

IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA
APPELLATE DIVISION

JEFFREY SWARTZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Case No.: 01-2016-AP-0023
LT No.: 01-2016-MM-2711-A



ORDER ON APPEAL

HON. MARK W. MOSELEY, Circuit Judge
HON. STANLEY H. GRIFFIS, III, Circuit Judge
HON. SUSANNE WILSON BULLARD, Circuit Judge

An Appeal from the Alachua County Court, Judge Walter M. Green
For Appellant: Mischael Sachmorov, Esq., Assistant Public Defender
For Appellee: Madeline G. Grippin, Esq., Assistant State Attorney

HON. MARK W. MOSELEY, Circuit Judge
HON. SUSANNE WILSON BULLARD, Circuit Judge

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J.K. JESS, IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL

Appellant seeks review of a final judgment and sentence. Appellant asserts that the trial court erred by precluding testimony about injuries inflicted on Appellant by the victim during a prior violent incident, which was essential to the jury's evaluation of whether Appellant's belief that a use of force was necessary and reasonable to defend himself during the charged battery.

Where a predicate is laid by the showing of some overt act by the victim that indicates a need for action by a defendant in self-defense, evidence of prior specific acts of violence by the victim may be admitted for the limited purpose of proving the reasonableness of the defendant's apprehension at the time of a use of force. *See Williams v. State*, 253 So.2d 243, 247 (Fla. 4th DCA 1971) The record shows Appellant testified that the victim, Lawrence Tolbert, shoved Appellant first. After Appellant shoved back, Tolbert "came at" Appellant with his hands

“balled up”. Having deemed that a proper predicate was laid, the trial court permitted Appellant to testify about the existence of a prior violent incident involving Appellant in which Tolbert was the aggressor. Appellant proffered testimony that, as a result of the prior incident, he suffered two black eyes, a couple cracked ribs, a bloody nose, and a flare-up of a pre-existing nerve condition. The reasonableness of Appellant’s response during the charged battery is directly tied to the degree of injury received in the prior violent incident. Therefore, we find that the trial court abused its discretion by sustaining the State’s objection to the admission of this proffered testimony.

Appellant’s entire defense hinged on his claim of self-defense and the admissibility of evidence supporting his claim should have been accorded great latitude. Since a claim of self-defense is based on the reasonableness of the apprehension in the mind of the defendant at the time of the use of force, it was not harmless error to exclude evidence of the injuries sustained by Appellant during the prior violent incident. *Id.* Accordingly, the final judgment is **REVERSED** and the case is **REMANDED** for a new trial consistent with this opinion.

HON. STANLEY H. GRIFFIS, III, Circuit Judge, concurs in the result only.

DONE AND ORDERED in Alachua County, Florida, on August 28, 2017.



MARK W. MOSELEY, CIRCUIT JUDGE



STANLEY H. GRIFFIS, III, CIRCUIT JUDGE



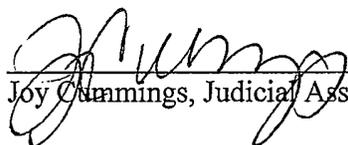
SUSANNE WILSON BULLARD, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing was furnished on August 28, 2017 to:

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Joy Cummings, Judicial Assistant