing, during which the following evidence was presented:

Thomas Depolis, testified that he met Mr. Reeves in the mid 1970s, when they were both sergeants for the Tampa Police Department. [T. 89; 90] After 26 years of service with the Tampa Police Department, Mr. Depolis retired as Deputy Chief and was appointed Chief Deputy of the Hillsborough County Sheriff's Office for six

years. [T. 87] Around the time they first met, he and Mr. Reeves were asked by the Chief of Police of the Tampa Police Department to form the Tactical Response Team (SWAT), which was focused on recognizing imminent danger and responding appropriately. [T.89; 90-91] Mr. Depolis and Mr. Reeves attended countless specialized training courses while developing the Tactical Response Team, many of which dealt specifically with the skills necessary to recognize imminent danger of death or serious body injury in the line of duty and on the use of necessary force and officer survival. [T. 91, 94; Exhibit C to Motion to Release Defendant on his own Recognizance or Set Reasonable Bail] While developing the Tactical Response Team, they learned to recognize certain factors that could impact a tactical response, such as lighting and noise conditions, physical abilities, facial expressions and body language, proximity, and reaction time. [T. 92; 95 – 100; Exhibit C to Motion to Release Defendant on his own Recognizance or Set Reasonable Bail] Mr. Depolis explained that decisions regarding the use of force are generally made in a fraction of a second. [T. 122]

After Mr. Depolis and Mr. Reeves designed this tactical squad and trained themselves by going to tactical courses across the country, they selected and trained the men that became the first tactical squad for the Tampa Police Department. [T. 92]

Mr. Reeves was the commander of the Tactical Response Team for 16 years. [108 - 109] Mr. Depolis could not remember Mr. Reeves ever overreacting in losing his temper during their work together. [T. 110] Mr. Depolis respected Mr. Reeves so much, both personally and professionally, that he later recommended him for the position of Security Director for Busch Entertainment, a position Mr. Reeves took after retiring from 27 years of service with the Tampa Police Department. [R. 111; 456]

Mr. Depolis testified that Mr. Reeves is uniquely trained to assess danger and act appropriately. [T. 94; 114] As a member of the SWAT team, Mr. Reeves practiced drawing his weapon from its holster thousands of times. [T. 118] Mr. Depolis had no reason to believe Mr. Reeves would be a danger to the community or a flight risk if granted pretrial release. [T. 112]

Margaret Scalise testified that she knew Mr. Reeves both professionally and personally. [T. 134] Ms. Scalise worked as the benefits coordinator for Busch Entertainment. [T. 129] She never saw Mr. Reeves lose his temper, get upset, or say a curse word. [T. 136] Her husband also worked for Busch Entertainment as manager of security. [T.133] She and Mrs. Reeves would often accompany Mr. Reeves and Mr. Scalise on yearly conferences. [T. 133] During all those interactions, Ms. Scalise never saw Mr. Reeves agitated, lose his temper or become

violent. [T. 138] Ms. Scalise and her husband have attended the movies with Mr. and Mrs. Reeves at that same movie theater at least 20 times. [T. 140] She has never witnessed Mr. Reeves get upset over texting or anything like that. [T. 140-41] Their double dates were uneventful and would include going to lunch at Sonny's BBQ, an early matinee movie, and Dairy Queen for desert. [T. 141] Ms. Scalise had no reason to believe Mr. Reeves would be a danger to the community or be a flight risk if granted pretrial release. [T. 142]

Michael Scalise testified that he began working with Mr. Reeves in 1993, when Mr. Reeves became Director of Security for Busch Entertainment. [T. 149, 150] During that time, Busch Entertainment dealt with four million guests per year and had a staff of 105 employees. [T. 150] In that capacity, he worked hand-in-hand with Mr. Reeves. [T. 154] Mr. Scalise never found Mr. Reeves to be aggressive or agitated or rude or violent in any way. [T. 155] Instead, Mr. Scalise described Mr. Reeves as quiet, calm, low-key. [T. 162] Mr. Reeves wrote the policies and procedures for security for Busch Entertainment. [T. 152] As Director of Security, Mr. Reeves dramatically improved the security at Busch Entertainment. [T. 152 – 53] Mr. Scalise had no reason to believe Mr. Reeves would be a danger to the community or be a flight risk. [T. 163]

Jennifer Shaw, Mr. Reeves' daughter, testified that she and her two year-old

daughter live with her parents, Vivian and Curtis Reeves in Brooksville, Florida. [T. 171; 174] Mr. Reeves also has a son, Matthew, who is an officer with the Tampa Police Department. [T. 171 -72] Mr. Reeves has been married to Vivian for 46 years. [T. 172] He spent his entire life in the Tampa area. [T. 176] Mr. Reeves has four siblings, three of which live in the area, as well as many extended family members. [T. 172 -73] They are a close family unit. [T. 173] Mr. Reeves cares for his 93 year-old mother, who lives in a nearby retirement community. [T. 185] Mr. Reeves' home, which he owns outright, has an estimated value of $186,000. [T. 196]

Mr. Reeves went to college while working as a police officer. He graduated magna cum laude from the University of Tampa. Mr. Reeves was an active father, present at all of his children's school events and activities. [T. 179] The Reeves went camping every year, did lots of outdoor activities, and attended church together every Sunday. [T. 179] Ms. Shaw could not think of anytime during her childhood where she saw her father interact with someone in an angry manner. [T. 181; 182]

Mr. Reeves carried a firearm at all times. [T. 201] He had a concealed weapons permit. [T. 200] As a retired Captain with 27 years of service with the Tampa Police Department, Mr. Reeves was authorized and encouraged to carry a firearm pursuant to 18 U.S.C. § 921, entitled the Law Enforcement Safety Act of 2004. [Motion to Release Defendant on his own Recognizance or Set Reasonable

Bail, page 7]

Matt Reeves has removed all the guns and ammunition from Mr. Reeves' home since the day of the incident. [T. 204]

Mr. Reeves suffers from bursitis in his shoulder, arthritis in both hands, a bad back, and floaters in his eyes. [T. 188] He also has high blood pressure and high cholesterol. [T. 189] Ms. Shaw has noticed her father's physical ailments escalate. [T. 192] He has no strength in his hands, as indicated by his recent inability to use a bow while hunting and his inability to take apart kayak paddles. [T. 194 – 95] Mrs. Reeves is also in poor health, suffering from osteoarthritis, asthma, chronic bronchitis, and a nodule in one of her lungs, which results in reduced lung capacity to 60%. [T. 186 – 87]

Charles Cummings was a patron at Cobb Theater on the afternoon in question. [T. 212] He was seated to the right of Mr. Oulson. [T. 213] During the previews, his attention was drawn to a conversation between Mr. Reeves and Mr. Oulson. [T. 214-15] The movie previews were playing loudly. [T. 224] He could not hear what Mr. Reeves was saying but heard Mr. Oulson say he was texting his two year-old daughter. [T. 215] He saw Mr. Reeves leave the theater and shortly thereafter return to his seat. [T. 216, 217] Mr. Cummings speculated that Mr. Reeves appeared angry and agitated because he was grumbling and his knee hit the back of Mr.

Cummings' seat. [T. 216] When Mr. Reeves returned, Mr. Oulson stood up and said something to the effect of a theater manager, did you tell the theater manager about us, did you report the theater manager. [T. 217] Mr. Oulson, who Mr. Cummings described as a mean looking 6'6" individual, leaned toward Mr. Reeves and spoke to him in a loud, animated voice. [T. 240, 241, 247] Mr. Cummings saw popcorn in the air. [T. 218] He did not see Mr. Oulson strike Mr. Reeves but saw Mrs. Oulson trying to push Mr. Oulson back. [T. 218, 249] He saw a bright flash and heard the gun go off. [T. 219] Thirty to forty seconds later, Mr. Reeves said "throw something in my face." [T. 219 – 20]

On cross-examination, Mr. Cummings admitted that his focus was on viewing the trailers, not the conversation between Mr. Reeves and Mr. Oulson. [T. 227; 239] Moreover, much of what he did observe, he observed peripherally, without the benefit of his glasses to correct his poor vision, which he stated was 20/300 in one eye and 20/200 in the other eye. [T. 244; 229] Likewise, on cross-examination, Mr. Cummings admitted that he had no basis for his statement that he believed Mr. Reeves was agitated and stated that Mr. Reeves could have hit the back of his chair because his backrest was encroaching into the walkway, which was the only method of egress. [T.225; 237]

Mark Turner, another movie patron, was seated in the same aisle as Mr. and

Mrs. Reeves. [T. 278] The lights in the theater were dim, at best. [T. 304] When Mr. Turner arrived at his seat, only Mrs. Reeves was seated. [T. 278] He observed Mr. Reeves enter the theater. [T. 279] According to Mr. Turner, Mr. Oulson was standing in front of his seat, looking at his phone, when Mr. Reeves got to his seat. [T. 294] Unlike Mr. Cummings, Mr. Turner found Mr. Reeves to be polite as he excused himself when he passed by. [T. 292] He did not find Mr. Reeves to be agitated and did not hear him mumbling. [T. 292] Mr. Turner described the aisle as difficult to navigate. [T. 293] Once Mr. Reeves sat down, Mr. Turner could no longer see him. [T. 291] Mr. Oulson was holding what he described as a small black cell phone in his right hand and a bag of popcorn in his left hand. [T. 300 – 02] Mr. Oulson was leaning over toward Mr. Reeves. [T. 312] Mr. Turner heard Mr. Oulson say "I – do you mind? I got a voicemail from my babysitter. I'd like to check to see that my daughter is okay." [T. 281] He didn't hear Mr. Reeves respond but Mr. Oulson's demeanor changed and he threw popcorn at Mr. Reeves, immediately after which he heard a shot fire. [T. 281-82] He did not hear Mr. Oulson yelling nor did he see Mrs. Oulson holding her husband back. [T. 298 – 99; 308 – 09] Almost immediately after the gunshot, he heard Mr. Reeves say something to the effect of "throw popcorn in my face." [T. 282]

Alan Hamilton, an off-duty Sumter County corporal, was seated five or six

seats away from Mr. Reeves. [T. 322; 326] The theater was dark during the movie previews, making it difficult to see details such as facial expressions. [T. 338] He heard Mr. Oulson speaking in a raised voice, which caught his attention. [T. 327] He saw Mr. Oulson, who he described as tall, leaning over his chair toward Mr. Reeves and heard him yell "I'm trying to text my fucking daughter, if you don't mind." [T. 345] The loudness of Mr. Oulson's voice alarmed him. [T. 346] He saw the back of Mr. Oulson's chair move into Mr. Reeves' space. [T. 345] Corporal Hamilton did not see anything in Mr. Oulson's hands. [T. 347] When he looked up, he saw a flick of popcorn and, instantly thereafter, a muzzle blast. [T. 329] He went to Mr. Reeves, who was sitting in his seat with the firearm on his left knee. [T. 330] He observed a large cell phone, which was later determined to belong to Mr. Oulson on the floor between Mr. Reeves' legs. [T. 356, 357] Corporal Hamilton heard Mr. Reeves say he got hit by something in his eye. [T. 332]

Derek Friedhoff was seated one or two rows in front of Mr. Oulson. [T. 378 – 79] He heard bickering but could not hear what was being said. [T. 380] A short while later, he heard more bickering. [T. 381] He saw a cell phone screen lit up and heard Mr. Oulson say, in an elevated voice, something along the lines of texting my daughter. [T. 381; 395] Mr. Oulson was holding his phone, which had an LCD screen, in his right hand. [T. 396 – 97] In making his observations, Mr. Friedhoff had

to look over his shoulder, through the space between where he and his girlfriend was seated. [T. 389 – 90] He could see only silhouettes but saw someone stand up and heard crumpling and an object land. [T. 382; 400] Mr. Friedhoff noted that the theater was loud from the noise of the previews. [T. 391] He saw the movement of something being thrown but couldn't tell what it was. [T. 400] After something was thrown, he heard someone say either "I'll teach you" or "I'll show you to throw popcorn at me." [T. 401] He then saw the flash from the muzzle of the gun fired. [T. 383]

Detective Allen Proctor testified that, following Mr. Reeves' arrest, he advised Mr. Reeves of his *Miranda* rights and subsequently interviewed him. [T. 443] Mr. Reeves' recorded statement was introduced as evidence. [T. 485] During the interview, Mr. Reeves is heard complaining of not having any feeling in his shoulders. [T. 455] In his statement, Mr. Reeves stated that he asked Mr. Oulson "Do you mind turning your cellphone off?" [T.457] Mr. Oulson told him to "fuck off" and kept playing with his phone so Mr. Reeves went to tell the manager. [T. 457] When Mr. Reeves returned to the theater from telling management, Mr. Reeves sat down and got the bag of popcorn from his wife. [T. 459] He noticed that Mr. Oulson was no longer playing on his phone. [T. 458] He told him "I see you put it away. I told the manager for no reason." [T. 458] Mr. Oulson then turned around in

his seat and said "If it was any of your fucking business, I was texting my daughter" and "you stay the hell out of my face."[T. 458 – 59] Mr. Oulson was virtually on top of him while he's saying this, with at least one of his feet on the seat, which caused Mrs. Oulson to try to hold her husband back. [T. 459; 465] Mr. Oulson continued to say fuck three or four more times. [T. 465] Mr. Reeves explained that he had nowhere to go and was leaning all the way back in his chair as far as he could to get away from him. [T. 459] Mr. Oulson said something that led Mr. Reeves to believe he was going to kick his ass; he was "scared shitless." [T. 459; 462]

Mr. Reeves explained that he stretched out to try to get away from Mr. Oulson because he had no other way to get out. [T. 460] Mr. Reeves held out his left arm in front of him and said either "no, no, no" or "whoa, whoa, whoa" in response to Mr. Oulson. [T. 460; 463; 467] Mr. Reeves tried to push Mr. Oulson off with his left hand. [T. 467] Mr. Reeves stated that Mr. Oulson hit him with something and that there was something wrong with his left eye. [T.460] Mr. Reeves explained that Mr. Oulson had his cell phone in his hand because he saw the blur of the screen. [T460] The blow moved his face sideways, knocked his glasses partially off and made him kind of dazed. [T. 469; 461] He had never had anybody jump on his ass like that. [T. 457] Mr. Reeves knew Mr. Oulson was coming after him and saw that he was unnecessarily explosive. [T.468] Mr. Oulson's face was contorted and he was in an

aggravated position. [T. 470] Mr. Reeves didn't understand his motivation. [T. 468] He thought Mr. Oulson was "fixing to do me – do me some bad stuff." [T. 469] After the incident, Mr. Reeves saw Mr. Oulson's cell phone lying at his feet. [T. 476]

Even during the interview, Mr. Reeves felt like he had something in his eye. [T. 461] Mr. Reeves explained that he had arthritis in both hands and that his back is a "freaking wreck." [T. 462] He noted that, "as you get older, you find out you're a physical wreck." [T. 462] Mr. Reeves explained that his agility is gone, noting that last time he used the pistol, he could hardly shoot it because he had so much arthritis. [T. 471] Mr. Reeves also told Detective Proctor that he's 71 years old – he's retired, has gained weight, has arthritis in his back, his knees, his hand. [T. 472] He couldn't take that guy; couldn't take anybody. [T. 472]

When asked why he shot Mr. Oulson, Mr. Reeves said because "it scared the hell out of me . . . I thought the guy was fixing to beat the shit out of me." [T. 470] He was confident that after already having hit one time, Mr. Oulson wasn't going to stop. [T. 472]

Detective Proctor also interviewed Vivian Reeves, the recording of which was also introduced as an exhibit. [T. 484; 485] In her interview, Ms. Reeves stated that Mr. Reeves asked Mr. Oulson to stop texting. [T. 487] Mr. Oulson said something

back but she did not hear what he said. [T. 487] Mr. Reeves said he was going to get a manager. [T. 487] Mr. Reeves returned to the theater by himself. [T. 488] Mr. Oulson said "who the fuck do you think", stood up, and moved over, after which she heard popping. [T. 488] When Mr. Oulson reached over, it looked like his whole body came forward. [T. 496] Mrs. Reeves heard Mr. Reeves say that Mr. Oulson hit him in the face. [T. 489] Mr. Reeves was in law enforcement 20 years never shot anyone or threatened anybody with a gun. [T. 492] Mrs. Reeves didn't know if Mr. Reeves thought Mr. Oulson was going to hurt him but stated that's what she "would have thought the guy was going to." [T. 492]

Early in the investigation, Detective Proctor became aware that there were cameras in the theater. [T. 537] Despite this, he didn't view the tape until several days later. [T. 537]

The State also introduced a copy of the surveillance video from inside the theater. [T. 585] The video shows Mr. Oulson throwing his phone at Mr. Reeves, hitting him on his person, and shoving popcorn from Mr. Reeves' hand onto his person. Law enforcement failed to determine the speed the surveillance cameras were filming or the speed in which the film was played. [T. 579] Therefore, it is impossible to determine if the movements in the film are in real time. Likewise, law enforcement failed to determine how much motion was required in order to activate

the video, which is motion activated. [T. 581] The motion activation film results in events being joined on the film that are not necessarily joined in real time. [T. 582] Law enforcement was also advised that the cameras did not have accurate or consistent timestamps. [T. 582]

The defense introduced two portions of the State's video – one in which the portion shows Mr. Oulson throwing the phone at Mr. Reeves and one in which the portion shows Mr. Oulson grabbing the popcorn from Mr. Reeves and shoving it in his person.[1] [T. 640] The video, most importantly, clearly depicts a bright light from the phone's LCD screen and a hand coming in the direction of Mr. Reeves as the phone is thrown. The light is seen traveling toward Mr. Reeves' face, appears to bounce from his person, and then is seen falling to the floor.

The autopsy of Mr. Oulson, which the defense introduced as an exhibit, is consistent with Mr. Oulson being in the process of committing a third attack against Mr. Reeves, as he had an "intermediate range grazing gunshot wound of right hand/wrist." [T. 605] It states the gunshot wound has surrounding stippling on the posterior surface of the hand, directed back to front when the arm is in the anatomical position. The autopsy report notes that the "paths of the two gunshot wounds correspond when the right hand/wrist is held in front of the thorax and likely

1 These files are entitled PhoneThrow.mp4 and Popcorn-Gun.mp4 and were played on Windows Media Player, version 12.0.7601.18150.

represent the path of a single bullet." [Certified copy of autopsy report attached]

Detective William Lindsey interviewed Nicole Oulson. [T. 545] Her recorded statement was introduced as evidence. [T. 545] Ms. Oulson stated that Mr. Reeves got rude with her husband and made some comments about turning off his cell phone. [T. 547] Mr. Reeves left. [T. 547] When he returned to his seat, Mr. Reeves said "Oh, so now you put the phone away." [T. 548] Mr. Oulson turned around, stood up, and said "Hey, what is your problem?" [T. 548] Mrs. Oulson stood up, put her hand on his chest and told him, "it's not worth it, sit down, watch the movie." [T. 548] She stated that Mr. Oulson was angry and that both men were "huffing and puffing." [T. 552] Mrs. Oulson was embarrassed by her husband's behavior, who she described as a hothead. [T. 554; 556] She did not see any pushing, shoving, or hitting. [T. 557] Mrs. Oulson was shot on her ring finger on her left hand, which she had put on her husband's chest to tell him to sit down. [T. 548, 554]

The trial court denied bail, finding that the State had "met their burden of 'proof of guilt is evident or the presumption is great.'" However, the trial court failed to make any findings to support this ruling. Instead, the trial court stated it "was hesitant to announce in open court a summary of the evidence the Court found credible and the specific enumeration of reasons to deny bond." [Certified copy of Order attached]

The trial court explicitly found, "[w]ithout hesitation . . . the Defendant is not a flight risk" and that it had "few concerns that [the Defendant] will be a danger to the community if released pre-trial." The Court went on to hold that, had the State not met its burden, the court would have set bond at $150,000 with a condition that Mr. Reeves wear an ankle monitor with GPS tracking and remain at his residence.

III. THE NATURE OF THE RELIEF SOUGHT

The nature of the relief sought by this petition is a writ of habeas corpus commanding the respondent to release the petitioner from his custody.

IV. ARGUMENT

A. The trial court departed from the essential requirements of the law in finding that the proof guilt is evident and the presumption great.

Both the Florida Constitution and Florida Rule of Criminal Procedure 3.131 make clear that there is a presumption in favor of pretrial release. Specifically, Article I, section 14 of the Florida Constitution provides:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of the guilt is evident or the presumption great, every person charged with a crime of violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accuse may be detained.

Art. I 1 §4, Fla. Const (Emphasis added).

Florida Rule of Criminal Procedure 3.131(a) resonates this sentiment, providing, in pertinent part, as follows:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.
> [. . . .]
>
> If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The degree of proof necessary before bail can be denied in such cases was set forth by the Supreme Court in *Russell v. State*, 71 So. 27 (1916) and *State ex rel. Van Eeghen v. Williams*, 87 So.2d 45 (Fla. 1956). Specifically, the Court held that the State is held to an even greater degree of proof than that required to establish guilt beyond a reasonable doubt.

Mr. Reeves is charged with Murder in the Second Degree, in violation of Florida Statute 782.04, which provides

> The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s.775.082, s. 775.083, or s. 775.084.

An act is immediately dangerous to another and evincing a depraved mind for purposes of the offense of second degree murder, if the act or series of acts is one that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another; (2) is done from ill will, hatred, spite or an evil intent; and (3) is of such a nature that the act itself indicated an indifference to human life. *Dorsey v. State*, 74 So.3d 521 (Fla. 4th DCA 2011), *Poole v. State*, 30 So.3d 696 (Fla. 2d DCA 2010), *Rayl v. State*, 765 So.2d 917 (Fla. 2d DCA 2000).

Although exceptions exist, the crime of second degree-murder is normally committed by a person who knows the victim and has had time to develop a level of enmity toward the victim. *Light v. State*, 841 So.2d 623,626 (Fla. 2d DCA 2003). Hatred, spite, evil intent, or ill will usually require more than a instant to develop. *Id.* Florida courts have held that an impulsive overreaction to an attack or injury is itself insufficient to prove ill will, hatred, spite, or evil intent. *Dorsey*, 74 So.2d at 524.

In this case, there are no facts that establish that Mr. Reeves' use of force was done from ill will, hatred, spite or evil intent as required by 782.04(2). Instead, the unrefuted evidence was that, after the initial verbal exchange, Mr. Reeves left to advise theater management of Mr. Oulson's actions. This is a clear indication that his desire was to peacefully and prudently rectify the problem. When he returned, Mr. Reeves was polite and calm, sat down, and picked up his popcorn to watch the

movie. Clearly, had Mr. Reeves intended on attacking or shooting Mr. Oulson, he would not have sat down and grabbed his popcorn after returning from speaking to the manager.

The evidence presented by the State makes clear that there is significant confusion amongst the State's witnesses about what actually occurred. The only consistent testimony between Mr. Cummings, Mr. Turner, Corporal Hamilton, and Derek Friedhoff was that the theater was dark and loud and that the incident happened quickly. Otherwise, each witness's account of the event contradicts the other. Likewise, Ms. Oulson's recorded statement contradicts Corporal Hamilton's version of the events. This is not surprising as each witness had limited visibility because of the darkened movie theater as well as audio interference from the noise of the movie previews. Similarly, the witnesses' memories were likely tainted not only by the emotional aspect of the incident but also by the wide-spread national media attention.

When there is such a conflict in the evidence, the State cannot be said to have met its burden of proof. The State must not only prove murder in the second degree, but must also refute Mr. Reeves' claim of self-defense. In proceedings such as these, the standard of proof is proof positive and presumption great, which is even greater than beyond a reasonable doubt.

Likewise, Mr. Reeves' unrebutted and unimpeached statements to law enforcement, as well as the video itself demonstrate that he used force only in self-defense and as a result of his fear of bodily harm and to prevent the commission of a felony / forcible felony.

Under Florida law, an accused may assert his justifiable use of deadly force as outlined in Florida Statutes 782.02 and 776.012.

Florida Statute 782.02 (Justifiable Use of Deadly Force) reads

> The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit *any* felony upon him or her or upon or in any dwelling house in which such person shall be.

Pursuant to section 782.02, Mr. Reeves was entitled to use deadly force to resist any felony upon him. Although Mr. Reeves may have had a duty to retreat under this statute, the facts and circumstances make clear that he had no reasonable means to retreat. In fact, there was no evidence presented by the State to suggest that he had the ability to retreat.

In this case, because Mr. Reeves was 71 years old at the time Mr. Oulson attacked him, Mr. Oulson's acts of hitting Mr. Reeves with a bag of popcorn and cell phone are, at the very least, acts of felony battery under Florida Statute 784.08. Florida Statute 784.09 provides

> Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65

> years of age or older, regardless of whether he or she knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:
>
> (c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

This statute clearly reflects the Legislature's intent to give special protection to the elderly, "whose old age often brings physical, emotional, and mental infirmities making [him or her] more vulnerable because the individual cannot defend himself from an attack . . . ." Tracy L. Kramer, Section 784.08 of the Florida Statutes: A Necessary Tool to Combat Elder Abuse and Victimization, 19 Nova L. Rev. 735 (1995). Likewise, the elderly are more prone to serious injury from the result of violence as their bodies are more fragile. Mr. Reeves, being 71 years of age, had the absolute legal right to use deadly force to resist any attempt to commit any felony upon him.

Mr. Reeves, as a retired law enforcement officer, was in a unique position to know the law as it pertains to his justifiable use of deadly force and as it pertains to the elderly. He spent his career as a public servant, enforcing the laws of Florida.

Similarly, Florida Statute 776.012 (Use of Force in Defense of Person) reads:

> A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

> (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a *forcible felony* . . . .

The term "reasonable belief" is not defined by statute. Reasonable belief is a common law concept that has been developed in case law. In *Brown v. United States*, 256 U.S. 335, 343 (1921), the Supreme Court articulated the standard for reasonable belief, noting "[d]etached reflections cannot be demanded in the presence of an upended knife." The Court held further "it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him." *Id.*

The standard jury instructions also outline the standard for determining a defendant's reasonable belief:

> In deciding whether defendant was justified in the use of deadly force, you must judge [him] [her] by the circumstances which [he] [she] was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.
>
> If the defendant [was not engaged in an unlawful activity and] was attacked in any place where [he] [she] had a right to be, [he] [she] had

> no duty to retreat and had the right to stand [his] [her] ground and meet force with force, including deadly force, if [he] [she] reasonably believed that it was necessary to do so to prevent death or great bodily harm to [himself] [herself] [another] or to prevent the commission of a forcible felony.
>
> Fla. Std. Jury Insr. (Crim.). [Justifiable Use of Deadly Force]

By requiring that a defendant be judged by his or her circumstances, the law recognizes that reasonable belief must be considered by an objective person in the defendant's subjective circumstances. Those circumstances include, but are not limited to, the defendant's age, disabilities, special skills, and physical surroundings.

In this case, Mr. Oulson committed at least two acts of violence against Mr. Reeves. First, this 6'4" 240 pound man stood up and threw his cell phone at Mr. Reeves' face, hitting him and resulting in the phone landing on the floor between Mr. Reeves' feet. Mr. Oulson then shoved Mr. Reeves' popcorn out of his hand and into his person. Moreover, the autopsy suggests that Mr. Oulson was in the process of committing a third attack against Mr. Reeves, as he received a grazing gunshot wound on his right hand/wrist while extended in front of him, which coincides with the path of the gunshot wound to his chest. The stippling indicates that Mr. Oulson's hand and fist were close to Mr. Reeves and the firearm. The only reasonable conclusion drawn from this evidence is that Mr. Oulson was about to punch Mr. Reeves with his fist when he was shot. Otherwise, why would an individual who

has already attacked Mr. Reeves at least twice immediately before have his hand/fist extended in front of his body yet again?

These acts of violence by Mr. Oulson constitute the crime of battery, throwing a deadly missile, and aggravated battery with a deadly weapon. A deadly weapon is an item which, when used in the ordinary manner contemplated by its design, will or is likely to cause death or great bodily injury or any instrument likely to cause great bodily harm because of the way it is used during a crime. *J.W. v. State*, 807 So.2d 148, 149 (Fla. 2d DCA 2002). To that end, Florida Standard Jury Instruction 8.4, entitled Aggravated Battery, defines a deadly weapon as a weapon "used or threatened to be used in a way likely to produce death or great bodily harm." Whether an item is a deadly weapon is a factual determination to be determined under the circumstances, taking into consideration "size, shape, material, and the manner in which it was used or was capable of being used." *Simmons v. State*, 780 So.2d 263, 265 (Fla. 4th DCA 2001). Courts throughout the United States have found that a cell phone constitutes a deadly weapon. *See Lester v. State*, 2004 WL 635411 (Tex. App – Amarillo 2004); *Smith v. Hedgpeth*, 706 F.3d 1099 (9th Cir. 2013); *U.S. v. LeCompte*, 108 F.3d 948 (8th Cir. 1997) (finding that a phone constituted a dangerous weapon under federal law). Just consider Mr. Oulson, a

6'4" 240 pound man, throwing a cell phone at point blank range. Such could undeniably cause great bodily harm.

Pursuant to Florida Statute 776.012, Mr. Reeves was justified in using deadly force both because he reasonably believed that such force was necessary to prevent imminent death or great bodily harm *or* to prevent the commission of a forcible felony. In this case, the forcible felony would be Mr. Oulson's throwing a deadly missile and committing aggravated battery. Under section 776.012, Mr. Reeves did not even have a duty to retreat. It is also important to remember that both self-defense statutes, 782.02 and 776.012, do not require the felony to have been committed before deadly force can be used. The law clearly mandates that deadly force can be used to *prevent* the commission of such felonies. In this case, Mr. Reeves use of force occurred after multiple felonies had already occurred because he was in fear of severe bodily injury and to prevent any further felonies from occurring.

In evaluating Mr. Reeves' claim of self defense, the trial court was required to consider the following facts: Mr. Reeves was confronted while seated in a dark, loud movie theater, with his elderly, frail wife at his side. He was 71 years old and suffers from arthritis in both hands and bursitis in his shoulder. He knew that he no longer had the agility he once had and that he couldn't withstand a beating. Mr.

Oulson came at him in an aggressive position with a contorted face. Mr. Reeves found him to be unnecessarily explosive and noted that he was much younger than him. Mr. Reeves, a retired, decorated law enforcement officer, who built his career on recognizing imminent danger and responding appropriately, was in the best position to perceive that the danger to him and his elderly wife was imminent and that deadly force was absolutely necessary to prevent death, great bodily harm, or the commission of a felony / forcible felony. There was not one scintilla of reliable evidence presented to refute this reasonable perception.

Importantly, Mr. Reeves, a retired Tampa Police Department Captain, was not only authorized, but encouraged by Congress to carry a firearm at the time of the incident. The United States Congress realized the value of allowing our retired law enforcement officers to carry firearms when it enacted 18 U.S.C. § 921, entitled the Law Enforcement Safety Act of 2004. In passing the law, Congress recognized that retired law enforcement officers should be permitted to carry concealed firearms "so that they may respond immediately to crimes across State and other jurisdictional lines, as well as to protect themselves and their families from vindictive criminals." Proceedings and Debates of the 108th Congress, 150 Cong. Rec. S7301-06 (2004).

Even if the trial court could have rejected Mr. Reeves' theory of self-defense because it found that he overreacted to Mr. Oulson's attack, such a finding would be consistent only with evidence of manslaughter, not second-degree murder. *See Dorsey*, 74 So.2d at 524. The video undeniably establishes that it was Mr. Oulson who attacked Mr. Reeves. Likewise, the video shows no attack or use of violence by Mr. Reeves prior to using his firearm in self-defense.

In *Dorsey*, the Fourth District cited to the following cases in support of its finding *Poole v. State*, 30 So.3d 696, 698-99 (Fla. 2d DCA 2010) (where defendant stabbed the unarmed victim once after the victim had lunged at him in a confined R.V. the evidence showed an impulsive overreaction to an attack, warranting a conviction for manslaughter but not second degree murder); *Bellamy v. State*, 977 So.2d 682, 684 (Fla. 2d DCA 2008) (reversing convictions for second degree murder and attempted second degree murder where defendant stabbed victims after he was pushed to the ground and someone stepped on his neck at a nightclub); *Rayl v. State*, 765 So.2d 917, 919-20 (Fla. 2d DCA 2000) (prosecution failed to establish that the defendant acted with depraved mind where the victim stormed into the defendant's place of business threatening to kill the defendant, the defendant shot the victim twice, and the victim had come toward the defendant before each shot; the fact that the defendant was standing with his arms folded when officers arrived was

insufficient to prove ill will); *McDaniel*, 620 So.2d at 1308 (prosecution failed to prove prima facie case of second degree murder where evidence showed that the victim initiated altercation with the defendant by hitting him in the mouth and knocking him to the ground; although defendant's use of knife to ward off further attack may have been excessive, thereby negating a finding of self-defense, his acts did not evince depraved mind; no evidence was presented that defendant acted out of ill will, hatred, spite, or an evil intent).

Likewise, in this case, even if the trial court found that Mr. Reeves used excessive force in his self-defense, pursuant to the case law above, Mr. Reeves would face a manslaughter charge, not second-degree murder and would be constitutionally entitled to pre-trial release. If the facts would support something other than a guilty verdict on the second-degree murder charge then proof is not evident and the presumption is not great. *See Seymour*, 132 So.2d at 302. This is especially so where the degree of proof is even greater than beyond a reasonable doubt.

In *Seymour*, the court found that the State failed to establish that proof of guilt for second-degree murder was evident or presumption great where the evidence supported lesser degrees of homicide. Specifically, the witnesses who observed the shooting in that case all perceived that the defendant was

surprised the victim was shot and the evidence that the defendant tried to discard the gun immediately after the shoot did not necessarily require a conclusion that the shooting was non-accidental.

Similarly, in *Mininni v. Gillum*, 447 So.2d 1013 (Fla. 2d DCA 1985), the defendant was charged with first-degree murder. The defendant was the manager of a club where the employees were unable to subdue a customer. The defendant went outside with a pistol and fired two warning shots but the customer continued his aggressive behavior. The defendant fatally shot the customer. This Court held that proof of his guilt was neither evident nor great so as to justify pretrial detention without bond.

Importantly, in this case, the trial court made no findings of fact regarding the evidence that allegedly established that the proof of guilt is evident and the presumption great; presumably, because no such evidence exists.

B. The trial court abused its discretion in denying bail.

Even where a defendant is charged with an offense punishable by life imprisonment, and the State has demonstrated that the proof of guilt is evident and the presumption is great, the accused may still come forward with a showing

addressed to the court's discretion to grant or deny bail. *See State v. Arthur*, 390 So.2d 717, 719 (Fla. 1980).

Florida Rule of Criminal Procedure 3.131(b)(3) elaborates on the factors a court must consider in determining bail. It reads:

> In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

In this case, Mr. Reeves has ample ties to the community, is not a flight risk, and is not a danger to the community. Mr. Reeves is married and has two adult children. He retired as a decorated law enforcement officer after 27 years of public service and went on to be director of security for Busch Entertainment. He owns a home in Hernando County, where he lives with his wife, his daughter, and granddaughter. He takes care of his 93 year old mother.

Accordingly, the trial court found "without hesitation . . . the Defendant is not a flight risk" and that it had "few concerns that [Mr. Reeves] will be a danger to community if released pre-trial." Despite these findings, the trial court inexplicably denied bail. The Legislature has made clear that its intent is that the primary consideration be the protection of the community from risk of physical harm to persons. Fla. Stat. § 907.041 (2014). To that end, courts have made clear that the "purpose of bail is not to punish the accused, but to secure attendance of accused to answer charge against him." *State ex rel. Crabb v. Carson*, 189 So.2d 376 (Fla. 1st DCA 1966); *Nicholas v. Cochran*, 673 So.2d 882 (Fla. 4th DCA 1996) (finding that the purpose of bail is to ensure appearance of criminal defendant at subsequent proceedings and to protect community against unreasonable danger from criminal defendant) Where, like here, the defendant is not a flight risk or a danger to the community, it is an abuse of discretion for the trial court to deny bail.

Because Petitioner has wrongfully been denied pretrial release, he is being illegally detained. Accordingly, Petitioner respectfully requests that this Court issue a writ of habeas corpus as such is the only adequate remedy to prevent his continued unlawful detention.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the Office of the State Attorney and by facsimile to the Honorable Pat Siracusa, on this, 21st day of April, 2014.

I FURTHER HEREBY CERTIFY that this Petition complies with the font requirements of rule 9.100(l) of the Florida Rules of Appellate Procedure.

Respectfully submitted,

[redacted]

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