IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC1400216CFAES-01

STATE OF FLORIDA	:	1. MURDER IN THE SECOND DEGREE,
V.	:	1°F (PBL)
CURTIS J. REEVES	:	2. AGGRAVATED BATTERY, 2°F
SPN 00683538		

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET RESONABLE BOND

Comes now, Bernie McCabe, State Attorney for the Sixth Judicial Circuit of Florida and files this response to Defendant's Motion to set reasonable bond and would respond as follows:

Article 1, Section 14 of the Florida Constitution provides:

> 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 shall be entitled to pretrial release on reasonable conditions. If no condition 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 Florida Supreme Court has held that "when a person accused of a capital offense or an offense punishable by life imprisonment seeks release on bail, it is within the discretion of the court to grant or deny bail when the proof of guilt is evident or the presumption great", and that "before the court can deny bail the state must have carried the burden of establishing that the proof of guilt is evident or the presumption great." *State V. Arthur, 390 So.2d 717 (Fla. 1980).*

Burden of Proof

Thus for the trial court to deny petitioner a bond for this reason, it is necessary for The Court to properly find the State has met this stringent burden.

In Elderbroom, the court interpreted the state's burden as follows:

Indeed, the state is held to a degree of proof greater than that required to establish guilt beyond a reasonable doubt. Furthermore, where the state's evidence is arguably sufficient to convict, but is contradicted in material respects such that substantial questions of fact are raised as to the guilt or innocence of a defendant, then a trial court may properly find that proof of guilt is not evident or the presumption of guilt is not great.

Elderbroom v. Knowles, 621 So.2d 518, 520 (Fla. 4DCA 1993).

"The degree of proof which the state must present to carry its burden in such a case has long been held to be a higher one than that of guilt to the exclusion of all reasonable doubt required for a criminal conviction".

Kirkland v. Fortune, 661 So2d 395, 397 (Fla. 1DCA 1995).

Hearsay Evidence in Form of Affidavits may Suffice to Prove Guilt Sufficient to Allow Pretrial Detention Without Bond.

In Mininni v. State, 477 So.2d 1013 (Fla. 2DCA 1985), the court held that hearsay evidence in the form of affidavits may satisfy the requirement that proof of the defendant's guilt be sufficient to allow detention without bond.

Second Degree Murder

The crime of second degree murder is defined as the unlawful killing of a human being, when perpetrated by an 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 §782.04, Fla. Stat. (2006). An act is imminently dangerous to another and evinces a "depraved mind" if it is an act or series of acts 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 indicates an indifference to human life.

Dorsey v. State, 74 So.3d 521, 524 (Fla. 4DCA 2011).

Depraved Mind

In *Keltner v. State, 650 So.2d 1066 (Fla. 2DCA 1995),* Keltner contends that the evidence was insufficient to warrant the jury's finding that he evinced a depraved mind in shooting the victim. From our review of the evidence in this case, we find that the act of pointing a loaded firearm in someone's direction and then firing it is imminently dangerous to another and evinces a depraved mind. *Brown v State, 569 So.2d 1320 (Fla. 1DCA 1990; Edwards v State 302 So.2d 479 (Fla. 3DCA 1974).*

Malice

In *Ramsey v. State, 154 So. 855 (Fla. 1934)*, the court stated: The legal and technical sense of the word "malice" differs from its sense in ordinary or common speech. In the technical sense it is a term of art importing wickedness and excluding a just cause or excuse. When so used it denotes a wrongful act done intentionally without just cause or excuse that definition may be inaccurate because no just cause or excuse can be allowed for a wrongful act. Malice in law refers to that state of mind which is reckless of law and of legal rights of the citizen in a person's conduct toward that citizen.

It includes all acts wantonly or willfully done that is which any man of reason, knowledge and ability must know to be contrary to his duty. It is implied from wrongful unjustifiable acts done on purpose or without just or legal excuse.

It is obvious; therefore, that the phrase 'evincing a depraved mind regardless of human life,' as used in the statute denouncing murder in the second degree, was not used in the legal or technical sense of the word 'malice' as above defined. The phrase conveys the idea of 'malice' in the popular or commonly understood sense of ill will, hatred, spite or evil intent. It is the malice of evil motive which the statute makes an ingredient of the crime of murder in the second degree.

Battery on a Person 65 Years Old or Older in Neither an Enumerated Felony Nor Does it Contain the Necessary Element of "The Use of Threat of Physical Force or Violence Against an Individual".

In *Nelson v. State, 987 So2d 1261 (Fla. 5DCA 2008)*, the issue for resolution was whether the trial court erred in classifying Nelson as a Prison Release Reoffender on the two convictions of battery of a person sixty-five years old or older, pursuant to section 784.08(2)(c), Florida Statues (2004). In *State v. Hearns, 961 So.2d 211 (Fla. 2007)*, the Florida Supreme Court looked at the elements of the offense charged, battery on a law enforcement officer and determined that since a battery could include a mere touching, it would not necessarily be a forcible felony under the PRR statute. We conclude that Hearns applies to the instant charges and that Nelson is not subject to sentencing as a PRR for the two battery offenses. Battery of a Person Sixty-five Years Old or Older is neither an enumerated felony nor does it contain the necessary element of "the use or threat of physical force or violence against an individual". See §784.08(a) (c), Fla Stat. (2004); Hearns, 961 So.2d 216 ("we reiterate that the only relevant consideration when determining whether an offense constitutes a forcible felony is the statutory elements of the offense. If 'the use or threat of physical force or violence against any individual' is not a necessary element of the crime, then the crime is not a forcible felony within the meaning of the final clause of section 776.08'").

Based upon the above foregoing case law it is clear that the Defendant, Curtis Reeves, used excessive force in self-defense, pursuant to the case law above. The act of the Victim, Chad Oulson, of throwing a bag of popcorn at the Defendant, Curtis Reeves, does not justify the Defendant, Curtis Reeves, using deadly force in killing the Victim, Chad Oulson, with a firearm. In consideration of the foregoing, the proof of guilt is evident and the presumption is great that the Defendant, Curtis Reeves, is guilty of Second Degree Murder and would not be entitled to Pre-trial Release as set out in Article I, section 14 of the Florida Constitution.

In light of the above aforementioned cases which support the findings of Second Degree Murder; there was sufficient evidence within the Pasco County Criminal Complaint Affidavit with which to find probable cause for Murder in the Second Degree, 1°F, punishable by life in prison, at First Appearance. Therefore, The Honorable Lynn Tepper's finding of Probable Cause and Defendant, Curtis Reeves, detention without bond was correct.

WHEREFORE, the State of Florida respectfully requests this Honorable Court deny the Defendant's Request to release him on his own recognizance or set reasonable bail in this cause and continue to hold the Defendant, Curtis Reeves, detained without bond.

I HEREBY CERTIFY that a copy of the above foregoing State's Response to Defendant's Motion to Set Reasonable Bond has been furnished to DINO M. MICHAELS, ESQ, by PERSONAL SERVICE, this 3rd day of February, 2014.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

[redacted]

Manuel Garcia
Florida Bar Number: 0845620
Assistant State Attorney
Sixth Judicial Circuit