

Randall M Adams
CLERK SUPERIOR COURT

**IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,)
)
)
) **INDICTMENT NO.**
v.)
) **CR-200043**
TRAVIS MCMICHAEL and,)
GREG MCMICHAEL,)
)
Defendants.)

**DEFENDANT TRAVIS MCMICHAEL'S
RESPONSE TO STATE'S MOTION IN LIMINE TO EXCLUDE
DEFENDANT'S "USE OF FORCE" EXPERTS**

The Defendant, Travis McMichael, files this, his response to the State's Motion in Limine to Exclude Defendant's "Use of Force" Experts.

On February 23, 2020, Travis McMichael had probable cause to believe that Ahmaud Arbery had committed a felony and was endeavoring to escape arrest by sprinting through Satilla Shores. Mr. McMichael, under the authority of OCGA § 17-4-60¹, sought to detain Mr. Arbery until police arrived. While attempting a lawful arrest, Mr. McMichael had to use deadly force to defend himself against Mr. Arbery who had charged Mr.

¹ "A private person has quite as much power to arrest a fugitive felon, where the emergency calls for immediate action as a public officer, and while so doing, is equally under the protection of the law." *Johnson v. Jackson* 140 Ga. App. 252 (1976)(quoting *Croom v. State*, 85 Ga. 718, 723 (1890)).

McMichael, pummeled Mr. McMichael with his fists, and attempted to wrest Mr. McMichael's gun away from him.

A person is justified in using lethal force against another if he reasonably believes such force is necessary to prevent death or great bodily injury to himself or others. O.C.G.A. § 16-3-21(a). The defendant's belief in the necessity of using force must be reasonable – the actions must have been motivated by the fears of a reasonable man. A defendant's intent and actions are relevant to the defense of self-defense inasmuch as its focus is the defendant's reasonable belief of the force necessary to defend himself. *Price v. State*, 280 Ga. 193, 196 (2006)(disapproved on other grounds by *Patel v. State*, 282 Ga. 412 (2007)); *Smith v. State*, 268 Ga. 196, 200 (1997)(evidence that a person suffered from battered person syndrome is only another circumstance which would authorize a finding that a reasonable person, with defendant's experience, would reasonably believe that use of force was necessary.). Jurors are permitted to consider how a reasonable person in defendant's particular circumstances would react. *Bracewell v. State*, 243 Ga. App. 792, 797 (2000); *Dasher v. State*, 146 Ga. App. 118 (1978)(jury was instructed it was proper to consider the relative size, strength, health, and physical infirmities of the defendant and alleged victim).

To aid the jury in its determination of whether Mr. McMichael's actions on February 23rd were reasonable, the jury will hear evidence regarding Mr. McMichael's training and experience while he was in the United States Coast Guard. Such training and experience informed Mr. McMichael's decision-making on February 23, 2020. Mr. McMichael spent approximately ten years in the Coast Guard where he was a boarding officer with arrest powers. In 2009, Mr. McMichael was trained at the Maritime Law Enforcement Academy located at the Federal Law Enforcement Training Center in Charleston ("FLETC"). Throughout the rest of his tenure in the Coast Guard, Mr. McMichael received additional training in law enforcement. The concepts that Mr. McMichael learned at FLETC and every year thereafter about law enforcement were precisely the same concepts taught to all other federal law enforcement officers. It is against this background that the defense intends to call a retired federal law enforcement officer to explain the concepts that Mr. McMichael knew, relied on, and employed on February 23rd. These concepts include: "use of force continuum," perception/reaction time, de-escalation techniques, restraints on the use of deadly force, weapon retention techniques, the ability of an unarmed person to inflict serious bodily injury and to continue to inflict injury even when injured, and the determination of probable cause.

OCGA § 24-7-707 provides, “In criminal proceedings, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.” Expert testimony on issues to be decided by the jury – even the ultimate issue – is admissible where the expert’s conclusion is one which jurors would not ordinarily be able to draw for themselves, i.e. the conclusion is beyond the ken of the average layman. *Smith v. State*, 343 Ga. App. 656, 660 (2017).

The defense’s expert in this case was both a student and an instructor at FLETC, and as such, has extensive knowledge about the law enforcement concepts and training Mr. McMichael received throughout his Coast Guard career. To be clear, the expert will not opine on the “reasonableness” of Mr. McMichael’s actions on February 23rd, nor will he give an opinion on the ultimate issue of whether Mr. McMichael acted in self-defense. However, it is anticipated that the expert will educate the jury on the aforementioned concepts at issue in this case, concepts taught at FLETC and beyond, concepts that informed Mr. McMichael’s decision-making, and how Mr. McMichael’s actions were “consistent with” his training.

A detention of another individual, whether by a private party like Mr. McMichael or by a law enforcement officer, is a seizure of that person and is

governed by applicable Fourth Amendment jurisprudence. The training that Travis McMichael received regarding search and seizure both in the classroom, but more importantly, in repetitive hands-on scenario training informed his knowledge about the threat posed by Ahmaud Arbery to him and his father. This extensive training over ten years did not dissipate simply because he separated from the Coast Guard, and in fact, such concepts that literally mean the difference between life and death for the boarding officer, are taught repetitively so that they become instinctual or muscle memory. Mr. McMichael's understanding of seizure and self-defense scenarios, learned in the Coast Guard, were instrumental in saving his life the day Ahmaud Arbery charged him, and tried to wrest Mr. McMichael's shotgun from him. Mr. McMichael's expert will educate the jury on what Travis McMichael was taught about the guardrails imposed on law enforcement officers by the Fourth Amendment.

The expert's testimony about Travis McMichael's implementation of his law enforcement training will assist the jury assess whether Mr. McMichael's actions and beliefs were objectively reasonable under both O.C.G.A. §§ 17-4-60 and 16-3-21(a).

WHEREFORE, Travis McMichael asks this Court to deny the State's motion in limine.

/s/ Robert G. Rubin

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Certificate of Service

I hereby certify by my signature that I have served a copy of **DEFENDANT TRAVIS MCMICHAEL'S RESPONSE TO THE STATE'S MOTION IN LIMINE TO EXCLUDE DEFENDANT'S USE OF FORCE EXPERTS** upon the parties via the Odyssey E-File System and by emailing it to counsel of record listed below:

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October 15, 2021.

/s/ Robert G. Rubin
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